

Despite the government's general stance on relaxation of lockdown and the recommendations of the Housing, Communities and Local Government Select Committee¹, the ban on taking active steps in possession claims or seeking to enforce possession orders has been extended until 23 August. This was following advice from the Lord Chancellor and the Civil Procedure Rules Committee.

This means that Practice Direction 51Z will continue to apply so that possession claims using CPR part 55 can be issued but cannot be actively pursued (for rent arrears or any other grounds), applications cannot be made to enforce possession orders obtained before the stay, appeals cannot be heard and directions cannot be made unless agreed. As we know, the ban does not include trespasser proceedings brought under CPR 55.6 or interim possession orders. Injunctions are not affected. The stay affects both residential and commercial property.

The report which can be found here <https://www.gov.uk/government/news/ban-on-evictions-extended-by-2-months-to-further-protect-renters> does confirm that between now and the end of August, the government will work with the judiciary and the legal sector to ensure that when the stay is lifted the courts can operate in a way to maintain social distancing and to ensure judges have all the information they need and that tenants have access to help.

The report confirms a commitment to transition out of the stay at the end of August. The Master of the Rolls has convened a judiciary led, cross sector task-and-finish working group to consider and address so far as practicable matters affecting litigants and the courts when the stay is lifted.

This will be welcome news to tenants but less so to landlords facing their own financial difficulties. It will also have a huge impact on the courts when the stay is lifted, the backlog of cases will take a long time to clear.

It should be remembered that the court does have very limited powers to lift the stay and can approve agreed directions. In **Copeland v Bank of Scotland Plc [2020] EWHC 1441 (QB)** the stay was lifted for the purpose of handing down judgment: <https://www.bailii.org/ew/cases/EWHC/QB/2020/1441.html>. In that case, the High Court considered the impact of **Arkin v Marshall [2020] EWCA Civ 620**² (which confirmed that the Court had power in very limited circumstances to lift the stay but the parameters of such power was left considerably vague) and found that where the appeal had been heard and all that remained was the handing down of judgment, the stay should be lifted but if that resulted in a possession order, execution of that must be stayed in accordance with the practice direction and that an extended period of time must be allowed for permission to bring a second appeal.

¹ <https://publications.parliament.uk/pa/cm5801/cmselect/cmcomloc/309/30902.htm>

² <https://www.judiciary.uk/wp-content/uploads/2020/05/Arkin.APPROVEDjudgment-of-the-court.pdf>

In conclusion, the stay continues for a further two months with the government working towards a transition after that time. That will give renters some relief when the country remains in partial lockdown with many thousands, if not millions of people feeling the financial effects of the pandemic. When the stay is lifted, it is still unclear what will replace it and how the courts will operate. These are very uncertain times for landlords and tenants alike. It seems likely that landlords will continue to place heavy reliance on injunctions in the interim to deal with anti social behaviour with these being dealt with by way of telephone hearings. There will inevitably be an increase in workload for the courts in dealing with the resulting trials.

If you have any queries or comments, please contact.



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