

# Possession in the Time of Covid (or 100 Years of Adjournments)

11.00am Thursday 29 October 2020

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The webinar will begin shortly

# Notices

Richard Cherry

New Forms 3 and 6A  
New Notice Periods  
Reactivation Notices

## Bringing a New Possession Claim - New Forms

New versions of Form 3 (Section 8) and 6A (Section 21) are at

<https://www.gov.uk/guidance/assured-tenancy-forms>

Reflect the new notice periods...

## New Notice Periods(1)



Section 21 - 6 months

Start the claim within 10 months of the  
date of Notice

Section 8...

## New Notice Periods(2)

Ground 14 (alone or with any ground other than 7A) – at once

Ground 14A, 14ZA or 17 (without Ground 7A or 14) – 2 weeks

Ground 8, 10 or 11 (without Ground 7A or 14) where 'at least 6 months rent is unpaid' at service of the notice – 4 weeks

Ground 7A (with or without other grounds) – 1 month

Ground 7 or 7B (without Ground 7A or 14) - 3 months

Ground 8, 10 or 11 without at least 6 months rent unpaid at service – 6 months

Other Grounds - 6 months

## Form 3 changes

New Form 3 Sets out:

- All new notice periods

- Extra requirements

Issue claim within 12 months of service

## Reactivation of Claims - New Practice Direction 55C

### PD55C

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-55c-coronavirus-temporary-provision-in-relation-to-possession-proceedings>

‘provides for temporary modification of Part 55 during the period beginning with 20 September 2020 (the end of the stay imposed by rule 55.29) and ending on 28 March 2021 (“the interim period”).’

## PD 55C - Stayed and new Claims

### Types of Claim

Paragraph 1.3 distinguishes between:

1. a 'stayed claim' - one brought 'on or before 19 September 2020' and expressly includes appeals from claims brought before that date

(stayed as a result of PD51Z and new CPR 55.29)

And

2. a 'new claim' - being a claim brought after 19 September

## PD 55C - Stayed Claims

Paragraph 2.1 - 'subject to paragraph 2.2 and **unless the court directs otherwise**' stayed claims will not be

- '(a) listed;
- (b) relisted;
- (c) heard; or
- (d) referred to a judge under rule 55.15' without a Reactivation Notice filed and served by either party.

Para 2.2 exceptions to 2.1:

claims 'brought on or after 3 August 2020' or 'in which a final order for possession has been made'.

Appeals?

## PD 55C - content of Reactivation Notice

Para 2.3 a reactivation notice must state that:

The Party wishes the claim to be 'listed, relisted, heard or referred'

And (except in the case of an appeal) 'what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants'

- No obligation on a landlord to make enquiries
- Tenant advisers will make their own representations

Para 2.4 in claims 'based on arrears of rent' (except appeals) claimant to file and serve with the notice 'an updated rent account for the previous two years'.

## PD 55C - failure to reactivate

### Para 2.5

any trial date [not hearing date] set before 27 March will be vacated ('unless the court orders otherwise') unless the appropriate reactivation measures have been carried out 'not less than 42 days prior to the hearing date'

- If no reactivation notice is filed by 29 Jan 2021 the claim will be stayed.
- The stay is not a sanction for purposes of CPR3.9 and can be lifted by application

Do you need to file a reactivation notice on applying to lift the stay?

## PD 55C - changing court timetables

Para 3.1 - the Court will give the parties at least 21 days notice of hearings 'listed or relisted in response to a reactivation notice'

Again NB 'unless it directs otherwise'

Para 4.1 modifies CPR 55.5 expressly disapplying the requirement in 55.5 for the standard 8 week period between issue and hearing.

# PD55C - case management of reactivated claims

Para 5 - reactivated claims with case management directions made before 20 September

5.1 - a party filing a reactivation notice must file & serve with it:

- a copy of the last directions made with 'new dates for compliance' and
- 'additional or alternative directions' including 'proposing a new hearing date' if required or
- a statement that no new directions are needed and hearing date can be met.

And state in writing whether case is suitable for video/audio link hearing

5.2 a party disagreeing is to 'file and serve a response within 14 days'.

Failure to comply with 5.1 by 29 January 2021 again results in a stay

## PD55C - New Claims

Para 6 in all 'new claims' brought after 3 Aug 2020 a landlord must:

- bring 2 copies of a notice setting out their knowledge of the impact of covid-19 on the defendant and their dependents
- send a copy to the defendant NLT14 days before the hearing.

In claims where the Pre-action Protocol for Possession Claims by Social Landlords applies, the claimant must also serve (and then bring two copies to the hearing) a notice stating the protocol has been complied with and set out how.

(no sanction is stated)

# PD55 - Form of Reactivation Notice



## Form of Reactivation Notice

On 15 September forms of Reactivation Notice for both Claimant and Defendant were issued at

<https://www.gov.uk/government/publications/reactivation-notice-for-property-possession>

Use is not mandatory.

Claimant's version suggests how possession cases may be prioritised

## PD55 - Prioritisation

How may a Landlord gain 'priority consideration':

- 'significant' anti-social behaviour,
- 'extreme' rent arrears (ie 'at least 12 months' rent or (in the case of a private landlord) 9 months' rent if that is at least 25% of the private landlord's income',
- squatters, illegal occupiers or persons unknown,
- domestic violence where possession of the property is important[?],
- fraud or deception, unlawful subletting, abandonment, non-occupation or death of the defendant,
- the property was allocated by an authority as temporary accommodation and is specifically needed for re-allocation as such.

Explanatory notes state - Claimant should tell the court what they know of the impact of Covid-19 on the Defendant BUT they can also rely on adverse financial consequences they have suffered from Covid19.

# Conclusions

1. Use the right new notice and period to seek possession
2. Most claims issued 'on or before 19 September' need reactivation
3. Does not apply if final possession order - appeals?
4. The official form is not mandatory
5. No obligation on landlords to seek information re impact of covid
6. Make sure you include directions etc if required
7. You can wait until Jan 2021 before reactivation... [why?]
8. Can you get your claim prioritised?

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