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# CIVIL PROCEDURE NEWS

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# In Brief

## Cases

- **Taylor Wimpey UK Ltd v Harron Homes Ltd** [2020] EWHC 1190 (TCC), 13 May 2020, unrep. (Fraser J)  
*Pre-action disclosure – defendant’s application – ADR*

**CPR r.31.16.** The applicant applied for pre-action disclosure arising from a dispute as to land drainage. The dispute was subject to a contractually agreed dispute resolution procedure, which obliged the parties to refer it to expert determination. The applicant, who would have been the defendant in any claim, applied for pre-action disclosure. **Held**, the application was refused. In doing so Fraser J held that the fact that the applicant was the potential defendant to a claim did not go to the jurisdictional test per **Black v Sumitomo Corp** (2001). It was an issue that was potentially relevant to the exercise of discretion should the jurisdictional test be satisfied. The nature and extent of its relevance would need to be considered on a case-by-case basis, however it may be relevant in so far as saving cost was concerned. It might also be relevant given the additional uncertainty, as to whether a claim would be commenced, that could arise due to the applicant being a potential defendant. The basis on which the applicant was refused was, however, that to accede to it would frustrate the terms of the contractually agreed dispute resolution procedure. On the point Fraser J emphasised, at paras 41 and 54, that the court would be particularly astute to ensure that pre-action disclosure applications were not used to “frustrate, impede or interfere” with such agreements. **Black v Sumitomo Corp** [2001] EWCA Civ 1819; [2002] 1 W.L.R. 1562, ref’d to. (See **Civil Procedure 2020** Vol.1 at para.31.16.4.)

- **R. (McKenzie) v Leeds Crown Court** [2020] EWHC 1867 (Admin), 15 July 2020, unrep. (Rafferty LJ, Sir Michael Supperstone)  
*Lord Chief Justice – general listing power*

**Constitutional Reform Act 2005 s.7(1).** The Divisional Court considered a judicial review challenge to a decision of the Crown Court at Leeds to extend the custody time limit in respect of an individual who was in custody on remand. One aspect of the challenge concerned a decision by the Lord Chief Justice, dated 23 March 2020, to suspend the listing of jury trials as a consequence of the COVID-19 pandemic. In dismissing the application, the court **held** that the Lord Chief Justice’s decision to suspend jury trials was a listing decision. While such decisions, which are judicial decisions, are ordinarily carried out by individual judges, as President of the Crown Court and Head of the Judiciary in England and Wales, the Lord Chief Justice was ultimately responsible for listing, i.e. he retained a general listing power. As President of the civil courts and Head of the Judiciary it would appear that, by parity of reasoning, the Lord Chief Justice has an analogous general listing power in respect of civil proceedings. (See **Civil Procedure 2020** Vol.2 at para.9A-970+.)

- **Phones 4U Ltd (In Administration) v EE Ltd** [2020] EWHC 1921 (Ch), 17 July 2020, unrep. (Roth J)  
*Disclosure – employee’s email or SMS messages on mobile device*

**CPR r.31.8.** A number of issues concerning disclosure were considered by Roth J in proceedings arising out of the collapse of Phones 4U Ltd. One issue concerned disclosure of emails and/or SMS messages that were held on mobile devices of present or former employees; an issue that is likely to become increasingly common. Roth J noted that the starting point for disclosure was, as per **BES Commercial Electricity Ltd v Cheshire West and Chester BC** (2020) at paras 74–79, for the disclosing party to request that their employees or former employees make their devices available for inspection. He went on to provide guidance, at paras 56–57, on the approach to be taken where the device was the personal device of the employee or former employee. In such a situation, the court should ensure that any disclosure order interferes as little as possible with their right of privacy. That being said, the court has the power to order access to and inspection of their device. Where disclosure is ordered, the court ought not to order that the device be provided to the party that has sought disclosure. On the contrary, it ought to be ordered to be delivered to an independent IT consultant, who should provide an undertaking to the court that they will only search the device for specified data within the terms of the order. They should also provide undertakings that no further data be disclosed to the relevant party’s solicitors and that the device be returned to its owner once the search has been completed. **BES Commercial Electricity Ltd v Cheshire West and Chester BC** [2020] EWHC 701 (QB), unrep., QB, ref’d to. (See **Civil Procedure 2020** Vol.1 at para.31.8.2.)

- **Phones 4U Ltd (In Administration) v EE Ltd** [2020] EWHC 1943 (Ch), 20 July 2020, unrep. (Roth J)  
*Security for costs – indemnity costs*

**CPR rr.25.12, 44.2.** The first, second and third defendants applied for security for costs in litigation arising out of the collapse of Phones 4U Ltd. Security was sought on the basis of potential liability for indemnity costs. Roth J noted that

the critical issue as to whether indemnity costs should be ordered depended on there being “some conduct or some circumstance that took the case out of the norm”: see *Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hammer Aspden & Johnson (Costs)* (2002), paras 32 and 39. He further noted Tomlinson J’s summary of various circumstances that have been held to justify such an order in *Three Rivers DC v Bank of England* (2006) at para.25. The defendants relied on first instance decisions: *Danilina v Chernukhin* (2018) and *Re Ingenious Litigation* (2020). They did so as the claims raised issues of deceit and other serious allegations of impropriety. In dismissing the application, Roth J held that: (i) in so far as *Danilina* and *Re Ingenious* could be interpreted as setting out that as a general test for awarding a higher level of security for costs it was necessary to show that there was a “real possibility” or a “reasonable possibility” that indemnity costs would ultimately be awarded, he disagreed with it: such a test was too low. Moreover, it was inappropriate to treat such characterisations as akin to a statutory test. The Court of Appeal’s decision in *Stokors SA v IG Markets Ltd* (2012), and particularly Tomlinson LJ’s observation at para.42 of that judgment, supported that view; and (ii) in looking at *Danilina* and *Re Ingenious* it was necessary to consider their factual context, which led to the conclusion that indemnity costs were a real or reasonable possibility. The factual circumstances of the present case, which concerned a competition law claim, were such that allegations of impropriety, e.g. secret agreements, were commonplace: they did not take the claim out of the norm (see para.34) as per *Excelsior Commercial. Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hammer Aspden & Johnson (Costs)* [2002] EWCA Civ 879; [2002] C.P.L.R. 693, *Three Rivers DC v Bank of England* [2006] EWHC 816 (Comm); [2006] 5 Costs L.R. 714, *Stokors SA v IG Markets Ltd* [2012] EWCA Civ 1706, unrep., *Danilina v Chernukhin* [2018] EWHC 2503 (Comm), unrep., *Re Ingenious Litigation* [2020] EWHC 235 (Ch), unrep., ref’d to. (See *Civil Procedure 2020* Vol.1 at para.25.13.1.)

# Practice Updates

## STATUTORY INSTRUMENTS

### THE CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2020

The Civil Procedure (Amendment No.3) Rules 2020 (SI 2020/747) come into force on **1 October 2020** with the exception of the amendments to Pts 30 and 83 which come into force on **23 August 2020**. It makes a number of amendments, the most significant of which are to: incorporate aspects of PD 3E into CPR Pt 3; ensure that claims against Welsh public bodies under Pt 7 are heard in Wales; amend Pt 3 in respect of transfers of enforcement proceedings concerning possession of land by the County Court to the High Court; and to substitute a new CPR Pt 81, with related consequential amendments in other Parts of the CPR. It also amends Pts 32, 34, 45, 61, 73, 77 and 83. As the amendments to Pts 30 and 83 come into force on **23 August 2020**, they are reproduced below.

#### AMENDMENT OF PART 30

6. In rule 30.4, after paragraph (2) insert—
- “(3) Where—
- (a) proceedings for the enforcement of a judgment or order for possession of land are transferred by the County Court to the High Court; and
  - (b) the land which is the subject of the possession order is located within the area of a District Registry, then, unless the court orders otherwise on or following transfer, the transfer shall be to that District Registry and all applications made in the High Court in relation to such transferred proceedings (including for any stay or suspension of any writ) shall be made in that District Registry.”.

#### AMENDMENT OF PART 83

16. —(1) After rule 83.8 insert—
- “**Notice of execution of writs and warrants of possession**
- 83.8A.**—(1) This rule applies to—
- (a) writs of possession; and
  - (b) warrants of possession, other than writs and warrants excluded by paragraph (6).
- (2) Subject to paragraph (5), a notice of eviction must be delivered to the premises not less than 14 days before the writ or warrant is executed.
- (3) The notice of eviction referred to in paragraph (2) must—
- (a) be addressed to—
    - (i) all persons against whom the possession order was made; and
    - (ii) “any other occupiers”; and

- (b) be in the form prescribed by Practice Direction 83.
- (4) The notice of eviction must be delivered by—
- (a) inserting it through the letter box in a sealed transparent envelope;
  - or
  - (b) if that is not practicable—
    - (i) attaching a copy to the main door or some other part of the land so that it is clearly visible; or
    - (ii) if that is not practicable, placing stakes in the land in places where they are clearly visible and attaching to each stake a copy of the notice in a sealed transparent envelope.
- (5) The court may—
- (a) dispense with the requirement to deliver a notice of eviction; or
  - (b) extend or shorten the time by which a notice of eviction must be delivered, but may not exercise its powers under sub-paragraph (b) so as to postpone the date of execution of any writ or warrant of possession beyond the last date permitted for that purpose by or under any enactment.
- (6) This rule does not apply to writs or warrants of possession to enforce possession orders against trespassers, other than possession orders against persons who entered or remained on the premises with the consent of a person who, at the time consent was given, had an immediate right to possession of the premises.”
- (2) In rule 83.13—
- (a) in paragraph (1)—
    - (i) for sub-paragraph (b) substitute—  
“(b) proceedings for contempt of court under Part 81;” and
    - (ii) for sub-paragraph (c) substitute—  
“(c) where no such proceedings are brought, by a writ of sequestration.”; and
  - (b) for paragraphs (2) to (9) substitute—
    - (2) No writ of possession to enforce a notice under section 33D of the Immigration Act 2014 may be issued without the permission of the court.
    - (3) No writ of possession against a trespasser may be issued after the expiry of 3 months from the date of the order without the permission of the court.
    - (4) Unless the court otherwise directs, an application for permission under paragraph (3) may be made without notice to any other party.
    - (5) An application for a writ of possession may be made without notice.
    - (6) The person applying for a writ of possession must file a certificate that the land which is the subject of the judgment or order has not been vacated.
    - (7) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.
    - (8) In a case to which paragraph (7) applies or where an order for possession has been suspended on terms as to payment of a sum of money by instalments, the person applying for a writ of possession must certify—
      - (a) the amount of money remaining due under the judgment or order; and
      - (b) that the whole or part of any instalment due remains unpaid.”.
- (3) In rule 83.14—
- (a) in paragraph (1)—
    - (i) for sub-paragraph (b) substitute—  
“(b) proceedings for contempt of court under Part 81;” and
    - (ii) for sub-paragraph (c) substitute—  
“(c) where no such proceedings are brought, by a writ of
  - (b) in paragraph (2), for sub-paragraph (c) substitute—  
“(c) proceedings for contempt of court under Part 81;”.

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

The Civil Procedure (Amendment No. 4) Rules 2020 (SI 2020/751) come into force on **23 August 2020**. It inserts a new, temporary, CPR r.55A1, which gives effect to a temporary CPR PD 55C (see below). At the time of writing this statutory instrument is subject to a prayer for annulment in the House of Lords (see <https://lordsbusiness.parliament.uk/ItemOfBusiness?itemOfBusinessId=81311&sectionId=48&businessPaperDate=2020-07-24> [Accessed 28 July 2020]). The basis on which annulment is sought is that the statutory instrument will

*“permit evictions which have been paused during the COVID-19 pandemic to be resumed before Parliament has had an opportunity to debate the impact of the Rules on (1) homelessness, and (2) the spread of COVID-19”.*

That evictions will recommence will, however, flow from the stay on possession proceedings and enforcement of such proceedings being lifted on 23 August 2020 not by this statutory instrument but by CPR r.55.29(2). Should the statutory instrument be annulled, possession proceedings will become subject to the, unamended, CPR Pt 55 and its Practice Direction. The statutory instrument amends Pt 55 as follows.

#### AMENDMENT OF THE PROCEDURE RULES 1998

2. In Part 55 of the Civil Procedure Rules 1998—

(a) at the beginning of the list of contents insert—

“Coronavirus – temporary provision Rule 55.A1”; and

(b) before rule 55.1 insert—

#### “Coronavirus – temporary provision

**55.A1**—(1) Practice Direction 55C makes provision for how claims under this Part (including appeals) are to proceed following the expiry of the stay provided for by rule 55.29.

(2) This Part has effect subject to Practice Direction 55C for the period specified, and in the manner specified, in Practice Direction 55C.”.

## PRACTICE DIRECTIONS

**PRACTICE DIRECTION – INSOLVENCY PROCEEDINGS (2018).** This Practice Direction was amended by the Chancellor of the High Court on 3 July 2020.

**INSOLVENCY PRACTICE DIRECTION RELATING TO THE CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020.** This Practice Direction issued by the Chancellor of the High Court came into force on **3 July 2020**. It makes provision concerning winding-up petitions consequent on the Corporate Insolvency and Governance Act 2020 and the COVID-19 pandemic.

**CPR PRACTICE DIRECTION – 122nd Update.** This Practice Direction Update affected a number of amendments which were variously in force on **17 July, 11.00 on 27 July, 23 August 2020, 1 October 2020** and immediately upon the entry into force of the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (SI 2019/521). It variously amends PDs 3E, 4, 7A, 7C, 7E, 15, 16, 22, 31A, 31B, 32, 34A, 35, 40B, 40D, 51M, 51R, 51S, 51U, 51V, 51Y, 52C, 63AA, 81, 83, PD-Pre-Action Conduct and Protocols, and the Practice Direction: Committal for Contempt of Court – Open Court. Most significantly it substitutes a new PD 3E, updates references regarding the wording of the warning concerning false statements of truth consequent on prior amendment to Pt 22 (see the amendments to PDs 7A, 7C, 7E, 15, 16, 31B, 35, and 40D), makes various updates consequent upon the introduction of a new CPR Pt 81 (see the amendments to PD 4, PD 22, PD 32, PD 40B, and PD 81, which is revoked, and the PD: Committal for Contempt of Court), revokes PD 51M and incorporates the Financial Markets Test case scheme in PD 63AA, introduces new provision for Nautical Assessors in the Court of Appeal in PD 52C (which replaces *Practice Direction (Admiralty Appeals: Assessors)* [1965] 1 W.L.R. 853), and introduces a requirement that a notice of eviction under CPR r.83.8A be in Form **N54**. The amendments that came into force on **17 and 27 July and 23 August 2020** are reproduced below.

The following amendment comes into force on **17 July 2020**.

#### PRACTICE DIRECTION 51Y – VIDEO OR AUDIO HEARINGS DURING CORONAVIRUS PANDEMIC

1) In paragraph 1, for “section 75” substitute “section 89”.

The following amendments come into force at **11.00 on 27 July 2020**.

#### PRACTICE DIRECTION 51R – ONLINE CIVIL MONEY CLAIMS PILOT

1) In the table of contents, after the entry for paragraph 14.1, insert –

Documents scanned by the bulk scanning provider – treated as true copy of the original by the court	Paragraph 14.2
Changes to practice direction 32 – evidence	Paragraph 14.3

”.

2) In paragraph 1.1, after the definition of “alternative response” insert –

“bulk scanning provider” means the bulk scanner supplying scanning services via the OCMC postal address;”.

- 3) In paragraph 2.1(2) –
  - a) after “(“CCBC”) insert “, but operating out of the Courts and Tribunals Service Centre at Stoke on Trent”; and
  - b) for “Online Civil Money Claims, County Court Business Centre, St Katharine’s House, 21-27 St. Katharine’s Street, Northampton, NN1 2LH, DX 702885 Northampton 7”, substitute “HMCTS CMC, PO Box 12747, Harlow, CM20 9RA”.
- 4) ...
- 5) In paragraph 14.1(A1), after “document or email” insert “submitted to the court electronically”.
- 6) After paragraph 14.1(2), for the words in parentheses, substitute –
  - “(2A) Where a form or document is received on paper at the OCMC postal address before 4.00 p.m., that document is treated as submitted to the court that day.
  - (2B) Where a form or document is received on paper copy at the OCMC postal address at or after 4.00 p.m. and before or at 11.59 p.m., that document is treated as submitted to the court before 4.00 p.m. on the next day the court office is open.
  - (2C) If a person sends a paper copy form or document to the court using an address that is not the OCMC postal address, the court may send it to the OCMC postal address (The form or document is still treated as submitted to the court when it was received at the first address.)”.
- 7) After the words in parentheses after paragraph 14.1, insert –

**“Documents scanned by the bulk scanning provider – treated as true copy of the original by the court**

- 14.2 The court will treat a scan of a document from the bulk scanning provider electronically transmitted to HMCTS’s secure digital platform as a true copy of the original document.

**Changes to Practice Direction 32 - Evidence**

- 14.3(1) In relation to claims that are started using Online Civil Money Claims, the Civil Procedure Rules Practice Direction 32 (Evidence) is changed as set out in subparagraph (2).
- (2) In Practice Direction 32, for paragraph 27.6, substitute—
  - “27.6(1) Subject to sub-paragraph (2), the originals of the documents contained in the trial bundle, together with copies of any other court orders should be available at the trial.
  - (2) Where a claim is started using Online Civil Money Claims in accordance with Practice Direction 51R, the court will treat a scan of a document from the bulk scanning provider electronically transmitted to Her Majesty’s Courts and Tribunal Service’s secure digital platform with an identity number as a true copy of the original document. The original need not be made available at the trial. (“Bulk scanning provider” has the meaning given in Practice Direction 51R.)”.
- 8) In paragraph 20.3 in subparagraph (3), for “19”, substitute “7”.

**PRACTICE DIRECTION 51S – THE COUNTY COURT ONLINE PILOT**

- 1) In paragraph 1.5, for “www.moneyclaim.reform.hmcts.net.”, substitute “https://www.moneyclaim-legal.platform.hmcts.net/ .”.
- 2) In paragraph 5.8, omit “except if, and in so far as, it has not been remitted”.
- 3) In paragraph 13, in the wording of the statement of truth, at the end insert “I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”.
- 4) After the signpost following paragraph 15, insert –
  - “15A A statement of truth must be dated with the date that it is signed.”.

The following amendment comes into force on **23 August 2020**.

**PRACTICE DIRECTION 83 – WRITS AND WARRANTS – GENERAL PROVISIONS**

- 1) After paragraph 5 insert—
  - “6. The notice of eviction required by rule 83.8A must be in Form N54.”

**CPR PRACTICE DIRECTION – 123rd Update.** This Practice Direction Update introduced a new, temporary, CPR PD 55C. It comes into force on **23 August 2020**. It was introduced consequent upon amendments effected by the Civil Procedure (Amendment No. 4) Rules 2020 (SI 2020/751, see above). The text of the Practice Direction is reproduced below.

**PRACTICE DIRECTION 55C – CORONAVIRUS: TEMPORARY PROVISION  
IN RELATION TO POSSESSION PROCEEDINGS**

*This practice direction supplements CPR Part 55*

**General – introductory and interpretation**

- 1.1 This practice direction is made under rule 55.A1 and provides for temporary modification of Part 55 during the period beginning with 23 August 2020 (the end of the stay imposed by rule 55.29) and ending on 28 March 2021 (“the interim period”).
- 1.2 During the interim period, Part 55 has effect subject to this practice direction.
- 1.3 In this practice direction—  
“stayed claim” means a claim which was brought on or before 22 August 2020 (including an appeal from a decision in such a claim) and which is accordingly subject to the stay imposed by rule 55.29;  
“new claim” means a claim brought after 22 August 2020.
- 1.4 Paragraphs 2.1 to 3.1 and 5.1 to 5.4 of this practice direction apply only to stayed claims (and attention is drawn to paragraph 2.2, which provides that paragraph 2.1 – and therefore the requirement for a reactivation notice – does not apply to stayed claims brought on or after 3 August 2020 or stayed claims in which a final possession order has been made).
- 1.5 Paragraph 4.1 of this practice direction applies to all claims whenever brought.
- 1.6 Paragraph 6.1 of this practice direction applies to all claims, including stayed claims, brought on or after 3 August 2020.
- 1.7 Paragraph 6.2 of this practice direction applies only to new claims to which Section II of Part 55 applies.

**No listing, relisting, hearing or referral in stayed claims without reactivation notice**

- 2.1 Subject to paragraph 2.2, and unless the court directs otherwise, no stayed claim is to be—
  - (a) listed;
  - (b) relisted;
  - (c) heard; or
  - (d) referred to a judge under rule 55.15,until one of the parties files and serves a written notice (a “reactivation notice”) confirming that they wish the case to be listed, relisted, heard or referred.
- 2.2 Paragraph 2.1 does not apply to a stayed claim—
  - (a) which was brought on or after 3 August 2020; or
  - (b) in which a final order for possession has been made.
- 2.3 A reactivation notice must—
  - (a) confirm that the party filing and serving it wishes the case to be listed, relisted, heard or referred; and
  - (b) except in proceedings relating to an appeal, set out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants.
- 2.4 Except in proceedings relating to an appeal, where a reactivation notice is filed and served by the Claimant and the claim is based on arrears of rent, the Claimant must provide with the notice an updated rent account for the previous two years.
- 2.5 Unless the court orders otherwise, any trial date set prior to 27 March 2020 (the date on which Practice Direction 51Z came into force) shall be vacated and the case stayed unless a party complies with the provisions of paragraphs 2.1, 2.3, 2.4 and 5.1 not less than 42 days prior to the hearing date.
- 2.6 If by 4.00 p.m. on 29 January 2021 no reactivation notice has been filed and served in relation to a stayed claim to which paragraph 2.1 applies, that claim will be automatically stayed.
- 2.7 A stay under paragraph 2.5 or 2.6 is not a sanction for breach; and an application to lift the stay is accordingly not an application for relief from sanctions under rule 3.9.

**Notice of listed or relisted hearings in stayed claims**

- 3.1 The court must, unless it directs otherwise, give at least 21 days’ notice to the parties of any hearing listed or relisted in response to a reactivation notice.

**All claims where no hearing listed**

4.1 During the interim period, rule 55.5 applies with the following modifications—

- (a) paragraph (1) is modified to read—  
“(1) Subject to paragraph (1A), the court will fix a date for the hearing when or after it issues the claim form.”; and
- (b) paragraph (3)(b) (standard period between issue and hearing of eight weeks) does not apply.

**Stayed claims where case management directions made**

5.1 In relation to a stayed claim to which paragraph 2.1 applies and in which case management directions were made before 23 August 2020, a party filing and serving a reactivation notice must file and serve with it—

- (a) a copy of the last directions order together with new dates for compliance with the directions taking account of the stay before 23 August 2020; and
- (b) either—
  - (i) a draft order setting out additional or alternative directions (including proposing a new hearing date) which are required; or
  - (ii) a statement in writing that no new directions are required and that an existing hearing date can be met; and
- (c) a statement in writing whether the case is suitable for hearing by video or audio link.

5.2 If the other parties do not agree with any of the matters advanced under paragraph 5.1(a), (b) and (c), they must file and serve a response within 14 days of service of the reactivation notice.

5.3 If no party has complied with paragraph 5.1 by 4.00 p.m. on 29 January 2021, the claim will be automatically stayed.

5.4 A stay under paragraph 5.3 is not a sanction for breach; and an application to lift the stay is accordingly not an application for relief from sanctions under rule 3.9.

**New claims and stayed claims brought on or after 3 August 2020 – demonstrating compliance with relevant Pre-Action Protocol and providing information as to effect of pandemic**

6.1 In any claim (whether a new claim or a stayed claim) brought on or after 3 August 2020, the Claimant must—

- (a) bring to the hearing two copies of a notice—
  - (i) in a claim to which the Pre-Action Protocol for Possession Claims by Social Landlords is applicable, confirming that the Claimant has complied with that Pre-Action Protocol and detailing how the Claimant has done so; and
  - (ii) in all claims, setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants; and
- (b) serve on the Defendant not less than 14 days prior to the hearing the notices referred to in subparagraph (a) setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants.

6.2 In any claim (whether a new claim or a stayed claim) brought on or after 3 August 2020 to which Section II of Part 55 applies the Claimant must file with the claim form for service with it a notice setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants.

(For a claim to which the Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property is applicable, paragraph 5.5 of Practice Direction 55A requires the Claimant to bring to the hearing two completed copies of Form N123 (the mortgage pre-action protocol checklist).)

**PRACTICE GUIDANCE****NON-CONTENTIOUS PROBATE – GUIDANCE ON USE OF STATEMENTS OF TRUTH IN PLACE OF AFFIDAVITS**

On 17 April 2020, Sir Andrew McFarlane PFD issued guidance on the use of statements of truth in place of affidavits in non-contentious probate matters (see *Civil Procedure News* No.5 of 2020). The guidance was to remain in effect until 30 July 2020. On 23 July 2020, Theis J, the Acting President of the Family Division, extended the application of the President’s Guidance so that it now expires on 30 October 2020 (see <https://www.judiciary.uk/announcements/extension-of-guidance-as-to-the-replacement-of-affidavits-with-statements-of-truth-in-non-contentious-probate-processes/> [Accessed 28 July 2020]).

## CORONAVIRUS GUIDANCE UPDATE

### GENERAL GUIDANCE

The coronavirus pandemic continues to affect the operation of the civil courts. While more courts are opening and hearings are being listed in open court, it remains important for practitioners to continue to consult the Judiciary of England and Wales and HMCTS websites for daily and weekly updates at:

- <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>
- <https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>
- <https://www.gov.uk/guidance/hmcts-weekly-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>
- <https://www.gov.uk/guidance/coronavirus-covid-19-courts-and-tribunals-planning-and-preparation>
- <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak> [all accessed 28 July 2020].

### QUEEN'S BENCH GUIDANCE

The Queen's Bench Division had issued a number of "Coronavirus Updates", which provided guidance on how its processes had changed during the COVID-19 pandemic. It replaced that guidance on 28 July 2020, with the Queen's Bench Division, Queen's Bench Division Listing and Action Department, Information for Court Users. This guidance can be found here at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/905851/QB\\_Information\\_for\\_Court\\_Users\\_updated\\_wc\\_3\\_August.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905851/QB_Information_for_Court_Users_updated_wc_3_August.pdf) [Accessed 3 August 2020].

### ADMINISTRATIVE COURT GUIDANCE

Guidance on the approach to take to proceeding in the Administrative Court in the Royal Courts of Justice is available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/897657/R CJ\\_Admin\\_Court\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897657/R CJ_Admin_Court_Guidance.pdf) [Accessed 28 July 2020].

### COURT FUNDS OFFICE GUIDANCE

From 1 June 2020 the rates of interest on funds held by the Court Funds Office were reduced. The rates are now: Special Account – 0.1%; Basic Account – 0.05% (<https://www.gov.uk/guidance/coronavirus-covid-19-impact-on-the-court-funds-office> [Accessed 4 August 2020]).

### PRACTICE NOTE – HEARINGS AND DETAILED ASSESSMENTS IN THE SENIOR COURTS COSTS OFFICE

The Senior Costs Judge has issued a Practice Note, which is in force from **1 August 2020**, in respect of detailed assessments hearings in the Senior Courts Cost Office. It is anticipated that it will remain in place for some time. The Practice Note is reproduced below.

#### HEARINGS AND DETAILED ASSESSMENTS IN THE SENIOR COURTS COSTS OFFICE PRACTICE NOTE BY THE SENIOR COSTS JUDGE

##### Introduction

1. As a result of the hard work and determination of the court staff and the willingness to adapt shown by most practitioners we have managed to hear almost all cases listed since March 2020. Very few hearings have been adjourned.
2. Based on our experience over the last few months we can now say how hearings will need to be conducted for the foreseeable future. This practice note applies only to hearings in the SCCO and applies from 1 August 2020. Detailed assessment hearings
3. It is for the costs judge or costs officer to decide the format of the hearing. Hearings will fall into one of 3 formats:
  - (1) Remote hearings with the judge and all parties appearing by telephone or video.
  - (2) Partly remote hearings with the judge and one or more parties in court and one or more parties appearing by telephone or video.

- (3) Hearings with the judge and all parties in court.
4. The notice of hearing sent by the court to the parties will state the format of the hearing. Parties may apply in writing for a different format within 14 days of receipt of the notice of hearing. The court will make the arrangements for video hearings and invitations will be sent to the representatives nominated by the parties. If the hearing is to be held by telephone, the receiving party should arrange the conference call in accordance with paragraph 6.10 of PD 23A, unless the court has directed otherwise.

#### Filing papers in support of the bill electronically

5. A party who wishes to lodge its papers in support of the bill electronically should discuss how it should do so with the clerk to the relevant costs judge or with the costs officer well in advance of the deadline for lodging the papers. There are 3 ways in which papers may be filed electronically:
- Via CE File. The size limit on CE File is 50MB although parties can in one filing file up to 10 documents with each not exceeding 50MB: PD51O paragraph 5.2(2).
  - With the permission of the court, via the HMCTS document upload centre. This enables the court staff to invite professional court users to upload documents required for hearings, which may be too large to be submitted via CE File. Documents uploaded are then accessible by the costs judge or costs officer.
  - With the permission of the court, via a safe third party online file-sharing platform. (However, please note that Ministry of Justice rules prevent costs officers from accessing third party systems).
6. Documents filed electronically, whether by CE File or by the document upload centre, must comply with paragraph 10 of PD 51O and also with the guidance on PDF bundles published at: <https://www.judiciary.uk/wpcontent/uploads/2020/05/GENERAL-GUIDANCE-ON-PDF-BUNDLES-f1-1.pdf> They must be formatted as one PDF document with bookmarks as appropriate for each constituent document and must be the subject of optical character recognition. They must be filed not less than 7 days before the start of the hearing, as required by PD 47 paragraph 13.11.

#### Filing papers in advance of detailed assessment hearings other than electronically

7. Experience has shown that hearings work much more efficiently where the receiving party has filed its papers electronically. Parties are encouraged therefore to file their papers in support of the bill electronically whether or not they have been working paperlessly. Where the receiving party's solicitors have been working paperlessly, it is unlikely that the cost of printing their files will be recoverable.
8. If the receiving party files its papers in support of the bill other than electronically:
- The receiving party will nevertheless be expected to file an electronic bundle of key documents (that is, the documents relevant to the issues raised in the points of dispute, but not including the documents already filed by CE File) rather than "core bundles" or the like on paper. The bundle should comply with paragraph 10 of PD 51O and the guidance referred to at paragraph 6 above.
  - The papers must be physically received at the SCCO not less than 7 days before the start of the hearing (as required by PD 47 paragraph 13.11). If papers are filed late the hearing may be adjourned.
9. Parties should file electronically any documents to which they will wish to refer at a hearing, because handing up papers or files in hearings may not now be permitted. That will be a matter for the costs judge or costs officer conducting the hearing.
10. Skeleton arguments and the like must be filed electronically (by CE File or email) at least 2 days before the hearing. Statements of costs for summary assessment must be filed using CE File not less than 24 hours before the time fixed for the hearing.

#### Applications and criminal costs appeals

11. While applications and criminal costs appeals can be heard in court with the parties present, greater use will be made of remote hearings (by video or telephone) in appropriate cases. The application notice or notice of hearing will identify the format of the hearing.
12. PD 51O paragraph 10.1 requires the applicant to file by CE File an electronic bundle at least 3 days before the hearing in the format required by paragraph 10.3.

#### Provisional assessments and Court of Protection bills

13. Between the parties bills under £75,000 will continue to be provisionally assessed, however the receiving party will

not be required to file papers in support of the bill unless expressly requested by the court. The court may request all of the papers in support of the bill or only those relating to a particular issue or issues. Where papers in support of the bill are requested, they should where possible be filed electronically.

14. The provisions relating to detailed assessment hearings (above) will apply to oral hearings of provisional assessments and appeals from costs officers.
15. On the provisional assessment of the bill of a deputy appointed by the Court of Protection, the deputy's solicitor must still file the papers in support of the bill with the bill, but is encouraged to do so electronically via either CE File or the HMCTS document upload centre (see paragraphs 5 and 6 above).

Andrew Gordon-Saker  
Senior Costs Judge  
3 July 2020

### ROYAL COURTS OF JUSTICE FEES OFFICE GUIDANCE

The RCJ Fees Office is open, as from 3 August 2020, from 10.00 a.m. to 16.30 p.m. from Monday to Friday. For further information see: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/903702/Royal\\_Courts\\_of\\_Justice\\_Fees\\_Office\\_update.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903702/Royal_Courts_of_Justice_Fees_Office_update.pdf) [Accessed 28 July 2020].

## In Detail

### COMMENTARY UPDATE TO CIVIL PROCEDURE 2020 VOL.1 PTS 55, 83 AND 84

#### Background

The coronavirus pandemic continues to result in amendments to the CPR and its Practice Directions being introduced at short notice. In *Civil Procedure News* No.7 of 2020, commentary updates, concerning CPR Pt 55, to *Civil Procedure 2020* Vol.1 were published in **In Detail**. Amendments to the CPR introduced via the Civil Procedure (Amendment No. 3) Rules 2020 (SI 2020/747) and the Civil Procedure (Amendment No. 4) Rules 2020 (SI 2020/751) have necessitated further commentary amendments to CPR Pt 55 as well as amendments to Pts 83 and 84. Those amendments will be uploaded to the online version of *Civil Procedure 2020* Vol.1 in August 2020. They, and any further necessary amendments, will be set out in the Third Supplement to *Civil Procedure 2020*.

#### (i) Updated commentary text for Civil Procedure Vol.1 Pt 55

Replace paragraph 55.0.0 with:

##### The COVID-19 stay (27 March 2020 to 23 August 2020)

**55.0.0** By Practice Direction 51Z, as amended, from 27 March 2020, all proceedings for possession brought under CPR Pt 55 and all proceedings seeking to enforce orders for possession by warrants or writs of possession were stayed for a period of 90 days (subsequently extended—see below). However, the stay did not apply to:

- (a) injunctions. For an example of an injunction requiring a patient to vacate a bed, see *University College London Hospitals Foundation Trust v MB* [2020] EWHC 882 (QB), Chamberlain J. See too *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] UKSC 11; [2009] 1 W.L.R. 2780, noted at para.55.4.5;
- (b) claims against trespassers to which r.55.6 applies;
- (c) applications for interim possession orders under Section III of Pt 55, including the making of such an order, the hearing required by r.55.25(4), or any application made under r.55.28(1); or
- (d) applications for case management directions which are agreed by all the parties.

The fact that a claim would be stayed did not preclude the issue of such a claim.

The full text of the Practice Direction is printed at para.51ZPD.1. It was amended on 10 June 2020 (CPR Update 121) to clarify that while the stay was in force procedural time limits were suspended and that the court was not to send any notices concerning individual proceedings. The stay expired on 25 June 2020, although the Practice Direction does not cease to have effect until 30 October 2020 (see para.51.2.15).

As from 25 June 2020, the Practice Direction has however been superseded by a new CPR r.55.29 which was introduced

by the Civil Procedure (Amendment No. 2) (Coronavirus) Rules 2020 (SI 2020/582) (see para.55.29.1). As from 25 June 2020, that provision replaces and continues the former stay, in a slightly modified form, until 23 August 2020. See para.55.29.1.

In *Arkin v Marshall* [2020] EWCA Civ 620, the Court of Appeal rejected contentions that PD 51Z was ultra vires and that ss.81–82 and Sch.29 to the Coronavirus Act 2020 were inconsistent with it. The court also rejected a submission that PD 51Z was incompatible with either ECHR art.6 or the fundamental principle of access to justice. “[T]he short delay to possession litigation enshrined in PD 51Z is amply justified by the exceptional circumstances of the coronavirus pandemic.” [33]

The stay under CPR PD 51Z only applied to “proceedings for possession brought under CPR Part 55” and “proceedings seeking to enforce an order for possession” within the meaning of para.2 of PD 51Z, but a landlord’s counterclaim for possession “clearly” amounted to “proceedings for possession brought under CPR Part 55”. If, in proceedings seeking a declaration, the landlord counterclaimed for possession, the entire action became “proceedings for possession brought under CPR Part 55” and so was caught by the stay when it was imposed in March 2020 (*TFS Stores Ltd v Designer Retail Outlet Centres (Mansfield) General Partner Ltd* [2020] EWCA Civ 833 where the Court of Appeal refused to lift the stay).

The automatic stay imposed by PD 51Z applied to appeals from possession orders which were extant when the stay began, as much as to first instance possession claims themselves. The words “all proceedings for possession brought under CPR Part 55” in para.2 of PD 51Z included such appeals. Proceedings brought under CPR Pt 55 were still “brought under CPR Part 55”, even when they were under appeal (*Hackney LBC v Okoro* [2020] EWCA Civ 681; [2020] 4 W.L.R. 85 and *TFS Stores Ltd v Designer Retail Outlet Centres (Mansfield) General Partner Ltd* above).

#### **Lifting the COVID-19 stay (27 March 2020 to 23 August 2020)**

**55.0.0.1** In *Arkin v Marshall* (para.55.0.0, above) the Court of Appeal stated that although PD 51Z cannot be read as formally excluding the operation of CPR r.3.1 and so, as a matter of strict jurisdiction, judges retain power to lift the stay which it imposes, the purpose of the stay

“would be fatally undermined if parties affected by the stay were entitled to rely on their particular circumstances – however special they might be said to be – as the basis on which the stay should be lifted in their particular case.”

While the Court of Appeal at [42]

“would not go so far as to say that there could be no circumstances in which it would be proper for a judge to order that the stay imposed by PD 51Z should be lifted in a particular case, [it had] great difficulty in envisaging such a case ... The approach of a blanket stay ... makes clear that possession claims are not to be dealt with on a normal case by case basis during the stay. We would strongly deprecate parties troubling the court with applications that are based only on [case management] reasons and which are in truth bound to fail.” [44]

The court concluded,

“although as a matter of strict jurisdiction a judge retains a theoretical power to lift any stay, it would almost always be wrong in principle to use it. [It did not] however, rule out that there might be the most exceptional circumstances in which such a stay could be lifted, in particular if it operated to defeat the expressed purposes of PD 51Z itself.” [46].

For a case where the stay of possession proceedings imposed by CPR PD 51Z was lifted for the very narrow purpose of handing down a reserved judgment on an appeal against a refusal to set aside a possession order, which had been heard before PD 51Z came into effect, see *Copeland v Bank of Scotland Plc* [2020] EWHC 1441 (QB), although Sir Geoffrey Vos, Chancellor of the High Court, strongly disapproved of that decision in *TFS Stores v Designer Retail Outlet Centres (Mansfield) General Partner Ltd* (para.55.0.0 above).

#### **Post COVID-19 Stay Changes to Procedure (23 August 2020 to 28 March 2021)**

**55.0.0.2** Practice Direction 55C, made under r.55.A1, as inserted by the Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020 (SI 2020/751), and included in the 123rd PD Update, modifies the standard Pt 55 procedure until 28 March 2021 (“the interim period”). It seeks to address the case management and case listing difficulties caused by the pandemic and the backlog of cases caused by the stay (see para.55.0.0 above.) Some modifications apply to all claims whenever brought. However, other provisions differ, depending upon whether a possession claim was brought before or after 23 August 2020.

On 17 July 2020, a motion was laid before the House of Lords that a Humble Address be presented to Her Majesty praying that the Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020 (SI 2020/751) be annulled. As the Third Supplement went to press, no date had been fixed for the debate, but in view of the Summer Recess, it could not be before September 2020. Although the Rules would have been in force and operational from 23 August 2020, if the motion is passed, the Rules would cease to have effect.

### Post COVID-19 Stay Changes to Procedure (claims brought on or before 22 August 2020)

#### 55.0.0.3 See PD 55C paras 2.1–3.1 and 5.1–5.4.

Unless the court directs otherwise, no stayed claim is to be listed, relisted, heard, or referred to a judge under r.55.15, until one of the parties (in practice, normally the claimant) files and serves a written reactivation notice confirming that they wish the case to be listed, relisted, heard or referred to a judge. There is no prescribed form. There is no need for a reactivation notice if a stayed claim was brought on or after 3 August 2020 or a final order for possession has been made. Except in proceedings relating to an appeal, reactivation notices must set out what knowledge the party filing the notice has as to the effect of the coronavirus pandemic on the defendant and their dependants. Where a reactivation notice is filed and served by the claimant and the claim is based on arrears of rent, the claimant must provide an updated rent account for the previous two years with the notice.

If case management directions were made before 23 August 2020, parties filing and serving reactivation notices must file and serve with them copies of the last directions order together with new dates for compliance with the directions taking account of the stay and either a draft order setting out additional or alternative directions (including a proposed new hearing date) or a statement that no new directions are required and that any existing hearing date can be met. They must also file and serve a statement in writing as to whether the case is suitable for hearing by video or audio link. Paragraph 5.2 contains a procedure which operates if the other parties do not agree with any of the proposals. If no party has complied with these provisions by 16.00 on 29 January 2021, the claim will be automatically stayed, but that stay is not a sanction for breach and an application to lift the stay is accordingly not an application for relief from sanctions under r.3.9.

Unless the court orders otherwise, any trial date set prior to 27 March 2020 is to be vacated and the case stayed unless a party complies with the reactivation notice provisions not less than 42 days prior to the hearing date. Again, if no reactivation notice has been filed and served in relation to a stayed claim by 16.00 on 29 January 2021 that claim will be automatically stayed. Such a stay is not a sanction for breach.

The court must, unless it directs otherwise, give at least 21 days' notice to the parties of any hearing listed or relisted in response to a reactivation notice.

### Post COVID-19 Stay Changes to Procedure (all claims)

#### 55.0.0.4 During the interim period, r.55.5 is modified to provide that the courts should fix dates for hearings when *or after* they issue claim forms (emphasis added) and that the standard period of eight weeks between issue and hearing does not apply.

There are also provisions requiring claimants in proceedings to which the Pre-Action Protocol for Possession Claims by Social Landlords applies to bring two copies of a notice confirming that the claimant has complied with that Pre-Action Protocol and detailing how the claimant has done so to any hearing. The Practice Direction also provides that claimants should set out what knowledge they have as to the effect of the coronavirus pandemic on defendants and their dependants.

### Amendments to substantive law due to COVID-19 (until 30 September 2020)

#### 55.0.0.5 The Coronavirus Act 2020 s.81 and Sch.29 (Residential tenancies in England and Wales: protection from eviction) make provision about notice periods in relation to possession proceedings. The Schedule amends, temporarily, various sections in the Rent Act 1977, the Housing Act 1985, the Housing Act 1988 and the Housing Act 1996 and associated regulations contained in statutory instruments. The amendments will cease to have effect on 30 September 2020. The full text of the Coronavirus Act 2020 can be found at <http://www.legislation.gov.uk/ukpga/2020/7/contents> [Accessed 3 July 2020].

## (ii) Updated commentary text for Civil Procedure Vol.1 Pt 83

### Related sources

*To the end of the list, add:*

- 83.0.18 • The Taking Control of Goods and Certification of Enforcement (Amendment) (Coronavirus) Regulations 2020 (SI 2020/451)
- The Taking Control of Goods and Certification of Enforcement (Amendment) (No. 2) (Coronavirus) Regulations 2020 (SI 2020/614)

### Forms

#### 83.0.19 After the twenty-first bullet point (beginning “N52 Warrant for Possession”), add new bullet point:

- N54 Notice of eviction

## II. Writs and Warrants

### Effect of rule

*After the first paragraph, add new paragraphs:*

- 83.4.1** Both the Taking Control of Goods and Certification of Enforcement (Amendment) (Coronavirus) Regulations 2020 (SI 2020/451) and the Taking Control of Goods and Certification of Enforcement (Amendment) (No. 2) (Coronavirus) Regulations 2020 (SI 2020/614) make temporary provisions extending the time within which an enforcement agent may take control of goods, but limiting the locations where the taking of control may occur. These provisions are implemented by amendments to regs 9 and 10 of the 2013 Regulations, during the “emergency period”, which is now defined in the following terms:

“‘emergency period’ means the period beginning with the 26th March 2020 and ending on 23rd August 2020”

In summary, if the date one month before an enforcement agent loses the right to take control of goods under reg.9(1) or reg.9(1) as extended under reg.9(3), was/is either on or after 26 February 2020, but before the emergency period, or during the emergency period, the period under reg.9(1) only begins on the date the original period for taking control of goods was due to expire.

Regulation 10 of the 2013 Regulations has been amended to exclude the taking control of goods located either at premises which include a dwelling house or on a highway during the emergency period (26 March 2020 to 23 August 2020). An amendment to reg.23 of the 2013 Regulations prevents an enforcement agent entering, re-entering or remaining on, premises if they include a dwelling house.

*Add new paragraph 83.8A.1:*

### Editorial note

- 83.8A.1** This rule came into force on 23 August 2020 (SI 2020/747 para.1.3).

Rule 83.8A(1) provides that not less than 14 days before the date fixed for execution of the writ or warrant of possession, a notice of eviction must be delivered to the premises of which possession will be taken. The rule specifies to whom the notice must be addressed (r.83.8A(3)) and how it should be delivered (r.83.8A(4)). This is subject to the qualified powers of the court to dispense with the requirement to deliver a notice, and to extend or shorten the period (r.83.8A(5)). The rule does not apply in respect of execution against trespassers, save where they entered or remained on the premises with the consent of the person who at the time of giving consent had an immediate right to possession of the premises (r.83.8A(6)).

This provision aligns the requirement for the provision of notice in the High Court and County Court (see amendments at r.83.13 that limit those cases requiring permission to issue a writ of possession, better to reflect the procedure under r.83.26).

## III. Writs

### Effect of rule

*Replace paragraph with:*

- 83.13.1** This current version of this rule came into force on 23 August 2020 (SI 2020/747 para.1.3).

Under this rule permission is not needed to enforce a judgment or order for the giving of possession, except where required under r.83.13(2) and (3). Where they are required, applications for permission may be made without notice in respect of writs pursuant to orders against trespassers where more than three months has elapsed since the order giving possession (r.83.13(4)). The defendant normally will be made aware of impending eviction by receipt of the Notice of Eviction required under r.83.8A. Note the requirement to file a certificate confirming that the land of which possession is sought has not been vacated (r.83.13(6)).

In addition to execution by way of writ of possession, any judgment or order for the giving of possession of land may also be enforced by proceedings from contempt (r.81) and, if proceedings for contempt are not brought, by a writ of sequestration.

### Writ of possession

*Replace paragraph with:*

- 83.13.2** For the form of a writ of possession see Form **N66**. The writ of possession may include provision for enforcing payment of any money due under the judgment or order for possession, which is being enforced. In these circumstances, or

where possession has been suspended on terms of payment of money by instalments, the applicant for the writ of possession must certify the amount of money remaining outstanding and that the whole or part of any instalment due remains unpaid (r.83.13(6) and (7)).

### **(iii) Updated commentary text for Civil Procedure Vol.1 Pt 84**

#### **Proceedings relating to certificates to act as an enforcement agent**

*Add new paragraph at end:*

- 84.0.5** The Taking Control of Goods and Certification of Enforcement Agents (Amendments) (No. 2) (Coronavirus) Regulations (SI 2020/614) deals with the duration of certificates affected by the coronavirus pandemic. Regulation 3.3 adds a provision to reg.7 of the Certification of Enforcement Agents Regulations 2014 (SI 2014/421) that if the “relevant day” (which is three months before the expiry of the certificate), falls during the period beginning with 26 December 2019 and ending on 23 August 2020, the certificate will continue to have effect for a period of nine months beginning with the relevant day. The result is that the certificates continue to have effect for an additional six months.

#### **Commercial Rent Arrears Recovery (“CRAR”)**

*To the end of the fourth bullet point, add:*

- 84.0.6** (Subject to reg.52(2) of the 2013 Regulations, as amended by both the Taking Control of Goods and Certification of Enforcement Agents (Amendments) (Coronavirus) Regulations 2020 (SI 2020/451) and the Taking Control of Goods and Certification of Enforcement Agents (Amendments) (No. 2) (Coronavirus) Regulations 2020 (SI 2020/614), which provide for a period of 189 days).

*Add new paragraphs at end:*

In *Brar v Thirunavukkrasu* [2019] EWCA Civ 2302 the court confirmed that a landlord invoking the Commercial Rent Arrears Recovery procedure affirms the lease, which operates as a waiver of the right to forfeit the lease.

Both the Taking Control of Goods and Certification of Enforcement Agents (Amendments) (Coronavirus) Regulations 2020 (SI 2020/451) and the Taking Control of Goods and Certification of Enforcement Agents (Amendments) (No. 2) (Coronavirus) Regulations 2020 (SI 2020/614) make temporary alterations to the CRAR procedure during the emergency period (see paras 83.4.1, 84.0.5 and reg.2(6) SI 2020/451 and reg.2(4) SI 2020/614).

#### **Related sources**

*Add new bullet points at end:*

- 84.0.7**
- The Taking Control of Goods and Certification of Enforcement (Amendment) (Coronavirus) Regulations 2020 (SI 2020/451)
  - The Taking Control of Goods and Certification of Enforcement (Amendment) (No. 2) (Coronavirus) Regulations 2020 (SI 2020/614)

### *III. Taking Control of Goods*

#### **Extension**

- 84.5.3** *Add new paragraph at end:*

Note that the combination of the Taking Control of Goods and Certification of Enforcement Agents (Amendments) (Coronavirus) Regulations 2020 (SI 2020/451) and the Taking Control of Goods and Certification of Enforcement Agents (Amendments) (No. 2) (Coronavirus) Regulations 2020 (SI 2020/614) is to provide for extensions of the periods under reg.9(1) and (3) of the Taking Control of Goods Regulations 2013 (SI 2013/1894) within which an enforcement agent may take control of goods (see para.83.4.1).

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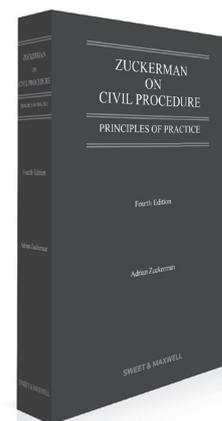
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