

Approved

Minutes of an EXTRAORDINARY MEETING OF THE CIVIL PROCEDURE RULE COMMITTEE Friday 21st August 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

The Master of the Rolls (Jointly Chaired with Lord Justice Coulson)
Lord Justice Coulson
Mr Justice Birss
Mr Justice Kerr
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
Richard Viney
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall

Apologies

No apologies were recorded.

Covid-19, Court recovery and related matters: Lord Chancellor's Notice under s.3A Civil Procedure Act 1997 to extend the stay on possession proceedings imposed by CPR 55.29

1. The Rt. Hon. Sir Terence Etherton, MR, opened the meeting with sincere thanks to members for attending this urgent, extraordinary meeting; in many instances members had returned from leave or rearranged business commitments to do so.
2. The MR drew members' attention to the Lord Chancellor's letter of 20 August 2020 which comprised a Notice under s.3A Civil Procedure Act 1997. It set out that the Lord Chancellor thought it expedient that the CPRC include provision in the rules that would extend the current stay on possession proceedings imposed by CPR 55.29 for a period of four weeks, to 20 September 2020.
3. In explaining the background and principles, the MR emphasised that the CPRC is an independent decision-making body and that the Notice must be considered in the context of the CPRC's statutory vires of ensuring that the, "civil justice system is accessible, fair and efficient". The CPRC was not in a position to make rules of court for the purpose of giving effect to broad economic and social policies of Government unconnected with the purpose of the committee and the CPR.
4. Given that the short extension being sought would allow time for final preparations and procedural arrangements to be made for the resumption of possession cases in the courts, this was considered to be consistent with the CPRC's statutory rule making requirements and as such, the Notice was deemed to have been lawfully made. This, in turn, meant that the CPRC had no option but to give effect to it.
5. A discussion as to the principle ensued, in which members expressed their views. The discussion highlighted a number of issues. Although it was recognised that, in the context of a public health crisis, the situation was an ever-changing and fast-moving landscape, there was a general feeling of disquiet from members concerning the very short notice being given to consider the position and, therefore, the opportunity for consultation was extremely limited. However, it had been possible to canvass the view of Mr Justice Robin

Knowles (as chair of the MR's Working Group and who was present at the CPRC meeting) and he confirmed that a continuation of the stay for four weeks would assist the Working Group in completing some outstanding matters in readiness for when the stay is lifted and proceedings resume.

6. Members were also very conscious of the need to avoid unintended consequences; a need for the position in Wales to be understood; a concern as to why the emphasis was on renters, when there was a duty to act in the interests of justice for all categories of defendants and parties in possession proceedings; and questioned why - if the intention is to align the current stay on residential possessions with HM Treasury's policy on the moratorium for commercial property - the proposed changes did not provide consistency.
7. It was also noted, with thanks, that other judges involved in possession and related enforcement work were present and invited to contribute, albeit not as substantive vote holding CPRC members: His Honour Judge Lethem, Master Dagnall, Senior Master Fontaine and His Honour Judge Jan Luba QC. Officials from the Ministry of Housing, Communities & Local Government, the Ministry of Justice and HM Courts & Tribunals Service were also in attendance.
8. The MR made it clear that if Government did see the need for a further stay in response to general social/economic policies, then it should consider how to achieve that without remittal to the CPRC or attempting to use a s.3A Notice.
9. It was **RESOLVED**, by a majority, to give effect to the s.3A Notice and thus, extend the stay on possession proceedings imposed by CPR 55.29 for four weeks until the 20 September 2020.
10. With the points of principle having been addressed, the MR left the meeting and Lord Justice Coulson took the Chair.
11. A discussion as to the proposed drafting for an amended rule 55.29 and amended PD55C took place. Alasdair Wallace and Andrew Currans took members through various drafting queries which were discussed. Coulson LJ made it clear that the CPRC had received the proposed drafting very late, overnight, and the meeting was convened at speed; the task now was to determine the drafting within the very narrow requirements of the Lord Chancellor's Notice. If subsequent issues arise, they can be considered. He also recalled the JCSI's letter in response to the last rule change the CPRC made in response to a s3A Notice, which questioned the CPRC's position regarding consultation. Drafting lawyers replied to explain that the requirement, 'to consult such persons as they consider appropriate' should now be understood to mean, such persons, 'if any', because it does not mean consultation has to take place every time rules are made. In instances such as this, where rules are made pursuant to a s.3A Notice from the Lord Chancellor, consultation does not have to take place. The concerns regarding sufficient time to avoid unintended consequences were also reiterated. In relation to the Practice Direction amendments, it was agreed not to change the end date (28 March 2021) of the, "interim period" (at paragraph 1.1) because that date is for review purposes; it was also decided not to make retrospective changes (for example at paragraph 1.4).
12. It was **AGREED** that:
 - CPR 55.29 be amended at paragraph (1)(a) by substituting "22 August 2020" with "19 September 2020" and at paragraph (1)(b) by substituting "23 August 2020" with "20 September 2020".
 - In consequence, the Civil Procedure (Amendment No. 3) Rules 2020 are also amended to align the coming into force date of some provisions therein with the new end date of the extended stay.

- PD 55C be amended at paragraph 1.1 by substituting “23 August 2020” with “20 September 2020”; at paragraph 1.3, in the definitions of “stayed claim” and “new claim”, to substitute “22 August 2020”, with “19 September 2020” and in paragraph 5.1, in both places it appears, to substitute “23 August 2020”, with “20 September 2020”.
13. **Actions:** (i) Drafting Lawyers, Officials and Secretariat to urgently finalise the related instruments for signature and submission to the Lord Chancellor for signing today and onward laying in Parliament (ii) Officials to co-ordinate communications.
 14. **Post Meeting Note:** The enabling Statutory Instrument, The Civil Procedure (Amendment No. 5) (Coronavirus) Rules 2020, was published on the Legislation website here: <http://www.legislation.gov.uk>. The related PD amendments are contained in the 124th Practice Direction Update which is published on the CPR web page here: <https://www.justice.gov.uk/courts/procedure-rules/civil>
 15. The meeting closed with thanks to all for attending at such short notice and the Chair emphasised the earlier concerns in this regard. He also recognised the huge amount of work already done by the Working Group to prepare for when the stay is lifted. Robin Knowles J said that this work will now continue over the additional four weeks provided by this extension so that the final procedural arrangements can be made for the resumption of possession cases. In doing so, confidence in the system should be enhanced which further supports the CPRC’s vires that rule making is exercised with a view to securing a civil justice system which is accessible, fair and efficient.

C B POOLE
August 2020

Attendees:

Nicola Critchley, Civil Justice Council
 Carl Poole, Rule Committee Secretary
 Peter Clough, CPRC Secretariat
 Amrita Dhaliwal, Ministry of Justice
 Alasdair Wallace, Government Legal Department
 Andy Currans, Government Legal Department
 Sam Allan, Judicial Office
 Andy Caton, Judicial Office
 Amy Shaw, Judicial Office
 His Honour Judge Lethem
 Master Dagnall
 Mr Justice Robin Knowles CBE
 His Honour Judge Jan Luba QC
 Senior Master Fontaine
 Fiona Rutherford, Ministry of Justice
 David Parkin, Ministry of Justice
 Marcia Williams, Ministry of Justice
 David Hamilton, Ministry of Justice
 Simon Vowles, HM Courts & Tribunals Service
 Faye Whates, HM Courts & Tribunals Service
 Alana Evans, HM Courts & Tribunals Service
 Stuart Wright, HM Courts & Tribunals Service
 Yvonne Jacobs-Jones, Chancery Lawyer, RCJ Group, HM Courts & Tribunals Service
 Rebecca Perks, Ministry of Housing, Communities & Local Government
 Leigh Shelmerdine, Civil Justice Council Secretariat