



Possession and homelessness in a time of Coronavirus

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2 April 2020



GARDEN COURT CHAMBERS



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The Legislation

- *S.81 - Residential tenancies in England and Wales: protection from eviction*
“Schedule 29 makes provision about notice periods in relation to possession proceedings in respect of certain residential tenancies etc. “
- Schedule 29 of the Coronavirus Act 2020
- Provisions last until 30/9/20 although this date may be extended (s.1(2))



Schedule 29

S.2 applies to Rent Act tenancies

S.3 amends s.83 HA 1985 to extend the notice period to a minimum of 3 months

S.4 amends s.83 ZA in relation to the absolute ground for anti-social behaviour

S.5 relates to flexible tenancies

S.6 to amends s.8 HA 1988

S.7 amends the notice period of ASTs from 2 months to 3 months – NEW FORMs 3 (s.8 notice) and 6A (s.21)



Schedule 29 (continued)

- S. 8 – Introductory tenancies
- S.9 – Demoted tenancies
- Ss.10 - 12 – Modifications to Forms
- S. 13 - Power to alter 3 month notice periods
- S. 14 – Power to make regulations



PD 51Z

- PD EFFECTIVE FROM 27 MARCH 2020 – 30 OCTOBER 2020
- COMPLEMENTS THE PROVISIONS RELATING TO MORATORIUM ON EVICTIONS AND DELAY OF POSSESSION CLAIMS
- ALL POSSESSION PROCEEDINGS WHICH FALL UNDER PART 55 AND ALL ENFORCEMENT PROCEEDINGS OF EXISTING POSSESSION ORDERS ARE STAYED UNTIL 25 JUNE 2020 (90 DAYS)
- CLAIMS FOR INJUNCTIVE RELIEF ARE NOT INCLUDED IN THE PD AND NO STAY APPLIES



Coronavirus Guidance for Landlords and Tenants

- Advisory Only
- Tenants to continue to pay their rent ‘to the best of their ability’
- Suggested that an agreement is reached and landlords are understanding
- New funding to help Tenants – old and new arrears?
- Landlords requested to not issue notices, issue claims or continue eviction proceedings for 3 months
- Applications to suspend warrants to be prioritised by the courts (Stayed?)



Guidance (continued)

- Pre-action protocol to be extended to private landlords – not yet in place
- Licensees – Protected by the PD51Z (stay on court action) but not protected by the CA 2020 (3 month notice period). Landlords still won't get PO even if only 28 days notice is given
- After 90 days, Landlords can progress claims, the process may take a lot longer.



Guidance (continued) - Repairs

- Obligation to repair remains – Regular review and maintenance to continue
- No reason to allow dangerous conditions to persist
- Tenants should allow access to inspect or remedy urgent health and safety issues
- Include (but are not limited to) Roof leaks, No heating/hot water, No washing/toilet facilities, broken fridge/washing machine, broken disability equipment and security related problem (broken external window/door)
- Moving home (decanting/transfers) should be delayed unless essential



POSSESSION LISTS AND COURT HEARINGS

Possession Cases

- Initially still being heard, DPS was still operating
- Then being unpicked to remove block listing so individual times allocated to avoid mass gatherings
- New legislation and PD means no possession cases, no lists, no DPS

Court hearings

- Open, suspended and staffed courts
- Priority Courts
- Remote hearings to take place either by telephone or skype
- Full Trials
- Settled cases



HEADLINE POINTS

- NO NEW CLAIMS, NO NEW EVICTIONS – GOOD NEWS
- CASES ALREADY ISSUED, IF UNDER PART 55 – STAYED FOR 90 DAYS – IS STAY AUTOMATIC? - BREATHING SPACE FOR TENANTS AND OPPORTUNITY FOR SOLICITORS TO GET DUCKS IN A ROW
- COUNTERCLAIMS FOR DISREPAIR – PLEAD WITHOUT SURVEYORS REPORT RESERVE RIGHT TO AMEND
- NO BAR ON ISSUING NOTICES – THE PROSPECT OF EVICTION HAS NOT DISAPPEARED
- NEW S.21 NOTICES PROVIDE FOR A 3 MONTH PERIOD BUT CAN STILL BE GIVEN – POST CRISIS, EVICTIONS MAY COME THICK AND FAST
- PROTECTION FOR THOSE LACKING SECURITY – LODGERS ETC – THE OXFORD DOCTOR!
- RISE IN UNLAWFUL EVICTIONS IF THE COURT IS NOT MAKING ORDERS? INJUNCTIVE RELIEF STILL AVAILABLE



SHORT HISTORY GOVERNMENT RESPONSE ON HOMELESSNESS

17 March 2020: £3.2 million emergency support for rough sleepers for initial emergency funding if they need to self-isolate: <https://www.gov.uk/government/news/3-2-million-emergency-support-for-rough-sleepers-during-coronavirus-outbreak>;

19 March 2020: £2.9 billion funding to strengthen care for the vulnerable, support for adult social care workforce & for services helping the most vulnerable, including homeless people: <https://www.gov.uk/government/news/2-9-billion-funding-to-strengthen-care-for-the-vulnerable>. £1.6 billion of that amount to local authorities.



SHORT HISTORY GOVERNMENT RESPONSE ON HOMELESSNESS

24 March 2020: COVID-19 advice for accommodation providers: hotels & accommodation providers to remain open if part of response to support key workers or vulnerable groups or specific need for some or all of site to remain open:
<https://www.gov.uk/guidance/covid-19-advice-for-accommodation-providers> &
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875654/Luke_Hall_MP_-_Letter_to_Hotel_Chief_Executives.pdf;

25 March 2020: COVID-19 guidance for hostel or day centre providers of services for people experiencing rough sleeping to be issued by Public Health England:
<https://www.gov.uk/government/publications/covid-19-guidance-on-services-for-people-experiencing-rough-sleeping/covid-19-guidance-for-hostel-or-day-centre-providers-of-services-for-people-experiencing-rough-sleeping>



Current position: 26 March 2020

Letter Luke Hall MP to Local Authority Leaders:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876466/Letter_from_Minister_Hall_to_Local_Authorities.pdf.

Basic principles:

- Focus on people who are, or are at risk of, sleeping rough & those who are in accommodation where it is difficult to self-isolate, such as shelters and assessment centres;
- Make sure these people have access to facilities that enable them to adhere to public health guidance on hygiene or isolation, ideally single room facilities;
- Utilise alternative powers & funding to assist those with no recourse to public funds who require shelter & other forms of support due to pandemic;
- Mitigate their own risk of infection & transmission to others, by ensuring that they are able to self-isolate as appropriate in line with public health guidance.



Current position: 26 March 2020

Programme of actions:

- Convene local co-ordination cell to plan & manage response to COVID-19 & rough sleeping involving local authority & NHS partners;
- Seek to stop homeless people from congregating in facilities such as day centres and street encampments where higher risk of transmission;
- Urgently procure accommodation for people on streets (support from MHCLG);
- Triage people into 3 cohorts: those with symptoms, those with pre-existing conditions without symptoms, others;
- Getting social care basics such as food & clinician care to people who need it in self-contained accommodation;
- If possible separate people who have significant drug & alcohol needs from those who do not.



Current position: 26 March 2020

In longer-term, necessary to identify step-down arrangements for the future;

Imperative that rough sleepers & other vulnerable homeless supported into appropriate accommodation by end of week (29 March 2020);

£1.6 billion funding announced previous week.



Current position & Part 7 Housing Act 1996

For people who are homeless and eligible for assistance, local housing authorities in England have duty to take reasonable steps to help them secure their own accommodation: the relief duty at s.189B(2).

This guidance should require local authorities to provide s.188(1) interim accommodation concurrently, on the grounds that there is “*reason to believe*” that a rough sleeper “*may have*” a priority need, usually that s/he may be vulnerable.

What happens when relief duty comes to an end? Accommodation duty if applicant priority need: either main housing duty or short-term if became homeless intentionally.



Current position & Part 7 Housing Act 1996

Panayiotou v Waltham Forest LBC [2017] EWCA Civ 1624, [2018] Q.B. 1232 per Lewison LJ:

“the relevant effect of the feature in question is an impairment of a person's ability to find accommodation or, if he cannot find it, to deal with the lack of it. The impairment may be an expectation that a person's physical or mental health would deteriorate; or it may be exposure to some external risk such as the risk of exploitation by others” [44] and

“the question to be asked is whether, when compared to an ordinary person if made homeless, the applicant, in consequence of a characteristic within section 189(1)(c) , would suffer or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering such that the harm or detriment would make a noticeable difference to his ability to deal with the consequences of homelessness. To put it another way, what Lord Neuberger PSC must have meant was that an applicant would be vulnerable if he were at risk of more harm in a significant way.” [64]



Current position & Part 7 Housing Act 1996

How is a rough sleeper at risk of more harm in a significant way?

- By possible exposure to contamination from others;
- By a pre-existing condition making symptoms/exposure more severe;
- By an inability to care for himself/herself if ill; and possibly
- By exposing others to risk.



Current position & Part 7 Housing Act 1996

Issues which may arise:

- Are you homeless? If you have accommodation available for your occupation, is it reasonable for you to continue to occupy? Can you self-isolate from others if required? Do other members of the household have symptoms/exposure to virus requiring you to isolate yourself from them?
- Is accommodation secured suitable for you? Given need to self-isolate in order either to protect yourself (if pre-existing condition) or avoid exposing others? Avoid sharing kitchens, bathrooms, toilets.
- Are these duties, enforceable under Part 7? Or simply the exercise of a power, perhaps under s.1 Localism Act 2011? If the latter, only challenge by JR. Suggest pre-action protocol letter if challenge necessary refers to Part 7 & if jurisdiction is disputed, asks for reasons.



Current position: No Recourse to Public Funds

Not eligible for homelessness assistance: s.185 HA 1996;

Clearly within the scope of 26 March 2020 letter;

See <http://www.nrpfnetwork.org.uk/Documents/coronavirus-factsheet.pdf>;

Local authority duties:

s.18 Care Act 2014: duty to meet eligible care & support needs;

s.17 Children Act 1989

Both subject to Sched 3 Nationality Immigration & Asylum Act 2002;

s.18 Care Act 2014 due to be suspended (Sched 12 Coronavirus Act 2020).



Current position: No Recourse to Public Funds

Section 1 Localism Act 2011:

“(1) A local authority has power to do anything that individuals generally may do.

(2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise—

(a) unlike anything the authority may do apart from subsection (1), or

(b) unlike anything that other public bodies may do.”

Note that Sched 3 NIA 2002 applies to s.1.

Note also that Admin Court has held that local authorities not permitted to use s.1 power where applicant is not eligible for assistance: *R (AR) v Hammersmith & Fulham LBC*, [2018] EWHC 3453 (Admin): challenge on human rights grounds?



Government guidance on self-isolation

Vulnerable individuals: “*increased risk of severe illness from coronavirus*”:
<https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/>:

aged 70 or older (regardless of medical conditions);

under 70 with an underlying health condition listed below (ie anyone instructed to get a flu jab as an adult each year on medical grounds);

chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease (COPD), emphysema or bronchitis;

chronic heart disease, such as heart failure;

chronic kidney disease;

chronic liver disease, such as hepatitis; cont’d...



Government guidance on self-isolation

Vulnerable people cont'd:

chronic neurological conditions, such as Parkinson's disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy;

Diabetes;

problems with your spleen – for example, sickle cell disease or if you have had your spleen removed;

a weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy;

being seriously overweight (a body mass index (BMI) of 40 or above);

those who are pregnant.



Government guidance on self isolation

If vulnerable person in household develops symptoms:

- Try to move him/out of home to stay with friends or family;
- Stay away from vulnerable person as much as possible.

Would this prompt application for homelessness assistance? Reasonable to continue to occupy?



Government guidance on self-isolation

Extremely vulnerable people: very high risk of severe illness from coronavirus: <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>, are being written to by NHS:

Solid organ transplant recipients;

People with specific cancers:

- people with cancer who are undergoing active chemotherapy or radical radiotherapy for lung cancer;

- people with cancers of the blood or bone marrow such as leukaemia, lymphoma or myeloma who are at any stage of treatment;

- people having immunotherapy or other continuing antibody treatments for cancer;



Government guidance on self isolation

Extremely vulnerable people cont'd:

people having other targeted cancer treatments which can affect the immune system, such as protein kinase inhibitors or PARP inhibitors;

people who have had bone marrow or stem cell transplants in the last 6 months, or who are still taking immunosuppression drugs;

People with severe respiratory conditions including all cystic fibrosis, severe asthma and severe COPD;

People with rare diseases and inborn errors of metabolism that significantly increase the risk of infections (such as SCID, homozygous sickle cell);

People on immunosuppression therapies sufficient to significantly increase risk of infection;

Women who are pregnant with significant heart disease, congenital or acquired.



Government guidance on self-isolation

“shielding” ie strongly advised to stay at home at all times & avoid face to face contact for at least 12 weeks. Guidance if extremely vulnerable person living in household:

- Minimise time spent in shared spaces & keep well ventilated;
- Aim to keep 2 metres away from people in household;
- Try to use separate bathroom, separate toilets;
- Clean toilet & bathroom if shared after each use;
- Avoid using kitchen together, eat separately, wash & dry utensils separately or in dishwasher.



Restrictions on movement

Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, SI 2020/350,
Reg 6:

- (1) *During the emergency period, no person may leave the place where they are living without reasonable excuse...*
- (4) *Paragraph (1) does not apply to any person who is homeless.*



Thank you

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