

Property: Residential evictions: where are we now?

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Oscar Davies gives an update on where we are currently with residential evictions, the general ban and its exceptions.

The pithily named [‘Public Health \(Coronavirus\) \(Protection from Eviction and Taking Control of Goods\) \(England\) Regulations 2020’](#) (“**the New Regulations**”) took effect on 17 November 2020, giving legal force to requests that the Lord Chancellor had previously made to High Court Enforcement Offices (“**HCEOs**”) and bailiffs to stop evictions and control of goods until after 11 January 2021.

Background

In a letter to the HCEO Association dated 21 October 2020, the Lord Chancellor, Robert Buckland MP, stated that under the new alert system (Tier 1, 2 and 3) he would ‘request’ that the HCEOs:

- (i) do not enter residential properties in areas that are classified under Tier 2 (high) or Tier 3 (very high) for the purposes of enforcement (i.e. no evictions or taking control of goods in these areas); and
- (ii) do not to carry out evictions in any residential properties anywhere in England and Wales over the Christmas period from 11 December 2020 until 11 January 2021 (otherwise known as the ‘winter truce’).

In that letter it states that similar requests were also asked of the bailiff associations (CIVEA and the Certificated Enforcement Agents Association) and their members.

A further letter was sent by the Lord Chancellor to the HCEO Association on 5 November 2020 setting out a list of exemptions to the general ban on evictions: illegal trespass or squatting by persons unknown, nuisance or antisocial behaviour, domestic abuse, fraud or deception and properties unoccupied following the death of the defendant. That letter also noted an intention to introduce an exemption for cases with extreme pre-COVID rent arrears, but did not specify further.

Questions have been raised as to the legality of such ‘requests’ by letter from the Lord Chancellor. What would be the legal basis on which enforcement should not be carried out? How would HCEOs and bailiffs comply with their statutory and non-statutory duties? What weight would courts give these letters, if any, when deciding whether to grant a warrant or writ of possession leading to eviction?

Where are we now?

The present status on whether evictions should be carried out by HCEOs and bailiffs is now enshrined in the New Regulations, which have finally given a legitimate legal basis to what had previously been set out as requests in letters. The New Regulations were made on 13 November 2020 and came into force on 17 November 2020. The New Regulations apply to England only (unusually excluding Wales).

The general rule stating that eviction must not be carried out in residential tenancies is set out in Regulation 2(1). It states that no person may attend a residential tenancy for the purpose of:

- (a) executing a writ or warrant of possession;
- (b) executing a writ or warrant of restitution; or

- (c) delivering a notice of eviction.

This rule remains in force until 11 January 2021 inclusive (Regulation 4(1)) – i.e. the end of the ‘winter truce’.

The carve outs from the main rule are then set out in Regulation 2(2), (3) and (5) respectively. Regulation 2(2) states that the general rule does not apply in the following circumstances (echoing the Lord Chancellor’s second letter):

- (a) Against trespassers (following service of a claim pursuant to CPR 55.6);
- (b) Anti-social behaviour (section 84A Housing Act 1985);
- (c) A tenant under [a secure tenancy](#) or a person residing in the premises:
 - i. who is causing or is likely to cause nuisance to other residents/visitors/the landlord, or has been convicted of using the residence for immoral/illegal purposes, or committing an indictable offence at the residence (Ground 2, Sch. 2, Housing Act 1985);
 - ii. the residence was occupied by a couple and one partner has left because of (threats of) violence from the other partner to them or their family, and the threatened partner is unlikely to return to the premises (Ground 2A, Sch. 2, Housing Act 1985);
 - iii. the tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly the tenant, or a person acting at the tenant’s instigation (Ground 5, Sch. 2, Housing Act 1985).
- (d) A tenant under [an assured tenancy](#) or a person residing in the premises:
 - a. who has been convicted of a serious offence or nuisance in the premises, or against someone who has a right in the premises or against the landlord, or has breached an anti-social behaviour order (Ground 7A, Sch. 2, Housing Act 1988);
 - b. who is causing or is likely to cause nuisance to other residents/visitors/the landlord, or has been convicted of using the residence for immoral/illegal purposes, or committing an indictable offence at the residence (Ground 14, Sch. 2, Housing Act 1988);
 - c. the residence, being social housing or with a social landlord, was occupied by a couple and one partner has left because of (threats of) violence from the other partner to them or their family, and the threatened partner is unlikely to return to the premises (Ground 14A, Sch. 2, Housing Act 1988);
 - d. the tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly the tenant, or a person acting at the tenant’s instigation (Ground 17, Sch. 2, Housing Act 1988).
- (e) Under a [statutory tenancy governed by the Rent Act 1977](#), where the tenant or any person residing or lodging or any sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the dwelling-house or

allowing the dwelling-house to be used for immoral or illegal purposes (Case 2, Sch. 15, Rent Act 1977).

Regulation 2(3) then deals with the extreme pre-COVID rent arrears alluded to in the Lord Chancellor's second letter. The general rule in Reg 2(1) does not apply where:

- (a) the case involves **substantial rent arrears** [Reg 2(4) defined as "*if the amount of unpaid rent arrears outstanding at the date on which the order for possession is granted is at least an amount equivalent to 9 months' rent*", excluding any arrears accrued after 23 March 2020]; and
- (b) the notice, writ or warrant relates to an order for possession made wholly or partly—
 - (i) on Ground 1 for secure tenancies (rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed), Sch. 2 to the Housing Act 1985;
 - (ii) on Ground 8 (8 weeks/3 months' rent unpaid depending on agreement), Ground 10 (some rent lawfully due) or Ground 11 (tenant has persistently delayed paying rent which has become lawfully due) for assured tenancies, Sch. 2 to the Housing Act 1988; or
 - (iii) under Case 1 of Schedule 15 to the Rent Act 1977 (rent lawfully due) for statutory tenancies under the Rent Act 1977.

Finally, the last exception noted is at Regulation 2(5). The two conditions allowing eviction are:

- (i) the court is satisfied that the notice, writ or warrant relates to an order for possession made wholly or partly on Ground 7 in Schedule 2 to the Housing Act 1988 (death of a tenant in periodic tenancy or fixed term tenancy); and
- (ii) the person attending at the residence must take reasonable steps to satisfy themselves that the dwelling house is unoccupied before evicting/executing a warrant or writ of possession (Regulation 2(6)).

NB: these exceptions have been paraphrased for the sake of brevity and if being relied upon please go to the relevant statute.

Evictions apart, goods inside a dwelling can only be seized after 2 December 2020 (control of goods pursuant to Sch. 12 Tribunals, Courts and Enforcement Act 2007), when the regulations for the second lockdown also expire (Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020).

In summary, the New Regulations should be kept in mind by tenants and enforcement officers alike, at least until their expiry on 11 January 2020. Whether a further extension to that date will be implemented is yet to be seen.