Mortgage Repossessions (Protection of Tenants etc) Act 2010

2010 CHAPTER 19

E+W

An Act to protect persons whose tenancies are not binding on mortgagees and to require mortgagees to give notice of the proposed execution of possession orders. [8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Power of court to postpone giving of possession E+W

(1) This section applies if—

(a) the mortgagee under a mortgage of land which consists of or includes a dwelling-house brings an action (other than an action for foreclosure) in which the mortgagee claims possession of the mortgaged property, and

(b) there is an unauthorised tenancy of all or part of the property.

(2) When making an order for delivery of possession of the property, the court may, on the application of the tenant, postpone the date for delivery of possession for a period not exceeding two months.

(3) Subsection (4) applies where an order for delivery of possession of the property has been made but not executed.

(4) The court may, on the application of the tenant ("the applicant"), stay or suspend execution of the order for a period not exceeding two months if—

(a) the court did not exercise its powers under subsection (2) when making the order or, if it did, the applicant was not the tenant when it exercised those powers,

(b) the applicant has asked the mortgagee to give an undertaking in writing not to enforce the order for two months beginning with the date the undertaking is given, and

(c) the mortgagee has not given such an undertaking.

(5) When considering whether to exercise its powers under this section, the court must have regard to—

(a) the circumstances of the tenant, and

(b) if there is an outstanding breach by the tenant of a term of the unauthorised tenancy—

(i) the nature of that breach, and

(ii) whether the tenant might reasonably be expected to have avoided breaching that term or to have remedied the breach.

(6) The court may make any postponement, stay or suspension under this section conditional on the making of payments to the mortgagee in respect of the occupation of the property (or part of the property) during the period of the postponement, stay or suspension.

(7) The making of any payment pursuant to—

(a) a condition of an undertaking of a kind mentioned in subsection (4)(c), or

(b) a condition imposed by virtue of subsection (6),

is not to be regarded as creating (or as evidence of the creation of) any tenancy or other right to occupy the property.

(8) For the purposes of this section there is an "unauthorised tenancy" if—

(a) an agreement has been made which, as between the parties to it (or their successors in title), is or gives rise to—

(i) an assured tenancy (within the meaning of the Housing Act 1988), or

[[F1](ia) an occupation contract (within the meaning of section 7 of the Renting Homes (Wales) Act 2016 (anaw 1)), or**]**

(ii) a protected or statutory tenancy (within the meaning of the Rent Act 1977), and

(b) the mortgagee's interest in the property is not subject to the tenancy.

(9) In this section "the tenant", in relation to an unauthorised tenancy, means the person who is, as between the parties to the agreement in question (or their successors in title), the tenant under the unauthorised tenancy (or, if there is more than one tenant, any of them).

Textual Amendments

F1 S. 1(8)(a)(ia) inserted (W.) (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **31(2)**

Commencement Information

I1 S. 1 in force in so far as not already in force at 1.10.2010 by S.I. 2010/1705, **art. 2**

2 Notice of execution of possession order E+W

(1) This section applies where the mortgagee under a mortgage of land which consists of or includes a dwelling-house has obtained an order for possession of the mortgaged property.

(2) The order may be executed—

(a) only if the mortgagee gives notice at the property of any prescribed step taken for the purpose of executing the order, and

(b) only after the end of a prescribed period beginning with the day on which such notice is given.

(3) "Prescribed" means prescribed by regulations made by the Secretary of State.

(4) Regulations made by the Secretary of State may prescribe the form of notices and the way in which they must be given.

(5) The regulations may make supplementary, incidental, transitional or saving provision.

(6) Regulations under this section may be made only with the consent of the Lord Chancellor.

(7) Regulations under this section are to be made by statutory instrument.

(8) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

I2 S. 2 in force in so far as not already in force at 1.10.2010 by S.I. 2010/1705, **art. 2**

3 Interpretation E+W

(1) This section applies for the purposes of this Act.

(2) "Dwelling-house" includes any building, or part of a building, that is used as a dwelling.

(3) The fact that part of the premises comprised in a dwelling-house is used as a shop or office, or for other business, trade or professional purposes, does not prevent the dwelling-house from being a dwelling-house for the purposes of this Act.

(4) "Mortgage" includes a charge, and "mortgagee" is to be read accordingly.

(5) "Mortgagee" includes any person deriving title under the original mortgagee.

(6) "Order" includes a judgment, and references to the making of an order are to be read accordingly.

Commencement Information

I3 S. 3 in force in so far as not already in force at 1.10.2010 by S.I. 2010/1705, **art. 2**

Changes to legislation: *There are currently no known outstanding effects for the Mortgage Repossessions (Protection of Tenants etc) Act 2010. (See end of Document for details)*

4 Commencement, extent and short title E+W

(1) This Act (except this section) comes into force on such day as the Secretary of State may by order made by statutory instrument appoint (and different days may be appointed for different purposes).

(2) An order under subsection (1) may make transitional or saving provision.

(3) This Act extends to England and Wales only.

(4) This Act may be cited as the Mortgage Repossessions (Protection of Tenants etc) Act 2010.

Changes to legislation:
There are currently no known outstanding effects for the Mortgage Repossessions (Protection of Tenants etc) Act 2010.