



# Hewitsons Agriculture, Food & Rural Business

LEGAL UPDATE

April 2020

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## COVID 19: A Guide for Rural Landowners and Estates

We have put together a list of the enquiries we have received over the last few weeks and are sharing the advice given below. Please note that this advice is not specific to your circumstances and so we recommend you speak to your usual contact at Hewitsons about your particular queries.

### **Employees**

#### **1) What is furlough and how does it work?**

Our employment team have produced a helpful article on this which can be found [here](#).

### **Tenancies**

#### **1) Am I legally obliged to give rent holidays or rent deferrals?**

In short, no. However, the long term implications and costs should be considered. If a tenant cannot pay their rent, you may end up having to bring the lease to an end using forfeiture. At present, forfeiture proceedings for commercial tenancies are suspended until 30 June 2020 so you will not be able to enforce a claim in the court to terminate the lease and will not be able to re enter until after that date. That being said, the rent will continue to accrue.

If you do forfeit the lease, you will have an empty property and potentially limited prospects of reletting the property. For commercial properties this may mean that you as landlord have to pick up the costs of services, insurance and (after 3 months or longer in certain circumstances) the business rates.

There are also delays in getting possession of residential tenancies as mentioned below. As such, a collaborative approach (see (2) below) may be most appropriate - particularly where the tenant has previously had a good record.

#### **2) What are my options if my tenants can't pay their rent?**

- Rent deferment. The rent will continue to accrue and become due at an agreed point in the future. It might be paid over several months/ quarters. Consider if the tenant will be able to pay this off in the future or if it is likely to become a bad debt.

- Change of rent payment from being due in advance to being due in arrears. This can be particularly helpful where rent is paid quarterly.
- Rent free period,
- Rent reduction. This would need to be agreed between all parties including any guarantors or mortgagees.

Consider also if your insurance policy covers you for loss of rent and the circumstances in which this may apply. You may be able to make a claim.

### **3) What if I have a section 21 notice which is due to expire in the next few weeks/ month?**

The Coronavirus Act 2020 means that if you have served a section 21 notice for possession of a residential dwelling which is to expire before 30 September 2020, the expiry date is to be a date which is 3 months' from the date which the section 21 notice is served upon the tenant. The notice does not end the tenancy, so if the tenant does not leave you need a court order to remove them and under changes to the Civil Procedure Rules, all possession proceedings in the court are stayed for 90 days effectively giving a further 3 months before the tenancy ends.

### **4) What if I need to carry out the "right to rent" checks?**

Right to rent checks have been temporarily adjusted to make it easier for landlords to carry them out. Checks can now be carried out over video calls, where the tenant holds up the original documents to the camera so they can be checked against the digital copy of the documents. The tenant can send scanned documents or a photo of the documents rather than sending the originals.

The date that the check was made should be recorded and should be marked as "an adjusted check has been undertaken on [insert date] due to COVID-19". Retrospective checks will then need to be carried out, within eight weeks of the COVID-19 measures ending, on tenants who started their tenancy during this period or required a follow-up check during this period. The retrospective check should be marked as "the individual's tenancy agreement commenced on [insert date]. The prescribed right to rent check was undertaken on [insert date] due to COVID-19."

### **5) What about agricultural holdings?**

To date the restrictions on terminating tenancies only apply to commercial and residential tenancies. As such, there are no restrictions on serving notices to pay and Case D notices under the Agricultural Holdings Act or forfeiting Farm Business Tenancies. However if you are required to enforce these actions then the issuing of proceedings in the Court will be caught by the restrictions which currently prescribe a 90 day stay.

Do remember that if you agree a change in the rent for an agricultural holding you potentially start the three year rent review clock running again.

### **6) Can I grant new tenancies?**

Yes. There is nothing to stop you from granting new tenancies of commercial, agricultural or residential land or buildings. However logistical issues may cause a problem. For example, an EPC needs to be obtained before a building is let and an EPC assessor is unlikely to be able to inspect.

### **7) What if one of my tenants is self isolating?**

If the tenant occupies the whole of a property, you do not need to do anything. If they occupy only part of a property or a floor of a building, we would recommend at a minimum, undertaking cleaning of common parts to reduce the risk posed to other tenants.

### **8) Do I have to keep a building open for my tenants?**

Yes. If you have let part of a building out then you are obliged to ensure the tenant can access this unless you come to an alternative arrangement with all tenants. If you do come to an arrangement with the tenants i.e. that the building

will close, you may be asked to give back some of the rent or reduce the service charge. This is a discussion to be had with the tenants.

### **9) What if I have a rent review due in one of my tenancies?**

With commercial tenancies, your rent review may be on a fixed date or upon service of notice. If it is the latter, you can choose not to review the rent this year and wait until next. If it is a fixed date, the rent will need to be reviewed. Most commercial leases provide for an upward only review (i.e. the rent won't go down) however the open market rent for premises is likely to be depressed in the current climate which may mean the increase is not as much as hoped.

For agricultural holdings the rents can go up or down, and if a rent review notice has been served it cannot be withdrawn. The parties can agree not to review the rent but either party can force the review by applying for the appointment of an arbitrator. Looking forward to future rent reviews even if the landlord would prefer not to review the rent, a tenant can serve a statutory rent review notice. That said a rent review notice served now would typically result in a review in September 2021 (assuming it is a Michaelmas tenancy). Hopefully, this rent will be affected by factors other than Covid-19.

### **10) Does this change my repairing responsibilities?**

No, you are still responsible for repairs. When dealing with residential properties the non statutory guidance issued by MHCLG urges a common-sense approach. Contractors may not be available, or may be unwilling, to enter properties where tenants are self-isolating and access may not be given by tenants. Where reasonable, tenants should grant access to a landlord's contractor to carry out works. The tenant and those entering should follow Public Health England's guidance including maintaining a minimum of two metres distance between people. If you cannot fulfil legal repairing obligations then keep a careful note of the obligations and reasons why they could not be fulfilled.

### **11) What about the new electricity regulations which are to come into force on 1 July 2020?**

[These regulations](#) require that electrical installations are tested by a qualified person prior to commencement of the tenancy and thereafter every 5 years. For existing tenancies, an electrical safety test will need to be carried out by 1 April 2021.

No additional guidance is available and in the absence of that, landlords should make every effort to comply with these regulations. If you are unable to gain access to a property (either due to tenant's refusal or restrictions in place), we recommend you document your attempts to gain access and keep all correspondence with your tenant about this.

## **On Farm**

### **1) Am I still allowed to plant crops/ tend to my animals/ carry out other farm activities?**

Yes. This work cannot be done from home and so, under current Government guidance (as at 15 April 2020), you are permitted to leave your home to undertake this work.

### **2) Are people still permitted to use public footpaths? What about my livestock or sheep in that field?**

Yes but they should stick to the footpath and not trespass onto your land. If anyone is trespassing, you can ask them to return to the footpath.

Only the Police have powers to ask people to disperse or leave – and recently they have in some areas temporarily closed footpaths in areas where people have been congregating. Defra has recently issued some guidance practical steps that could be taken to reduce risks such as:-

- Tying gates open so walkers do not need to touch them;
- Displaying polite notices asking people to respect residents and works by following social distancing guidelines;
- Offering a safe alternative route where the footpath goes through farmyards and gardens.

You are permitted to keep livestock in a field with a footpath and this has not changed, nor have the measures the landowner should impose when grazing stock or deciding whether they should be in pasture where there is a footpath. If you have a reasonable belief that a dog is worrying your sheep, then you are permitted to shoot it although we would recommend engaging with the dog owner before this step is taken.

## **Finances**

### **1) I can't pay my rent this month- what should I do?**

Contact your landlord and see what options they are willing to make available to you. A list of suggested options are in (2) in the Tenancies section above. With agricultural holdings, the CLA and the TFA have issued a joint statement asking both landlord and tenants to work collaboratively and not take advantage of the situation.

### **2) I can't make ends meet- what help is available?**

Depending on your individual circumstances, Government assistance may be available. For information on help for businesses, [see here](#). If you have a facility with a Bank, speak to your Bank manager and see if you can apply for one of the Government backed loans. Also try and negotiate payment holidays with your suppliers and anyone else you need to pay.

## **Legal**

### **1) How can I get a document witnessed?**

If a document requires you to sign in front of a witness, this cannot be done electronically. Whilst not ideal, until the law is changed we are recommending that you either arrange for another member of your household to witness your signature (note this isn't permitted for some documents) or ask a neighbour (or two in the case of a Will) to witness you signing a document from two metres away, or through a window. They can then complete their details accordingly.

### **2) How can I swear a statutory declaration?**

Usually a statutory declaration is signed and then sworn in the presence of a solicitor or Commissioner for Oaths. This presents similar practical difficulties to witnessing documents. However, so long as the solicitor can confirm the date and place of the declaration, he or she can complete the swear. This could be done through a window or two metres apart. It may be possible to make some declarations via video conferencing if the solicitor is confident the document he or she signs is the one signed at the relevant date and place. However, it depends on the specific declaration. For example, statutory declarations can be given by tenants to exclude security of tenure from commercial tenancies. The form of declaration is given by legislation which requires the solicitor to say the declaration was made "Before me" which suggests the solicitor should physically see the declarant.

For more information on any of the items raised in this legal update please contact a member of our [Agriculture, Food & Rural Business team](#).

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