

Protection from eviction – what we know so far... (February 2021)



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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 Parliament 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.

Update: UK governments have updated their measures on protection from eviction due to Covid-19. Full details have been added to the relevant sections of this briefing.

CIH has published a [detailed set of proposals](#) to avoid a situation where thousands of people become homeless and costs landlords and local authorities millions of pounds.

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).

Guidance for:

- England
- Wales
- Scotland
- Northern Ireland

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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 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. On July 24 the Welsh Government announced its own extension which means that notices issued following July 24th will be subject to a six month notice period. Those issued between March 27 and July 23 will be subject to the original three month notice period.

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.

Update: August 29, 2020 (England only)

The Government has brought forward regulations to:

- Extend the stay on possession proceedings to September 20, 2020
- Extend tenancy notice periods to six months in all but the most serious cases until at least March 2021 (The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020 implement this)

However, the Government understand that there are some cases where it is right that landlords should be able to start progressing cases more quickly, because of the pressure they place on landlords, other tenants and local communities. Therefore, notice periods for the most serious circumstances will drop. The Government has identified these 'serious circumstances' through engagement with stakeholders and represent the cases that present the most strain for landlords.

Therefore, from 29 August 2020, notice periods for the following cases, must be at least:

- 4 weeks in relation to anti-social behaviour (some discretionary grounds relating to nuisance/immoral or illegal use of the property require no notice at all. 2 weeks' notice is required for notices in relation to rioting)
- 2 – 4 weeks in relation to domestic abuse (depending on the type of tenancy notice period will vary – 2 weeks' notice for grounds under the Housing Act 1988 and 4 weeks under the Housing Act 1985)
- 2- 4 weeks for false statement (depending on the type of tenancy and ground used, the notice period will vary – 2 weeks' notice for grounds under the Housing Act 1988 and 4 weeks under the Housing Act 1985)
- 4 weeks' where over six months of rent is due (if less than six months is owed, then six months' notice must be given)

- 4 weeks for local authority introductory and demoted tenancies for cases relating to anti-social behaviour (including rioting) and domestic abuse
- 3 months' where the tenant is unlawfully present in the UK in breach of immigration rules (known as no 'Right to Rent') or where the tenant has passed away
- 6 months' notice period for all other grounds, including Section 21 notices and rent arrears under 6 months.

Notices served on and before 28 August are not affected by these changes and must be at least three months if served on or after 27 March. If a landlord wishes to serve a new notice in order to take advantage of the new shorter notice periods required for certain serious cases, they should, where they are issuing a new notice of the same type, withdraw the first notice before they serve a new notice. These regulations apply in England only.

None of these measures change a tenants' liability to pay rent and tenants who can afford to pay should continue to do so.

Note on prescribed forms for issuing notice to seek possession

In line with the changes introduced by these regulations, the government have updated the forms for serving a 'notice seeking possession' via:

- Section 21(1) or (4) of the Housing Act 1988 (Form 6a)
- Section 8 of the Housing Act 1988 (Form 3), and
- for certain secure tenancies used in the social rented sector (Part I Notice of Seeking Possession, s.83 of the Housing Act 1985 and Part II Notice of Seeking Termination of Tenancy and Recovery of Possession, s83 of the Housing Act 1985).

To accommodate the longer notice period requirements, new notices of intention to seek possession via Section 21 will now be valid for a total of ten months.

The updated Forms 6a and 3 are available [here](#).

Secure tenancy notice forms are available [here](#).

Update - September 16, 2020 (England)

From 21 September 2020 the English courts will start to hear possession hearings again. Cases will be subject to new court processes and procedures which the government and judiciary have developed. These include:

- A statutory increase in the notice period to 6 months meaning that renters served notice can stay in their homes over winter, with time to find alternative support or accommodation
- The only exceptions to this are the most egregious cases, including where tenants have demonstrated anti-social behaviour or committed fraud, and the landlord rightly would like to re-let their property to another tenant
- If an area is in a local lockdown that includes a restriction on gathering in homes, evictions will not be enforced by bailiffs.

Cases, such as those involving anti-social behaviour, domestic and other crimes, and extreme rent arrears where landlords would otherwise face unmanageable debts, will be prioritised for court hearings.

Cases from before 3 August 2020 will not immediately proceed to hearing but will have to be 're-activated' by the landlord and are then subject to a new review hearing, which will be held at least four weeks before the substantive hearing.

Landlords will also be required to provide the court with information on how tenants have been affected by the pandemic. Where this information is not provided, judges will be able to adjourn proceedings until the information is provided.

Update - January 8, 2021 (England)

The ban on bailiff evictions has been extended until February 21, 2021 and landlords are still required to give a six month notice period until 31 March, 2021.

Update - February 14, 2021 (England)

The ban on bailiff evictions has been extended until March 31, 2021, with exemptions for the most severe cases. Landlords are still required to give a six month notice period for evictions, except in the most severe cases. This means that most households already served notice can remain in their homes until at least August 31, 2021.

Update: February 19, 2021 2021 (England)

The government has announced funding for the Society of Mediators to pilot a new mediation service as part of the possession process to support landlords and tenants to resolve disputes before the substantive hearing. A referral to the service will be made on the day of the case review if both parties agree.

How does the mediation pilot work?

Tenants will have access to free legal advice from the Housing Possession Court Duty Scheme (HPCDS) on the review day. If both parties agree and the case is considered suitable, the case will be referred to the free mediation service. A mediator from the Society of Mediators will then contact the tenant and landlord to arrange a suitable time for the mediation to take place. This will be a series of telephone calls between all parties. This will provide the landlord and tenant with an opportunity to reach an agreement that best suits them and can be sustained.

If an agreement is reached during mediation, the mediator will ask both parties to sign an agreement and will inform the court of the outcome. If an agreement is not reached, then the substantive hearing will take place on the date specified. Agreeing to mediation will not make the court possession process any longer. Although mediation is more flexible than the court process, [government guidance](#) recommends that both parties should still seek independent legal advice. This is available for free to tenants on the day of their review through the Housing Court Possession Duty Scheme before any referral to the mediation pilot is made.

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](#). A CIH member briefing on the second emergency Coronavirus Act is available [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.

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 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 also established a £5 million loan fund for private landlords facing a loss of income due to COVID-19. More details of the loan fund are available [here](#).

Update: On 1 September, 2020 the Scottish government announced the following:

- The [Programme](#) for Government 2020-2021, confirming an extension to March 2021 of the existing emergency legislation which increases eviction notice periods for most social and private tenants to six months, including arrears cases.
- Following feedback from the housing sector about cases of significant negative impacts in some communities, the notice period for cases involving antisocial behaviour will be reduced from three months to one.
- Further financial support to try and prevent evictions including an additional £3 million for discretionary housing payments (DHPs) and,
- A new £10 million tenant [hardship](#) loan fund. The fund will provide zero interest loans to tenants who cannot access other forms of support, for example, those who do not have an active housing benefit or universal credit claim and so cannot apply for a DHP. This follows a £5 million [loan fund](#) for private landlords which opened in May.

Scottish Government guidance for social landlords is available [here](#) and for private landlords [here](#).

Temporary halt on evictions

The Scottish Government introduced a temporary halt on eviction orders being enforced between 11 December and 22 January 2021. On 14 January new regulations were introduced to extend restrictions on

evictions to 31 March. Exemptions will still be in place to allow evictions in cases involving criminal or antisocial behaviour including domestic abuse.

This is intended to offer more protection to tenants, make it easier to self-isolate if needed and ease pressure on local authority homelessness services.

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.

Update: Extension of legislation to protect private renters

On 19 August 2020 the Department for Communities (DfC) extended the legislation, which was initially due to expire at the end of September 2020, to 31 March 2021.

The Private Tenancies (Coronavirus Modifications) Act requires landlords in Northern Ireland to give a 12-week notice to quit period before seeking a court order to begin eviction proceedings. This is in place to provide extra protection for tenants in the private rented sector both now, but in the anticipation of a second wave of the virus and also for financial protection as the furlough scheme winds down.

However, if the landlord served notice on tenants before 5 May 2020, this does not stand and the length of notice required remains:

- 4 weeks for tenants who have been living in the property for up to 5 years
- 8 weeks for tenants who have been living in the property for between 5 and 10 years
- 12 weeks for tenants who have been living in the property for more than 10 years.

Update: On 4 September 2020 the Northern Ireland government announced:

- Updated [guidance](#) on eviction proceedings. With effect from 31 August 2020, courts in Northern Ireland will resume hearings, including possession proceedings
- Any notices to quit that had been issued before 24 March 2020 can now proceed
- Notices to quit issued after 5 May 2020, are subject to a twelve-week notice period in line with the emergency legislation measures.

Update 24 February, 2021: Legislation protecting private renters from eviction has been extended to 30 September 2021.

The twelve week notice to quit period before a court order to begin proceedings to evict may be sought remains.

Wales

On 24 July 2020 the Welsh Government announced an extension to the notice period on evictions from three months to six. The change will apply to all private rented and housing association tenants, unless they are being evicted on grounds of anti-social behaviour (<https://gov.wales/eviction-during-coronavirus-pandemic>).

New regulations have been made under Schedule 29 of the Coronavirus Act 2020, that temporarily extend the minimum notice periods landlords must give to tenants with assured and assured shorthold tenancies. These changes are as follows:

- A six-month notice period will apply to notices issued on or after 24 July 2020 under section 8 of the Housing Act 1988, except those that specify grounds 7A or 14 (relating to anti-social behaviour). A three-month notice period will continue to apply to notices that specify grounds 7A or 14.
- A six-month notice period will apply to notices issued on or after 24 July 2020 under section 21 of the Housing Act 1988.

This temporary extension will last until 30 September 2020, although could be extended.

In tandem with this, the Welsh Government has launched an £8 million 'Tenant Saver Loan Scheme', which applies to the private rented sector only. It allows tenants to borrow money to cover the arrears they have built up and is paid directly to the landlord or agent. (https://www.rentsmart.gov.wales/Uploads/Downloads/00/00/01/32/DownloadFileEN_FILE/Tenancy-Saver-Loans-FAQs.pdf).

Update: On 15 September 2020, the Welsh Government announce:

- An extension to eviction notices to the March 31, 2021.