



# Recap on Where We Are When it Comes to Obtaining Possession of Residential Premises

For commercial properties, the ongoing ban on forfeiture arising from non-payment of rent is due to expire on 31 March 2021 (unless it is further extended). Whilst that news may provide some commercial landlords with some comfort, where do you currently stand if you are a landlord seeking possession of a residential property?

This article looks at the steps that a residential landlord is required to take in the current legal climate and what hurdles they may have to jump in order to seek possession of a residential property.

It is no secret that the Government's actions during the pandemic as regards to restrictions on possession proceedings have been to attempt to avoid increased homelessness and movement during a surge in the pandemic. However, this has meant that landlords have largely been left, at times, powerless to recover their properties.

Whilst landlords are now able to issue proceedings for the recovery of their properties, the courts are still adopting a cautious approach and it seems to be that the most common methods by which to obtain possession are sought to be obtained is by way of:

1. a no fault eviction (following a Section 21 notice); or
2. eviction on the basis of Ground 8 of Schedule 2 of the Housing Act 1988 (following a Section 8 notice)

## How much notice does a landlord need to give?

By virtue of *The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020*, landlords must give tenants at least 6 months' notice of the fact that the landlord requires possession when serving a Section 21 notice on or after 29 August 2020. Further, where a landlord gives a tenant a valid Section 21 notice after 29 August 2020, the notice will now remain valid for 10 months.

In Wales, the requirement for a landlord to provide its tenant with at least 6 months' notice applies to all Section 21 notices served on or after 24 July 2020.

Similarly to Section 21 notices, if a landlord has given its tenant notice pursuant to Section 8, on or after 29 August 2020, the notice period must be at least 6 months. However, this can be made shorter in certain cases.

For example, if the tenant is displaying serious anti-social behaviour the required notice has reverted to that which was in place prior to the Coronavirus Act 2020. In other words, 4 weeks if it is a periodic tenancy or 1 month if it is a fixed term tenancy.

Further, if there are serious rent arrears at the time of service of the notice and possession proceedings (i.e. 6 or more months' arrears) then the notice period can be reduced to 4 weeks.

The requirement to provide 6 months' notice in respect of both Section 21 and Section 8 notices expires on 31 March 2021 in both England and Wales, after which it is possible the required notice period will revert back to that which was in place prior to the Coronavirus Act 2020. The Government could, of course, decide to extend this requirement further and so landlords would be wise to monitor the situation closely in that regard.

## The possession proceedings

All possession proceedings, whether they are issued after the notice period has expired in a Section 21 notice or Section 8 notice must include a notice as to the claimant's knowledge as to the effect of the coronavirus pandemic on the defendant(s) and its dependants. If the landlord does not know what effect the pandemic has had, they must show what steps they have taken to try and obtain this information.

Whilst there is a backlog of cases that the courts are having to deal with, and so each court will have a different turnaround time in how quickly it can progress possession cases, we are finding that most courts are dealing with these in around 4 months (from date of issue to possession hearing).

However, even if a landlord is successful in obtaining a court order granting possession if the tenant continues to refuse to vacate, the landlord will need to ask the court for a 'warrant of possession'. When the court issues a warrant, it will send the tenants an eviction notice specifying the date by which they must leave the property. If the tenants do not leave by that date, it would usually mean that a bailiff would be required to evict the tenants.

Alternatively, landlords could also obtain a 'writ of possession' by transferring the case to the High Court.

Bailiffs are currently restricted from evicting tenants in England or Wales unless there is a serious reason to do so. Such reasons include illegal occupation, false statement, anti-social behaviour, perpetrators of domestic abuse in the social sector, where a property is unoccupied following death of a tenant and serious rent arrears greater than 6 months' rent.

These restrictions concerning the use of bailiffs will be in place until 21 February 2021 in England and 31 March 2021 in Wales and are being kept under review. Interestingly, outstanding arrears of 6 months or more does not constitute a serious reason in Wales.

## Conclusion

Whilst this article looks to provide key information as to the steps required to obtain possession of a residential property, the practical reality is that obtaining possession is not always straightforward and is currently further complicated by the legislation put in place as a result of the pandemic.

The Government has sought to help landlords understand their position and have published guidance: [Understanding the possession action process: A guide for private landlords in England and Wales](#). However, landlords would still be wise to consider instructing solicitors to assist them with obtaining possession as the consequences of falling at any of the required hurdles could result in having to start the process all over again.

If you have any questions regarding the above information, please contact our experienced [property litigation solicitors](#) by emailing [online.enquiries@la-law.com](mailto:online.enquiries@la-law.com) or calling 01202 786175.