

‘Writ the ground running’: Updates to the regime for enforcing possession orders

As the coronavirus crisis abates, and the general stay on possession proceedings imposed originally by PD 51Z and later CPR r.55.29 comes to an end on 20 September¹, claimants who have obtained possession orders, or obtain them soon after, will soon be able to enforce them. The removal of this one procedural limit to enforcement, is however, not the removal of all. New CPR 83.8A² requires notice of eviction to be given, once a writ or warrant of possession has been obtained. Moreover, this new notice requirement has been accompanied by changes to CPR 83.13 from 20 September 2020. CPR 83.13 pre-amendment had dealt with the requirements for notice on an application for writs of possession in the High Court, and had generated much case law. The requirement for notice of such an application has been much limited, with the notice to be given after the issue of the writ, on eviction, instead. This aligns the procedure in the High and County Courts. In this article, we review the possession order enforcement regime, highlighting what has changed because of the recent amendments.

The procedure for enforcement

The general stay on possession proceedings extends to proceedings seeking to enforce an order for possession by warrant or writ. Thus, on the lifting of the stay, claimants may have possession orders made before it was imposed, but no writ or warrant; or a writ or warrant issued before the stay, but never enforced. Under CPR 83.3(3), any such writ or warrant will be valid for 12 months from the date of its issue; an application can be made to extend time (CPR 83.3(4)) rather than seek the issue of a new writ or warrant. However, the effect of the stay on the writ or warrant must be to stop time running, as it is for limitation periods³, so that the 12 month period will not include the period of the stay (i.e. 27 March 2020 to 20 September 2020).

In the County Court, where most possession orders are made, the next step to enforcement is to apply for a warrant of possession. In most cases, the court’s permission is not required to

¹ By the Civil Procedure (Amendment No. 5) (Coronavirus) Rules 2020 which changes the date in CPR 55.29 for the continuation of the stay from 23 August to 20 September.

² Inserted, along with a number of other amendments to Part 83, by The Civil Procedure (Amendment No. 3) Rules 2020 2020/747, and, post the Civil Procedure (Amendment No. 5) (Coronavirus) Rules 2020, coming into force on 20 September.

³ The now often-cited *Grant v Dawn Meats UK* [2018] EWCA Civ 2212.

make such an application.⁴ Moreover, it is clear that an application for a warrant of possession can be made without giving notice to the defendant or the occupiers of the land: CPR r83.26(3)(a). This is so even in situations where permission is required to apply for the warrant, unless the court has ordered otherwise: r83.2(5). Thus enforcement is relatively simple.

In the High Court, enforcement is achieved through a writ of possession. Rather than a bailiff employed by the court service, enforcement is by a High Court enforcement officer approved by the High Court but instructed by the claimant. Accordingly, enforcement can often be achieved more quickly than in the County Court.

Where the possession order was obtained in the County Court, the first requirement, in most cases, is to seek a transfer of the proceedings to the High Court⁵ for enforcement under s.42 County Courts Act 1984, and then obtain a certificate of judgment under CPR 40.14A. In our experience, gained before the PD 51Z stay, the majority of District Judges refuse most s.42 applications. Evidence as to the standard delay in obtaining a bailiff appointment is rarely sufficient. Some particular unusual and unique hardship to the claimant resulting from a long wait for enforcement will need to be shown. The effect of Covid-19 and the stay, shared by the nation, is unlikely to be enough.

No s.42 application is needed in a ‘claim against trespassers’ as defined in CPR 55.1⁶. That is because CPR 83.19(1)(b) permits the claimant to make a request for a certificate of judgment under CPR 40.14A(1)⁷ so as to enforce in the High Court. That certificate takes effect as a transfer to the High Court. Once there has been a transfer, in either case, a writ of possession will be needed.

New CPR 83.8A: The new requirements

From 20 September 2020 a new provision, CPR 83.8A, requiring notice of eviction to be given to occupiers before the eviction date, will come into force. Since it applies to both writs and

⁴ There are exceptions. Permission is needed for a warrant to enforce a possession order against trespassers where it is over three months from the date of the order (r83.26(11)); to enforce a suspended possession order where the entitlement to possession depends on breach of a condition other than the payment of money (r83.2(3)(e)); and in the other situations in r83.2(3).

⁵ New CPR 30.4(3), in force from 20 September 2020, will, on a successful transfer to the High Court, send the claim to the appropriate District Registry, if the land is within the area of a District Registry.

⁶ Note in particular that tenants remaining on land after the term date of a lease, and without security of tenure, are not trespassers for Part 55, though they are in substantive law.

⁷ Using form N293A. A certificate of judgment under CPR 40.14A(1) is produced administratively and, where the applicant is a party to the claim for possession, need not be referred to a judge. It may be signed by a court officer.

warrants of possession, it is relevant to enforcement in both the High and County Courts. Having such notice will give defendants and occupiers the opportunity to apply to set aside or suspend a possession order, or set aside a warrant or writ, before eviction but after issue of the warrant or writ. It was the absence of such an opportunity which in the High Court had made arguments about notice of the application to issue a writ so important.

Save for writs or warrants of possession to enforce possession orders against trespassers⁸, which are excluded from this new notice regime under r.83.8A(6), a notice of eviction must be delivered to the premises (r.83.8A(2)), addressed to all persons against whom the possession order was made, and “any other occupiers” (r.83.8A(3)), not less than 14 days before the writ or warrant is executed.

A prescribed form for the notice of eviction is to be found in PD 83. The notice must be delivered by inserting it through the letterbox in a sealed transparent envelope, or, if that is not practical, attaching it to the main door or some other part of the land so that is clearly visible, or placing stakes in the land where they are clearly visible, and attaching copies of the notice in a sealed transparent envelope to each stake (r.83.8A(4)).

The previous requirement for permission from the court for issue of a writ of possession has, subject to some exceptions, been removed⁹. An application for the issue of a writ where permission is not needed may also be made without notice (r.83.13(5)), though the person applying must file a certificate that the land has not been vacated (r.83.13(6)), and, if the possession order was suspended on terms as to payment of money, that person must in addition certify the amount of money remaining due under the judgment or order, and that the whole or part of any instalment due remains unpaid (r.83.13(8))¹⁰.

⁸ Though note that a person who entered or remained on the premises with the consent of a person, who at the time consent was given, had an immediate right to possession of the premises, is not a trespasser for r.83.8A(6). The definition of ‘trespasser’ here therefore echoes that in CPR 55.1, although the reference in Part 55 to trespassers not including a tenant or sub-tenant under a terminated tenancy has not been carried into r.83.8A(6).

⁹ Exceptions include claims against trespassers where the writ is issued after the expiry of three months from the date of the possession order (r.83.13(3)). Although permission from the court for issue is needed, the application for such permission may be made without notice to any other party (r.83.13(4)).

¹⁰ In respect of both writs and warrants, permission is not needed where the possession order was suspended conditional on payment of arrears. CPR 83.2 imposes a requirement for permission to issue a warrant where the possession order was suspended on terms other than the payment of money. There does not appear to be a similar requirement for writs..

Comment on the new regime

The result of these changes is to bring the procedure for issue of a writ of possession in the High Court into line with that in the County Court. Thus the flurry of cases dealing with the requirement for notice under the old CPR 83.13 for an application for issue of a writ of possession – culminating most recently in *Hertfordshire County Council v Bryn Davies* [2020] EWHC 838 QB – can perhaps now be put to one side.

The following should however be noted. Presumably, on such an application for a writ made without notice, the applicant will be under a duty of full and frank disclosure, as is the case on applications without notice generally¹¹. A failure to set out information about any steps to vacate the property which have been taken, or an inaccuracy as to the monies owed, may well, on the occupier of the land's application, lead to the setting aside of writ or indeed warrant. Thus issues with a failure to notify the court in the application to enforce of the defendant's application for permission to appeal, as in one of the writ notice cases, *Secretary of State for Defence v Helen Nicholas* [2015] EWHC 4064 (Ch), may be successful on the ground of breach of duty.

¹¹ This was applied in the context of an administrative application (a without notice application for an interim charging order) in *Ittihadih v Metcalfe*, Unrep, Master Teverson, 9 February 2017 but noted in Solicitors' Journal article April 2017.