

# COVID-19 and Notices Seeking Possession

## Guide 1

- This guide explains changes to 'Notices Seeking Possession' for particular forms of occupier. We've also prepared a sister document, '[COVID-19 and Possession Proceedings in the County Court](#)' which we hope is of assistance in explaining the current situation.
- Although it might be thought of as 'easier' in the immediate term to try to explain all the changes in one document, the truth is changes in this document explains what the [Government](#) changes are (Coronavirus Act 2020 being primary legislation passed through parliament). Guide 2 explains what the [court rule](#) changes are.
- We consider in the long run, explaining changes being made by the Government on one hand, and the court rules on the other, will be a more effective as a training tool, in the event of a future significant divergence.
- We are in the process of preparing training materials to assist advisors with starter to intermediate knowledge of housing law in Bristol. The limits on the following document in absence of these materials, is recognised. A note on possession procedure below is included, in the hope this makes the document as accessible as possible in the meantime.
- Advisors may be aware that there have been several significant recent updates to possession procedure and eviction, during this pandemic crisis. It is easy to get confused and we've seen quite a few myths or perhaps worse, misleading 'half-truths' which sound convincing because they're often partially correct.
- The changes to Notices Seeking Possession reflect an immediate requirement to minimise the eviction rate, with its knock-on effect on the risk to public health during the current pandemic. As will be described, there will need to be significant further changes to underlying drivers to prevent significant eviction numbers further down the line.
- The following is intended as a guide to advisors and those working with people whom have received notice i.e. to establish which rights of occupation are covered, and which are not, by the government's changes.

## Note on Possession Procedure

In the event advisors are not already aware, most forms of occupation require some form of notice seeking possession, or notice to quit, as the stage one in taking possession proceedings. This guide indeed focuses on stage one.

The only exceptions to the stage are where forms of occupation are not covered by the Protection from Eviction Act 1977 (see below, and sister article 'COVID-19 and Illegal Eviction'). For these occupants, only a 'reasonable notice' needs to be given<sup>1</sup> and are not within the remit of described changes.

## Notices Seeking Possession and COVID-19<sup>2</sup>

As explained above, the changes described here are crucial for the first stage of the possession- eviction procedure, given that most possession proceedings cannot even be started in the Court, until a valid notice has expired.

- Notices Seeking Possession served on or after 26<sup>th</sup> March 2020 for the specified types of tenancy, will need to give no less than three months' notice of a landlord's intention to seek possession of the property.
- The forms of tenure included are: Secure, Introductory, Flexible, Rent Act, Agricultural, Flexible, Demoted, Family Intervention, Assured and Assured Shorthold.
- As a reminder, in Bristol and surrounding areas, secure tenancy is the standard tenancy for Council tenants where applicable (Introductory for first 12 months), Assured tenancy or fixed term Assured Shorthold tenancies for Housing Associations, and Assured Shorthold for private tenants (live-in landlords will not carry this tenancy type – they will be the lesser 'unprotected licensee' status).
- These changes apply regardless of the reason for possession – whether rent arrears, alleged breach of tenancy agreement or some other reason. (Yes, this is contentious within the sector).
- Once the notice expires, if an occupier remains in occupation, a landlord must take Court action in order to recover possession (stage two). This explains both why notices 'just in case' might be being served at the moment, but also why we tend to advise those given notices to 'stay put' in most circumstances

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<sup>1</sup> See section 3A Protection from Eviction Act 1977

<sup>2</sup> Schedule 29, Coronavirus Act 2020

- (England-only) As a warning on 'just-in-case' notices for private tenants, there are rules confirming that 'no-grounds' notices - section 21 - have to have court proceedings either issued within six months of service of the notice, or four months following their expiry<sup>3</sup>.
- These rules have been altered slightly, such that the 'four months from expiry' rule is changed to three, in order to ensure the general principle remains that a notice has to be acted upon within six months of service of the notice overall.
- (England-only) the Government has updated the 'prescribed form' notice for section 21 notices (often considered as a 'no-fault' based eviction notice) and for section 8 notice (considered as a 'grounds-based' eviction notice) relevant to Assured tenancies, to reflect the changes to give at least three months<sup>4</sup>. It is highly likely that notices served to end relevant tenancies which are not in the correct prescribed form will be considered as invalid by the court.
- A defective notice is unable to be used where particular 'mandatory' grounds are relied on, such as 'mandatory' ground 8 (i.e. where two months or more rent arrears are lawfully due) by a private landlord or Housing Association<sup>5</sup> or section 21 notice is invalid. In other circumstances, in principle, Claimants may ask the Court to use discretion to 'excuse' an incorrect or invalid notice (i.e. waive the three month prescribed notice). Courts should be encouraged very strongly to consider the ongoing situation as to why such a discretion should not be exercised.
- This part of the Coronavirus Act has effect until the end of September 2020, at which point (currently) it is anticipated that it reverts to the regular system.

## Whom do the changes not affect?

- Any occupier who does not have protection under the Protection from Eviction Act 1977 is unaffected.
- A tenant with a relevant form of occupation who received a Notice Seeking Possession *prior* to 26<sup>th</sup> March 2020 is not affected (but see sister article on 'COVID-19 and Possession Proceedings in the County Court').
- Occupiers whom hold a *licence* rather than a *tenancy*. This includes for example those whom have a resident landlord or otherwise lack 'exclusive possession' of their room or accommodation (beware 'sham' licence agreements which are in fact tenancies!)

<sup>3</sup>Section 21(4D) and (4E) Housing Act 1988.

<sup>4</sup>The forms are on the Government website [www.gov.uk](http://www.gov.uk) and updated from the previous forms to include information that 3 months notice must be given. Please note these forms are prescribed in England only as Wales does not require service of How to Rent in England booklet (obviously) nor Energy Performance and Gas Safety Certificate for section 21 purposes, due to disapplication of sections 33 to 41 Deregulation Act 2015 in Wales. The reference to the relevant regulations would be given here, but as Giles Peaker has pointed out in his excellent 'Nearly Legal' blog on the matter, the regulations haven't yet been formally changed – the Coronavirus Act actually made the changes themselves, instead of altering the prescribed regulations.

<sup>5</sup>See section 8(1)(b) and (5) Housing Act 1988. This also includes for ground 7A schedule 2 Housing Act 1988 i.e. particular forms of serious offence.

- Those being evicted from emergency accommodation may be treated as occupying not as a 'dwelling' in particular circumstances<sup>6</sup>.
- It will also not affect people whom have lost their security of tenure e.g. because they have ceased occupying premises as their only or principal home, or for example where a joint tenancy has been terminated by service of a Notice to Quit.
- Occupiers getting notice which lasts under three months are particularly encouraged to seek legal advice.
- Many of the above examples will, however, be affected by the changes described within Guide 2.

## Social Impact and other action

Due to the changes, there is an increasing concern about the potential for Illegal Eviction. (See Guide 3 - 'COVID-19 and Illegal Eviction') )

It is also likely that due to delays in possession action, landlords (particularly social landlords) may be more likely to consider injunction action against tenants alleged to commit antisocial behaviour - see 'COVID-19 and Antisocial Behaviour'.

We have also seen a significant amount of within the public domain which encourage rent-strikes or not engaging with tenancy agreement terms. **Please note that nothing in the recent updates stops rent being lawfully due, or the application of the tenancy agreement terms, at this time.**

Whilst immediate action therefore being delayed in many cases (as explained below) in being able to legally evict, it is crucial to ensure occupiers<sup>7</sup> are aware of the need for an ongoing relationship with their landlord, and that the approach taken now may have consequences further down the line.

Where possible, we therefore suggest that occupiers are dissuaded from taking an overly combative approach in dealings with the landlord<sup>8</sup>, and in line with government guidance, should to look to work with their landlord in relation any rent arrears accruing as a result of COVID-19.

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<sup>6</sup> Desnousse v Newham London Borough Council [2006] EWCA Civ 547

<sup>7</sup> 'Occupiers' will be used within these guides as a neutral term to describe persons residing at a premises, since 'tenant' has a particular defined status, for example, compared to licensees. This concept is borrowed from ever-soon-to-be-introduced Renting Homes (Wales) Act 2016, which will look to equalise these forms of tenure.

<sup>8</sup> Although we use the neutral term 'occupier' for occupants of a property, we use 'landlord' will used as the umbrella term to describe the person granting occupation (including 'licensors')

It is inevitable that the short-term at least, many cases of rent arrears will become unavoidable at present due to job loss or furloughing, and/or benefits being delayed, and/or one or a combination of these meaning an occupant is unable to meet the full rental liability.

These changes deal with part of a puzzle which may take some time to solve, has several players with competing interests, and yet is only likely to be solved if all the players are able to work together.

## Stages two and three

Stage two of the eviction process is that where an occupier with protection remains in the property upon a notice's expiry, a landlord must follow with an application to court for a Possession Order, upon the expiry of the Notice to effect a lawful eviction. In the event a possession order is made<sup>9</sup>, it can be enforced after the period allowed by the Court upon further application by the landlord.

Stage three of the process is that following expiry of a possession order, the landlord needs to apply for an eviction warrant, which is point at which a bailiff time and date is actually set. It is possible to stop the bailiff warrant in some circumstances, particularly where the original ground for possession was discretionary<sup>10</sup>. Stages two and three really become more important in Guide 2.

## Summary

It is our position that minimising the possession/eviction rate is inherently a good thing, as at least short-term security is afforded. Many people's affordability of moving costs, and practicalities of sorting things out during lockdown, would be severely comprised at this point.

It remains to be seen what will be done to minimise evictions further down the line, i.e. at the end of this period.

*Please do not hesitate to contact Bristol Law Centre housing department [Housing@bristolawcentre.org.uk](mailto:Housing@bristolawcentre.org.uk) if there are any queries in relation to the above, or if there is a client/service user whom may benefit from specialist legal advice.*

*Bristol Law Centre has a contract with the Legal Aid Agency allowing us to provide publicly funded advice and representation in appropriate cases.*

*This document covers the Coronavirus Act and any known changes up to 17<sup>th</sup> May 2020. Please note this document is intended as guidance and as such is unable to be relied upon or replace formal legal advice.*

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<sup>9</sup> Usually the Civil Procedure Rules – CPR 55.5 (3A) and (3B)- state the first possession hearing would need to be between 4 and 8 weeks from date of issue of proceedings. This is however far, far shorter in 'unlawful trespass' cases i.e. a matter of days – CPR 55.5(2) and (6) . Defended possession cases could of course take far longer. At present, all of this will be overtaken due to Practice Direction 51Z, referred to in guide 'COVID-19 and Possession Proceedings in the County Court.'

<sup>10</sup> It is possible in other ways as well, but this guide is not intended as a replacement for specialist possession advice.