

Possession Proceedings Stay and Notice Requirements

It seems that it is a daily task to check to see if the position regarding possession proceedings has changed from the day before. This article is an update to my last article [‘Ban on evictions and notice periods extended in Government U-turn’](#) which confirmed that the stay of possession proceedings would be extended by a month and that 6 months notice periods would be introduced with some exceptions. This note applies to England only.

On Friday afternoon (28 August 2020), the Government published The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020 <https://www.legislation.gov.uk/ukxi/2020/914/made> and those Regulations came into force on Saturday 29 August 2020. These Regulations deal with the, temporarily amended, notice periods for various tenures, which I referred to in my previous article, by amending Schedule 29 to the Coronavirus Act 2020. The changes will apply until 31 March 2021.

The general position is that (from 29 August 2020) a landlord must give 6 months notice period before starting possession proceedings. However, there are some important exceptions as follows:

Assured tenancies

- Grounds 8, 10 or 11 (rent arrears and persistent delay in paying rent) where not less than 6 months arrears are outstanding at the time of service of the notice – 4 weeks notice*.
- Ground 7 (after death of tenant) 3 months*.
- Ground 7B (notice of no right to rent) – 3 months*.
- Ground 14 (discretionary ASB) – no notice required, can issue immediately after service of the notice.
- Ground 14A (domestic violence) – 2 weeks*.
- Ground 14ZA (indictable offence in riot) – 2 weeks*.
- Ground 17 (tenancy granted after false representation) – 2 weeks notice*.
- Ground 7A (mandatory ASB) – 28 days for periodic tenancies and 1 month for fixed term tenancies.

* Where no other grounds are relied upon.

Assured shorthold tenancies

Grounds as above and in addition;

S21 – 6 months notice. This would mean that the right to issue proceedings on the notice would be lost immediately upon expiry of the notice under the “old” rules. However, this period has been extended to 10 months from date of service – giving 4 months to issue proceedings.

Secure tenancies

- Ground 1 (rent arrears) where at least 6 months arrears and no other ground is relied on (save for 27A indictable offence at riot, 2A domestic violence or 5 tenancy granted after false representation) – 4 weeks
- Ground 2 (discretionary ASB) - no notice required, can issue immediately after service of the notice.
- Ground 27A – 4weeks*
- Ground 2A – 4 weeks*
- Ground 5 – weeks*

* if no other grounds are relied on.

The prescribed form Notices Seeking Possession have been amended and can be found here <https://www.gov.uk/guidance/assured-tenancy-forms> and <https://www.gov.uk/guidance/secure-tenancy-forms>.

For the avoidance of doubt, NTQ rules were never affected by the Coronavirus legislation so the usual notice periods continue to apply and must comply with the Protection From Eviction Act 1977.

This raises several practical questions:

1. Are notices served after 26 March 2020 but before 29 August 2020 valid?

Yes even if the notice period differs from the new rules above. These Regulations are not retrospective. Readers should remember that notices “served” means when deemed served so if a landlord rushed to serve a notice under the 3 months rules but it would not have been

deemed served until after 29 August 2020, it will be invalid.

2. Can those matters where notices were served during the period in 1 above be issued after 30 September 2020?

Yes unless the current pressure on the Government results in the stay being further extended.

3. What is the status of the requirements to serve reactivation notices for claims stayed or issued before 3 August 2020?

Those requirements (in PD55C) have not been amended (save to change the commencement of listed claims date to 20 September) so a reactivation is still required for those cases when listing of cases commences. See [‘The End is in Sight – but what then?’](#) setting out the requirements for such notices.

4. What are the requirements for claims issued after 3 August 2020?

The position remains that the landlord will be required to serve details as to the effect of the pandemic on the tenant and their family 14 days prior to the hearing.

This is my interpretation of the Regulations but they are very difficult to follow. The Government has published a press release <https://www.gov.uk/government/news/government-has-changed-the-law-so-most-renters-have-a-6-month-notice-period> confirming the above and also confirming that more detailed guidance on using the courts and the new arrangements will be made available in advance of possession proceedings starting again (probably 5pm on 19 September ...)

There is one discrepancy. The Press Release refers to 4 weeks notice for ASB cases but the only mention of this 4 weeks period in the Regulations relates to demoted and introductory tenancies and for the use of Ground 7A (mandatory possession on ASB grounds). This may be a drafting error but it appears that the rules have not changed for secure or assured tenancies relying on the discretionary ASB grounds that do not require notice after service of the NOSP unless so prescribed by the tenancy agreement.

The press release also confirms that the Government still intend to abolish s21 by way of the Renters Reform Bill.

As ever, we continue to stay alert to further changes and guidance. Interesting times!

Jane Talbot

ST IVES CHAMBERS

Law is correct as at 31 August 2020



Whilst every effort has been taken to ensure that the law in this article is correct, it is intended to give a general overview of the law for educational purposes. Readers are respectfully reminded that it is not intended to be a substitute for specific legal advice and should not be relied upon for this purpose. No liability is accepted for any error or omission contained herein.