

How to...
Get Possession for Rent
Arrears After COVID

Niamh O'Brien and Charmaine Clubb

Webinar Outline

- Notices- Where are we now?
- What arrears can be relied upon
- Debt Respite (Breathing Space and Mental Health Crisis) Regs 2020
- Hearing day troubleshooting
- Live Q & A

NOTICES

- England or Wales?
- Section 8 notices: prescribed form
- Modified notice periods during COVID:
 - 26 March 2020 to 28 August 2020
 - 29 August 2020 to 31 May 2021
 - 1 June 2021 to 30 September 2021
 - From 1 October 2021

NOTICE PERIODS: WHERE ARE WE NOW?

- *The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021 (SI 2021/564) (English Regulations No. 3)* are currently in force
- Unless an exception applies, the notice period has been reduced from six to four months
- The 'relevant period' in Schedule 29 to the CVA 2020 has been extended until 30 September 2021

NOTICE PERIODS: WHAT HAPPENS AFTER 1 OCTOBER 2021?

- The *Coronavirus Act 2020 (Residential Tenancies and Notices (Amendment and Suspension) (England) Regulations 2021 (SI 2021/994) (Amendment and Suspension Regulations)* will come into force
- Notice periods will revert to pre-pandemic notice periods
- A new prescribed form of notice under section 8 HA 1988 will be introduced
- The 'relevant period' in Schedule 29 to the CVA 2020 will be extended until 25 March 2022

TECHNICAL GUIDANCE (1988 ACT)

Ground	Pre-coronavirus Act 2020 notice period: until 26 March 2020	Modified notice period: 26 March 2020 - 28 August 2020	Modified notice period: 29 August 2020 - 31 May 2021	Modified notice period: 1 June - 30 September 2021
8: Serious rent arrears at time of service of notice and possession proceedings	2 weeks	3 months	(a) 4 weeks where arrears are at least 6 months (b) 6 months where arrears are less than 6 months	a) 4 weeks where arrears are at least 4 months b) 4 months where arrears are less than 4 months From 1 August 2021 - 2 months' notice where arrears are less than 4 months
10: Some rent arrears at the time of service of notice and possession proceedings	2 weeks	3 months	a) 4 weeks where arrears are at least 6 months b) 6 months where arrears are less than 6 months	a) 4 weeks where arrears are at least 4 months b) 4 months where arrears are less than 4 months From 1 August 2021- 2 months' notice where arrears are less than 4 months
11: Persistent late payment of rent	2 weeks	3 months	a) 4 weeks where arrears are at least 6 months b) 6 months where arrears are less than 6 months	a) 4 weeks where arrears are at least 4 months b) 4 months where arrears are less than 4 months From 1 August 2021- 2 months' notice where arrears are less than 4 months

TECHNICAL GUIDANCE (1985 ACT)

Ground	Pre-coronavirus act 2020 notice period: Until 26 March 2020	Modified notice period: 26 March 2020 - 28 August 2020	Modified notice period: 29 August 2020 - 31 May 2021	Modified notice period: from 1 June 2021
1: Rent arrears or breach of tenancy	4 weeks	3 months	(a) 4 weeks where arrears are at least 6 months and no other ground is specified (apart from ground 2) (b) 6 months where arrears are less than 6 months	a) 4 weeks where arrears are at least 4 months and no other ground is specified (apart from ground 2) b) 4 months where arrears are less than 4 months From 1 August 2021- 2 months' notice where arrears are less than 4 months

TYPES OF ARREARS

- What if the rent arrears arose after March 2020 (i.e. during lockdown)?
- What if *some of* the rent arrears arose after March 2020?
- What if the reason for the arrears is COVID-related?
- Does it matter if the landlord is (or is not) a Local Authority?

Breathing Space and Mental Health Crisis Regs

- Came into force on 4 May 2021
- Prevents all creditors, including landlords, from taking action to enforce payment of affected debt
- Extends to all steps in the possession process
- Can last 60 days, or (MHC only) 30 days beyond cessation of treatment.
- New Practice Direction PD70A

Standard Breathing Space

- Can only be put in place by a Registered Debt Advisor authorised by the Financial Conduct Authority
- Will cover all qualifying debts. This includes rent arrears
- Lasts for 60 days
- Can only be applied for once in a 12 month period
- Ongoing liabilities are unaffected by the moratorium

Breathing Space – Procedure

- Debtor attends meeting with a debt advisor
- Debt advisor recommends breathing space moratorium and registers it with the Insolvency Service
- Insolvency Service notifies all affected creditors
- Affected creditors must stop all enforcement action
- Affected creditors must inform the Court (Reg 10; CPR PD70A Para 3) and conduct a search for additional debt (Reg 14)

Mental Health Crisis - Procedure

- Debtor can apply to a registered debt advisor
- Alternatively application can be made by carer, social worker, mental health professional or debtor's representative
- Debtor must meet eligibility criteria for a standard breathing space
- Ongoing treatment must be certified by an Approved Mental Health Professional (approved under s114(1) MHA 1983 by SS)

Eligibility Criteria

- Debtor is detained under the Mental Health Act
- Debtor has been removed to a place of safety under the Mental Health Act
- Debtor is getting crisis care either as an inpatient or in the community from a specialist Mental Health team
- Evidence of Mental Health Crisis Care is required
- Single point of application provided by the Money and Pensions Service

Effect of MHC Breathing Space

- All enforcement action must stop
- No enforcement action may be taken in respect of debts accruing after MHC breathing space commences
- Moratorium lasts for as long as the debtor's specialist mental health treatment lasts (as confirmed by the AMHP) plus 30 days
- Ongoing liabilities are covered

Challenging a Moratorium

- Half time review by RDA
- Creditor can request review by RDA
- Creditor can apply to court to cancel a BSM or MHCM
- Creditor can seek permission of the court to take enforcement action. Permission will only be granted if it does not undermine the purpose of the moratorium

Review and Cancellation- Grounds

- Unfair prejudice to the interests of the creditor (see Axnoller Events Ltd v Brake [2021] EWHC 2308 (Ch.))
- Debtor did not meet the eligibility criteria when BSM or MHCM application was made
- Debt is not a qualifying debt
- Debtor has sufficient funds to discharge their debt
- 20 day time limit for review, 50 day time limit for court application.

Effect of Breach by Creditor

- Any notice served during Moratorium is invalid (Reg 7(12))
- Proceedings commenced during moratorium liable to strike out
- Creditor is liable for any additional costs caused to others

WHAT COULD GO WRONG?

- What if the section 8 notice is defective?
- What if the tenant denies receiving the section 8 notice?
- What if your Housing Officer does not attend the hearing?
- What if you do not have an up-to-date rent statement?
- What if you do not have a statement of costs?