

A grayscale background image of a city street with tall buildings and a bus, overlaid with a purple border on the left side.

POSSESSION: REACTIVATION

The process for reactivating possession claims under the interim rules and commencing new possession claims.

BY MATTHEW RICE

Following the outbreak of the COVID-19 pandemic all possession claims were suspended from 27 March 2020. During the stay all possession claims filed in court were automatically stayed and case management directions could only be given if both parties agreed (including in relation to appeals). The stay ended on 20 September 2020 - with the exception of mortgage lenders who are required to wait until after 31 October 2020 to commence possession proceedings in line with FCA Guidance. But what is the situation now?

Practice Direction 55C sets out the new interim rules which will apply from 21 September 2020 until 28 March 2021. These rules will only affect possession claims commenced after 3 August 2020; those brought before will be subject to different rules.

Reactivation of claims for possession made before 3 August 2020

These rules only affect those claims which were *brought before 3 August 2020 or where no possession order was made before 27 March 2020*.

Paragraph 2.1 of Practice Direction 55C confirms that a reactivation notice must be served by *any party* albeit that in practice this is more likely to be

served by the claimant. The reactivation notice must confirm that the serving party wishes for the case to be either listed, relisted, heard or referred to a judge.

Unless relating to an appeal, the reactivation notice must:

1. identify, to the best of the claimant's knowledge, the effect of the Covid-19 pandemic on the defendant and their dependents.
2. provide an updated rent account for the previous 2 years (if the claim is based on rent arrears).

A reactivation notice must be sent either 42 days before any listed trial date (para 2.5 PD 55) or before 4.00 pm on 29 January 2021. If the notice is not sent the claimant will need to apply to have the stay lifted.

Where a possession order was granted before 27 March 2020 the claimant is not required to use the reactivation notice process but must give 14 days' notice of intended eviction.

Reactivation where case management directions made

Paragraph 5.1 of Practice Direction 55C confirms that *in addition* to the reactivation process discussed above, the claimant must file and serve:

1. amended directions taking into account the new dates for compliance following the stay,
2. a draft order setting out any additional or alternative directions which are required, together with a proposed new hearing date. Alternatively the claimant must confirm in writing that no new directions are required and an existing hearing date can be met,
3. confirmation in writing whether the case is suitable for hearing by video or audio conference

Should the defendant disagree with the draft order (or written notice) they have 14 days from service to file and serve a response pursuant to paragraph 5.2 of Practice Direction 55C.

Again, if the claimant does not file and serve these documents before 4.00 pm on 29 January 2021 they will need to apply to lift the stay.

Restarting claims made from 3 August 2020

Possession claims which were commenced on or after 3 August 2020 will not need to follow the reactivation process.

Paragraph 6.1 of Practice Direction 55C confirms however that the claimant must:

1. bring to the hearing a notice in duplicate which provides details, to the best of the claimant's knowledge, of the effect of the Covid-19 pandemic on the defendant (and any dependents),
2. serve on the defendant a copy of the notice 14 days before the hearing.

In line with the Pre-Action Protocol for Possession Claims by Social Landlords, any claimant who is a social landlord must also provide notice setting out how they have complied with the protocol.

Accelerated Procedure from 20 September 2020

Paragraphs 1.7 and 6.2 of Practice Direction 55C confirm that landlords

of assured shorthold tenants may continue to use the accelerated procedure to bring a claim for possession.

The landlord however must file a notice setting out, to the best of their knowledge, the impact the Covid-19 pandemic has had on their tenant (and any dependents). This notice must be filed and served with the claim form.

The tenant is permitted to dispute the landlord's evidence and if they do so, the claim may be listed for a hearing.

Miscellaneous information on Court Hearings

The Master of the Rolls in his "Overall Arrangements" has confirmed that the usual timeframe of 8 weeks between the issue of the claim and the hearing date will no longer apply. Cases may be listed up to 3 months ahead and a hearing date will not be fixed at the time that the claim form is issued.

The Master of Rolls has also confirmed that during the continuation of the Covid-19 pandemic that hearings may be listed in temporary court buildings.

Extended Notice Period

The following tenants retain the right to extended notice of intended possession proceedings:

- assured shorthold (including starter tenancies)
- assured
- secure
- flexible
- introductory
- demoted
- regulated

For notices served between 29 August 2020 and 31 March 2021 the new minimum notice period is **6 months** pursuant to schedule 29 of the Coronavirus Act 2020, unless an exception applies. The classes of exceptions are numerous, but notably include situations where the tenant has not paid rent for 6 months.

AMB Law regularly acts for landlords, receivers and trustees in bankruptcy to secure possession of property and would be more than willing to discuss your needs or explore whether any exceptions apply. AMB Law stand ready and willing to assist our current and new clients, please do not hesitate to contact us:

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Matthew is a contentious lawyer with five years' experience gained with a major firm with multiple offices nationally and globally. Matthew gained a first in law at Nottingham Law School and a distinction in the LPC from the University of Law. Matthew joined AMB Law in June 2018 and works across all departments assisting primarily with insolvency and commercial property.

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