

CORONAVIRUS: IMPLICATIONS FOR THE PRIVATE RENTED SECTOR

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Over 20% of the UK's households live in private rented accommodation – that's some 4.5m households, including 600,000 children.¹

It is therefore no surprise that the Government hastily legislated to prevent mass evictions of tenants hit by lockdown-induced cashflow problems. Self-evidently, the state did not want a national housing and homelessness crisis just at the time when the public health emergency necessitates that people stay at home.

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The Coronavirus Act 2020 (the "Act") introduced numerous measures to combat COVID-19-related problems. This included a requirement that, from 26 March to 30 September 2020, residential landlords must give their tenants at least three months' notice before commencing possession proceedings ("COVID Notices"). Since then, the courts have also issued a new Practice Direction, PD51Z, to the Civil Procedure Rules (which govern English court procedure) suspending all possession proceedings until at least 25 June 2020 (the "Possession Moratorium").

As the eviction of residential tenants without a court order is a criminal offence,² the upshot is that landlords cannot lawfully remove tenants from their homes during the expected period of the COVID-19 lockdown.

COVID NOTICES

COVID Notices are now mandatory for the most common type of residential lease in the UK – assured shorthold tenancies, requiring three (rather than the usual two) months' notice to be given before bringing possession proceedings.

They are also required for numerous other residential leases,³ either increasing the usual notice period required or introducing a wholly new notice requirement.

However, COVID Notices are not necessary for common law tenancies, most licences to occupy (including most guardianship agreements) and service occupier agreements. This means they are not required in respect of residential tenancies with rents over £100,000 per annum (typically prime city-centre residential apartments and houses). Similarly, individuals living in premises in the course, or in performance, of their employment are excluded.

It is also telling that the Government is contemplating extending the existing pre-action protocol on possession proceedings by social landlords to cover the private sector. If implemented, this would require private sector landlords to take additional steps before seeking possession (such as exploring their tenants' financial position before proceedings are issued).

THE POSSESSION MORATORIUM

The Possession Moratorium means that most residential occupiers, including those against whom COVID Notices are not required, cannot be lawfully evicted against their will until 25 June 2020 at the earliest. The new Practice Direction therefore goes beyond its intended purpose, as a procedural and case management accessory to the Act's measures, to having standalone legal effect.

Moreover, early anecdotal evidence of the Possession Moratorium's application indicates that some County Court judges have adopted a practice of granting longer stays than envisaged by the new rules. That said, the court remains open to persuasion and so landlords and tenants should seek legal advice regarding stays of possession in their particular case.

Whilst trespassing on residential premises is a criminal offence,⁴ sophisticated squatters recognised a shortcoming in the Possession Moratorium which meant they could move into (and between) commercial premises and rely on the courts' application of the Possession Moratorium to postpone possession or injunctive proceedings against them. However, thanks to swift intervention by the Property Litigation Association and Property Bar Association, the Practice Direction was amended on 20 April 2020 so that now claims against trespassers are excluded from the Possession Moratorium.

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WHAT ARE THE IMPLICATIONS FOR RESIDENTIAL LANDLORDS?

While many tenants will continue to comply with their tenancy agreements and pay rent, COVID-19 may affect some tenants' ability to do so. For instance, their income may be reduced, delayed or cease for reasons associated with the pandemic.

For landlords, the key impact of COVID Notices and the Possession Moratorium is that they will be unable to take prompt action to repossess properties and re-let them to new tenants that are able and willing to pay the rent. Further, once the Possession Moratorium is lifted, there will no doubt be a large backlog of new and existing possession cases which is likely to result in even greater delays than

landlords suffered prior to COVID-19.

WHAT OTHER LEGAL REMEDIES SHOULD RESIDENTIAL LANDLORDS CONSIDER?

There may be other avenues of rent and financial recovery and assistance that landlords can consider, including:

1. **Rent guarantees:** If such arrangements are in place, a guarantor could be compelled to assist a tenant struggling to pay their rent;
2. **Rent deposits** (if any) taken at the grant of a tenancy agreement as security for payment of the rent and the tenant's performance of its covenants: However, where the deposit is held in a deposit protection scheme, there will be procedural requirements with which the landlord will need to comply and so in some cases, those funds will not be immediately available;
3. **Loss of rent/'rent guarantee' insurance:** The terms and conditions of any such policy will need to be examined with care. Some will require arrears to exist for a certain period. Others may require statutory notices to be served or possession proceedings to be filed; and
4. **Mortgage lenders:** The Government has engaged with lenders who have agreed to offer mortgage repayment holidays of three months to landlords with buy-to-let mortgages whose tenants are in financial difficulties as a result of the COVID-19 outbreak. However, anecdotal evidence suggests that landlords are facing great difficulty contacting lenders to take advantage of such arrangements.

COOPERATION BETWEEN LANDLORDS AND TENANTS

In the midst of the current pandemic, most landlords and tenants will be sympathetic to the unprecedented circumstances and issues they are each facing.

COVID Notices and the Possession Moratorium do not stop rent from being due, they just delay one of the usual means by which landlords resolve situations of non-payment of rent. Therefore, tenants would be well-advised to be candid regarding potential issues, such as difficulties in paying rent, as soon as possible. If a guarantor is party to any tenancy agreement, they should also be included in any discussions.

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Suppliers in the private-rented sector are increasingly institutional and professionalised. In London, for instance, only 40% of landlords are private landlords.⁵ The market now predominantly consists of institutionally-funded, build-to-rent apartment blocks that are professionally managed.

Therefore, we are seeing many landlords taking sophisticated and proactive steps to communicate and cooperate with tenants.

This can lead to negotiated solutions such as deferred, instalment or reduced rental payments. However, all parties should take care to formalise any such agreements. Improperly documented rental concessions could have unintended or unforeseen consequences for the unwary landlord or tenant.

No doubt there are those landlords that regard COVID Notices and the Possession Moratorium as draconian fetters on their legal rights. However, we would suggest that they are best treated as helpful breathing space to conduct sensible discussions. They may even grant an opportunity to foster a stronger longer-term relationship between parties which, in the post-COVID world, will stand landlords and tenants in better stead.

[1] According to the latest figures compiled by the Office of National Statistics.

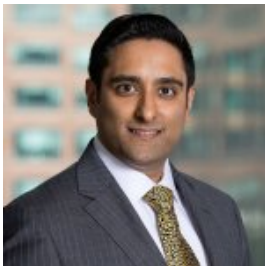
[2] The Protection from Eviction Act 1977.

[3] Rent Act 1977 protected tenancies and statutory tenancies, secure tenancies, flexible tenancies, assured tenancies, introductory tenancies, demoted tenancies and secure licences under the Housing Act 1985.

[4] Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

[5] Council of Mortgage Lenders Survey 2017

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