

**LANDLORD
ADVICE UK**



020 3903 2000
www.landlordadvice.co.uk



Landlords Guide to Understanding the Implications of the Coronavirus

January-February 2021 Edition



Landlords Guide to Understanding the Implications of the Coronavirus

January-February 2021 Edition

This guidance is for landlords in the private and social rented sectors in England on:

1. Measures relating to notices seeking possession as amended by the Coronavirus Act 2020 and subsequent regulations;
2. Possession claims in the County Court;
3. Mortgage payments; and
4. Health and safety obligations, repairs and inspections in the context of coronavirus (COVID-19).

This guidance is advisory, incorporates governments guidance and informs you about recent changes to the law. All guidance is subject to frequent updates and should be checked regularly for currency.



1. Measures Relating to Notices Seeking Possession

The purpose of this advisory guidance is to help landlords understand the implications of the Coronavirus Act 2020. The Act provides protection to social and private tenants by delaying when landlords can start proceedings to evict tenants.

This means that from 29 August 2020, with the exception of the most serious cases, landlords are not able to start possession proceedings unless they have given their tenants 6 months' notice. These serious cases include those in relation to anti-social behaviour (including rioting), domestic abuse, false statement and where a tenant has accrued rent arrears to the value of over 6 months' rent.

The stay on possession proceedings expired on 20 September 2020 and landlords are now able to progress their possession claim through the courts. Courts will carefully prioritise the most egregious cases, such as those involving anti-social behaviour and other crimes.

Longer notice periods and new court rules apply during the national lockdown which is in force in England.

The Coronavirus Act 2020 protects most tenants and secure licensees in the private and social rented sectors by putting measures in place that say that, in most cases, before starting court action landlords are required to give extended notice of intention to seek possession to their tenants. For notices issued between 26 March to 28 August 2020, the required notice period was 3 months. Notices issued during this period are unaffected by the changes outlined below.

The provisions in the Coronavirus Act 2020 have been extended meaning that from 29 August 2020, landlords must provide 6 months' notice to their tenants in most circumstances. However, there are some serious cases where it is right that landlords are able to start progressing within a shorter timeframe. This is because of the pressures these cases place on landlords, other tenants and local communities.



These changes mean that from 29 August 2020:

- For notices in relation to anti-social behaviour, domestic abuse, rioting and false statement, the required notice periods have returned to their pre-Coronavirus Act 2020 lengths. In some cases, this means that possession proceedings for anti-social behaviour can be brought immediately after notice has been served. Notice periods on these grounds otherwise vary, depending on the type of tenancy and ground used, between 2 weeks and 1 month.
- Where at least 6 months of rent is unpaid, a minimum 4-week notice period will be required. If less than 6 months of rent is unpaid, then the notice period is 6 months.
- Where a tenant has passed away or is in breach of immigration rules and does not have a right to rent a property in the United Kingdom then a minimum 3-month notice period is usually required.
- Where a social tenant has an introductory or demoted tenancy

(used by local authorities), for cases concerning anti-social behaviour (including rioting) and domestic abuse, a 4-week notice period will be required. Otherwise, notice periods for Introductory and Demoted Tenancies will be 6 months.

- A 6-month notice period is required for all other grounds, including Section 21 notices and, as stated earlier, where accrued rent arrears are less than the value of 6 months' rent.

At the expiry of the notice period, a landlord cannot force a tenant to leave their home without a possession order. When the notice period expires, a landlord would need to take court action if the tenant was unable to give up possession of the property.

Where appropriate, if disputes over rent or other matters persist, landlords and tenants are encouraged to consider mediation.

Mediation allows an independent third-party to assist those involved to reach a mutually acceptable agreement to resolve their dispute, without the matter needing to go to court. While early mediation may be most beneficial in

helping parties come to an agreement, this can take place at any point during the possession action process.

Most tenants will be able to pay rent as normal and should continue to do so, as they will remain liable for the rent throughout the coronavirus pandemic.

There is no 'one-size fits all' approach, as each tenant's circumstance is different, and some will be worse affected in terms of their ability to pay than others. It is important for landlords to be flexible and have open correspondence with their tenants at the earliest opportunity, to allow both parties to agree a sensible way forward.

How long are Section 8 & 21 notices valid for?

Where a landlord gives a tenant a valid Section 21 notice after 29 August 2020, the notice will now remain valid for an extended period of 10 months from the date it is given to the tenant.

The validity of Section 8 notices remains unchanged by the Coronavirus Act 2020. Section 8 notices continue to be valid for 12 months after they are served.

2. Possession Claims

Eviction Ban Extended in England until 21 February 2021. On 8 January 2021 the Housing Secretary, Robert Jenrick MP, announced a further extension to the restrictions on evictions for private renters in England which came into force on 11 January 2021.

The current restrictions were due to end on 11 January 2021, however, the new extension will be until 21 February 2021 and reviewed regularly.

The UK Government has now approved The Public Health (Coronavirus) (Protection from Eviction) (England) Regulations 2021 and has released updated guidance to reflect a return to a national lockdown and the extension of the ban on bailiff enforcement.

These regulations do not stop a landlord serving notice or issuing possession proceedings however.

The extension does not extend the restrictions on taking control of goods which are set to end on 11 January 2021. The previous regulations also introduced a temporary ban on bailiffs attending residential properties to execute a warrant of control (in order to seize the tenant's goods in order to be sold to recover arrears), however, this has not been extended and is set to end on 11 January 2021 meaning that bailiffs will be able to enforce judgements for outstanding debt.

Possession orders cannot be executed from 11 January 2021 to 21 February 2021 unless an exemption applies. A non-exhaustive list of the exemptions are:

1. Where 'substantial' rent arrears have accrued. The arrears must equate to 6 months' rent arrears, including any rent arrears that arose before the coronavirus pandemic.
2. To evict trespassers.
3. Anti-social behaviour.
4. Where the tenant has been convicted of a serious offence.
5. Where the tenant gave a false statement which induced the landlord to grant the tenancy.

Court proceedings to obtain a possession order are still ongoing. This does not affect any eviction notices served or possession claims issued prior to these regulations, but it does mean that any possession orders made cannot be enforced by a bailiff until after 21 February 2021 unless an exemption apply.

Will the courts consider the impact of the coronavirus outbreak on tenants and landlords?

When making a possession claim, landlords are required to set out any information they are aware of in relation to how their tenant, or any dependant of their tenant, has been affected by the coronavirus pandemic. This could include information regarding issues with employment or benefit payments, disability issues and whether they have been 'shielding'. Where this information is not provided, judges have the ability to adjourn proceedings until such information is provided. Tenants who are challenging a possession claim also have the opportunity to inform the court of how they have been impacted by the pandemic.

Where a landlord is seeking possession as a result of suffering financial difficulty



due to the pandemic, the landlord can draw that to the court's attention by marking the claim 'COVID-19'. Likewise, where difficulties suffered by a tenant as a result of the pandemic have brought about the situation where possession is being sought, the tenant can mark their challenge 'COVID-19'. Information supporting the 'COVID-19' marking must be provided.

We continue to encourage landlords and tenants to work together to resolve disputes without the need for court action, including agreeing repayment plans where a tenant is unable to fully meet their rent.

How does the mediation process work?

If you have a disagreement with your landlord or tenant, you should try to discuss it with them as early as possible. If there is a disagreement between a landlord and tenant that can't be resolved by them speaking to each other directly, it may be helpful to use a mediator or mediation service. Tenants should also consider speaking to a free, impartial advice service, such as Citizens Advice.

A mediator is an impartial person who helps both sides work out an agreement. The mediator is neutral and will not make any judgment on the rights or wrongs of the case. The role of the mediator is to help you and the other party negotiate an agreement.

Mediation is a voluntary process, so both parties involved need to want to use the service. In mediation, each side can sum up the main points of their case and think about what the other side has to say. A mediator helps both parties to consider whether they can both reach agreement about how the dispute could be settled.

Mediation can, in some cases, avoid the need for court action. However, where cases are brought to court, mediation can still help to resolve the dispute. Duty solicitors and other legal professionals can help support both parties to reach resolution without the need for a full hearing.

Local authorities may also be able to support negotiations between a landlord and tenant. If anyone is at risk of homelessness, their local authority has a duty to work with them to help prevent them becoming homeless. The relevant local authority can be found at: Find your local council.

3. Mortgage Payments

The mortgage holiday has been extended, with applications open to 31 March 2021. Borrowers, including those with a Buy to Let mortgage, who have been impacted by Coronavirus and have not yet had a mortgage payment holiday will be entitled to a 6-month holiday, and those that have already started a mortgage payment holiday will be able to top up to 6 months without this being recorded on their credit file.

The Financial Conduct Authority (FCA) has been clear that for borrowers who have taken 6 months' holiday and continue to face ongoing financial difficulties, firms should continue to provide support through tailored forbearance options. This could include granting new mortgage payment holidays. Mortgage customers in this situation should speak to their lender to discuss their options.

If a landlord is concerned about their financial situation they should discuss this with their lender. There is currently a moratorium on the enforcement of lender repossession, except for in exceptional cases (such as a borrower requesting proceeding continue).

4. Repairs, maintenance and health and safety

Tenants have a right to a warm and safe property to live. Where safe to do so, it is in the best interests of both tenants and landlords to ensure that properties are well maintained, kept in good repair and free from hazards.

It is in the best interests of both tenants and landlords to ensure that properties are kept in good repair and free from hazards. Tenants should let their landlords know early if there is a problem and landlords should take the appropriate action as soon as possible.

Landlords can take steps to carry out repairs and safety inspections under the national lockdown which is in force in England, provided these are undertaken in line with public health advice.

Landlords should be aware that some tenants may still want to exercise caution and should respect this when engaging with their tenants.

Current restrictions may mean it is harder to carry out routine or essential repairs and maintenance, but landlords will be expected to make every effort to meet their responsibilities. Because of these restrictions, we are recommending a pragmatic approach to enforcement from local authorities. This should mean that tenants who are living with serious hazards that a landlord has failed to remedy can still be assured of local authority support, but that landlords should also know they should not be unfairly penalised where COVID-19 restrictions may have prevented them from meeting some routine obligations.

Landlords can take steps to carry out repairs and safety inspections under the national lockdown which is in force in England, provided these are undertaken in line with public health advice and the relevant coronavirus (COVID-19) legislation.

What does the current lockdown mean for repairs and inspections to property?

Landlords can take steps to carry out repairs and safety inspections, including routine and essential inspections and repairs, as well as any planned internal works to the property under the national lockdown which is in force in England, provided these are undertaken in line with public health advice.

In particular, no work should be carried out if it means landlords or contractors may have to enter a household which is self-isolating because one or more family members has symptoms, unless it is to remedy a direct risk to the safety of the household.

Landlords and tenants should work together to make prior arrangements to ensure that social distancing is maintained and hygiene procedures should be followed in line with the latest guidance on working safely in people's homes.

Landlords should be aware that some tenants may still want to exercise caution and respect this when engaging with their tenants.

What about works to the exterior of properties, and to external communal areas?

Landlords should be able to carry out works to the outside of dwellings, such as routine maintenance, grounds maintenance and cleaning of communal areas, it is advised contractors comply with relevant guidance on social distancing in the workplace.

Landlords can take steps to carry out repairs and safety inspections, including routine and essential inspections and repairs, as well as any planned internal works to the property during the national lockdown which is in force in England, provided these are undertaken in line with public health advice and the relevant coronavirus (COVID-19) legislation.



What about a landlords' obligations to provide regular gas and electrical safety inspections?

Safety in the home remains extremely important and therefore all landlords should make every effort to abide by existing gas safety regulations – and in the private rented sector, the new electrical safety regulations which apply to new tenancies from 1 July 2020 – providing this can be done in line with guidance on working in people's homes.

Gas safety inspections should not be carried out in homes that are self-isolating until after the isolation period has ended, unless it is to remedy a direct risk to the safety of the household.

Landlords and contractors can now carry out both routine and essential repairs in households with clinically extremely vulnerable occupants. In these cases, landlords and tenants should work together to make prior arrangements to ensure that social distancing is maintained (insofar as possible).

Where a tenant is not self-isolating and persistently refuses to allow access to the property, landlords still have the powers and tools available to gain access to their properties during the period affected by coronavirus. This includes access to the courts to obtain an injunction or, in the case of a local authority landlord, a warrant.

Local authorities and other enforcement agencies are aware of guidance for people working in other people's homes and how this will affect landlords complying with gas and electrical safety requirements. We are encouraging a pragmatic, common-sense approach to enforcement in these unprecedented times.

Landlords are legally required to provide tenants with all necessary gas and electrical safety and any other relevant certification at the beginning of a tenancy (and carry out all scheduled inspections and tests where required). Where inspections have already been carried out, documents can be provided by post or in some circumstances it may be possible to provide digital copies.

Electrical and gas safety in privately rented properties

The Electrical Safety Standards in the Private Rented Sector Regulations 2020 were made on 18 March and apply to all new tenancies from 1 July 2020 and will apply to all existing tenancies from 1 April 2021.

The Electrical Safety Regulations require landlords to:

1. Have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years.

2. Provide a copy of the report (known as the Electrical Safety Condition Report or EICR) to their tenants, and to the local authority if requested.

3. If the EICR requires investigative or remedial works, landlords will have to carry this out within 28 days or a shorter period if specified in the report. Written confirmation of the completion of the remedial works from the electrician must be supplied to the tenant and the local authority within 28 days of completion of the works.

The Gas Safety (Installation and Use) Regulations 1998 require landlords to have annual gas safety check on each

appliance and flue carried out by engineer registered with the Gas Safe Register and to keep a record of each safety check. Further advice can be found on the Gas Safe Register's website.

Both regulations are clear on the issue of compliance. With regards to the Electrical Safety Regulations, a landlord would not be in breach of the duty to comply with a remedial notice if the landlord can show they have taken all reasonable steps to comply. With regards to a landlord's duties under the Gas Safety Regulations, a landlord would

not be liable for an offence if the landlord can show they have taken all reasonable steps to prevent the contravention.

A landlord could show reasonable steps by keeping copies of all communications they have had with their tenants and with electricians as they tried to arrange the work, including any replies they have had. Landlords may also want to provide other evidence they have that the installation, appliance or flue is in a good condition while they attempt to arrange works.

What about access to a property to conduct viewings or where a move is scheduled?

House viewings can still proceed throughout during the national lockdown which is in force in England, provided these are undertaken in line with public health advice.

Where viewings proceed, they should be conducted in line with the guidance on viewings which is set out below. A tenants' safety should be the priority of letting agents and landlords.

Where possible, virtual viewings should be used before visiting properties in person in order to minimise public health risks. If any member of either the household being viewed, or the household undertaking a viewing is showing symptoms of COVID-19 or is self-isolating, then an in-person viewing should be delayed.

We recommend that current occupiers vacate the property while viewings are taking place in order to minimise unnecessary contact.

Members of the public who are viewing a property should wear a suitable face covering as described in government guidance unless they are exempt from this requirement. This should be confirmed with the agent before arrival. Anyone with concerns should contact the agent in advance of their visit to discuss appropriate measures.

We expect property agents to accompany clients on a viewing and follow social distancing guidance. Where viewings are unaccompanied, agents should make sure viewers and the occupants of the home understand how they should conduct themselves to protect their health and the health of others.



020 3903 2000
www.landlordadvice.co.uk



"I have known Sasha Charles of Landlord Advice UK for the past 6 years and have always utilised their services to deal with my legal issues. During this time Sasha and the team have dealt with many possession claims and a complex dispute about interest in property. Landlord Advice UK have great integrity and are extremely dedicated to property law with unprecedented knowledge in the field. I would highly recommend their services." – Mohammed Ijaz of London Living

"I contacted Landlord Advice on their free advice line, who provided me with helpful advice. They then assisted me with the whole process from start to finish and I now have my property back. Would strongly recommend to anyone needing the same service" – Laura Taylor

A Firm You Can Trust

We have repeat clients who come back to us time and time again, year on year.

We understand that being involved in property is not always easy, whether you are a joint property owner tied up in a family dispute over interest in the property, a private or social landlord or agent. It is for this reason that we have created a dedicated firm of property law experts who are always there to help.

Commercial Property

- Drafting and negotiating lease agreements
- Enforcement of Forfeiture Rights
- Commercial Rent Arrears Recovery
- Applications Relating to Renewal of Leases
- Recovery of Possession of Property
- Repair and Dilapidation Claims

Residential Property

- Recovery of Possession of Property
- Rent Arrears Recovery
- Landlord and Tenant Disputes
- Tenancy Deposit Protection Penalty Claims
- Rent Repayment Orders

- Improvement Notices, Prohibition Orders and Demolition Orders
- Financial Penalties
- Banning Order Offences
- Drafting Tenancy Agreements
- License Agreements
- Secure Tenancies

Interest in Land

- Family and Joint Ownership Disputes
- Property Adjustment Orders in Divorce Proceedings
- Disputes of Interest in Land
- Applications for Orders for Sale of Property
- Applications for a Declarations of Interest in Property

We look forward to hearing from you.

If you wish to discuss anything in this guide for more detail, please contact our team to find out how we can help you.



E-Mail: admin@landlordadvice.co.uk

Telephone: 020 3903 2000

Landlord Advice UK, Nightingale House, Crawley, West Sussex, RH10 A6E

We are currently experiencing a large volume of calls, we recommend that initial enquiries are made to us via e-mail, should you wish to discuss your matter, you can request a call back by e-mail and a member of our team will contact you as soon as possible.