

End of the Stay(cation)?

The (**potential**) reactivation of
housing possession claims and
Practice Direction 55C

Matthew Withers
1 Crown Office Row

matthew.withers@1cor.com

What is going on?

The extension

- CPR 55.29 amended
- stay extended until 20 Sept 2020

Upcoming changes?

- 6 months' notice
- prioritisation of stayed claims

Practice direction 55C – a whistle-stop tour

Amendment



MASTER OF
THE ROLLS

THE RT HON SIR TERENCE ETHERTON

21 August 2020

Dear Colleagues

Yesterday the Lord Chancellor wrote to me, in my capacity as the Head of Civil Justice and Chair of the Civil Procedure Rule Committee (CPRC). He thinks it expedient for the Civil Procedure Rules to include provision that would extend the stay imposed by rule 55.29 for a period of four weeks, to 20 September. Pursuant to 3A of the CPA 1997 he directed the CPRC to make rules to achieve that purpose.

The CPRC met earlier today. It considered the extremely unusual nature and timing of the letter of direction from the Lord Chancellor but by majority considered that it was bound to follow the direction. Consequently, the CPRC also considered the draft rules necessary to meet this objective. I understand that these rules will shortly be put forward to Parliament.

This 4-week extension to the stay relating to housing possession cases, will allow for further work to be done to prepare for the stay to be lifted which in many respects can be welcomed.

I would like to repeat my extreme gratitude for the work of the group led by Mr Justice Knowles to prepare for the end of the stay which we anticipated on would be Sunday. I would also like to thank the DCJ's and many of you who will have helped with that work. That work will not be redundant because, whenever the stay comes to an end, the work that has been done will be available to be put into effect.

Best Wishes

Terence Etherton, MR



1 CROWN OFFICE ROW

Amendment contd.

- The Civil Procedure (Amendment No. 5) (Coronavirus) Rules 2020.
- SI 2020 No. 889 (L. 20)
<https://www.legislation.gov.uk/ukxi/2020/889/introduction/made>
- Amends CPR55.29

CPR 55.29(1)

“...all possession proceedings brought under this Part and all enforcement proceedings by way of writ or warrant of possession that are—

(a) stayed immediately prior to this rule coming into force; or

*(b) brought after this rule comes into force and on or before **19 September 2020**,*

*are stayed until **20 September 2020**.”*

Other announcements

- 6 months' notice

“The government also intends to give tenants greater protection from eviction over the winter by requiring landlords to provide tenants with 6 months’ notice in all bar those cases raising other serious issues such as those involving anti-social behaviour and domestic abuse perpetrators, until at least the end of March.”

<https://www.gov.uk/government/news/jenrick-extends-ban-on-evictions-and-notice-periods>

“I am also increasing protections for renters – 6 month notice periods must be given to tenants, supporting renters over winter.”

Robert Jenrick MP – Secretary of State for Housing, Communities and Local Government

6 months' notice: things to look out for

- Current notices (3 months – Coronavirus Act 2020 schedule 29)
 - Ongoing validity
 - To serve (now) or not to serve
 - When will it end?
- Potential Changes and pitfalls
 - Exemptions? Domestic abuse and egregious ASB
 - Pay attention to s36 Deregulation Act 2015: accidental abolishment of s21?
 - Expiry – March 2021?
 - When not to serve (December 2020 and beyond?)

Other announcements

- Prioritisation of stayed claims

“When courts do resume eviction hearings they will carefully prioritise the most egregious cases, ensuring landlords are able to progress the most serious cases, such as those involving anti-social behaviour and other crimes, as well as where landlords have not received rent for over a year and would otherwise face unmanageable debts.”

<https://www.gov.uk/government/news/jenrick-extends-ban-on-evictions-and-notice-periods>

BUT...

“Case listing, including prioritisation, is a judicial function and we are working with the judiciary through the Master of the Rolls’ Working Group on possession to consider the categories of serious cases that would be prioritised when hearings resume. Further detail on those categories will be set out in due course and we will engage with key stakeholders on this.”

PD55C

- Distinguishes ‘stayed claim’ and ‘new’ claims – brought after ~~22 August 2020~~
- Reactivation notices
 - The impact of coronavirus on the Defendant
- Schedules of arrears

Reactivation Notice

- Para 2.1:

“no stayed claim is to be—

- (a) listed;*
- (b) relisted;*
- (c) heard; or*
- (d) referred to a judge under rule 55.15, until one of the parties files and serves a written notice (a “reactivation notice”) confirming that they wish the case to be listed, relisted, heard or referred.”*

- Does not apply to any case where a final order made (Para 2.2(b), or any claim brought after ~~3 August 2020. (Para 2.2(a)).~~

Reactivation notices

- Para 2.3

“A reactivation notice must—

- (a) confirm that the party filing and serving it wishes the case to be listed, relisted, heard or referred; and*
- (b) except in proceedings relating to an appeal, set out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants.”*

- Para 2.4

“Except in proceedings relating to an appeal, where a reactivation notice is filed and served by the Claimant and the claim is based on arrears of rent, the Claimant must provide with the notice an updated rent account for the previous two years.”

Directions

- Where directions previously made:
 - Must file copy of the last directions order and:
 - New dates, new draft directions, or a statement confirming no new directions required and;
 - Whether the case is suitable for remote hearing
 - If disagree, file and serve a response within 14 days
(Para 5.1 & 5.2)

No action not a sanction

- If no reactivation notice, and/or directions filed before ~~4pm 29 January 2021~~ claim stayed generally. (paragraphs 2.6 and 5.3)
- Not a sanction, so no CPR3.9 relief needed on an application to lift. (paragraphs 2.7 and 5.4)

“New claims”

- In post stay claims and any claims brought after ~~3 August 2020~~, the Claimant must bring to the hearing a notice “*setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants*” (para 6.1)
- Must have served this on the Defendant 14 days prior to the hearing.
- For accelerated claims this notice must be filed with the claim form, for service on the Defendant

What do you know?

- *“what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants”*
- What complies?
 - *“requiring the claimant to provide (in the particulars of claim reactivation notice or for the hearing as appropriate) any relevant information about the defendant’s circumstances to include information on the effect of the pandemic on the defendant and his/her dependants, which will enable the court to have regard to vulnerability, disability, and social security position, and those who are “shielding”;*”

[Explanatory notes to The Civil Procedure \(Amendment No. 4\) \(Coronavirus\) Rules 2020](#)

Effects of non-compliance

- *“..... should a landlord not provide requisite information to the courts about the effect of Covid 19 on a tenant when the landlord is bringing forward an application, then the courts will have power to adjourn the case, which will hit the landlord in the pocket.....”*

Chris Pincher MP – Housing, Communities and Local Government
Minister, 22 July 2020, House of Commons

How Long?!

- No CPR 55.5(3)(b) 8 weeks between issue and hearing (para 4.1)
- At least 21 days notice of hearing (para 3.1)
- Backlog of stayed claims circa 40k nationally, not including “new claims”
- Estimated hearing capacity 25%

Questions?

No answers guaranteed!

matthew.withers@1cor.com

brighton@1cor.com

01273 625 625



1 CROWN OFFICE ROW

www.1cor.com