

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PROCEDURE (AMENDMENT NO. 5) (CORONAVIRUS) RULES 2020**  
**2020 No. 889 (L. 20)**

**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”). The amendment extends the operation of rule 55.29 to provide for possession proceedings under that part (with some exceptions) to be stayed for a further period of four weeks from 23 August until 20 September 2020. A stay was first introduced on a pilot basis on 27 March 2020 by Practice Direction 51Z<sup>1</sup> supplementing the CPR, which was made in response to the coronavirus pandemic to protect renters and home owners. It was extended, in effect, by the insertion of rule 55.29 by the Civil Procedure (Amendment No. 2) (Coronavirus) Rules 2020 (S.I. 2020/582) to the 23 August. Continuing the stay for a further short period will allow time to be sure that all practical arrangements to protect renters are in place, before this stay is lifted. The instrument also makes consequential amendments to the Civil Procedure (Amendment No. 3) Rules (S.I. 2020/747).

**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 the negative resolution procedure and comes into force on 22 August. It is laid two days after that date and 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 continuous 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 or whilst Parliament is sitting.
- 3.3 The insertion of rule 55.A1 by the Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020 (S.I. 2020/751) gives effect to a new temporary Practice Direction 55C<sup>2</sup> to put in place arrangements for the resumption of possession proceedings when the stay ends and to ensure that all parties are properly protected when proceedings resume.

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<sup>1</sup> <http://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. 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.

<sup>2</sup> <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-55c-coronavirus-temporary-provision-in-relation-to-possession-proceedings>

Without an extension to rule 55.29, Practice Direction 55C will have effect from 23 August. Whilst it had been the ambition to reopen the courts from 23 August, there are continuing public health concerns in relation to the Coronavirus pandemic, which have resulted in a series of local lockdowns. The end of the stay on 23 August without all possible practical arrangements in place to support tenants and landlords when proceedings resume could present risks to public health. Whilst those arrangements are finalised, protection will continue to be provided to renters through a further short stay on proceedings.

- 3.4 To that end, on 20 August, the Lord Chancellor issued a notice to the Master of the Rolls pursuant to section 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 rule 55.29 for four weeks. That provision was agreed by the Civil Procedure Rule Committee at an extraordinary meeting on 21 August and is contained in this instrument. For operational reasons, the stay was intended to end on Sunday 23 August. The Committee having both met and made the rules on 21 August, and the Minister having made this instrument on that date, the first available date for laying this instrument is 24 August. The Ministry regrets that it has not been possible in this instance to give the usual notice period, nor to comply with the normal procedure for making and laying an instrument before commencement. However, the government's overriding concern is that there should not be a gap in the operation of any stay on possession proceedings while new arrangements are finalised to ensure the protection of renters in the ongoing pandemic.

*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)*

- 3.5 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 nine times a year and except in very rare circumstances meets before making rules, as it did (in an extraordinary meeting) for the matters in the present instrument. Consultation is addressed in section 10 of this memorandum.  
6.2 This instrument amends Part 55 of the CPR, the practical effect of which is to extend the current stay on possession proceedings in rules 55.29 from 23 August to 20 September 2020.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument introduces temporary arrangements to protect the public in the continuing context of the pandemic and the economic situation. No further extension was anticipated when the stay on possession proceedings was previously extended in June. The volume of Coronavirus cases had been steadily declining since the peak in April and had continued to do so until early July. More recently cases have started to increase again and a number of local areas have been placed into lockdown. Relatedly, comparable European countries such as France and Spain have seen an increase in their COVID cases resulting the Foreign and Commonwealth Office advising against non-essential travel.
- 7.2 In this context, we have reviewed the imminent end to the stay on possession proceedings. Our primary consideration is public health and the potential strain on public services. We are mindful of the possible increase of infection rates as we head into winter, coupled with the annual flu season. We, therefore, do not believe it is appropriate to reopen the courts without all practical arrangements in place to provide protections to tenants in the ongoing pandemic. Continuing the stay for a further short period will allow time to ensure these arrangements are in place before the stay is lifted.

## **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 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 a particular proposal and the circumstances in which it arises. Given the urgency in ensuring that, for public health reasons, there should be not be a gap in the operation of any stay on possession proceedings, requiring the CPRC to make the rules within a day of the Lord Chancellor's notice under section 3A of the 1997 Act, no formal consultation has been undertaken, but members of the Working Group established by the Master of the Rolls to work through the detail of the arrangements for handling cases when proceedings resume were invited to attend the CPRC's extraordinary meeting and were able to contribute their views to, and inform, the CPRC's deliberations.

## **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 proceedings that has been in place since 27 March 2020. The extended stay will have an impact on landlords who are unable to pursue proceedings for eviction. However, given the wider circumstances of the public health implications of Covid-19 and the need to prevent homelessness while practical measures are put in place, the government believes that a further short extension of the current stay is necessary and justified. 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 such as landlords or tenants. The policy intention is to protect tenants 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 change for measures in view of the impact of Covid-19.

## **15. Contact**

- 15.1 Amrita Dhaliwal at the Ministry of Justice Telephone: 020 333 4 6306 or email: [amrita.dhaliwal@justice.gov.uk](mailto:amrita.dhaliwal@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