

# **Where are we now with residential possession claims?**



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## **Introduction**

1. The Covid-19 pandemic has directly impacted the statutory and procedural rules that ordinarily govern the relationship between residential landlords and tenants. Yet, we are now in a situation where many of the public health measures that were put in place to tackle the public health emergency and its effects are being lifted.
2. The aim of this seminar is to try and answer the question: where are we now with residential possession claims in England? My response, will focus on the following areas:
  - (a) Notice periods
  - (b) Procedural changes to possession proceedings
  - (c) Enforcement action

### **A. Notice periods**

3. The Coronavirus Act 2020 (“the Coronavirus Act”) came into force on 25 March 2020. It granted the Government emergency powers to tackle the social and economic impact that the Covid-19 pandemic would have on citizens and businesses alike.
4. The substantive provisions of the Coronavirus Act which governed residential possessions were section 81 and schedule 29. In general, these provisions protected social and private residential tenants from eviction by delaying when landlords could start possession proceedings.
5. The “relevant period” in relation to schedule 29 of the Coronavirus Act has been extended to 25 March 2022; namely, the date the Coronavirus Act 2020 is due to expire: see the Coronavirus Act 2020 (Residential Tenancies and Notices) (Amendment and Suspension) (England) Regulations 2021 (S.I. 2021/994), reg. 2.
6. One of the key changes heralded by the Coronavirus Act and its associated regulations was in relation to the amount of notice landlords were required to give their tenants before commencing possession proceedings. Between 26 March 2020 and 30 September 2021 notice period for most tenants and licensees in the social and private rented sector were extended.
7. Due to the various changes that have been made during this time, a landlord commencing possession proceedings or a tenant faced with defending possession

proceedings must verify that at the material time the relevant notice seeking possession was served, the correct notice period was given.

8. For ease of reference, set out in tabular form below are the changes that have been made to the notice periods for secure, assured and assured shorthold tenancies since 26 March 2020 to date. It should also be remembered that the relevant prescribed forms have also been amended a number of times during this period. Both landlords and tenants, or their advisors, should check that the correct prescribed form has been served.

Secure tenancies under the Housing Act 1985

9. Before possession proceedings can be commenced or the court has determined that it is just and equitable to dispense with service, section 83 of the Housing Act 1985 (“the 1985 Act”) requires that a secure tenant of a local authority landlord or a private registered provider of social housing, if the secure tenancy was granted before the Housing Act 1988 (“the 1988 Act”) came into force, must be served with a valid notice of seeking possession, also known as a NOSP.
  
10. The relevant changes to notice periods for claims based on rent arrears for secure tenancies under the 1985 Act, section 84(2)(a) and ground 1, schedule 2 are as follows:

<b>Relevant Periods</b>	<b>Amount of notice required</b>
Pre- Coronavirus Act 2020	4 weeks’ notice
26 March 2020 until 28 August 2020	3 months’ notice
29 August 2020 and 31 May 2021	<ul style="list-style-type: none"> <li>• Rent arrears of less than 6 months – 6 months’ notice</li> <li>• Rent arrears of 6 months or more – 4 weeks’ notice</li> </ul>
1 June 2021 and 31 July 2021	<ul style="list-style-type: none"> <li>• Rent arrears of less than 4 months – 4 months’ notice</li> <li>• Rent arrears of 4 months or more – 4 weeks’ notice</li> </ul>
1 August 2021 and 30 September 2021	<ul style="list-style-type: none"> <li>• Rent arrears of less than 4 months – 2 months’ notice</li> </ul>

	<ul style="list-style-type: none"> <li>• Rent arrears of 4 months or more – 4 weeks' notice</li> </ul>
1 October 2021 to date	4 weeks' notice

Assured and assured shorthold tenancies under the Housing Act 1988

*Fault grounds*

11. For tenancies let under an assured or an assured shorthold tenancy (AST) possession can be sought on what is colloquially termed as “the fault grounds”. Section 8 of the 1988 Act provides that a landlord can only regain possession if they first serve on their tenant a notice of their intention to seek possession. This notice is more commonly referred to as a “section 8 notice” or a “NSP”.
12. The relevant changes to notice periods for claims based on mandatory and discretionary rent arrears grounds for assured and assured shorthold tenancies under the 1988 Act, section 8 and grounds 8, 10 and 11 of schedule 2 are as follows:

<b>Relevant Periods</b>	<b>Amount of notice required</b>
Pre-Coronavirus Act 2020	Grounds 8, 10 and 11: 2 weeks' notice
26 March 2020 until 28 August 2020	Grounds 8, 10 and 11: 3 months' notice
29 August 2020 until 31 May 2021	<ul style="list-style-type: none"> <li>• Grounds 8, 10 and 11: rent arrears of 6 months or more – 4 weeks' notice</li> <li>• Grounds 8, 10 and 11: rent arrears of less than 6 months – 6 months' notice</li> </ul>
1 June 2021 until 31 July 2021	<ul style="list-style-type: none"> <li>• Grounds 8, 10 and 11: rent arrears of 4 months or more – 4 weeks' notice</li> <li>• Grounds 8, 10 and 11: rent arrears of less than 4 months – 4 months' notice</li> </ul>
1 August 2021 until 30 September 2021	<ul style="list-style-type: none"> <li>• Grounds 8, 10 and 11: rent arrears of 4 months or more – 4 weeks' notice</li> <li>• Grounds 8, 10 and 11: rent arrears of less than 4 months – 2 months' notice</li> </ul>

1 October 2021 to date	Grounds 8, 10 and 11: 2 weeks' notice

*No fault grounds under section 21 of the 1988 Act*

13. The emergency measures put in place under the Coronavirus Act did not prohibit landlords from using the colloquially termed “no fault procedure” for recovering possession of a property let on an AST. The no fault procedure requires a landlord to serve a valid notice of seeking possession under section 21 of the 1988 Act. Such a notice is colloquially termed as a “section 21 notice”.
14. The relevant changes to the notice periods for claims against an assured shorthold tenant based on the no fault procedure set out in section 21 of the 1988 Act are as follows:

<b>Relevant Periods</b>	<b>Amount of notice required</b>
Pre-Coronavirus Act 2020	2 months' notice
26 March 2020 until 28 August 2020	3 months' notice
29 August 2020 until 31 May 2021	6 months' notice
1 June 2021 to 30 September 2021	4 months' notice
1 October 2021 to date	2 months' notice

## **B. Procedural changes to possession proceedings**

### The Overall arrangements and PD 55C

15. A stay on possession proceedings and enforcement action was initially imposed for a period of 90 days with effect from 27 March 2020 until 25 June 2020. The moratorium was subsequently extended to 23 August 2020 pursuant to CPR PD 51Z and CPR 55.29 (both of which have been repealed). On 21 August 2020 the moratorium was extended for a further four weeks until 20 September 2020.

16. When the stay on possession claims was lifted on 20 September 2020 landlords and their agents were required to comply with the terms of CPR PD 55C (PD 55C). PD 55C set out the steps a landlord is required to take to reactivate a stayed claim for possession. It also sets out the procedural requirements that applies to new and existing claims.
17. 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. Guidance was also given in the form of: Possession Proceedings Listing Priorities in the County Court and Overall Arrangements for Possession Proceedings in England and Wales (“the Overall Arrangements”). The Overall Arrangements was important because it explained how the court would use some of the additional information required by PD 55C to prioritise cases.
18. The Overall Arrangements ended on 1 November 2021, as was announced by the Master of the Rolls on 3 November 2021. The consequences of this announcement was that review hearings, in theory, ceased to be listed before the listing of a substantive claim for possession. Yet, I know some courts are still listing review hearings before the hearing of the substantive possession claim is listed. Additionally, Covid-19 marking and the priority listing of certain types of claims for possession have also ended.
19. Practice Direction 55C is still in force, but has been substantially amended. Paragraph 1.8 of PD 55C provides that PD 55C continues to have effect in relation to claims issued after 1 December 2021 – this is the date when the “interim period” to which PD 55C applied expired.
20. Paragraph 1.9 of PD 55C specifically provides that paragraphs 6.1 and 6.2 of PD 55C continue to have effect until 30 June 2022 in relation to any claim issued on or after 3 August 2020, including any claim issued after 30 November 2021.
21. Paragraph 6.1 of PD 55C, provides:

“[i]n 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 and their dependants; and
- (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.”

22. Paragraph 6.2 of PD 55C, provides:

“[i]n any claim (whether a new claim or a stayed claim) brought on or after 3 August 2020 to which Section II of Part 55 [accelerated possession claims] 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.”

23. The courts are requiring strict compliance with paragraphs 6.1 and 6.2 of PD 55C. Any failure on the part of the landlord or their agent to comply should be brought to the court’s attention.

#### Listings

24. Possession claims are also increasingly being listed for “face to face” attendance by the parties at court. The use of remote hearings in claims for possession is being slowly phased out. Although the preference now appears to be for in person attendance for possession claims, the court has not returned to block listing of claims. Parties now being required to attend the substantive first hearing of a possession claim are being allocated specific time slots for their hearing.

#### Mediation pilot scheme

25. The Housing Possession Mediation Pilot Scheme that was launched on 1 February 2021, and was made available to the parties at the review hearing stage, was withdrawn on 13 October 2021. No replacement scheme has been put in place.

#### Breathing space and mental health crisis moratoriums

26. Since 4 May 2021, tenants in rent arrears can also seek Breathing Space and Mental Health Crisis Moratoriums: see The Debt Respite Scheme (Breathing Space

Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020.

27. The aim of the regulations is to provide legal protection to individuals with “problem debt”, and to provide a breathing space for individuals receiving crisis mental health treatment.
28. The effect of a Breathing Space Moratorium or a Mental Health Crisis Moratorium being put in place is that for a prescribed period of time a landlord is prevented from:
  - serving a notice of seeking possession under section 8 of the 1988 Act on rent arrears grounds,
  - commencing or continuing claims for possession; and /or
  - seeking enforcement action
29. In respect of a Breathing Space Moratorium, a landlord is prevented from carrying out any of the aforementioned steps for a period of 60 days.
30. In respect of a Mental Health Crisis Moratorium a landlord is prevented from taking any of the aforementioned steps for the duration of the mental health crisis treatment, plus 30 days after, regardless of the duration of treatment.
31. A strict eligibility criteria must be met in respect of both types of moratoriums. Tenants and those advising them should have regard to the eligibility criteria to assess whether a tenant will qualify.
32. Breathing space and health crisis moratoriums cannot be used by a tenant in circumstances where their landlord has sought possession using the no fault procedure under section 21 of the 1988 Act.

### **C. Enforcement**

33. The moratorium on evictions was lifted in respect of all claims for residential possession on 31 May 2021.
34. County Court Bailiffs and High Court Enforcement Officers must provide tenants with at least 14 days’ notice of an eviction. Additionally, they have been asked not to carry

out residential evictions in England if anyone living in the property has COVID-19 symptoms or is self-isolating.

35. A warrant for possession or writ of possession is valid for a period of 12 months from the date of issue: see CPR 83.3(3). A court can extend a relevant writ or warrant for possession from time to time for a period of 12-month at any one time: See CPR 83.3(4).
36. In circumstances where it has not been possible to enforce an extant warrant or writ due to restrictions imposed as a result of the Coronavirus pandemic. An application can be made to extend the warrant using form N244.
37. In practice the moratorium that has been placed on evictions has meant that both the County Court Bailiffs' Office and the High Court Enforcement Officers have a considerable backlog of evictions to work through. As a consequence long delays are being experienced in the execution of warrants and writs for possession.

## **Conclusion**

38. In my opinion, with the continued removal of Covid-19 restrictions and protective measures that were put in place during the pandemic, the procedural aspects of residential possession claims will slowly continue to return to the pre-Covid-19 status quo ante.

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