

## Abandoned premises: Part 3

*The Housing and Planning Act 2016 contains little discussed but important provisions concerning the recovery of abandoned premises. **Andy Lane** discusses what this means in practice*

### Introduction

The Government's stated aim in respect of the abandoned premises provisions, to be found at Part 3 of the Housing and Planning Act 2016 ("the Act"), was to enable landlords to more easily repossess properties that had been abandoned without the need for a court order, and to speed up the repossession process.

This was despite the fact that implied surrender provisions would apply in many instances under existing law, and bodies such as Shelter and Crisis noting that genuine abandonment cases account for just 0.04% (1750) of private renting households.

Teresa Pearce, Shadow Minister for Communities and Local Government, sought unsuccessfully for an amendment whereby the local housing authority would be required to confirm that they also suspect the property to be abandoned.

### Section 57 Notice

The abandoned premises provisions rely on the proper service of a notice – indeed, one of a number – with section 57 of the Act providing:

*"A private landlord may give a tenant a notice bringing an assured shorthold tenancy to an end on the day on which the notice is given if—*

- (a) the tenancy relates to premises in England,*
- (b) the unpaid rent condition is met (see section 58),*
- (c) the landlord has given the warning notices required by section 59, and*
- (d) no tenant, named occupier or deposit payer has responded in writing to any of those notices before the date specified in the warning notices."*

## Overview

In short, where an assured shorthold tenant has moved out of demised premises owing arrears to their landlord, where the landlord has served 3 warning notices that the landlord intends to bring the tenancy to an end because of abandonment, and where no response has been made to the said notices then the tenancy will end on the day of the section 57 notice.

It is important to note:

1. **Private Landlord & ASTs:** This just applies to assured shorthold tenancies, although “private landlord” is defined by section 62 as simply meaning those landlords not satisfying section 80(1) of the Housing Act 1985. **The definition therefore includes most housing associations’ tenancies:** section 57.
2. **Rent arrears:** For the abandoned premises provisions to apply, the rent must have been unpaid for at least 8 consecutive weeks (if payable weekly or fortnightly), 2 consecutive months (if payable monthly), 1 quarter (if payable quarterly) or 3 months’ rent outstanding for at least 3 months (if payable yearly): section 58(1).
3. Any rent paid before the section 57 notice will nullify the previous qualifying status of the arrears: section 58(2).
4. **Warning notices:** Before section 57 can apply a landlord must give 3 warning notices:
  - 4.1 The section 58 rent condition does not need to be satisfied at the time of the 1<sup>st</sup> notice, though it must be satisfied by the time of the 2<sup>nd</sup> notice: section 59(6)(7).
  - 4.2 The 2<sup>nd</sup> warning notice must be given between 2 and 4 weeks after the 1<sup>st</sup> notice, with the 3<sup>rd</sup> notice being given within 5 days after the date in the notice for the tenant to respond by: section 59(8)(9).
  - 4.3 The 3<sup>rd</sup> notice can be prescribed subject to regulations: section 59(10).
  - 4.4 The first 2 notices must be served on the tenant, named occupiers<sup>1</sup> and any deposit payers<sup>2</sup>: sections 59(2).
  - 4.5 **Service** is provided for by section 61:

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<sup>1</sup> i.e. a person named in the tenancy as a person who may live in the demised premises – section 59(11)

<sup>2</sup> i.e. the person a landlord knows paid the deposit on behalf of the tenant – section 59(11)

*“(2) The notice may given by delivering it to the tenant, named occupier or deposit payer in person.*

*(3) If the notice is not delivered to the tenant, named occupier or deposit payer in person it must be given by—*

*(a) leaving it at, or sending it to, the premises to which the tenancy relates,*

*(b) leaving it at, or sending it to, every other postal address in the United Kingdom that the tenant, named occupier or deposit payer has given the landlord as a contact address for giving notices,*

*(c) sending it to every email address that the tenant, named occupier or deposit payer has given the landlord as a contact address for giving notices, and*

*(d) in the case of a tenant, leaving it at or sending it to every postal address in the United Kingdom of every guarantor, marked for the attention of the tenant.*

5. **Reinstatement:** A tenant can – within 6 months from the time the section 57 notice is given - apply to the county court to reinstate the tenancy if they have a good reason for failing to respond to the warning notices (the court being able to make “any order it thinks fit for the purpose of reinstating the tenancy”: section 60.

### **Conclusion**

The security of tenure provisions of section 5 of the Housing Act 1988 have accordingly been amended by section 63 of the Act to allow for a tenancy coming to an end in accordance with section 57 of the Act.

The abandoned premises provisions have not at the time of writing been brought into force.

**Andy Lane**

**Cornerstone Barristers**