

REACTIVATING POSSESSION PROCEEDINGS

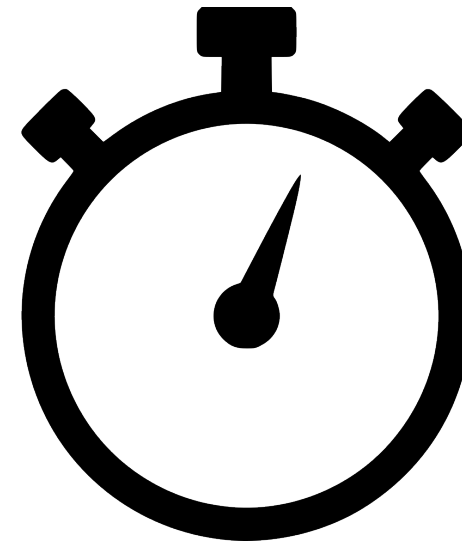
MAX GORDON & NIAMH O'BRIEN

Disclaimer

- The purpose of this webinar is to provide a helpful summary and should not be considered as an alternative to fully informed legal advice.

The stay to proceedings – CPR 55.29

- Almost all possession proceedings were stayed until 20 September 2020.
- Not including
 - Claims against trespassers (CPR55.6) *LB Hackney v Powlesland* [2020] EWCH 2102(Ch)
 - Interim Possession Orders
 - Injunctive relief.



CPR 55.29(4)

- *For the purposes of the application of any rule to any proceedings that are stayed by paragraph (1)—*
- *(a) time does not run; and*
- *(b) no notice is required to be given by the court*

What now?

CPR PD55C

- **20 September 2020 until 28 March 2021.**
- Nothing without reactivation notice!
- Not applicable to a stayed claim brought on or after 3 August 2020 or where a final order has been made
- PD55C 2.1 - **No listing, relisting, hearing or referral** in stayed claims without reactivation notice...UNLESS THE COURT ORDERS OTHERWISE

Relisted hearings

- Court must, unless it directs otherwise, give 21 days notice of listed or relisted hearing –PD55C 3.1

The reactivation notice

- Must confirm the party filing and serving wishes the case to be listed, relisted, heard or referred and...
- (except in appeal) *'set out what knowledge that party has as to the effect of Coronavirus pandemic on the Defendant and their dependents'* [PD55C 2.3]
- Up to date rent account

4pm 29 JANUARY 2021

- If no reactivation notice is received by this date the claim will be automatically stayed
- An application to lift the stay is not an application for relief from sanctions - PD55c 2.7A.

Stayed claims where case management directions made PD55C 5.1

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- File and serve with the reactivation notice—
 - The last directions order with new dates for compliance; and
 - Either—
 - (i) a draft order setting out additional or alternative directions (including proposing a new hearing date); or
 - (ii) a statement in writing that no new directions are required and that an existing hearing date can be met; and
 - Suitability for remote hearing.

Stayed claims where case management directions made

- If the other parties disagree they must file and serve a response within 14 days of service of the reactivation notice- PD55C 5.2



New claims & stayed claims brought after 3 August 2020

- Bring to the hearing two copies of a notice
 - Confirming compliance with the Pre-Action Protocol
 - Knowledge of the effect of Covid-19
 - Serve not less than 14 days before the hearing

Extended notice period

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- Notices served between **26 March 2020 and 28 August 2020 - three months.**
 - Notices served between **29 August 2020 and 31 March 2021 - six months,**
 - unless exceptions apply
 - S21 served between 29 August 2020 and 31 March 2021, time to start possession proceedings after the service is extended to **ten months.**

Transitional provisions on section 21

- Reg 4 The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020
- A 3 month notice 26 March 2020 – 28 August 2020 is still valid.

Exceptions to extensions

- Notice period will be standard for:
- Discretionary ground for anti-social behaviour for secure tenancies
- Mandatory ground for anti-social behaviour for secure tenancies
- Anti-social behaviour grounds for assured and assured shorthold tenancies

Exceptions to extended notice

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- The six-months' rule is subject to the following exceptions:
 - The minimum notice to quit period is **four weeks** if:
 - Six months' rent is unpaid
 - Anti-social behaviour – regulated/protected/introductory
 - Riot, domestic violence or a false statement - secure (2 weeks if assured)

Exception - 3 months notice

- Failure of the Right to Rent rules
- Assured tenancy and possession is sought following the death of the former tenant
- Regulation 3 The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020 SI 2020/914.

Notices

- The **'Technical guidance on eviction notices'**
- Schedule 29 Coronavirus Act 2020 before 29 August 2020
- The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020 SI 2020/914

4 Steps to Regaining Possession

- Reactivate stayed claim – CPR PD 55C
- Review Hearing – ‘Overall Arrangements’ and ‘Understanding the Possession Action Process Guide’
- Substantive hearing-CPR 55
- Enforcement- Health Protection (Coronavirus Restrictions)(England)(No.4) Regulations 2020

Listing Priority

- ~~Anti-social behaviour~~
- Extreme rent arrears (12 months plus)
- Squatters and other trespassers
- Domestic violence
- Fraud/unlawful subletting
- Abandonment
- Recovery of 'temporary accommodation'

Covid-19 Case Marking

- Can be requested by D or private landlord at any time and by any means
- Available where the pandemic and/or stay has caused particular difficulties in relation to the tenancy
- The file will be marked on request unless the other side objects
- May be taken into account when listing and/or case management

Review Hearing

- Applies to 'new' and stayed cases
- Procedure set out in 'Overall Arrangements'
- Listed not less than 21 days after any Reactivation notice

Review Bundle

- C must provide an e-bundle to the court and a paper bundle to D 14 days before the review hearing
- Bundle must include 'all the required information' and the enhanced information about D and his/her dependents
- If the review bundle is not 'in order' court may dismiss the claim, or give directions

Content of Review Bundle

- Not set out the Overall Arrangements or PD55

- Guidance : "Claim Form and Particulars of Claim, information about how your tenant has been affected by coronavirus and the tenant's Defence, including whether they have marked the case as being affected by COVID-19".
- Notice of Review : "All documents filed to date and information required by PD55 2.3(5) (i.e. housing benefit information)
- Also confirm service of paper bundle on D and C's availability on review date

Review Appointment Procedure

- No personal attendance before the judge.
- Parties and the duty advisor must be available to each other at court or on the telephone
- Parties expected to agree and order or agree directions beforehand
- Court may forward e-bundle to the duty advisor
- If the bundle is in order the court will list for a substantive hearing not less than 28 days later

Suspension of Enforcement

- The Public Health (Coronavirus) (Protection from eviction and taking control of goods) (England) Regulations 2020
- Came into force 17 November 2020
- In force until 11 Jan 2021
- Replaced blanket 'ban' requested by Lord Chancellor
- Applies to County Court Bailiffs and High Court Enforcement Officers

Enforcement – Exceptions Reg 2

- Trespassers
- Extreme rent arrears accrued before 23 March 2020
- ASB (absolute ground)
- Death of tenant
- Domestic violence
- No eviction if occupant is self-isolating, has Covid or is 'clinically extremely vulnerable'