

Protection from eviction - what we know so far... (updated 9 April)



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Housing

Coronavirus Act 2020 and protection from eviction provisions

The Westminster government has now passed the Coronavirus Act 2020. The legislation can be viewed [here](#).

The provisions relating to protection from eviction are contained in schedule 29 of the Act. These provisions relate to possession proceedings in England and Wales, after the Welsh Assembly passed a Legislative Consent Motion. The Welsh Minister for Housing and Local Government has written to all social housing tenants in Wales, setting out her expectations of social landlords. The letter can be accessed [here](#). The measures do not extend to Scotland and Northern Ireland, The Scottish parliament passed the Coronavirus (Scotland) Act 2020 on 6 April 2020, the Northern Ireland government is in the process of passing its own legislation.

The measures in Scotland and Northern Ireland are outlined in the final section of this briefing.

How the Act works: overview

The provisions that relate to possession proceedings are contained in schedule 29 of the Bill and apply from the day the Act is passed until 30th September 2020 - this is called the 'relevant period'. The relevant period can be extended by either the Secretary of State for Health and Social Care in England or in Wales by the Welsh Minister (CA 2020, s 87(1), schedule 29 paragraph 1).

The Act does not ban evictions - it merely extends the minimum notice period before proceedings for possession can take place to three months. The three-month period can be extended by the relevant minister to up to six (CA 2020, sch 29 paras 13, 14). These provisions apply to all the statutory grounds for possession - not just those that relate to rent arrears.

The Act works by applying amendments to the relevant legislation on tenant security (e.g. Housing Act 1985, Housing Act 1988) that automatically expire and restore it to the position immediately before it took effect

once the relevant period ends. The relevant regulations that specify the content of notices of seeking possession are also amended to reflect these changes (CA 2020, sch 29 paras 10-12). The specific provisions that relate to the tenancy type (secure, assured etc.) are outlined below (see appropriate heading).

Possession proceedings begun before commencement

Possession proceedings that were started before the Act was passed are unaffected by the changes to the minimum notice period and, in theory, can continue on the same basis as before.

How the courts will deal with proceedings

The Act does not make any changes to the way possession proceedings are dealt with by the

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courts once started and it does not interfere with judicial discretion as to how proceedings are run and judges powers to make orders - whether the proceedings were started before or after commencement of the Act. So, for example, the judge's powers to postpone or adjourn proceedings or to refuse possession where the ground applied for is discretionary, remain unaffected. Obviously, the extraordinary circumstances that apply during and in the aftermath of the crisis are bound to be a factor as to how each case proceeds and how it is dealt with.

Local authority tenancies

Secure tenancies

When a landlord serves a notice, the notice must state the date after which proceedings for possession can begin; this cannot be earlier than three months, extended from two months, after the date the notice is served (Housing Act 1985 s83(4B)(a), as amended by CA 2020, schedule 29 paragraph 3) - this applies to all grounds for possession not just those relating to rent arrears including the absolute anti-social behaviour ground (Housing Act 1985 s83ZA(10)(a), CA 2020, sch 29 para 4).

Flexible tenancies

As with secure tenancies (above), with flexible tenancies, possession proceedings cannot now begin for a minimum of three months from the date of a notice seeking possession being served, during the period the Act applies (Housing Act 1985 s107D, CA 2020, sch 29 para 5).

Introductory tenancies

The notice period cannot be earlier than three months from the date of the service of the notice, or the date the tenancy could be ended by a notice to quit if that was earlier (Housing Act 1996 s128(4A), CA 2020 sch 29 para 8).

Demoted tenancies

The three month notice period also applies to demoted tenancies (Housing Act 1996 s143A(3), CA 2020, sch 29 para 9).

Housing associations and private landlords

Assured Shorthold Tenancies / 'starter tenancies' (section 21)

The minimum notice period for the 'no fault' notice only ground is now to be read as three months (instead of two), and this cannot start until the last day of the current period. The earliest date on which the notice can be served from the start of the tenancy remains at four months (Housing Act 1988 s21(1)(b),(4)(a),(4E)(b), CA 2020, sch 29 para 7)

Assured tenancies (section 8)

For assured tenancies using any of the following grounds - 1, 2, 5, 6, 7, 9, 14 and 16 the date (for proceedings) in the notice when proceeding can commence must not be earlier than three months after the date on which it is served (Housing Act 1988 s8(4),(4A), CA 2020, sch 29 para 6(b),(c)).

Where ground 7A (serious offences) is used, if the tenancy is periodic this cannot be earlier than three months or the date it would otherwise be ended by an ordinary notice to quit, if this is later. If the tenancy is a fixed term the notice expires three months after the date on which the notice is served (currently one month) (Housing Act 1988 s8(3A)(a),(b), CA 2020, sch 29 para 6(a)).

In any other case, where the notice period is normally two weeks (including ground 8 - the mandatory rent arrears ground) the notice period is now three months (HA 1998 s8(4B), CA 2020 sch 29 para 6(d)).

Rent Act regulated tenancies

There are also similar provisions in the schedule that apply to regulated tenancies (i.e. Rent Act tenancies) that extend the notice period for any of the statutory grounds to three months. (CA 2020, sch 29 para 2).

Court action

From 27 March 2020, following a decision by the Master of the Rolls with the Lord Chancellor's agreement, the court service will suspend all ongoing housing possession action – this means that neither cases currently in or any about to go into the system can progress to the stage where someone could be evicted.

This suspension initially lasts for 90 days, but this can be extended if needed. The measure protects all private and social renters, as well as those with mortgages and those with licenses covered by the Protection from Eviction Act 1977. It applies to both England and Wales.

The government has also made clear that:

- Tenants are still liable for their rent and should pay this as usual
- Landlords remain legally obligated to ensure properties meet the required standard – urgent, essential health and safety repairs should be made. An agreement for non-urgent repairs to be done later should be made between tenants and landlords.

This measure does not affect the provisions made in the Coronavirus Act 2020 to protect tenants from eviction, only a temporary shutdown of court proceedings.

Scotland

The Scottish parliament passed the Coronavirus (Scotland) Act 2020 on 1 April 2020 and it received royal assent on 6 April 2020. It supplements the Coronavirus Act 2020 passed by the UK government on 25 March 2020. The full act can be read [here](#). CIH Scotland have published a 'What you need to know' about the act, for CIH members. This can be read [here](#).

The main measures of the Coronavirus (Scotland) 2020 are:

- The act temporarily makes all private rented sector (PRS) eviction cases discretionary – this means that when the tribunal reconvenes it can consider the individual circumstances of each case

- For most eviction clauses across both the PRS and social sector, the minimum notice period is extended to six months except where the property has been abandoned or there has been criminal or antisocial behaviour.

The act will expire automatically after six months unless it is extended by Ministers, which could take it up to September 2021 at the latest.

All cases before the Housing Tribunal have been suspended until at least the end of May 2020 – this means that private landlords cannot currently issue a legal eviction notice.

Social Rented Sector

- Social landlords are expected to use existing systems for supporting tenants who struggle to pay their rent because their income has dropped
- the Scottish Government has published [guidance for social landlords](#) during the Coronavirus pandemic
- landlords must notify the Scottish Housing Regulator of any changes to service levels, disruption or financial impact because of the virus, however
- legal requirements on issues such as carrying out an annual gas safety inspection remain in place.

Private rented sector (PRS):

- The Scottish government has asked the UK government to extend mortgage payment holidays from three to six months and for this approach to be extended to all mortgages, including buy to let mortgages, to help private landlords allow more flexibility for their tenants
- The Scottish housing minister has written to landlords and letting agents urging them to work with tenants who are struggling, allow flexibility and support them to claim benefits if possible. The Minister has also announced details of a zero interest loan fund that will be made available to eligible private landlords

facing loss of income due to COVID-19. Details of the scheme are expected before the end of April.

Northern Ireland

The Northern Ireland government have announced the following:

- the Department for Communities (DfC) has an agreement in place with all social housing landlords (Housing Executive and Housing Associations) that social housing tenants facing difficulties paying rent during the Coronavirus crisis will not be evicted
- DfC has assurances from 'Co-Ownership Northern Ireland' that, those facing difficulties keeping up with their payment's homes are secure, and that both Co-Ownership and mortgage lenders will treat these issues with sensitivity and support their customers during this difficult period
- Although evictions have not been officially suspended in the same way they have in the other devolved nations, the NI court system will essentially stop any evictions from occurring as the Enforcement of Judgements Office (EJO) has suspended any new applications for enforcement.

The Minister is to bring a Bill before the Northern Ireland Assembly to extend the 'notice to quit' period to better protect PRS tenants during the covid-19 crisis. It is expected to be given accelerated passage and come into effect in the next two weeks.

When passed, the Private Tenancies (Emergency Modifications) Bill 2020 will require landlords to give private tenants 12 weeks' notice to quit before actioning proceedings to evict. This is expected to add a layer of protection to prevent tenants from becoming homeless and will be in place until 30 September 2020. The minister has advised that she can and will extend this period if necessary.