

## Coronavirus Act 2020: Landlord and Tenant Update

James Culverwell explains the temporary emergency provisions affecting all landlords and tenants as a result of the Coronavirus Act 2020.

### Introduction

On 25<sup>th</sup> March 2020, the [Coronavirus Act 2020](#) (‘the Act’) received Royal Assent bringing into force a swathe of emergency provisions to help navigate the country through the ongoing COVID-19 pandemic.

This article focuses on the impact that it has on commercial and residential landlords and tenants. If you are a landlord or a tenant, or you advise anyone who is, it is very important that you understand the effect of these temporary changes.

### Scope and intentions of the Act

The Government’s aim in introducing the provisions discussed below is to protect commercial and residential tenants from eviction during a time of significant financial difficulty. The Act therefore makes provision to protect both residential and commercial tenants from eviction for a limited period.

Most of the provisions of the Act will automatically expire after two years (including those affecting tenancies) but are subject to reports to Parliament by the Secretary of State every two months and require a positive vote by Parliament every six months for them to continue.

Landlords and tenants should both be aware that the Act allows for the various periods below to be changed at any time and so, whilst the information below is accurate at the time of publication, you are advised to seek specific legal advice on your situation if difficulties arise with your tenancy, and certainly before taking, or responding to, any action for possession.

### Summary of the impact on tenancies

The key point to note for residential tenancies is that, during the ‘relevant period’ (explained below), the Act extends the notice periods required for each type of tenancy to three months. This is done in very slightly different ways for each type of tenancy, and there are further details below.

For business tenancies, the Act prevents a landlord re-entering or otherwise forfeiting a tenancy during the relevant period (explained below) based on non-payment of rent. It also prevents any order for possession on grounds of non-payment of rent taking effect during that period. The small reassurance for Landlords is that their rights of re-entry or forfeiture for non-payment of rent can only be waived expressly in writing during that period.

### Residential Tenancies

#### *The provisions of the Act*

The Act addresses residential tenancies in section 81 and the full measures are contained in Schedule 29 of the Act. The first important point to note from Schedule 29 is that the provisions relating to residential tenancies are in force during what is referred to as the ‘relevant period’. This is currently 26<sup>th</sup> March 2020 to 30<sup>th</sup> September 2020. At that point, all notice periods revert to their original duration. However, the relevant period can be extended by the Secretary of State at any time.

Schedule 29 addresses the following forms of tenancies in turn and makes amendments to the statutory regimes governing each:

- Protected tenancies and statutory tenancies under the Rent Act 1977;
- Secure tenancies under the Housing Act 1985;
- 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.

The Secretary of State has power to increase or decrease the required notice periods subject to an upper limit of six months at any time.

#### *Rent Act 1977 tenancies*

For protected tenancies, any notice to quit must be for a period of three months rather than the normal four weeks. For statutory tenancies, a landlord cannot commence proceedings for possession before having served a notice with a period of three months. This notice must contain specific information which is outlined in the Act. Landlords should seek advice before serving any such notice and tenants should seek advice if they receive such a notice.

#### *Secure tenancies*

Again, the changes extend the required notice period to 3 months and proceedings cannot be commenced before the expiry of that period. This includes proceedings relying on the 'absolute ground' for possession of anti-social behaviour, as to which see the comment section below.

#### *Assured and assured shorthold tenancies*

The notice requirements for section 8 and section 21 notices are both extended to three months. It is important to note that for section 8 notices, this applies to all grounds for possession, not just non-payment of rent.

#### *Flexible, introductory and demoted tenancies*

The notice periods for all of these tenancies are also extended to three months.

#### *Practical impact*

For landlords, there is no bar on bringing possession proceedings, but it will not be possible to do so until the expiry of the new three-month notice period. The Act does not address notices that have been served before commencement of the relevant period, nor does it directly address the power to make possession orders (unlike the provisions for business tenancies). Therefore, any notices that have expired or were served before 26<sup>th</sup> March 2020 are still valid. However, the courts are currently only dealing with urgent hearings whilst they work to roll-out increased facilities for remote hearings. As such, it is unlikely that an initial court hearing will be listed for some time. It is also anticipated that judges will be far less willing to make possession orders during this period in light of the spirit of the provisions and the public interest in preventing homelessness at this time.

Any landlord considering serving a notice or bringing possession proceedings towards the end of the relevant period, should consider whether it is better to wait for the relevant period to expire. For example, issuing a section 8 notice on 1<sup>st</sup> August would mean waiting until the 1<sup>st</sup> November before commencing proceedings. Waiting until 1<sup>st</sup> October would allow a standard 14-day notice to be served and proceedings could be commenced sooner.

#### *Comment*

As noted above, there was some speculation before the Act was passed that the provisions would either prevent possession proceedings being brought, or that it would only apply to possession for non-payment of rent. This is perhaps because the statements issued by the government placed

these changes in the context of the financial difficulties presented by the necessity for the public to stay at home. However, the extended notice periods apply to all grounds for possession. Whilst the intention to minimise any increase in the homeless population is entirely understandable, this could pose difficulties. In particular, the fact that possession for anti-social behaviour cannot be achieved for at least three months will not be received favourably by neighbours who are all spending the whole day at home. The extended notice stops a Landlord even trying to address the problem with a threat of repossession.

For tenants, there is now a safety net in place for those who cannot meet their rent obligations whilst their earnings are reduced. However, this does not remove the obligation to pay rent and anyone who cannot do so, is still at risk from possession proceedings later down the line.

The clear intention of the government and the Act is to prevent possession proceedings being brought during this time of difficulty. Both landlords and tenants should communicate with each other at an early stage, try to understand the other's position and come to a sensible arrangement using the various forms of financial support being offered at the moment. It is naturally difficult for landlords who have their own financial obligations which cannot be met and are not directly funded by any support package at this time. Chief among those will be mortgage payments and those with mortgages should consider the three-month mortgage payment holiday which is available on buy-to-let mortgages as well as standard mortgages. However, you should seek your own financial advice on this.

## **Commercial tenancies**

### *Provisions of the Act*

Section 82 addresses business tenancies in England and Wales. A business tenancy for these purposes is any tenancy within Part II of the Landlord and Tenant Act 1954, i.e. any tenancy 'where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes'. It also includes any tenancy where the occupier is not the tenant but would otherwise fall within that definition.

All provisions in section 82 apply during the current 'relevant period' which is 26<sup>th</sup> March 2020 to 30<sup>th</sup> June 2020. The section places restrictions on rights of forfeiture for non-payment of rent as well as limiting the courts' powers to make orders for possession.

### *Re-entry and forfeiture*

Section 82(1) prohibits enforcement of any right of re-entry or forfeiture for non-payment of rent arising during the relevant period. However, subsection (2) also provides that any such right of cannot be waived by the landlord save expressly in writing.

### *Powers of the courts*

As above, the restrictions on the courts' powers apply for possession sought on the grounds of non-payment of rent. Any order for possession on grounds of non-payment of rent made by the High Court cannot take effect during the relevant period. If an order has already been made by the High Court which requires the tenant to give possession during the relevant period unless they comply with some requirement, the tenant can apply to the court to vary the order. The application must be made before possession is given and the court must then ensure that the tenant does not have to give possession before the end of the relevant period.

Similarly, the County Court may not exercise its statutory power to order possession in circumstances where the lease has been forfeit for non-payment of rent unless the date for

possession is beyond the end of the relevant period in existence at that time. Any order for possession based on forfeiture for non-payment of rent already made, or made during the period, is automatically extended to the end of the relevant period.

Finally, where the court is considering whether there has been 'persistent delay in paying rent' under the Landlord and Tenant Act 1954, any failure to pay rent during the relevant period, whether it fell due before or during the period, cannot be taken into account.

*Comment*

Commercial landlords and tenants currently have a shorter relevant period than for residential tenancies, although it can be extended by the Secretary of State at any time. The protection for commercial tenants is also only in relation to non-payment of rent. Any other breaches giving rise to a right of forfeiture can still be enforced but can also be waived in the normal way. Both parties should therefore be careful to uphold their rights under the lease even where there are ongoing difficulties with rent.

Whilst tenants are protected for the time being if they are unable to pay rent, landlords should note that they can continue to accept rent during the relevant period, even if there is occasional non-payment, without waiving a right to forfeiture. That right could then be enforced if necessary, at the conclusion of the relevant period. Both landlords and tenants must be aware of the expiry of the relevant period and be careful to remedy any breach or not to waive any right after 30<sup>th</sup> June 2020.

If you require any more detailed advice about the effect of the Act, or any other issues arising from a tenancy, please get in touch with us and one of our property experts will be happy to help.