

WinckworthSherwood

The stay is over – but how easy is it for Landlords to obtain possession of their properties now?

On 27 March 2020 emergency legislation came into force which introduced a stay on all existing and new residential possession proceedings. The stay was originally intended to last until 25 June 2020, was extended until 23 August 2020 and again at the 11th hour to 20 September 2020.

The last six months has seen an unprecedented array of changes to the steps landlords must take to recover possession of their properties. Landlords should be aware from the outset that that there are hurdles which if not properly complied with, could delay or potentially prevent the recovery of possession of the property.

Most recently, from 21 October 2020, landlords will be prevented from evicting tenants in areas that are classified as Local Alert Level 2 (high) or 3 (very high). Landlords are therefore only currently able to evict tenants in areas classified as Level 1 (medium).

Notices

From 29 August 2020, a landlord must give **six months'** notice in their Section 21 notice and most Section 8 notices, unless an exemption applies. We draw your attention to the following exemptions -

- Section 8 - Grounds 8, 10 and 11: 4 weeks' notice can be given where a tenant is arrears of rent in excess of six months.
- Section 8 - Ground 14: where there is evidence of anti-social behaviour,

nuisance, illegal or immoral behaviour on the part of the tenant, a landlord can issue proceedings immediately after service of the notice.

- Section 8 - Ground 7: 3 months' notice is required following the death of a tenant.

It will remain important for a landlord to check they can serve a Section 21 notice, and that none of the restrictions apply. Once the Section 21 notice is served, landlords will now have ten months to issue proceedings from the date of service of the notice, instead of six.

Possession proceedings

On 20 September 2020, the Courts resumed dealing with possession proceedings which had been stayed since 27 March 2020.

Unsurprisingly, there is a substantial backlog of cases which the Court must re-list and the process moving forward is going to be slow for the foreseeable future. In addition, new procedures have been introduced to enable the Courts to deal with how they are going to prioritise cases.

Reactivation notices

Where a case was stayed by the Court, if the parties want to revive their cases, they must file a reactivation notice at the Court and serve it upon the Defendants.

The notice must indicate if the landlord wants the case to be listed, relisted, heard or referred. Importantly, the landlord must give information within the notice as to how the Coronavirus pandemic has affected the Defendant.

This can include what knowledge you have of the financial or health impacts of the pandemic or any change of circumstances of the Defendant or the composition of their household. Therefore, enquires must be made of the Defendant before the notice can be filed.

What further information must be included in the notice is dependent on what stage the proceedings had reached when they were stayed and the grounds on which the action is based.

In theory, the reactivation notice should assist the Court in deciding how to prioritise the cases in terms of what cases should be listed first. For example, if you have substantial rent arrears or there are allegations of domestic violence, your case should be prioritised.

The Review Hearing

A new two-part possession system has also been introduced. Previously, the Court would issue the possession proceedings and list a claim for first hearing within an eight-week period.

That eight-week time period has now been suspended, to give Courts more time to deal with the backlog. Instead, the Court will list a Review Hearing. This will enable the Court to look at the papers before listing the first hearing, now referred to as the "Substantive Hearing". The parties will be required to lodge an electronic bundle of the relevant papers before this hearing. This step will undoubtedly add further cost and delay into the process.

Continuing information

The requirement to provide information regarding the circumstances of the Defendant, is not a one-off requirement.

14 days prior to a hearing, the landlord must serve upon the Defendant a notice setting out what knowledge the party has of the effect of the pandemic upon the Defendant. Again, that will mean the landlord will need to ask the Defendant, after service of the proceedings for information to complete this step.

When will my case be heard?

There are currently no set time frames for when Courts will be able to clear the backlog of possession claims which will have amassed since the suspension first came in to force in March 2020.

Promisingly, on 19 July 2020 the Lord Chancellor announced that ten temporary Courts called 'Nightingale Courts' will be set up across England and Wales. The aim of the project is to help clear the backlog of cases.

While the Courts will be able to hear all civil, family and tribunal work, as well as a limited number of criminal matters, we anticipate that the Nightingale Court will find themselves inundated with possession claims.

Local Covid alert level system

On 21 October 2020, following the new Local Covid Alert Level system, the Lord Chancellor announced that landlords should instruct enforcement agents working under their authorisation not to enter residential properties in areas that are classified as Local Alert Level 2 (high) or 3 (very high) for the purposes of carrying out evictions.

Conclusion

Whilst landlords will have welcomed the lifting of the suspension on possession hearings, the future doesn't look like plain sailing. Given a further restriction has been introduced in respect of evictions in certain areas, there is a possibility of even more restrictions to come.

Landlords need to think carefully about how they liaise with their tenants and be mindful of the fact that it may still be some time before possession claims, particularly those issued more recently, receive a hearing date and even then, it may not be possible to enforce the possession order.

The government has encouraged landlords to prioritise pursuing cases involving extreme rent arrears; domestic abuse; anti-social behaviour; squatters; fraud and illegal sub-letting. Landlords may therefore wish to start thinking about alternative means of resolving their disputes, such as mediation or rent payment plans in cases which where they can.

For further information, please contact:



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