

To say that the COVID-19 pandemic has had a substantial impact would be an understatement. The resulting economic situation has seen tenants failing to maintain rental payments. Added to this, the Government's stays on possession proceedings (having been introduced during March 2020 and extended three times to September 2020) has meant that landlords (who often service a mortgage on the rented property) were without any legal recourse. Things do now appear to be somewhat clearer and moving forward.

How much notice does the landlord need to give?

The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020 came into force on 29 August 2020 in England and has varied the notice periods for both section 21 and section 8 notices (until at least 31 March 2021).

In terms of section 8 notices, a possession claim cannot be commenced until after the expiry of the notice period (and the claim must be issued within 12 months from the date of service of the notice). The notice periods have been extended as follows –

<u>Mandatory Ground</u>	<u>Pre-26/03/20</u>	<u>26/03/20 to 28/08/20</u>	<u>Post-29/08/20</u>
1. Landlord wants to move in	2 months	3 months	6 months
2. Mortgage repossession	2 months	3 months	6 months
3. Out of season holiday let	2 weeks	3 months	6 months
4. Let to student by an educational institution	2 weeks	3 months	6 months
5. Property required for use by minister of religion	2 months	3 months	6 months
6. Demolition/redevelopment	2 weeks	3 months	6 months
7. Death of tenant	2 months	3 months	3 months
	4 weeks (periodic tenancy)		4 weeks (periodic tenancy)
	1 month (fixed term tenancy)		
7a. Serious anti-social behaviour	tenancy)	3 months	1 month (fixed term tenancy)

7b. No right to rent in the UK	2 weeks	3 months	3 months
			(a) 4 weeks where arrears are at least 6 months
8. Serious rent arrears at time of service of notice and possession proceedings	2 weeks	3 months	(b) 6 months where arrears are less than 6 months
9. Alternative accommodation available	2 months	3 months	6 months
			(a) 4 weeks where arrears are at least 6 months
10. Some rent arrears at the time of service of notice and possession proceedings	2 weeks	3 months	(b) 6 months where arrears are less than 6 months
			(a) 4 weeks where arrears are at least 6 months
11. Persistent late payment of rent	2 weeks	3 months	(b) 6 months where arrears are less than 6 months
12. Breach of tenancy agreement	2 weeks	3 months	6 months
13. Tenant deteriorated property	2 weeks	3 months	6 months
14. Nuisance/annoyance, illegal/immoral use of property	None- proceedings may be commenced immediately after service of notice	3 months	None - proceedings may be commenced immediately after service of notice
14A. Domestic abuse (social tenancies only – where victim has permanently left the property)	2 weeks	3 months	2 weeks
14ZA. Rioting	2 weeks	3 months	2 weeks
15. Tenant has deteriorated furniture	2 weeks	3 months	6 months
16. Employment	2 months	3 months	6 months

17. False statement 2 weeks 3 months 2 weeks

The section 21 notice period has also been extended as follows,

	<u>Pre-26/03/20</u>	<u>26/03/20 to 28/08/20</u>	<u>Post-29/08/20</u>
Notice period	2 months	3 months	6 months

For section 21 notices sent after on or after 29 August 2020, the claim must be issued within 10 months of service of the notice.

How has the Court responded?

The stay on possession claims was lifted on 20 September 2020. That said, landlords should expect delays. In anticipation of the stay being lifted, HMCTS is said to have appointed 160 designated court staff and 200 additional judges have been assembled to handle the additional work.

The court will now prioritise cases involving anti-social behaviour, squatters, domestic abuse or fraud by tenants, as well as those where there are very high rent arrears of at least 6 months. Cases with at least 12 months' rent arrears (or 9 months' worth of arrears which amounts to over 25% of a private landlord's total income), will take priority. Claims which were issued prior to the stay being introduced will also be a priority.

For possession claims brought before 3 August 2020, a 'reactivation notice' must to be filed and served (except those wherein a final possession order had already been made). For those claims brought after 3 August 2020, a notice providing information as to the effect of the pandemic on the tenant and any dependents.

For those claims which would normally have been listed for hearing, further to guidance issued by the Master of the Rolls, a review ('R') date will first be listed. At the R hearing, it is expected that a Substantive ('S') hearing will be fixed for a date at least 28 days thereafter. 14 days before the R date, the landlord will be required to provide the Court with an e-bundle, confirmation that it has been filed and served, and confirm availability to discuss the case (by telephone will suffice) with the tenant or duty adviser. If there is no resolution during the R hearing, the case shall proceed to an S hearing which all parties will be expected to attend. The expectation is that S hearings will be listed for 15 minutes (not in block lists) and may take place in person at courts which can accommodate social distancing, unless the parties agree to a remote hearing.

What should landlords do?

As always, good advice is to communicate with your tenants. Find out if and how they have been affected by the pandemic, when they envisage being able to make payment of the rent and whether any repayment plans can be accommodated. Litigation should be a last resort. That said, given the uncertain times ahead and the extended processes, landlords should give thought to issuing notices so as to protect their position in the event that future maintenance of a tenancy becomes unfeasible for the tenant. The service of a notice does not oblige

a landlord to initiate a possession claim upon its expiry. In the least, it will provide a safeguard against any unanticipated problems in the future.

At SCS Law, we can offer a fixed fee for each stage of the possession process. Our fixed fees can be found [here](#). Contact one of our team today to discuss your matter further.

The information contained above is accurate as of 24 November 2020 and applies to matters relating to claims brought in the County Courts of England only. It is not intended to constitute formal legal advice and should not be relied upon.