

EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT NO. 4) (CORONAVIRUS) RULES 2020

2020 No. 751 (L. 17)

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 arrangements for managing the resumption of possession proceedings under that Part. This follows the Civil Procedure (Amendment No. 2) (Coronavirus) Rules 2020 (S.I. 2020/582) which extended for two months (to 23 August 2020) the stay on possession proceedings imposed by Practice Direction 51Z supporting the CPR¹ (which expired on 25 June), providing time to put appropriate arrangements in place for the resumption of possession proceedings when the stay ends and to ensure that all parties are properly protected as proceedings resume. This instrument makes rule amendments to enable effect to be given to the agreed arrangements.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is subject to the negative resolution procedure and comes into force on 23 August. While that is more than 21 days after the instrument was laid, a significant proportion of that period falls after Parliament has risen.
- 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 have appropriate arrangements in place when the stay on possession proceedings ends on 23 August, the Ministry’s view is that the coming into force of this instrument cannot be delayed for the period necessary to allow for 21 days while Parliament is sitting.
- 3.3 Work on considering what arrangements and procedures are required, and how best to manage possession cases after the lifting of the stay on possession proceedings on 23 August 2020, has been undertaken, in particular by an emergency working group since 1 June. The group is led by senior judiciary and includes representatives of government departments and agencies, legal representatives and members from the advice sector, and has considered how best to address matters affecting litigants and the courts after lifting of the stay on possession proceedings is lifted. Particular regard has been had to—
 - a. the practical issues, including pre-action conduct, case management, remote-working and social distancing, and managing increased volume;

¹ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51z-stay-of-possession-proceedings-coronavirus>, made under CPR rule 51.2 in response to the coronavirus pandemic to protect renters and home owners.

- b. the position of tenants, landlords, lenders, local authorities, and other court users; and
 - c. where people are particularly vulnerable.
- 3.4 The arrangements put in place will be temporary until 28 March 2021, with a facility to review in the meantime, and include—
- a requirement for a claimant to inform the court who wishes to resume stayed proceedings to inform the court and defendant in writing of this after the expiry of the stay in a “reactivation notice”;
 - requiring the claimant to provide (in the particulars of claim reactivation notice or for the hearing as appropriate) any relevant information about the defendant’s circumstances to include information on the effect of the pandemic on the defendant and his/her dependants, which will enable the court to have regard to vulnerability, disability, and social security position, and those who are “shielding”;
 - to allow the court to fix a date either on or after issue (so that hearings may be appropriately spread out and avoiding “bunching”.
 - to suspend the standard period between issue of a claim form and hearing which usually would be not more than eight weeks, again to spread out hearings appropriately in particular having regard to court capacity;
 - to require a claimant so far as practicable to produce the full arrears history in advance rather than at the hearing.
- 3.5 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 Civil Procedure Rules are made by the Civil Procedure Rule Committee (CPRC) under the Civil Procedure Act 1997, section 2(6) of which requires the CPRC before making rules to meet (unless inexpedient to do so) and consult such persons as they consider appropriate. The CPRC meets 9 times a year and except in very rare circumstances considers any proposed matters for inclusion in the rules in at least one meeting (as it did for the matters in the present instrument). Consultation is addressed in section 10 of this memorandum.
- 6.2 This instrument inserts into Part 55 of the CPR a new rule which provides the basis for a new, temporary Practice Direction 55C supplementing Part 55 (“PD55C”). PD55C (which is available on the Ministry of Justice website at <http://www.justice.gov.uk/courts/procedure-rules/civil>) in turn provides for the

temporary arrangements to support the administration of justice and to promote best practice and consistency in and related to possession proceedings in the continuing context of the pandemic and the economic situation. This is done in exercise of the power conferred by paragraph 6 of Schedule 1 to the Civil Procedure Act 1997. Other examples of the exercise of this power include CPR rule 51.2 (which enables modification of the rules for the purpose of pilot schemes²), and CPR rules 57A.3 and 63A.3 (which enable a practice direction to provide for provisions of the CPR not to apply for the purposes of claims in the Business and Property Courts and the Financial List respectively). This approach confers maximum flexibility, enabling any adjustment of the temporary provisions which might emerge in the light of operational experience and review to be necessary to be made by practice direction (as with the amendments made, in the light of practical operational experience and representations, to Practice Direction 51Z). The practical effect is that these arrangements come into effect when the stay on possession proceedings is lifted and cases resume in the courts on Monday 24 August 2020.

7. Policy background

- 7.1 This instrument introduces temporary arrangements to protect the public and to ensure that appropriate arrangements are in place to protect all those involved when cases resume and to ensure that the civil justice system is “accessible, fair and efficient”. It addresses so far as practicable matters affecting litigants and the courts when the present stay on possession proceedings is lifted and promotes best practice and consistency in and related to possession proceedings in the continuing context of the pandemic and the economic situation whilst being mindful of the impact of Covid-19 on the courts and court procedures and the economy.

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. The new rule 55.A1 will be revoked, together with PD55C which it introduces, when there is no longer a need for the temporary provision they make (which will be kept under continuous review).

10. Consultation outcome

- 10.1 The CPRC does not always undertake a formal public consultation on proposed amendments to the rules, but does endeavour to ensure that its development of proposals and drafting is informed by relevant views from outside the Committee (such as operational experts in her Majesty’s Courts and Tribunals Service, relevant Government departments, members of the judiciary and practitioner and lay advice sector interests (in particular via the Civil Justice Council), as appropriate to particular proposal and the circumstances in which it arises. The proposals giving rise to this instrument were initially developed by a working group separate to the CPRC,

² Rule 51.2 was considered by the Court of Appeal in *Arkin v. Marshall* [2020] EWCA Civ 620, holding that rule 51.2 was *intra vires* the Civil Procedure Act 1997 provisions, and that Practice Direction 51Z was *intra vires* rule 51.2.

involving the senior judiciary, Government departments and agencies, in consultation with legal representatives and members from the advice sector, and subsequently by a sub-committee of the CPRC which was in regular communication with the working group to settle the detail of the rules changes. The senior judicial chair of the working group (also a member of the Civil Justice Council) attended the CPRC's meeting to provide further input into the detail of the final drafting.

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 introduce temporary arrangements to manage possession proceedings in light of the impact of covid-19 on litigants and the court system. This instrument will also promote best practice and consistency in and related to possession proceedings in the continuing context of the pandemic and the economic situation, as the stay is lifted. The temporary arrangements for possession proceedings will have an impact on landlords who have been unable to pursue proceedings for eviction and will be required to demonstrate that they have engaged with their tenants in an effort to find a solution before making a claim. 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 the resumption of cases should be handled in a sensitive and proportionate manner.

13. Regulating small business

- 13.1 The legislation applies to activities that may be undertaken by small businesses such as landlords or tenants. The policy intention is to effectively manage the resumption of 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 temporary rule changes for temporary measures to assist litigants and the courts to manage possession cases when

the stay on proceedings is lifted. These arrangements need to be in place when proceedings resume so that courts and users are clear about the changes in court requirements in view of the impact of Covid-19 and the additional information required by 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 Lord Chancellor at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard