

# Dealing with lettings during the pandemic

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Robert Brown

selborne  
**CHAMBERS**

# Overview

- Repairs
- EPC, gas and electricity inspections
- Tenants withholding rent
- Buy-to-let and mortgage providers
- Viewings and new tenancies

# Context

- “Lockdown” - The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350)
- Inevitable restrictions when “lockdown” eases
- Coronavirus Act 2020
- Civil Procedure Rules Practice Direction 51Z
- Common sense

# The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

- Came into force at 1:00 p.m. on 26 March 2020
- Lasts for the “emergency period” – no fixed end date, but requires review at least every 21 days, first review by 16 April
- Main restriction is reg.6(1): “During the emergency period, no person may leave the place where they are living without reasonable excuse.”
- [http://www.legislation.gov.uk/ukxi/2020/350/pdfs/ukxi\\_20200350\\_en.pdf](http://www.legislation.gov.uk/ukxi/2020/350/pdfs/ukxi_20200350_en.pdf)

# CPR PD51Z

- “All proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession are stayed for a period of 90 days from the date this Direction comes into force”
- <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51z-stay-of-possession-proceedings,-coronavirus>

# Repairs

- No change to Landlord and Tenant Act 1985, s.11
  - (although note that the extent of the repairing duty has recently been expanded by Homes (Fitness for Human Habitation) Act 2018)
- Normally\* no breach of repairing covenant until a reasonable time to carry out the repairs has elapsed
  - This may not apply if the repair is one which the tenant does not have to give notice of to the landlord

# Repairs

- MHCLG guidance:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/876500/Consolidated\\_Landlord\\_and\\_Tenant\\_Guidance\\_COVID\\_and\\_the\\_PRS\\_v4.2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876500/Consolidated_Landlord_and_Tenant_Guidance_COVID_and_the_PRS_v4.2.pdf)
- “In these unprecedented times we encourage tenants and landlords to take a pragmatic, common-sense approach to non-urgent issues which are affected by COVID-19 related restrictions.”
- “Where reasonable, safe for you and in line with other Government guidance, we recommend that you allow local authorities, landlords or contractors access to your property in order to inspect or remedy urgent health and safety issues.”

# EPCs

- MHCLG guidance: <https://www.gov.uk/guidance/coronavirus-covid-19-energy-performance-certificates>
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- Suggestion: if no EPC, ask yourself whether you really need to market that property in middle of a public health emergency



# Gas inspections

- Gas Safety (Installation and Use) Regulations 1998 (SI 1998/2451)
- Key duty is reg.36
- There is no “reasonable excuse” defence within reg.36 but reg.39 is important:
- “No person shall be guilty of an offence by reason of contravention of regulation ... 36 of these Regulations in any case in which he can show that he took all reasonable steps to prevent that contravention.”

# Gas inspections

- MHCLG [guidance](#)
- “Landlords should make every effort to abide by existing gas safety regulations”
- “reasonable steps”
- HSE guidance: <https://www.hse.gov.uk/news/coronavirus.htm>
- Gas Safe Register guidance: <https://www.gassaferegister.co.uk/help-and-advice/covid-19-advice-and-guidance/>

# Electricity inspections

- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (SI 2020/312)
- [http://www.legislation.gov.uk/ukxi/2020/312/pdfs/ukxi\\_20200312\\_en.pdf](http://www.legislation.gov.uk/ukxi/2020/312/pdfs/ukxi_20200312_en.pdf)
- Regulations apply from 1 July 2020 to “new specified tenancies”, *i.e.* those granted on or after 1 June 2020, and from 1 April 2021 to all “existing specified tenancies”, *i.e.* those granted before 1 June 2020

# Electricity inspections

- Three key duties in reg.3
- Ensure electrical safety standards met
  - <https://electrical.theiet.org/bs-7671/>
  - <https://shop.bsigroup.com/ProductDetail?pid=0000000000030342613>
- Ensure regular inspections and testing
- Ensure first inspection and testing carried out before tenancy commences for new tenancies or by 1 April 2021 for existing tenancies
- Enforced by remedial notices and action or financial penalties

# Electricity inspections

- MHCLG [guidance](#)
- “Landlords should make every effort to abide by ... electrical safety regulations which come into force on 1 July.”
- “reasonable steps”

# Tenants withholding rent

- No universal rent holiday
- “Tenants should continue to pay rent and abide by all other terms of their tenancy agreement to the best of their ability. The government has a strong package of financial support available to tenants, and where they can pay the rent as normal, they should do. Tenants who are unable to do so should speak to their landlord at the earliest opportunity.”
- “An early conversation between landlord and tenant can help both parties to agree a plan if tenants are struggling to pay their rent. This can include reaching a temporary agreement not to seek possession action for a period of time and instead accept a lower level of rent, or agree a plan to pay off arrears at a later date.”

# Tenants withholding rent

- Remember: notice periods changed and general stay on possession claims (Coronavirus Act 2020, [sch.29](#) & CPR [PD51Z](#))
- “Regardless of this legislation, where tenants have difficulty paying rent over this period, we ask that landlords do not issue a notice seeking possession, particularly given that the tenant may be sick or facing other hardship due to COVID-19.”
- If you have a mortgage, consider applying for a mortgage payment holiday

# Buy-to-let and mortgage providers

- Mortgage payment holidays
- Financial Conduct Authority guidance
- <https://www.fca.org.uk/consumers/mortgages-coronavirus-consumers>
- Possession proceedings by lenders? See CPR [PD51Z](#)



# Viewings and new tenancies

- Reg.7: “During the emergency period, no person may participate in a gathering in a public place of more than two people except— ... (d) where reasonably necessary— (i) to facilitate a house move”
- MHCLG guidance: <https://www.gov.uk/guidance/government-advice-on-home-moving-during-the-coronavirus-covid-19-outbreak>
- “Home buyers and renters should, where possible, delay moving to a new house while measures are in place to fight coronavirus (COVID-19).”
- “Our advice is that if you have already exchanged contracts and the property is currently occupied then all parties should work together to agree a delay or another way to resolve this matter.”

# Viewings and new tenancies

- Viewings are discouraged
- MHCLG “recommend that access to a property is only proposed for serious and urgent issues”

# Short-term holiday lets

- Probable breach of reg.5(3); very limited exceptions in reg.5(4)
- Probable breach of reg.6(1); almost certainly not a reasonable excuse

# Useful links

- The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350):  
[http://www.legislation.gov.uk/ukxi/2020/350/pdfs/ukxi\\_20200350\\_en.pdf](http://www.legislation.gov.uk/ukxi/2020/350/pdfs/ukxi_20200350_en.pdf)
- Coronavirus Act 2020, sch.29:  
<http://www.legislation.gov.uk/ukpga/2020/7/schedule/29>
- CPR PD51Z: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51z-stay-of-possession-proceedings,-coronavirus>

# Useful links

- MHCLG landlord and tenant guidance: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/876500/Consolidated\\_Landlord\\_and\\_Tenant\\_Guidance\\_COVID\\_and\\_the\\_PRS\\_v4.2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876500/Consolidated_Landlord_and_Tenant_Guidance_COVID_and_the_PRS_v4.2.pdf)
- MHCLG EPC guidance: <https://www.gov.uk/guidance/coronavirus-covid-19-energy-performance-certificates>
- HSE guidance: <https://www.hse.gov.uk/news/coronavirus.htm>

# Useful links

- Gas Safe Register guidance:  
<https://www.gassaferegister.co.uk/help-and-advice/covid-19-advice-and-guidance/>
- MHCLG moving home guidance:  
<https://www.gov.uk/guidance/government-advice-on-home-moving-during-the-coronavirus-covid-19-outbreak>
- FCA: <https://www.fca.org.uk/consumers/mortgages-coronavirus-consumers>



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[robert.brown@selbornechambers.co.uk](mailto:robert.brown@selbornechambers.co.uk)

[@rbrownac](#)