

Practice Direction 51Z- Possession Proceedings Stay- Coronavirus

Practice Direction 51Z has been introduced, with effect from 27 March 2020.

It provides:

- “1. This practice direction is made under rule 51.2 of the Civil Procedure Rules (“CPR”). It is intended to assess modifications to the rules and Practice Directions that may be necessary during the Coronavirus pandemic and the need to ensure that the administration of justice, including the enforcement of orders, is carried out so as not to endanger public health. As such it makes provision to stay proceedings for, and to enforce, possession. It ceases to have effect on 30 October 2020.
2. All proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession are stayed for a period of 90 days from the date this Direction comes into force.
3. For the avoidance of doubt, claims for injunctive relief are not subject to the stay in paragraph 2.”

Scope of the Practice Direction

The Practice Direction is broadly drafted. It is not limited to proceedings brought by lenders or landlords in relation to residential properties, but rather applies to all possession proceedings. Accordingly, proceedings relating to commercial property are also subject to the stay. The Practice Direction is also not limited to claims where the occupier entered onto the land lawfully. Trespasser possession proceedings are thus also subject to the stay.

Effect of the Practice Direction

Existing possession proceedings are stayed until 25 June 2020, without the need for an order. If new possession proceedings are commenced, it seems they will be stayed on issue until 25 June 2020.

Where a possession order has been obtained but not executed, the enforcement of the order by execution of a writ or warrant is stayed again until 25 June 2020.

Any other options?

Even in these exceptional times, it is possible to imagine circumstances in which action is required urgently if, for example, trespassers enter into a building and their actions on the premises mean there is an imminent risk of substantial property damage.

Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 created a criminal offence of squatting, in certain circumstances, in a residential property. Should such a situation arise, one option would therefore be to contact the police.

If recourse to the Courts is necessary, the new Practice Direction makes clear that injunction proceedings are not subject to the stay and thus injunctive relief could be sought. Helpful analogies might be drawn with the numerous cases concerning protestors and urban explorers where injunctions have been granted against unknown persons entering or remaining on land. However, even if such an injunction is made, enforcement may prove problematic. As property practitioners will be aware, a writ or warrant of possession entitles the bailiffs to remove all persons on the land. The usual mechanisms for enforcing injunctions, namely sequestration and committal, are less helpful.

In relation to commercial properties, landlords who are considering peaceable re-entry will need to be aware of the restrictions contained in section 82 of the Coronavirus Act 2020.

Compiled by Julia Petrenko