

46th Edition June 2021

VIRTUAL CONFERENCE & TRAINING

Thursday 16 September 2021

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Welcome to the latest edition of the PReSs

The effect of the pandemic continues to run through the economy with many sectors receiving considerable Government money to minimize its impact. The private rented sector is one of the unfortunate few which has received little or no support during this period however, as Covid19 restrictions are relaxed there has been some recent movement around possessions.

From 1 June 2021 the notice period in most cases, including section 21 and most section 8 grounds, was reduced to 4 months from 6 months. There are some shorter notice period exemptions for section 8 action, i.e. where the rent arrears are “serious”, in some anti-social behaviour situations or there are fraudulent grounds for possession.

Bailiffs began operating again from 1 June 2021 however, there is a significant backlog of cases. The Government also announced that any warrants for possession which expired between 17 March 2020 and 31 August 2021 can be extended free of charge by using form N244.

Unfortunately, the struggling Government flag ship climate change initiative, the Green Home Grant, originally expected to create thousands of new jobs, was pulled on 31 March 2021. This is a blow to the Government's green credentials as it prepares to host the UN Climate conference, COP26 (Conference of the Parties 2026) in November. COP26 may well have been on the Government's mind when it published its consultation in September 2020 on amending the domestic PRS minimum energy efficiency regulations. The Government indicated its wish to make the minimum EPC band to be Band C by 2025 for new tenancies and by 2028 for existing tenancies. Further they propose to increase the cost cap to £10,000 from the current £3,500. The proposals will affect two thirds of the PRS properties. We still await the outcome of the consultation.

The Right to Rent rules changed from 21 June 2021 and it is no longer acceptable online checks. The landlord or agent will now need a face to face meeting with all adult prospective occupiers, not just the prospective tenants. During the pandemic the Government's Home Office introduced an online right to rent system. The landlord does not need to check the documents as the evaluation takes place using government held data. The tenant will provide a “share code” or it will be emailed allowing access to the applicants' data. See <https://www.gov.uk/check-tenant-right-to-rent-documents>

The Information Commissioner's Office (ICO) has announced that it will be writing to the private rented sector to remind them that they will probably need to register with the ICO. In most cases landlords and agents will need to register with the ICO and pay their annual fee under the General Data Protection Regulations (GDPR).

The regulations states that those, such as landlords and agents, who hold and use a significant amount of personal data of others, such as prospective and current tenants, are data controllers and as such must ensure the personal data is used in accordance with the GDPR. The personal data will be “used” in the course of carrying out credit check, obtaining references, preparing tenancy agreements etc. More information is available at <https://ico.org.uk/>

Hope you enjoy this edition

Dave Princep (Chair of LLAS & ATLAS)

Would You Like to Run a Highly Tax-Efficient Professional Property Business?

Expected Impact of 2023 Corporation Tax Rates on 'Take Home' Income for Higher Rate Taxpayers

Taxable Profits	After-Tax Dividend from Limited (Investment) Company	After-Tax Income in Personal Names [^]	After-Tax Return of Capital from Mixed Partnership LLP
£50,000	£25,313 Tax rate = 49%	£30,000 Tax rate = 40%	£40,500* Tax rate = 19%
£100,000	£45,625 Tax rate = 54%	£55,000 Tax rate = 45%	£77,250* Tax rate = 23%
£300,000	£139,763 Tax rate = 53%	£165,000 Tax rate = 45%	£225,000 Tax rate = 25%

This table is an illustration of how the Corporation Tax changes might possibly impact landlords' post-tax income should they become law. Based on the current government proposals, these thoughts are owned by Less Tax 4 Landlords.

For illustration purposes, the above table applies for Higher Rate Tax Payers where before the information in the above table is calculated, it is assumed that all individuals have already maxed out their income before higher tax rates are applied (e.g. £50,270 per person plus £2000 tax free dividend)

Please note, the Limited (Investment) Company tax rate is based on 25% corporation tax followed by dividend tax. All examples include adjustment representing loss of personal allowance on total income above £100,000. Mixed Partnerships example assumes the portfolio is being run as a business and LLP members have appropriate capital accounts. For more details visit lt4l.co.uk/nrlasummer

[^]For comparison purposes it is assumed there are no mortgages. Finance costs could considerably decrease the like-for-like after-tax income in personal names by inflating taxable profits (see lt4l.co.uk/sec24). Limited Company and Mixed Partnership LLP would remain unaffected.

*small profits rate of 19% for first £50,000 profit in a limited company as announced in the budget, with a tapered rate of 26.5% applying on profits between £50,000 and £250,000 for illustration purposes. For more details on the Corporation Tax increase to 25% announced in the budget read our budget summary at <http://lt4l.co.uk/2021budget>

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*Awarded to Less Tax 4 Landlords by Property Reporter Awards 2020

Specialist landlord & tenant lawyer -Tessa Shepperson Answers landlords' FAQ: Is it worth using mediation?

The eviction ban may be coming to an end but it looks as if most landlords will face a long wait to recover their property.

- There is a massive backlog in the courts, left over from 2020 when no cases were processed for several months.
 - The eviction process is longer now due to new procedures introduced as a result of the pandemic, and
 - There are only a limited number of court bailiffs, and they can only do one thing at a time!
- So, if you are looking to recover possession of your property, for whatever reason, you are inevitably looking at a long wait if you try to do it through the courts. So, is there any alternative? One solution could be to try mediation.

About mediation

Mediation is a structured process where an impartial third party (the mediator) assists people to resolve their disputes.

The advantage of mediation is that it can often deal with people's real issues, which Judges cannot do.

So, say you have a case where a tenant is in serious arrears of rent. Often the reason people do this is as a protest as they do not think their landlord is behaving properly. Maybe because the property is not being kept in repair or for some other reason. Perhaps due to a personality clash the tenants have never been able to explain this properly to their landlord. A mediator will be able to discuss this with the tenants, in a way that the Judge cannot do, and then explain the situation to the landlord. Through this the parties may be able to reach some sort of resolution where the landlord agrees to get the work done and the tenant recommences payment of rent.

Mediation can often help in this way – by dealing with the real things in issue and bringing people together in a way that frequently does not happen without professional help.

There have been many, many cases where mediation has succeeded in getting a resolution in cases where all parties were totally entrenched and convinced that only court action would do. Often the solution achieved by the mediation is far better for the parties than anything which could have been reached through the courts.

Mostly because each party has only been able to see things from their own point of view and have never been able to see things 'in the round' which is how a mediator will see it. Also, mediators know what is possible and may have ideas to help which you would never have thought of.

What are the mediation services available?

There are basically three:

- The Property Redress Scheme Tenancy Mediation Service
- TDS Independent Resolution, and
- The Court Mediation Service (which is a pilot

The first two are paid for services and the court mediation service is free. However, the advantage of the first two is that they can be commenced before court proceedings whereas the court service can only be used after court proceedings have begun.

Why landlords should initiate mediation before issuing proceedings

Now mediation will not be suitable for all cases, but it is always worth giving it a go as you never know. You will only see things from your point of view, and it may be hard for you to see that the tenants have an equally valid point of view. In many cases you won't know what it is.

Now if a dispute is to be sorted, it is best that this is done at as an early a stage as possible – before massive arrears have built up. Although you as a landlord will have to pay for the mediation, which will cost between £26 and £600 + (depending on the scheme you use and how far the mediation progresses) this could be well worth the money.

It is far better to pay £600 now (say) if the result is the tenant recommences rent payments, and you avoid expensive court proceedings and a long period without rent. Even if the tenant refuses to engage, this will do you good as you will be able to say to the Judge, when your case eventually reaches the review stage, that you have tried mediation (and you should have a certificate to prove this) but that the tenants refused to cooperate. Which will reflect badly on them and may give you the advantage.

There is also the fact that courts expect you to use settle cases including by mediation, if you can and this is baked into the court rules and pre-action protocols. So, you really need decide whether you have a good reason NOT to engage in mediation and maybe consider how you will be able to justify this to a Judge.

Mediation is not a legal requirement, but it is a legal requirement to consider mediation.

What next?

If you have a serious problem with your tenants – have a look at the two schemes - there is a lot of information on both websites:

- The Property Redress Scheme website is at <https://tenancymediation.theprs.co.uk/>
- The TDS resolution scheme website is at <https://www.thedisputeservice.com/tdsresolution>

You should be able to offset the cost against your tax. So, why not give it a go?

If it is too late for this and your proceedings have started – you will still have an opportunity to use the Court Mediation pilot which will normally be offered to you at the case review stage.

Tessa Shepperson.

Tessa is a specialist landlord and tenant lawyer and runs the Landlord Law online information service at www.landlordlaw.co.uk

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PRS Market Update

Evictions

To make you aware that both the Section 8, and the Section 21 notices changed on June 1st when they became 4 month notices.

Ensure you use the correct notice from the website – www.gov.uk

Note the following most serious cases for Section 8 will remain lower than 4 months:

- anti-social behaviour (immediate to 4 weeks' notice)
- domestic abuse in the social sector (2 to 4 weeks' notice)
- false statement (2 to 4 weeks' notice)
- over 4 months' accumulated rent arrears (4 weeks' notice)
- breach of immigration rules 'Right to Rent (2 weeks' notice)
- death of a tenant (2 months' notice).

The announcement by the Government also said that, "subject to the public health advice and progress with the Roadmap", notice periods will return to pre-pandemic levels from 1st October 2021."

The only comment I would make on this is that it is even more important to get your paperwork correct, and also have appropriate proof of your case. This proof now even applies to a Section 21, as the Courts are now vetting everything, and if they believe the landlord/agent is bringing an eviction case against a tenant who has been adversely affected by the Pandemic, the case will be refused.

Survey of members

We have recently carried out a couple of surveys of iHowz members:- Survey - Is CGT (Capital Gains Tax) affecting sales of property?

Selling

Just over a ¼ (28.6%) of landlords are not intending to sell any, or any of their portfolio; whilst nearly ⅔ (58.4%) intend to sell within 5 years – with nearly half (46.9%) to sell within 3 years, or less.

60% would like to sell, but feel that CGT is stopping them, but only 30% are put off buying because of CGT and/or IHT.

Corporate Structure

The vast majority (67.1%) hold their portfolios in sole name; 8.2% as a Partnership; 1.4% as LLP; 4.1% as a company; and 17.8% have a mixed holding.

Within the mixed holdings sole name; 35.9% are private; 21.9% as a Partnership; 14.2% as LLP; 20.4% as a company.

Tax Advice

63.8% have taken tax advice.

29.1% from a tax adviser; 58.2 from and Accountant; 1% from a Bookkeeper; none from a solicitor; 1% from books; and 6.8% look after themselves.

Planning Advice

80% have a current will, but only 40% have Lasting Power of Attorney.

In answer to a range of other planning (e.g. IHT) 'No' was predominate to 'Yes'.

Most landlords were aware of many of the terms used within CGT, apart from Passive Activity Loss (PALs) where 80% had no knowledge.

Software survey

This was carried out to ascertain what members used on the computer.

A brief summary of those respondents:-

- 61% had joined at least one of the monthly virtual landlord meet-ups
- only 40% used some kind of software to aid their management, but:-
- the majority of these used standard software, especially:-
 - spreadsheets
 - word processing
 - emails/texting/WhatsApp
- only one person used specialist property software
- nearly ½ (47%) did not use social media. Of those who do, the majority used Facebook and YouTube.
Only 9% used Twitter, and 18% used LinkedIn.
- Of the specialist property websites:-
 - 56% use Rightmove
 - 46% Zoopla
 - 37% Land Registry
 - 23% Spare Room
 - 21% Open Rent

Warnings of new build shortage.

There have been various warnings of forthcoming problems with new builds.

The CITB (Construction Industry Training Board) has warned that the industry will require an additional 217,000 new workers by 2025 just to meet demand, with those working in joinery, fit-out and electrical among the most prized.

The ONS (Office For National Statistics) have already seen that monthly construction output fell by 2.0% in April 2021 compared with March 2021, falling to £13,961 million, and was the first month-on-month fall since December 2020 when output fell by 2.2%.

This follows comparatively strong growth of 5.8% in March 2021. Anecdotal evidence received from survey returns suggested increased new work, delayed projects returning to sites, and a general increase in demand and confidence across the industry, as well as unusually warm weather were contributing factors to the large monthly increase in construction output in March 2021.

British Landlords are Getting Younger!

According to property firm Knight Knox, the average age of all British landlords has decreased overall. In 2018, people under 44 accounted for 29% of all landlords. Now, those aged under 40 accounts for 47% of all landlords. These figures show that there has been a significant change in the property ladder over the past three years. More and more younger people are finding value in the long-term strategy of buy-to-let (BTL) investments. This injection of youth is an excellent sign for the industry.

On the flip side, older landlords are moving away from BTL investing. In 2018, according to the study, exactly 50% of landlords were aged over 55. But in today's market, this percentage has declined by almost half to 26% aged 51 or over — a massive decrease.

In part, this may be down to first-time buyers. Last year's stamp duty holiday increase can be seen by many as a way to capitalise while BTL rental supply declined. The jump from £125,000 to £500,000 in tax-free rates is a huge pull for many investors, especially first-time buyers.

The tax break, which has been extended through to 30th June, has given a temporary boost to BTL sales. The capital they stand to gain is a great way of getting started in the business. As we all know, once you get off the mark, the only way is up. That first experience being positive is vital.

As the research indicates, the youngest landlords – those aged between 18 and 30 – are making more money from rental income than older landlords. They average £25,481 a year, according to the 500 private landlords surveyed. Not only that, but there are now 250,000 fewer rental homes in England than in 2017, and cash purchases fell in 10 out of 11 regions between 2019 and 2020. That suggests BTLs are being funded by mortgages – a first-time investor technique.

Unsurprisingly, these younger landlords are increasingly optimistic about their future in the industry. Around 54% of under 30s said they were '*very confident*' about market predictions for the following year. On the other hand, just 15% of over 51s said the same. The under 30s also said they were planning on purchasing another property within the next year or so.

What is the reasoning behind this? Several things related to Chancellor George Osborne's 2016 regulatory changes would appear to be the answer. The phased-in tapering of mortgage interest relief, 3% stamp duty surcharge, and the wear and tear allowance abolition.

These three aspects gave landlords a number of reasons to sell up properties or sell off their portfolios while they had the chance to, knowing they would be affected by the changes.

Moving from here on out, we should expect some of these figures to stagnate. The end to the stamp duty holiday is the main reason. But after that, who knows what may happen. For those wanting to build up their portfolio, though, now is the best time to do so. Capitalising at the right moment and gaining that necessary experience can immensely benefit the rest of your career. Don't do so, and you may live to regret that decision further down the line.



Peter Littlewood, iHowz Director
For more info on iHowz Landlord Association, visit <http://ihowz.co.uk/>

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The idea of the conference & Training day is to enable all participants to get up to date with the legislative changes within the PRS. We will have talks on most of the different regulations that landlords, agents, property investors, local authorities' staff within the PRS must be aware of. **Our expert panel of speakers will be covering the following on the day:**

- Managing uncertainty and forecasting for PRS future in an unpredictable environment, what next For Property Prices Post Covid-19?, & How Brexit could impact the PRS sector.
- An Overview of legislative changes that have happened over the past year as a result of the Covid19 and how it has affected landlords, agents and the PRS as a whole, for example changes in the Courts systems, section 21 & 8, and any new developments etc and a look ahead at the changes still to come within the PRS.
- The gas regulations & the new Electricity Regulations and EICR certificates & The Minimum Energy Efficiency Standards (MEES)
- The Govt consulted on increasing significantly the minimum energy efficiency standards and the costings to rent out a property by 2025. This will affect 2/3 of rented properties".
- The Debt Respite or Breathing Space Scheme
- Housing Health & Safety Rating System - now also used with the Fitness for Habitation legislation & brief update on Licensing Schemes
- Is your property an HMO? A look at RRO (Rent Repayment Orders) which are often applied for by tenants where landlords have not applied for their HMO license
- Construction (Design and Management) Regulations - which apply to all building works within properties, including Radon, Asbestos and Legionella (the three silent killers)
- Why landlords should initiate mediation before issuing proceedings (landlord/tenant mediation and resolving deposit disputes themselves rather than time consuming formal arbitration")
- Social housing as a viable investment strategy
- What the new Permitted Development Rights mean to all
- Accredited landlords & Agents get **10 CPD points** for participating





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Landlord Tax payments

How to Make 2022 Your Best Year Yet

For many landlords, having faced their largest ever tax payment less than 6 months ago, the upcoming payment on account will have arrived all too soon. On the plus side, the July 31st payment will be the last of the year for many landlords. But that doesn't mean tax should be forgotten until 2022.

This is particularly true if you're a mortgaged portfolio landlord AND a higher rate taxpayer WITH property in personal names. These landlords impacted by Section 24 will see tax bills rise again next year unless they take action soon. This is because the UK's payment on account system means self-employed landlords haven't yet felt the full impact of the changes - despite mortgage interest relief being disallowed for well over a year - and will face a balancing payment to cover the final stepped increase in January 2022.

Now usually, when a business is paying more tax it is down to one of two reasons:

1. The business is more profitable, making more money, and so more tax is due
2. The government change the rules and increase taxes

Unfortunately, with Section 24 it is the latter that is impacting most landlords - and only landlords - as the tax changes are focussed solely on the Private Rented Sector. This leaves landlords facing a 'tax-escalator' effect, with 2022 being the top of the conveyor belt.

It is still a fact though - Section 24 or no Section 24 - that far too many landlords are paying more taxes than necessary. Certainly, paying more taxes could be the best short-term option for some. Many landlords are exiting the market and restructuring their business may not make sense at this time. But for those who are staying in the market and looking to build, run and grow a professional property business - accounting for taxable profits in personal names is simply no longer a viable option for most higher rate taxpayers.

Where landlords take action to incorporate their portfolio as a recognised business structure (note this doesn't have to mean incorporation to limited company ownership) they can turn what is expected to be portfolio landlords' worst projected year for tax payments (2022) into their best year yet.

So, if the shock of your last tax bill does not sit well with you, it may be time to ask yourself if you are confident that your Property Portfolio is as **tax efficient as possible?**

Making 2022 Your Best Year Yet

Widely attributed to ancient China, you have likely heard the proverb:

The best time to plant a tree was 20 years ago.

The second-best time is now.'

Well the best time to take action ahead of the Section 24 changes was probably 2015. The second best time is now.

For those taking action, most have followed one of two routes:

- Arranging for property assets and income to be gifted to a lower rate tax paying spouse or relative
- Arranging for property assets and income to be accounted for in a business structure



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The image also features several small book covers related to property and business law, such as 'The Law of Landlord and Tenant', 'Understanding Hybrid Business Structures', and 'Mortgage Lending and Business Structures'.

Less Tax 4 Landlords can help with both of these, and if you've been impacted by any of the issues raised in this article, you can request a free initial assessment with Less Tax 4 Landlords by visiting www.lt4l.co.uk/assess-llas

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Editorial by Ben Rose, Group Head of Marketing for Less Tax 4 Landlords and the Less Is More Property Business Group

New Section 8 Notice Problems

As from 4 May the Assured Tenancies and Agricultural Occupancies (Forms) (Moratorium Debt) (Consequential Amendment) (England) Regulations 2021 came into effect.

These regulations do just one thing but it is an important one. That is they amend the current section 8 notice used for possession claims under the Housing Act 1988 and replace it with a new version. The meat of the form is unchanged but there are new notes at the top (for landlords) and at the bottom (for tenants) which deal with the new Breathing Space regulations which come into effect on that day.

Essentially the notes make clear that a section 8 notice cannot be served in respect of a debt which is subject to a Breathing Space. I have written much more on the Breathing Space regulations [here](#).

Existing notices served before 4 May will be fine. However, this also means that any notice posted today (30 April) that is not deemed served until 4 May will need to use the new notice form. So a tenancy agreement that says notices that are deemed served on the next working day will not now be deemed served until 4 May.

If the wrong notice is used then this is not necessarily fatal. The courts can accept that the notice communicates the key information required to the tenant and waive the error. However, given that the breathing space legislation affects the fundamental validity of the notice then the risk of the courts declining to let a landlord off are pretty high.

Anyone looking to serve a section 8 notice will need to use the new templates.

Just to make things more complex the form also contains an error of sorts. The notice periods set out in it are the old ones from before the Covid pandemic changes. That means that the notice periods are described as two weeks for rent arrears for example rather than the actual periods just now of four weeks or six months depending on the level of arrears. Either this is a hint as to what is going to happen at the end of May or there is likely to be another version of the form next week!

Source: https://www.jmw.co.uk/services-for-business/commercial-litigation-dispute-resolution/blog/new-section-8-notice-problems?inf_contact_key=063e169e57a89b9114d6be715925d314

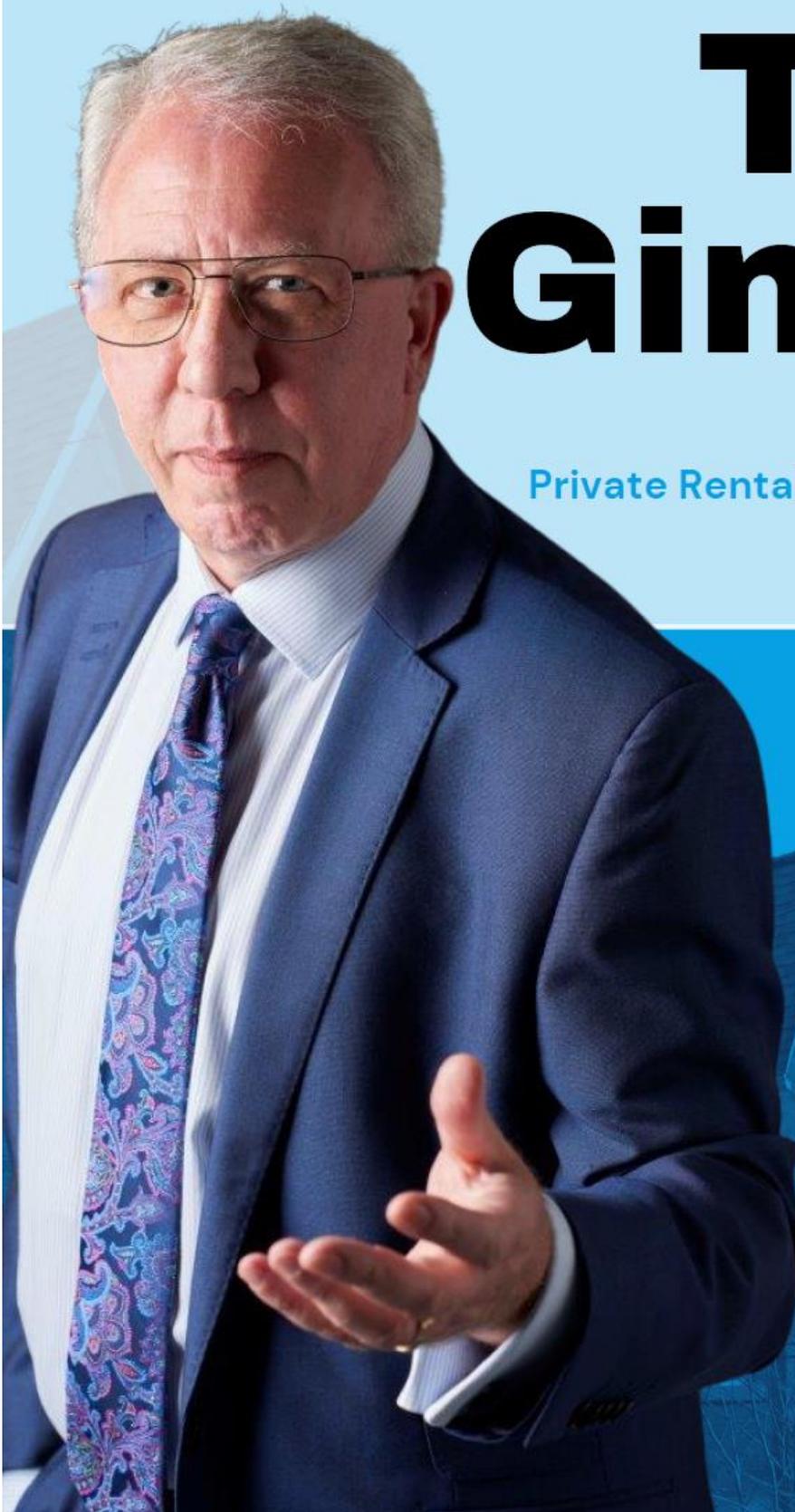
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Have tenants in arrears? You Need to be Aware of the Debt Respite Scheme

New Debt Respite Scheme Came into Force May 1st 2021

As of May 4th, landlords will find themselves facing yet more eviction hurdles when a government scheme designed to protect tenants with 'problem debts' came into force. This new legislation has implications for agencies also, who could be blocked from charging late fees or taking action on missing rents. Here's everything you need to know about the new legislation and what you need to do...

The new Debt Respite Scheme

The Debt Respite or '**Breathing Space**' Scheme, is designed to safeguard tenants who may have accumulated debt as a result of the pandemic. The new scheme will impact both the evictions process and how landlords interact with guarantors.

The regulations work to pause enforcement action on certain individuals from creditors, such as letting agents and landlords – and have the effect of freezing all charges, fees and certain interest on qualifying debts for up to 60 days.

Applying for a standard breathing space

Debtors can only access a breathing space by seeking debt advice from a debt adviser.

Anyone who cannot or is unlikely to be able to repay their debts can apply to a debt adviser for a standard breathing space.

Although all applications must be considered, the debt adviser might decide a breathing space is not appropriate for a debtor.

For example, if a person can access funds or income, they might be able to pay their debts with some budgeting help. Another example would be if they already have assets that could easily be sold to clear the debt. In these cases, a breathing space would not be the right solution. A breathing space might also not be appropriate for someone who can enter a more suitable debt solution straight away, without needing the protections.

Applying for a mental health crisis breathing space

The government committed to develop an alternative route to access the protections for people receiving mental health crisis treatment, so that they do not have to access debt advice first. If an Approved Mental Health Professional (AMHP) certifies that a person is receiving mental health crisis treatment, the AMHP's evidence can be used by a debt adviser to start a mental health crisis breathing space.

In addition to the debtor, the following people can apply to a debt adviser on behalf of a debtor for a mental health crisis breathing space:

- any debtor receiving mental health crisis treatment
- the debtor's carer
- Approved Mental Health Professionals
- care co-ordinators appointed for the debtor
- mental health nurses
- social workers

- independent mental health advocates or mental capacity advocates appointed for the debtor
- a debtor's representative

Qualifying debts

Debts included in a breathing space must be qualifying debts. Debts are any sum of money owed by the debtor to you, while liabilities are any obligation on the debtor to pay money to you. Most debts are likely to be qualifying debts. These will include:

- credit cards
- store cards
- personal loans
- pay day loans
- overdrafts
- utility bill arrears
- mortgage or rent arrears

Government debts like tax and benefit debts are all likely to qualify, unless they are included in the list of excluded debts.

Joint debts can be included in a breathing space, even if only one person applies for a breathing space. The joint debt would become a breathing space debt, and you must apply the same protections to the other people who owe that debt to you. The breathing space does not affect the other people's debts and liabilities in their own names.

While guarantor loans can be included in a breathing space, the protections do not extend to the guarantor. The guarantor can apply for their own breathing space, if they're eligible.

Qualifying debts can include any that the debtor had before the Breathing Space legislation came into force on 4 May 2021.

New debts incurred during a breathing space are not qualifying debts. Neither are new arrears on a secured debt that arises during a breathing space.

What are the implications for agents and landlords?

As of May 4th, when letting agents, landlords, and other creditors receive notification on a moratorium debt, they must temporarily stop enforcement action and freeze charges, fees and certain interest for the duration of the moratorium.

What action should agents take?

Keep accurate records of tenant debts in the run-up to May and conduct a records search for any additional debts owed so that you have evidence to back up payment requests

- Consider any changes you need to make to your systems to comply with new regulations (it would be wise to invest in a system that can accurately track and manage arrears)
- Communicate the upcoming changes to landlords and explain that tenants can't be chased for arrears within a breathing space.

Extra information for landlords

The new scheme will definitely seem like yet another set-back for landlords in so far as evictions will undoubtedly become yet more problematic in many cases

But it's important to keep in mind that:

- Section 21 and section 8 notices may still be served and enforced against tenants who are subject to moratoriums as long as they are outside of matters relating to rent arrears.
- Tenants are still expected to pay rent during these periods – and failure to do so means you can apply to have the moratorium cancelled.
- Not everyone will be successful in applying for a debt moratorium. There are certain conditions that must be satisfied. The new Regulations apply only to the enforcement of a 'qualifying' debt.
- An approved mental health professional will need to be involved in cases relating to mental health.

Source: <https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors>

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Surrendering a Tenancy Ahead of Move-in

In this article, **Training for Professionals** looks at the issue of tenants wanting to pull out of tenancies already agreed as many have a poor understanding of the concept of honouring a contract.

Tenancy 'regrets'

It appears Covid-19 has created fresh pressures on the private rented sector with more tenants wishing to back out of tenancies already agreed. This is more of an issue with student lettings when an agreement to rent has been made, often well in advance of the move in date, but then the student no longer wishes to take up residence. It could be an issue with local lockdowns where quite understandably a tenant wants to avoid or is unable to move into a higher tier Covid area or where the student is prevented from taking up their university place for health reasons.

Legal position

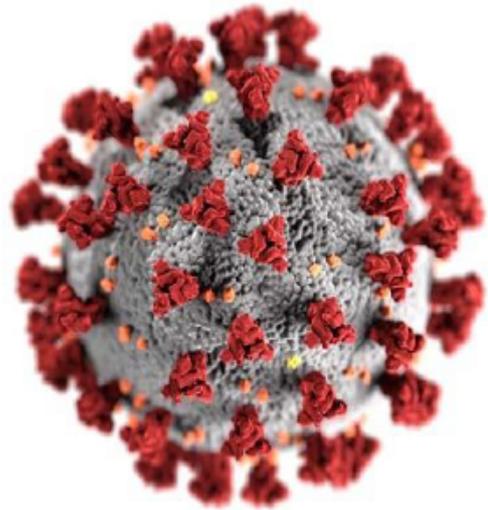
The contractual position is that once a tenancy has been entered into, the tenant is liable for the rent for the term regardless of whether they ever move in. If there is only an agreement in principle, there may not yet be a contract as such and the tenant may, of course, back out without obligation.

The main issue is whether or not there is a contract in place, or whether there is a clause in the contract permitting a break.

Frustration

In some situations, the common law principle of frustration may apply. If, for instance, the property is destroyed by a fire after the tenancy agreement has been made, there would be no obligation on either party to fulfil the contract because the fire has made the property uninhabitable, so the contract is frustrated. The parties may withdraw without any liability. The relevant question is whether a tenancy agreement is frustrated as a result of pandemic issues.

If the tenancy negotiations remain subject to contract, then there will be no tenancy and the parties may withdraw. If, however, the contract has been completed, the landlord would be entitled to sue the tenant for losses if they withdraw. The defence of frustration would not be straightforward for the tenant unless they can prove that circumstances have arisen which are beyond their control. For example: a tenant who was moving to the UK from abroad and the UK closes its



borders, thus making the tenant's arrival impossible. However, in this case the difficulty for the tenant is that the property is still available for occupation and so the core subject matter of the tenancy is still there to use. In general terms, the fact that it is no longer economic, convenient or desirable for the tenant for the tenancy to go ahead is insufficient to plead frustration. The courts will always apply this principle as narrowly as possible.

Letting fees

If the tenants fail to move in, the landlord may be unwilling to pay the agent's letting fees. The same principles apply, subject to the agent's terms of business, and the agent would be entitled to a fee regardless.

Conclusion

There is currently no specific Government regulation on this point, other than the general Covid-19 guidance which requires landlords, agents and tenants to act reasonably.

Agents should, ahead of agreeing a tenancy, explain the legal principles of signing a contract so that the tenants have a clear understanding about their commitments before signing it.



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Ban on commercial evictions extended to March 2022

The government has extended the ban on landlords evicting firms for unpaid commercial rent for another nine months.

The ban, which stops landlords taking tenants to court for non-payment, was due to end on 30 June 2021, but has now been extended until March 2022 in the wake of the decision to push back so-called Freedom Day to 19 July 2021.

Treasury secretary Stephen Barclay said the delay in easing lockdown restrictions, announced on Monday 21st June, "present additional challenges" to business.

It is estimated that firms in retail and hospitality are £5bn in rent debt.

The moratorium of commercial evictions was first announced in April last year and was initially designed to help struggling businesses through to September 2020.

While retailers and hospitality firms welcomed the decision to extend the ban, landlords voiced dismay and again warned that some profitable tenants were abusing the ban to avoid paying rent they can afford.

Barclay said: "We welcome ongoing negotiations between landlords and tenants about accrued rent as we continue to recover from the pandemic. To support these, we're now providing a new backstop to help businesses and tenants to return to normal."

According to business secretary Kwasi Kwarteng, sorting out commercial rent debts will be supported by a new binding arbitration system.

He said: "The new arbitration process will be underpinned by law, providing commercial tenants and landlords with peace of mind that covid-related rent debts will be settled fairly, and with finality."

However, the government has so far not announced plans to introduce a similar mandatory arbitration to settle disputes between landlords and tenants in the residential sector.

Communities Secretary Robert Jenrick commented: "We have provided unprecedented support to businesses to help them through the pandemic. However, as we continue to lift restrictions and start to return to business as usual, tenants and landlords should be preparing to pay rent or come to an agreement if they have not done so already.

"This special scheme reflects the unprecedented nature of the pandemic and responds to the unique challenges faced by some businesses. It strikes the right balance between protecting landlords while also helping businesses most in need, so they are able to reopen when it is safe to do so."

Source: [Eviction ban extended – Property Industry Eye](https://www.gov.uk/government/news/further-support-for-commercial-and-residential-tenants)

<https://www.gov.uk/government/news/further-support-for-commercial-and-residential-tenants>

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The amount landlords will have to pay occupants entitled to home loss payments increased on 1 October 2019

What is the legal position?

The Land Compensation Act 1973 sets out circumstances in which a landlord is obliged to make a home loss payment to an occupant who is permanently displaced from their home. These circumstances include:

- Compulsory purchase of a dwelling;
- Making of a housing order in respect of the dwelling;
- Where a registered provider of social housing (in England) or a registered social landlord (in Wales) is carrying out an improvement to the dwelling or redevelopment of the land; and
- A possession order in respect of a secure tenancy based on Ground 10 or 10A.

The occupant must meet certain eligibility criteria to qualify for the payment. The amount of home loss payment is set by the Government in regulations.

What is changing?

Under the new Home Loss Payments (Prescribed Amounts) (England) Regulations 2020, any occupants who are displaced on or after 1 October 2020 will be entitled to:

- For tenants, £6,500 (instead of £6,400); and
- For leaseholders, who are entitled to 10% of the property value, a minimum payment of £6,500 (instead of £6,400) and a maximum payment of £65,000 (instead of £64,000).

The 2019 Regulations are repealed.

What do you need to do?

Landlords need to ensure the increased amounts are paid to eligible occupants and that relevant policies and procedures are updated accordingly. Landlords may also want to consider paying the higher amounts sooner if an occupant tries to delay displacement to meet the October eligibility date: this may be a more cost-effective approach.

Source www.gov.uk



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Rogue letting agency and director receive lengthy bans

A letting agency and its director have received bans of five and three years for letting an unlicensed and unsafe home in King's Cross.

This follows a court ruling last year that found each guilty of operating an unlicensed HMO and hit with fines of over £70,000.

The two banning orders are the second and third secured by Camden Council, which has now obtained three of four rogue landlord banning orders in effect in London.

Simple Properties Management Ltd and the company's Director, Miguel Cabeo Cespedes, 50, of Windsor Ave, SW19, were given banning orders prohibiting them from letting any housing and engaging in letting agency or property management work in England.

The company received a ban for five years and Cespedes for three years.

Cespedes is also banned from being involved in any company that carries out letting or property management work for that period.

The banning orders will take effect in six months' time and if breached, penalties can include imprisonment for up to 51 weeks or a court fine, or both or a Civil Financial Penalty of up to £30,000.

The judgement follows a previous hearing at Highbury Corner Magistrates Court held on February 6, 2020, which found Simple Properties Management Ltd and Mr Cabeo Cespedes guilty of operating an unlicensed HMO and breaching safety regulations resulting in penalties that included a £40,000 fine for the business and a £30,000 fine for Cespedes.

This case was brought to court after council officers carried out several visits to an Acton Street property in May 2019 and identified it as an unlicensed HMO with numerous safety issues.

Officers found that the flat's kitchen diner had been improperly partitioned to make the two bed flat a four bedroom property that was home to five residents, damaged wiring to a washing machine was left exposed in the property's bathroom and both the fire alarms and fire escapes from the property were found to be inadequate.

Cllr Meric Apak, cabinet member for Better Homes, said: "Around a third of Camden residents rent from private landlords and they deserve to live in properly regulated and safe homes. The pandemic has further highlighted the importance of this and the right to a safe and secure home.

"Most landlords are decent law-abiding people however for too long a minority have been able to let housing that may be unfit for human habitation, is overcrowded and in which fire and general safety are both woefully disregarded.

Our HMO licensing scheme continues to improve the standards in Camden's private housing, empowering renters to take action and helping good landlords to run successful businesses.

"The prosecution and banning orders we have seen given in this case is a necessary last resort. Our message to landlords and letting agents is that we are here to work with you; to provide advice and assistance first of all and to ensure you can meet.

Source: [Rogue letting agency and director receive lengthy bans – Property Industry Eye](#)

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When is Rent Arrears not Arrears? When it is a Moratorium Debt!

From 4 May 2021 landlords, in common with others owed money by individuals living in England and Wales will need to consider the effect of debt moratoriums.

The new Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 come into force as from 4 May 2021 and will apply to most debts accrued before or after that date include arrears of rent.

Any person who is in debt can seek a debt moratorium from an approved debt advice provider. If the moratorium is granted it must be registered with a computer system that will be maintained on behalf of the Secretary of State. A moratorium is not something that is given freely. In order to obtain one a debtor must reasonably satisfy the debt advice provider that they will be able to pay their debts in full if they are given the breathing space created by a debt moratorium and also that they will be able to prevent their debt position getting worse during the moratorium. In other words, a moratorium is a more formal process of debt rescheduling with a statutory underpinning.

During a moratorium a debtor or tenant in arrears cannot be contacted to seek payment of the debt subject to the moratorium and cannot be asked to pay any part of that debt, any interest on it or any fee or cost created by it. They also cannot be served with a section 8 notice citing one of the three grounds for possession for arrears (grounds 8, 10 and 11) or the equivalent notices in Wales under the Renting Homes (Wales) Act 2016 (when it comes into force). A possession order cannot be sought against such a tenant for those same arrears and a possession order, if already obtained, cannot be enforced by a Bailiff or High Court Enforcement Officer (Sheriff). The regulations also state that no legal action in a court can be taken against a person on the strength of a moratorium debt. This would seem to protect licensees and non-Housing Act tenants too even though they don't get the very explicit protection that the ban on section 8 notices gives. Interest and penalties that accrue in respect of a moratorium debt during the moratorium period cannot be sought and so are lost to the creditor.

However, this is not a free ride for defaulting tenants. A section 21 notice can still be served and enforced against a tenant subject to a moratorium and so can a section 8 notice citing grounds other than arrears of rent. In addition, it is an absolute requirement of a debt moratorium that a tenant benefitting from it continues to pay their rent for their main home. Failure to comply with the obligations of a debt moratorium, such as ongoing rent payment, permits a landlord to apply to the relevant debt advice organisation for cancellation of the moratorium and if they decline, to the courts to ask for the moratorium to be ended or to permit legal action for eviction on the grounds of arrears to progress. However, the main factor that will also lead to this not being offered in all that many cases is that there must be an overall ability to actually clear the debts. A moratorium is not there to simply delay the inevitable.

There are further moratorium provisions for people suffering a mental health crisis. These are far more powerful but require a certified mental health professional to confirm that the debtor is suffering a mental health crisis and that they need to be protected from their debts on a temporary basis while this is resolved.

As we emerge from the Covid-19 pandemic it is inevitable that there will be many tenants, and others, with substantial debts

In some of these cases a debt moratorium may be appropriate where the individual has a source of income, or will gain one, that can be used to pay the debts off if they are appropriately re-scheduled. It is likely that a significant number of landlords will find themselves with tenants seeking moratoriums on the basis that their rent arrears were incurred during a temporary reduction in income caused by Covid-19 and that they are now able to pay the rent and clear the debts on a scheduled basis.

As against these benefits for tenants it is likely that the fact that these regulations are forthcoming will motivate some landlords to issue notices and proceedings to try and remove tenants before they avail themselves of a moratorium. It may also drive the use of section 21 notices (at least until they are no longer available) as these will not be restricted by a debt moratorium.

David Smith is a Partner of JMW Solicitors

Source: <https://www.jmw.co.uk/services-for-business/commercial-litigation-dispute-resolution/blog/when-rent-arrears-not-arrears-when-it-moratorium-debt>

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