

COVID-19 and Possession Proceedings in the County Court

Guide 2

- This guide explains updates to the Civil Procedure Rules (CPR) Practice Directions by the Lord Chancellor and the Master of the Rolls¹. It is important to remember that unlike the Government legislation², this has come in several sets and appears more likely to have regular updates.
- Whilst not legislation, the updates affect the way in which the Courts are working. Since it is not primary legislation (unlike the Coronavirus Act) it does mean it is susceptible to court challenge – however, the Court of Appeal has upheld the direction³.
- The initial change was introduced the day following changes to Notices Seeking Possession in relation to specified residential tenancies, introduced within the Coronavirus Act 2020. This guide is therefore best read in conjunction with its sister document, '[COVID-19 and Notices Seeking Possession](#)' for a full explanation on the current position (*correct as at 17th May 2020*).
- We are, separately, in the process of preparing training materials to assist advisors in Bristol from starter to intermediate knowledge of possession proceedings. We recognise the limit of the following document until this is provided. It is hoped our notes provides some assistance in the meantime.

Possession proceedings – general note

Where a Court Order is required (i.e. where the Protection From Eviction Act 1977 applies), possession is a three stage process. A Notice Seeking Possession or Notice to Quit (where relevant) is the first step in possession proceedings. A Court application (for a possession order) is therefore the second step, and an eviction warrant is the third and final step. This guide therefore matters for the second and third stage as a result of the temporary changes.

¹ 117th Practice Direction introducing PD 51Z on 27th March 2020, 120th Practice Direction updating it effective 18th April 2020.

² Described in Guide 1

³ [Arkin \(As Fixed Charge Receiver\) v Marshall](#) [2020] EWCA Civ 620.

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- On 27th March 2020, Practice Direction s51Z came into effect, updating the Court rules in relation to both possession proceedings and evictions in the County Court.
- The Direction stated that all possession action (which is to include eviction warrants currently in the Courts) were stayed for a minimum of 90 days i.e. until at least 25th June 2020. **Injunctions are not subject to this direction** (see below)⁵.
- The Direction is in force until 30th October 2020, meaning it is possible that proceedings may continue to be stayed following the above date, depending on developments in relation to the current pandemic.
- For occupiers whom are therefore subject to existing possession action or have received notification of an eviction warrant, the action should have been stayed. It is recognised that many will consider it appropriate to clarify their local County Court that any relevant hearing date has been moved⁶.
- The Court service initially set out its 'priority work' in a document which included applications to stay eviction warrants. Eviction warrants themselves however should be automatically stayed in any event⁷.
- Usually where possession proceedings are moved, the Courts write to the parties confirming their relisting at the first possible opportunity. The very fact that this direction will not expire until October, suggests that a review of the situation to release the stay on 25th June 2020 will be undertaken in due course, and a further extension may well be given. For this reason, relisting does carry a risk that Courts would potentially have to write out to various parties and list, then (if the pandemic does not abate) have to issue further stays.
- Many County Courts are currently operating a significantly reduced staff, and some Courts are now closed to the public. There is a formal list of which Courts are still open for hearings and have some active role at present, and which Courts are shut to the public⁸.

⁴ Civil Procedure Rules, Practice Direction 51Z

⁵ PD51Z para 3.

⁶ The 120th Practice Direction helpfully updated that parties CAN agree case management directions where it properly facilitate justice, would not involve part attendance at court to request directions and allow for cases to continue to run effectively once the stay is lifted.

⁷ <https://www.gov.uk/guidance/hmcts-priorities-during-coronavirus-outbreak>

⁸ <https://www.gov.uk/guidance/courts-and-tribunals-tracker-list-during-coronavirus-outbreak>.

Important issues for tenants/occupiers

- Tenancy terms, **including as to rent** (or other occupation charge) still apply during this period⁹.
- For those at risk of eviction/ongoing proceedings, the stay may serve as an opportunity to demonstrate ability to engage with rental obligations, or perhaps improved compliance with tenancy terms following allegations of antisocial behaviour, giving Courts confidence in future tenancy conduct.
- In the other cases, economic drivers behind the stay are likely to mean a significant negative effect from the perspective of the occupier. For example, in many cases financial difficulties will worsen as a result of COVID-19 related problems affecting rent areas, for example loss of income due to furlough, job loss or benefit delays/inadequate payments (or a combination of the above). For this reason, the current stay acts as a delayer but will often not resolve those underlying issues.
- Cases involving antisocial behaviour allegations may well proliferate due to the lockdown. We consider that as a result of the stay, landlords (specifically social landlords) may be more tempted than usual to consider injunctions instead of possession proceedings, as they are which are not subject to the general stay (see COVID-19 and Antisocial Behaviour’).
- Occupiers receiving outright possession orders shortly before the stay was introduced, especially where the hearing may not have been possible to attend due to coronavirus, should be encouraged to seek specialist legal assistance as soon as possible. Outright orders will especially concerning for ‘mandatory ground’ cases (where court had no choice but to make the order) because the Court would then have extremely limited ability to stop any following eviction warrant, unless the original order is set aside. Legal advice should be sought to investigate possibility of setting aside orders.
- Of course, setting orders aside will not be possible in all cases e.g. valid mandatory ground cases. There is also the question of ensuring set-aside orders are applied for ‘promptly’, and the effect of the stay on that definition¹⁰.
- Landlords should still be able to issue possession claims in the local County Court, however the Court should not ‘serve’ the claim form within the stayed period¹¹. This is important because usually an occupier is given a timescale to return a Defence form

⁹ On other occupation charge, licence holders are liable for what legally termed ‘mesne profits’ rather than rent.

¹⁰ See Forcelux v Binnie [2009] EWCA Civ 854 and Hackney v Findlay [2011] EWCA Civ 8 for an explanation of the relationship between CPR 3 and CPR 39.3. In summary, the Court are likely to want to see applications for set aside as soon as possible, and if possible we would suggest filing the set-aside application even if the practical effect of the direction is that it is immediately stayed.

¹¹ CPR 55.5(3)(b) states the standard period for first possession hearing should not being more than 8 weeks from the issue of Claim form, is inherently relaxed by Practice Direction 51Z.

within a particular timescale, and any occupier would need to bear in mind the time running after service of the Claim form, to file the defence¹².

- Where there is time running for a deadline as at 27th March 2020, e.g. for claim forms already served and defences awaited, the deadline for response is effectively frozen for 90 days and will recommence running (at present) from 25th June 2020. This will be particularly important for tenants responding to accelerated possession proceedings cases (see footnote 12).
- It is anticipated that there is likely to be a significant bottleneck in possession claims when the stay is lifted, due both to ongoing cases being relisted and 'new claims' being commenced.

Whom is/is not affected?

- The groups of occupier covered are wider than the occupiers in Guide 1. It covers any occupier whose landlord requires a Court Order and where stage 3 of proceedings has not yet been completed i.e. eviction warrant carried out.
- These changes will NOT affect occupiers who lack protection under the 'Protection from Eviction' Act because the landlord would NOT need a Court Order anyway (see COVID-19 and Illegal Eviction). Exempt occupiers are entitled to 'reasonable notice' only.
- As of 18th April 2020, trespassers (defined within CPR 55.6) are likewise outside of the stay. This is therefore relevant to trespass cases where the trespasser did not have permission to occupy the premises to start with, the Defendant is classed as against 'persons unknown' or where they can be subject to the 'interim possession' procedure.

Other groups of occupier however are still covered even where they are technically 'trespassers' (e.g. those whom continue to occupy following expiry of valid notice to quit e.g. Bristol City Council's policy is to class 'failed' successors to tenancies as 'trespassers').

¹² This is usually 14 days from service of the Claim Form (CPR 15.2), though for trespassers much shorter - CPR 55.7(2). Court rules usually allow for Courts to consider representations from Defendants up to the date of the hearing and may allow Defences to be served out of time - CPR 55.7(3). Whilst courts often tolerate this they will of course not always do so, and advisors need to bear this in mind. The group most at risk of not filing a Defence in time, are occupiers whom are Assured Shorthold Tenants, where their landlord uses the 'Accelerated Possession' procedure under form N5B (England or Wales as appropriate). This is because with this procedure, a Court hearing is NOT automatically listed, and failure to respond to the claim risks a possession order being made on the papers, as the Defendant would have missed their chance to bring any defects in the paperwork to the attention of the Court – CPR 55.14.

Summary

As indicated in 'COVID-19 and Notices Seeking Possession' it is foreseeable that inaction in relation to resolving underlying drivers of possession will affect and strain all interested groups i.e. landlords, occupiers, legal representatives and advice/support agencies, Local Authority housing departments and the court system itself.

Injunctions may become far more common in the courts- both against occupiers in relation to addressing acute antisocial behaviour allegations, or against landlords for unlawful eviction.

Please do not hesitate to contact Bristol Law Centre housing department Housing@bristolawcentre.org.uk if there are any queries in relation to the above, or if there is a client/service user whom may benefit from specialist legal advice.

Bristol Law Centre has a contract with the Legal Aid Agency allowing us to provide publicly funded advice and representation in appropriate cases.

This document covers the initial alteration to Civil Procedure Rules and any known changes up to 17th May 2020. Please note this document is intended as guidance only, and as such is unable to be relied upon or replace formal legal advice.