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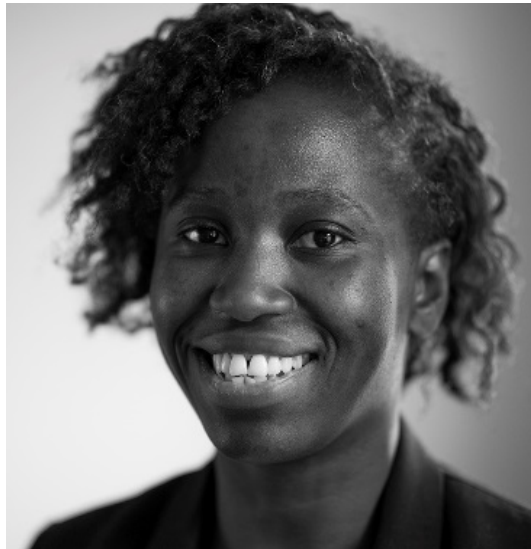
15 April 2021

Residential Possession Proceedings in the Time of Covid-19



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Presenter



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Elizabeth is an established property practitioner with particular expertise in the fields of housing, commercial and residential landlord and tenant law.



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Aim

- The aim of this seminar is to provide you with an overview of the legislative and procedural changes that occurred in residential possession law in England during the current pandemic. I will focus on the following three areas:
- Notice periods
- Commencing or reactivating stayed possession proceedings
- Enforcement action



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Outline of seminar topics

I will focus on the following three areas:

- Notice periods
- Commencing or reactivating stayed possession proceedings
- Enforcement action



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Landlord notice periods

The substantive provisions of the Coronavirus Act 2020 that governs residential tenancies are found in section 81 and schedule 29 of the Coronavirus Act. These provisions protect social and private tenants by delaying when landlords can start possession proceedings during the pandemic.



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Landlord notice periods

Section 81 and schedule 29 of the Coronavirus Act 2020 are now due to expire on 31 May 2021.



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Landlord notice periods

The extended notice period covers the following type of tenancies:

- Protected tenancies and statutory tenancies under the Rent Act 1977
- Secure tenancies and Flexible Tenancies under the Housing Act 1985
- Assured and Assured shorthold tenancies under the Housing Act 1988; and
- Introductory and Demoted tenancies under the Housing Act 1996



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Landlord notice periods

Rent Act 1977: statutory tenancies

Under section 3(4) of the Rent Act 1977, a landlord seeking to commence possession proceedings, was not previously required to serve notice.



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Landlord notice periods

Rent Act 1977: statutory tenancies

Since 26 March 2020 landlords are now required to serve a notice of intention to commence possession proceedings pursuant to section 3(4A) of the Rent Act 1977.



Landlord notice periods

Rent Act 1977: statutory tenancies

The relevant notice periods are as follows:

- 3 months' notice – for notices served between 26 March 2020 and 28 August 2020
- 6 months' notice for notices served between 29 August 2020 and 31 May 2021 unless one of the exceptions applies



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Landlord notice periods

Rent Act 1977: statutory tenancies

The exceptions :

- 4 weeks' notice – where at least 6 months' rent is unpaid for notices served between 26 March 2020 and 28 August 2020
- 4 weeks' notice - where anti-social behaviour is alleged, whether or not any other ground is relied upon
- 3 months' notice – where there has been a breach of



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Landlord notice periods

Secure Tenancies under the Housing Act 1985

Under section 83 of the Housing Act 1985 a secure tenant must be served with a valid notice of seeking possession, also known as a NOSP, before possession proceedings can be commenced, unless the court has determined that it is just and equitable to dispense with the same.



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Landlord notice periods

Secure Tenancies under the Housing Act 1985

26 March 2020 until 28 August 2020

3 months notice period for a NOSP– for all grounds of possession



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Landlord notice periods

Secure Tenancies under the Housing Act 1985

29 August 2020 until 31 May 2021 (unless extended)

A 6 months' extended notice period has been applied for all grounds of possession unless one of the following exceptional circumstances arises.



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Landlord notice periods

Secure Tenancies under the Housing Act 1985

29 August 2020 until 31 May 2021 (unless extended) -

Exceptional circumstances -

- 4 weeks' notice – where there are at least 6 months' arrears of rent under ground 1 of schedule 2 to the 1985 Act (rent arrears or other breach of tenancy) and no other ground save ground 2 of schedule 2 to the 1985 Act is relied upon



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Landlord notice periods

Secure Tenancies under the Housing Act 1985

29 August 2020 until 31 May 2021 (unless extended) -

Exceptional circumstances (cont.) -

- Immediately after service of NOSP -where possession is being sought as a result of anti-social behaviour or use of the premises for immoral or illegal purposes under ground 2 of schedule 2 to the 1985 Act



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Landlord notice periods

Secure Tenancies under the Housing Act 1985

29 August 2020 until 31 May 2021 (unless extended) -

Exceptional circumstances (cont.) -

- 4 weeks' notice - where possession is being sought as a result of ground 2ZA of schedule 2 to the 1985 Act (conviction arising from a riot) and no other ground is specified apart from ground 2 of schedule 2 to the 1985 Act



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Landlord notice periods

Secure Tenancies under the Housing Act 1985

29 August 2020 until 31 May 2021 (unless extended) -

Exceptional circumstances (cont.) -

- 4 weeks' notice - where possession is being sought as a result of ground 5 of schedule 2 to the 1985 Act (inducing a tenancy through a false statement) and no other ground is specified apart from ground 2 of schedule 2 to the 1985 Act



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Landlord notice periods

Flexible tenancies

Notice of non-renewal

To regain possession a landlord must first serve on the tenant a notice of non-renewal of the tenancy pursuant to section 107D(3) of the 1985 Act. The notice of renewal must be in writing and give the tenant not less than six months' notice and inform the tenant of their right to seek a review.



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Landlord notice periods

Notice seeking possession

After the expiry of the notice of non-renewal, a landlord must serve a notice of seeking possession, also known as a NSP, on the tenant to regain possession of the premises.



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Landlord notice periods

Notice seeking possession: notice periods

Before 26 March 2020

2 months notice.



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Landlord notice periods

Notice seeking possession: notice periods

26 March 2020 and 28 August 2020

3 months notice period.



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Landlord notice periods

Notice seeking possession: notice periods

29 August 2020 and 31 May 2021 (unless extended)

6 months notice period.



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

Possession sought under one of the “fault grounds” under schedule 2 to the Housing Act 1988 (“the 1988 Act”) - a notice seeking possession (NSP) must be served under section 8 of the 1988 Act.



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Landlord notice periods

Assured and assured shorthold tenancies under the
Housing Act 1988

26 March 2020 and 28 August 2020

3 months' notice period for all grounds



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Landlord notice periods

Assured and assured shorthold tenancies under the
Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

6 months' notice period unless one of the following exceptions apply.



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Landlord notice periods

Assured and assured shorthold tenancies under the
Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Mandatory grounds of possession exceptions

3 months' notice – death of the tenant (ground 7 of
schedule 2 to the 1988 Act)



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Mandatory grounds of possession exceptions (cont.)

Minimum of 4 weeks' notice for a periodic tenancy and 1 month's notice for a fixed term tenancy – serious anti-social behaviour (ground 7A of schedule 2 to the 1988 Act)



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Mandatory grounds of possession exceptions (cont.)

Minimum of 3 months' notice - tenant has failed the "right to rent checks" (ground 7B of schedule 2 to the 1988 Act)



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Mandatory grounds of possession exceptions (cont.)

4 weeks' notice – at least 6 month's rent arrears under the mandatory rent arrears ground 8 of schedule 2 to the 1988 Act



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Discretionary grounds of possession exceptions

4 weeks' notice – at least 6 month's rent arrears under the discretionary rent arrears ground 10 and 11 of schedule 2 to the 1988 Act



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Discretionary grounds of possession exceptions (cont.)

Immediately after the NSP has been served - under ground 14 of schedule 2 to the 1988 Act; namely, antisocial behaviour grounds or use of premises for



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Discretionary grounds of possession exceptions (cont.)

2 weeks notice - under ground 14A of schedule 2 to the 1988 Act; namely, domestic abuse (ground can only be used by social landlords)



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Discretionary grounds of possession exceptions (cont.)

2 weeks notice - under ground 14ZA of schedule 2 to the 1988 Act; namely, conviction arising from a riot



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

29 August 2020 and 31 May 2021 (unless extended)

Discretionary grounds of possession exceptions (cont.)

2 weeks notice - under ground 17 of schedule 2 to the 1988 Act; namely, making a false statement to induce a tenancy



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Landlord notice periods

Assured and assured shorthold tenancies under the Housing Act 1988

Non-fault grounds under section 21 of the 1988 Act

- Landlords are still permitted to rely on the non-fault ground procedure for recovering possession of a property let on an AST
- A valid notice of seeking possession under section 21 of the 1988 Act must first be served by the landlord



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Landlord notice periods

Assured and assured shorthold tenancies under the
Housing Act 1988

Non-fault grounds under section 21 of the 1988 Act

26 March 2020 and 28 August 2020

3 months notice must be given.



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Landlord notice periods

Assured and assured shorthold tenancies under the
Housing Act 1988

Non-fault grounds under section 21 of the 1988 Act

29 August 2020 and 31 May 2021

At least 6 months notice must be given.



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Landlord notice periods

Introductory Tenancies

- For introductory tenancies under the Housing Act 1996 (“the 1996 Act”) a landlord can only gain possession if they first serve a notice under section 128 of the 1996 Act.
- The standard notice period for a section 128 notice was 4 weeks.



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Landlord notice periods

Introductory Tenancies

26 March 2020 and 28 August 2020

3 months' - notice period regardless of the reason



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Landlord notice periods

Introductory Tenancies

29 August 2020 and 31 May 2021 (unless extended)

- 4 weeks notice - if a reason for possession being sought is in relation to anti-social behaviour, domestic abuse or for a conviction following a riot
- In all other cases the minimum notice period is 6 months



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Landlord notice periods

Demoted tenancies

A local authority or housing acting trust tenant who occupies their premises under a demoted can only have their tenancy terminated if their social landlord first serves them with a notice of proceedings for possession before commencing possession proceedings.

There is no prescribed form for the notice, but it must be in writing and comply with the other requirements of section 143E(3) of the Housing Act 1996.



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Landlord notice periods

Demoted tenancies

Before a private registered provider of social housing can obtain possession or premises let under a demoted tenancy, it must serve the tenant with a valid notice either under section 8 or section 21 of the 1988 Act.



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Landlord notice periods

Demoted tenancies

Notice periods

26 March 2020 and 28 August 2020

3 months' notice.



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Landlord notice periods

Demoted tenancies

Notice periods cont.

29 August 2020 and 31 May 2021 (unless extended)

- 4 weeks - if reason for possession being sought is related to anti-social behaviour, domestic abuse or for a conviction following a riot
- 6 months - in all other cases



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Possession proceedings and enforcement

A stay on all possession proceedings and enforcement action was initially imposed from 27 March 2020. It was subsequently extended until 20 September 2020.



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Possession proceedings and enforcement

CPR PD 55C

Sets out the steps a landlord must take to reactivate a stayed claim for possession. It also sets out the procedural requirements that will apply to new and existing claims. It is set to expire on 30 July 2021.



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Possession proceedings and enforcement

CPR PD 55C

On 17 September 2020, the Master of the Rolls issued detailed information concerning the arrangements for the resumption of possession hearings from 21 September 2020, including guidance on Possession Proceedings Listing Priorities in the County Court and Overall Arrangements for Possession Proceedings in England and Wales



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Possession proceedings and enforcement

Claim stayed before 23 August 2020

For stayed possession claims that were issued before 3 August 2020 unless the court directs otherwise, the claim will not be listed, heard, reheard or referred to a judge if a defence was filed until one of the parties' files and serves a written notice (a "Reactivation Notice").



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Possession proceedings and enforcement

Claim stayed before 23 August 2020

Reactivation notice

The Reactivation Notice must:

- confirm that the party wishes the case to be listed, relisted, heard or referred; and
- except in proceedings relating to an appeal, set out what knowledge that party has as to the effect of the Coronavirus pandemic on the defendant and their dependants



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Possession proceedings and enforcement

Claim stayed before 23 August 2020

Reactivation notice cont.

- If the claim was commenced on rent arrears grounds, the claimant must provide an updated rent account for the previous two years at the same time as the Reactivation Notice is served.



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Possession proceedings and enforcement

Claim stayed before 23 August 2020

In a claim that was stayed, where case management directions were made before 23 August 2020, a party who files and serves a Reactivation Notice must also file and serve the following:

- (a) a copy of the last directions order together with new dates for compliance with the directions taking account of the stay before 20 September 2020; and



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Possession proceedings and enforcement

Claim stayed before 23 August 2020

- (b) either—
 - (i) a draft order setting out additional or alternative directions which are required (including proposing a new hearing date); or
 - (ii) a statement in writing that no new directions are required and that an existing hearing date can be met; and



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Possession proceedings and enforcement

Claim stayed before 23 August 2020

- (c) a statement in writing as to whether the case is suitable for hearing by video or audio link.



Possession proceedings and enforcement

Any claim (whether a new claim or a stayed claim) brought on or after 3 August 2020

the Claimant must—

- (a) bring to the hearing two copies of a notice—
 - (i) in a claim to which the Pre-Action Protocol for Possession Claims by Social Landlords is applicable, confirming that the Claimant has complied with that Pre-Action Protocol and detailing how the Claimant has done so; and
 - (ii) in all claims, setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant



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Possession proceedings and enforcement

Any claim (whether a new claim or a stayed claim) brought on or after 3 August 2020

the Claimant must—

- (b) serve on the Defendant not less than 14 days prior to the hearing the notices referred to in sub-paragraph (a) setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants



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Possession proceedings and enforcement

Accelerated possession claim

In any claim (whether a new claim or a stayed claim) brought on or after 3 August 2020 to which Section II of Part 55 applies the Claimant must file with the claim form for service with it a notice setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants.



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Possession proceedings and enforcement

Accelerated possession claim

In any claim (whether a new claim or a stayed claim) brought on or after 3 August 2020 to which Section II of Part 55 applies the Claimant must file with the claim form for service with it a notice setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants.



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C. Enforcement

Moratorium on enforcement action

There is currently a moratorium on the execution of warrants for possession or delivering a notice of eviction until 31 May 2021 (unless this date is extended); subject to the following exemptions...



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C. Enforcement

Moratorium on enforcement action

Exemptions from the moratorium on enforcement

- A writ or warrant relates to an order for possession made against trespassers to which CPR 55.6 applies (persons unknown)
- A warrant of possession granted wholly or partly on the basis of grounds of anti-social behaviour, nuisance, domestic violence or false statements (under grounds 7A, 14, 14A or 17 of Schedule 2 to the 1988 Act)



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C. Enforcement

Moratorium on enforcement action

Exemptions from the moratorium on enforcement (cont.)

- A warrant of possession granted wholly or partly on the basis of ground 7 of Schedule 2 to the HA 1988 (death of the tenant) where the person attending is satisfied that the dwelling house is unoccupied at the time of attendance
- A warrant of possession granted wholly or partly on the basis of grounds the mandatory or discretionary rent arrears grounds under grounds



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Conclusion

Keep up to date with the Government guidance. This area of law remains fluid.



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