



Sir Robert Neill MP
Chair of the Justice Committee
House of Commons
SW1A 0AA

8 December 2020

Dear Bob,

UPDATE ON THE PUBLIC HEALTH (CORONAVIRUS) (PROTECTION FROM EVICTION AND TAKING CONTROL OF GOODS) (ENGLAND) REGULATIONS 2020

Thank you for your letter dated 24 November on the Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020 (“the Regulations”). I am pleased to hear of the Committee’s support for the Government’s decision to legislate to stop the enforcement of evictions, except in limited circumstances, during the national lockdown and until 11 January.

The Government made a commitment in September that evictions would not take place over the mid-winter period between 11 December and 11 January except in limited circumstances. This was to prevent people being evicted at a time when accessing services may be more difficult and to prevent any additional burden falling on the NHS and avoid overburdening local authorities in their work providing housing support and protecting public health.

The Government also took action to protect people for the enforcement of evictions during the national restrictions that were introduced in England from 5 November. In order to provide consistency throughout the time when the national restrictions applied, and the following mid-winter period, and to ensure landlords were able to recover their properties in the most serious circumstances, the Government wished the exemptions to the ban to apply during the national restrictions. This led to a delay in legislating as we finalised the details of the exemptions and how they would be implemented. We continue to keep the position following the expiry of the ban on 11 January 2021 under review and we will keep the committee informed of progress.

You have asked for further information on the exemption for substantial rent arrears, which requires arrears of an amount equivalent to 9 months’ rent to be outstanding, with any arrears accrued after the 23 March discounted. As you will appreciate, the overriding purpose of the ban is to protect public health by preventing the enforcement of evictions at a time when the risk of virus transmission is high and when services are under additional strain. However, the Government has judged it necessary to include exemptions to the ban for those circumstances where the public health risks are sufficiently outweighed by the competing interests of: preventing harm to third parties; taking action against egregious behaviour; or taking action in cases which threaten to undermine confidence in the integrity of the system. The exemption for rent arrears is tightly drafted so that only landlords with the most extreme cases of arrears pre-dating the pandemic can enforce evictions at the current time. This ensures that landlords can take action in the most serious cases whilst preventing the enforcement of evictions for the majority of cases

due to public health concerns. Restricting the enforcement of evictions aside from the most serious circumstances will substantially decrease the volume of people being evicted and thus better ensure local authority capacity to support them.

As you are aware, the Regulations provide that in order for an eviction to proceed, the court must be satisfied that one of the permitted exemptions applies. I have set out the process by which the courts will make this determination below.

New applications for possession orders and those currently before the court

While the prohibition is in force, when making an order for possession, if the court is satisfied that the order falls within one of the exemptions the court will record that in the order (specifying which regulation). This includes the exemption for pre-COVID rent arrears, although in this instance for the court to be satisfied the claimant will need to provide a detailed calculation of rent arrears showing precisely how they meet the definition in the exemption.

Existing orders where an exemption is not identified on the order

Where there is an existing possession order and an exemption is not identified on it (for example orders made prior to 17 November), in the event that the claimant believes an exemption applies, they should make an application to court by filing a form N244 under Part 23 of the Civil Procedure Rules. Pursuant to the guidance issued by the judiciary, this application should request the Court “to declare itself satisfied of the following matter set out at [specify which paragraph of Regulation 2], namely [specify the matter]”. The application should be on notice to the defendant. No fee is payable for this application. The application should be sent to the court that made the original possession order. The court will then seek to list the application for hearing on the next possession day with time available, having regard to the possession proceedings listing priorities issued by the Master of the Rolls.

We have published guidance for landlords and tenants in the social and private rented sectors on the possession action process. This includes information about the operation of the exemptions to the pause on bailiff enforcement. This guidance is available at

<https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants>.

I am placing a copy of this letter in the Libraries of both Houses.

Yours ever

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly slanted style.

RT HON ROBERT BUCKLAND QC MP