

EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT NO. 2) (CORONAVIRUS) RULES 2020

2020 No. 582 (L. 13)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends Part 55 of the Civil Procedure Rules 1998 (“CPR”) to provide for possession proceedings under that Part (with some exceptions) to be stayed, in effect extending the stay on such proceedings introduced on a pilot basis on 27 March by Practice Direction 51Z (‘PD51Z’) supplementing the CPR. PD 51Z [<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51z-stay-of-possession-proceedings,-coronavirus>] was made in response to the coronavirus pandemic to protect renters and home owners. The stay imposed by PD51Z expires on 25 June and the additional period of the stay provided for by this instrument will enable the government to finalise urgent work with the judiciary, legal and advice sectors to put appropriate arrangements in place for the resumption of proceedings on 24 August and to make sure that all parties are properly protected when the moratorium ends.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is subject to negative resolution procedure and is due to come into force on 25 June, in contravention of the convention that instruments will be laid before Parliament for 21 days before coming into force.
- 3.2 While the Ministry acknowledges the general desirability of observing the “21-day rule”, in the current fast-moving circumstances of the coronavirus pandemic and the need to extend the stay on possession proceedings without a gap, the Ministry’s view is that the coming into force of this instrument cannot be delayed for 21 days.
- 3.3 The Ministry has been considering whether, and if so how, to extend the stay on possession after the end of the period provided for by PD51Z. The original stay was introduced by a Practice Direction (made by the Master of the Rolls with the agreement of the Lord Chancellor), on a pilot basis. It expires on 25 June. An emergency working group to consider arrangements for the ending of the stay started work on 1 June. The group is led by senior judiciary and includes government departments and agencies, legal representatives and members from the advice sector, and is looking in particular at arrangements that need to be put in place to ensure that proceedings are safe and fair when the stay ends. There is a clear view amongst that group that the stay should be extended, and the Ministry has concluded that this would appropriately be done by provision in the CPR themselves rather than in a

Practice Direction. To that end, on 4 June, the Lord Chancellor issued a notice to the Master of the Rolls under s. 3A of the Civil Procedure Act 1997 that he thought it expedient for the Civil Procedure Rules to include provision that would extend the stay imposed by Practice Direction 51Z for eight weeks. That provision was agreed by the Civil Procedure Rule Committee at its meeting on 5 June and is contained in this instrument. The Ministry regrets that it has not been possible to give the usual notice period for this instrument before it comes into effect on 25 June. However, the circumstances are extreme and the Ministry's overriding concern is that there should not be any gap in the operation of the stay on possession proceedings.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This Rule amends the CPR to insert a new, temporary, rule to provide that possession proceedings and enforcement proceedings by way of writ and warrant for possession, other than those referred to in inserted rule 55.29(2) that were stayed immediately prior to the coming into force of these Rules, or which are commenced after these Rules come into force and on or before 22 August 2020, are stayed until 23 August 2020. The practical effect of this is that possession proceedings may resume on Monday 24 August 2020.
- 6.2 The new rule further provides that (i) the fact subsequent proceedings will be stayed does not prevent the issue of a claim under Part 55 (ii) the imposition of the stay does not prevent the giving of any notice required under Part 55; (iii) for the purposes of any time limit imposed under Part 55 of the Civil Procedure Rules a "day" does not include any day on which proceedings are stayed; and (iv) the 3 month time limit imposed by rule 55.15(4)(b) runs from the end of the stay imposed by the new rule.

7. Policy background

What is being done and why?

- 7.1 This instrument extends the stay on possession proceedings and will ensure that the civil justice system is "accessible, fair and efficient". The stay under Practice Direction 51Z expires on 25 June with concern that this may lead to an increase in possession cases which could result in increased homelessness at a time of continuing lockdown and public health risk. Urgent collaborative work is being undertaken to agree arrangements to manage carefully the eventual resumption of possession cases

in the courts and the resulting potential for eviction. That work has just started and there is a clear view amongst those involved that an extension is necessary to protect the public and to ensure that appropriate arrangements can be put in place to protect all those involved when cases resume. It will also enable government to develop policy options for protecting tenants, especially the most vulnerable, including those shielding.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 There are no plans to consolidate this amendment.

10. Consultation outcome

10.1 Given the urgency and need to affect changes ahead of the Practice Direction 51Z expiring on 25 June, no formal consultation has been undertaken but the Civil Procedure Rule Committee (CPRC) has agreed the detail and content of the instrument.

11. Guidance

11.1 Amendments to the civil justice system are drawn to the attention of participants, to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant legal publications by the CPR Committee secretariat; as well as by publicity within HM Courts and Tribunals Service. News of changes affecting the civil jurisdiction, are published on the Ministry of Justice website at <https://www.justice.gov.uk/courts/procedure-rules/civil>.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies, but there may be an impact on landlords operating as a business, see 12.3.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because this is temporary, emergency legislation in exceptional circumstances, a formal impact assessment is not required for Better Regulation purposes and has not been completed. This instrument does not impose any new policy, but rather aims to extend the stay on possession cases that has been in place since 27 March 2020. That stay was imposed under Practice Direction 51Z [<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51z-stay-of-possession-proceedings,-coronavirus>] which was considered and confirmed by the Court of Appeal in the case of *Arkin v Marshall* (2020) EWCA Civ 620. The extended stay on possession proceedings will have an impact on landlords who are unable to pursue proceedings for eviction. There are usually around 11,500 new possession cases each month. However, given the wider circumstances of the public health implications of Covid-19 and the need to prevent homelessness, and the arrangements that have been put in place to support the rented

sector, the government believes that an extension is a necessary and proportionate response. It will also give time for an emergency working group to conclude its work. That group is led by the senior judiciary and comprises government departments and agencies, legal representatives and members from the advice sector, and is looking at arrangements that need to be put in place to ensure that proceedings are safe and fair when the stay ends. The government is mindful of its responsibilities under the Public Sector Equality Duty and will continue to keep this matter under review. It would be prepared to undertake a more detailed impact assessment in due course if the need arises.

13. Regulating small business

- 13.1 The legislation applies to activities that may be undertaken by small businesses as landlords or tenants. The policy intention is to extend the stay on possession proceedings and the Ministry acknowledges that this may act to the detriment of some small businesses and to the advantage of others.
- 13.2 Given the temporary and urgent nature of the measure, and the policy intention, no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 This legislation will not be monitored as it introduces a temporary rule to extend measures previously introduced under Practice Direction 51Z. The extension of time will allow for ongoing work to conclude on how to protect the public and to ensure that appropriate arrangements can be put in place to protect all those involved when possession cases resume in the courts.

15. Contact

- 15.1 Marcia Williams at the Ministry of Justice Telephone: 0203 334 4289 or email: Marcia.williams@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Civil Justice and Law, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.