

Guidance on writs of possession over the mid-winter period

1. Introduction

The Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020 (“the regulations”) came into force on 17 November 2020. The regulations apply in England only.

Until 11 January 2021, the regulations prohibit attendance by any person at any dwelling house for the purposes of executing a writ or warrant of possession or of restitution, **or to deliver a notice of eviction.**

There are exemptions to this prohibition for the most serious circumstances. These circumstances are those where the Government feels that the competing interests of preventing harm to third parties or taking action against egregious behaviour are sufficient to outweigh the public health risks.

In order for an exemption to apply, the court must be satisfied of one or more of the following:

- the claim is against trespassers who are persons unknown;
- the order for possession was made wholly or partly on the grounds of anti-social behaviour, nuisance or false statements, domestic abuse in social tenancies, or substantial rent arrears equivalent to nine months’ rent that predate 23 March 2020; or
- the order for possession was made wholly or partly on the grounds of death of the tenant, and the person attending the property is satisfied that the property is unoccupied.

2. How are exemptions identified?

In order for an eviction to proceed, the court must be satisfied that an exemption applies. One of the processes outlined below must be followed in all cases.

- i. New possession orders: from now until 11 January 2021, when making an order for possession the court will record in the order if it is satisfied that the order falls within one of the exemptions (specifying which regulation). This includes the exemption for pre-Covid rent arrears, although in this instance the claimant will need to provide a detailed calculation of rent arrears showing precisely how they meet the definition in the exemption.

The claimant must give the HCEO a copy of a court order clearly showing that the case into an allowed exemption. If the claimant fails to produce an order, the HCEO should not proceed with the eviction.

- ii. Where an exemption is not identified on the order (including orders made prior to 17 November: the claimant should make an application by filing an N244 application under Part 23 of the Civil Procedure Rules, requesting the Court “to declare itself satisfied of the following matter set out at [specify which paragraph of Regulation 2], namely [specify the matter]”. This should be ‘on notice’. The application should be sent to the court that made with the original possession order. No fee is payable for this application.

The court will then seek to list the application for hearing on the next possession day with time available, having regard to the possession proceedings listing priorities issued by the Master of the Rolls.

HCEOs should not approach the District Judge or Master directly. If a claimant believes their writ falls within a permitted ground, they should apply on notice as described above. The HCEO should not approach the judge on the claimant's behalf.

3. Other considerations

- Writs of Restitution: If the writ of restitution arose from a writ of possession that had originally been identified as an 'exemption', enforcement may proceed. Otherwise, the claimant will need to make an application as above.
- Properties unoccupied following the death of the tenant: If enforcing a writ of possession made wholly or partly on the grounds of death of the tenant (one of the permitted exemptions), the person attending the property **must also be satisfied** that the property is unoccupied. If this is not the case, they should not proceed with the eviction.
- Wales: The regulations do not apply in Wales. We will provide further information on arrangements in Wales shortly.



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