

JUNE 2021

TECHNICAL UPDATE – LANDLORD & TENANT

Roythornes property litigation (leasehold management)
technical update

Moratorium on Evictions against Tenants

- Ended 1 June 2021
- Bailiffs have been asked not to carry out an eviction if anyone living at the property has COVID-19 symptoms or is self-isolating

New Notice Seeking Possession

- Assured Tenancies and Agricultural Occupancies (Forms) (Moratorium Debt) (Consequential Amendment) (England) Regulations 2021 (SI 2021/518) came into force on 4/5/21.
- Amendment was required due to the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England & Wales) Regulations 2020 (SI 2020/1311) which
 - enables a debtor to obtain temporary protection from creditor action on debts which are covered by a breathing space moratorium for up to 60 days; and
 - during that time, the creditor cannot take enforcement action and that includes serving a possession Notice on grounds 8, 10 or 11 Schedule 2 Housing Act 1988 or taking possession having served notice.
- The Regulations make amendments to Form 3 (the prescribed Notice Seeking Possession) to refer to the Debt Respite Regulations and explain the consequences of them for possession claims.
- Issues that have arisen due to the Government making these Regulations in haste and overlooking the need to amend Form 3 in time:
 - Timing and coming into force of the Regulations made on 28/4/21, first publicly available on 30/4/21 (Friday before bank holiday weekend) and came into force on 4/5/2021 (next business day after the Regulations were publicly available) and there are no transitional provisions.
 - Form in the schedule to the Regulations contains the Notice setting out incorrect time scales for date when possession proceedings may commence. It refers to the old, pre Covid time periods.
 - The Form 3 template with the correct time scales has been subsequently uploaded on the MCHLG website however, the Regulations specify the incorrect periods.

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- Consequences of these issues:
 - Short interval between public availability of the Regulations and there coming into force on 4/5/21. If a landlord has prepared a Notice which is an earlier version of the Notice before that date and did so at the end of the last week in April 2021 but the Notice was not hand delivered or not sent so that it was not deemed served until on or after 4/5/21. The notice is very likely to be invalid because it will make no reference to the Debt Respite Scheme elements in the prescribed form and consequentially has an error.
 - Notices that were served between 4/5/21 and 31/5/21 (as new time periods for Notice took effect from 1/6/21) may result in tenants raising technical defences in relation to Notices served if the Notice used is the one appended to the Regulations, on the basis that it sets out incorrect law; or if the MHCLG form was used as it is not the one that appears in the Regulations and is therefore incorrect.
 - For arguments bought by tenants relying on errors in Notices see our [March 2021 issue of Useful Cases – Landlord & Tenant](#).

Landlords who encounter tenants who are intending to prolong the possession proceedings process based on the issues highlighted above should seek guidance from the case of *Pease v Carter* 2020 EWCA Civ 175 for an argument against the validity of a Notice Seeking Possession. In this case the Court of Appeal restated that a Notice will not be invalid notwithstanding an error so long as the reasonable recipient, reading the Notice in context would have:-

(1) appreciated that it contained an error and what the Notice was intending to convey

(2) the Notice so interpreted complies with the statutory requirement in the light of the purpose of those requirements. However; even if it does not comply with the statutory requirements, it may still be valid if it is substantially to the same effect.

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Bukola Obadun-Craigs

Bukola Obadun-Craigs - Partner

bukolaobadun-craigs@roythornes.co.uk
07702 867532

