



24th AUGUST 2020

POSSESSION PROCEEDINGS AFTER 20 SEPTEMBER 2020

THE NEW REGIME

Today, 24 August was to be the day on which landlords ought to have been able to recommence possession proceedings. The stay on the courts adjudicating on existing claims was to be lifted and new proceedings allowed to commence. That would have been at least some good news for Landlords who want to recover their homes from tenants who don't pay the rent or are in breach of other terms of the rental agreement or are refusing to leave at the end of their tenancy. However, it is not going to be that simple. The government at the last minute on Friday postponed the resumption of possession proceedings until 20th September. There is no guarantee that there will not be further extensions and in any event the new proposed regime has catches and the government has a clear agenda of which this last minute postponement is a good indication.

Assuming there are no further postponements or changes from 20th September the position will be as follows

- Landlords who have already commenced claims for possession which were stayed because of Covid19 must reactivate them. This means notifying the court and the tenant by using a reactivation notice. However, this requirement will not apply to new claims
- But in respect of all claims the landlord will need to prepare with their claim a statement summarising the circumstances of the tenant including how, if at all, Covid19 has had any effect on the tenant to include details of any vulnerability whether economic or related to physical or mental health. The need to file such details with the

claim is scheduled to last only to the end of March 2021 but may be extended. It is as yet unclear what use the court is to make of these statements and they cannot have any effect on the statutory grounds for possession, that is why the government has decided to approach the problem in a different manner, please see below

- **Further, landlords will need to provide a schedule of rent arrears in advance of the hearing as opposed to at the hearing, which was the former requirement**
- **All these requirements will apply, as appropriate to accelerated possession claims [claims under section 21 of the Housing Act 1988, the so called “ no fault evictions” although it might be just as apposite to call them claims based on “a signed agreement to leave at the end of the tenancy”] as they will to normal claims**
- **In addition the notice period that needs to be given to determine any Assured Shorthold Tenancy has been extended yet again . It was first extended from 2 to 3 months and has now been extended further to 6 months**
- **These are procedural hurdles and failure to observe them will mean that a hearing will be delayed while these requirements are fulfilled.**
- **But the real sting in the tail is that the courts have been given flexibility on setting the date for the hearing of any possession action. The old practice of the courts fixing a hearing date on issue of the claim will not continue and it will no longer be the case that courts must fix a hearing date within 8 weeks of issue. To some extent that is understandable as the backlog of cases is going to be significant following a 5 month freeze on hearings but there is a very clear pecking order in which cases are going to be heard , please see below**

- **What will this mean in practice? It seems clear that the government wants the courts to prioritise certain types of possession claims, in particular those involving breaches of the tenancy agreement which are causing others to suffer as a result of crime, violence, noise or other anti-social behaviour or where there has been fraud or other unlawful activity. A case concerning serious rent arrears is also likely to be given a priority date.**
- **However, possession claims on the grounds of less serious breaches and we think section 21 claims [which give the landlord the right to the property back at the end of the agreement provided the statutory notices have been properly served] are likely to go to the back of the queue. Since this government has , as part of its legislative programme, a stated desire to abolish section 21 possession claims and increase tenants security of tenure [Yes, landlords you are not going to be able to recover your property automatically at the end of the agreement if you want it back . It will depend on the circumstances] it is not inconceivable that at least some possession claims based on this section will be so delayed that they are not heard until after new legislation is passed by Parliament.**

We will update you on any changes or future postponements but Landlords beware, do not delay in seeking any order for possession after 20th September. The chances are you are going to be waiting a long time whatever happens

At Astberrys we have excellent contacts with specialist solicitors and barristers and offer landlords who let their property through us a premium possession service should the need arise.



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