



Sir Robert Neill MP
Chair
Justice Committee
House of Commons
London
SW1A 0AA

28 September 2020

Dear Bob,

CIVIL PROCEDURE (AMENDMENT NO. 5) (CORONAVIRUS) RULES 2020

Thank you for your letter of 10 September 2020 regarding the above instrument and seeking clarity on the arrangements for the effective resumption of possession proceedings after 20 September, as well as confirmation of future legislative plans.

May I start by thanking your Committee for their understanding that it was not possible, in this particular situation, to observe the 21-day rule. I would, nonetheless, like to reiterate my apologies for that and to reassure the Committee that this is not in any way an indication of a move to normalise non-compliance. As you recognise, these were exceptional circumstances and, notwithstanding that the usual process for amending the Civil Procedure Rules is by way of a negative resolution SI, it was not, and is not, my intention to stifle Parliamentary scrutiny or debate.

These Rules were made before the expiry of the previous possession stay, which was due to expire on 23 August to avoid any gaps in cover. While it is accurate that due to these exceptional circumstances the SI had to be laid after the coming into force date, the extension itself was not retrospective.

As your Committee appreciates, I issued a notice to the Master of the Rolls under s. 3A of the Civil Procedure Act 1997 that I thought it expedient for the Civil Procedure Rules to include provision to extend the stay by four weeks to provide sufficient time for arrangements to be finalised to provide protections to claimants and defendants when possession cases resume. This in my view was not only essential on a practical level, it was also seen as enhancing confidence in the system and by doing so, it would further support the vires that rule making is exercised with a view to securing a civil justice system which is accessible, fair and efficient.

The practical arrangements have been developed by a cross-sector Working Group, convened by the Master of the Rolls as Head of Civil Justice and to whom I am enormously grateful. The Working Group has brought together contributions from government and government agencies, the judiciary and HM Courts & Tribunals Service, the professional and advice sectors, user groups and experts. It has also engaged with a wide range of associations and representative bodies, and at a national (England & Wales), regional and local level. Measures it has proposed include

- Amendments to the Civil Procedure Rules and their supporting Practice Directions (PD); for example PD55C under the 123rd Practice Direction Update, to which the Civil Procedure (Amendment No.4) (Coronavirus) Rules 2020 relate, as well as the Civil Procedure

(Amendment No.3) Rules 2020 and the 122nd Practice Direction Update, viewable here: <https://www.justice.gov.uk/courts/procedure-rules/civil>

- The introduction, by the Judiciary, of new case management and listing arrangements, including a scheme of prioritisation.
- The inclusion of specific procedures to enable the Court to receive enhanced information of any effect of the pandemic on the parties.
- Increased user communication through HMCTS including guidance.
- The publication of guidance by the Ministry of Housing, Communities and Local Government (MHCLG), and the Financial Conduct Authority (FCA, with UK Finance), and the development and publication of voluntary best practice by a number of national associations.
- Adjustments in relation to legal aid duty scheme legal advice. This is something on which your Committee was particularly interested. The aim is that it will enable (a) earlier provision, (b) remote provision where needed, and to (c) remove gaps in geographical coverage, (d) to extend to some Accelerated Possession Proceedings. Indeed, the Legal Aid Agency (LAA) have retendered for services to ensure there is duty desk provision in every area prior to the resumption in possession hearings
- Specific designation, deployment, preparation and training of HMCTS staff as well as judicial preparation and training through the Judicial College.
- Arrangements for monitoring, including to identify when and where adjustments are needed and if contingency arrangements need to be brought in.

I recognise that the SI and Practice direction considered by the rule committee solely concern the judicial process and not the wider engagement which has been facilitated by the working group. Further publications by the judiciary, HMCTS, and the Ministry of Housing will set out these measures in greater detail.

The Government will also continue to be clear in its guidance and public communications that tenants remain liable to pay their rent and abide by all other terms of their tenancy agreement to the best of their ability. Landlords have a right to be paid rent for their properties and must follow strict procedures if they want to gain possession. In order to prevent people getting into financial hardship, the Government has put in place an unprecedented support package including paying up to 80% of their wages, increasing the amount available to welfare claimants and raising the Local Housing Allowance rate to the 30th percentile, supporting tenants who may be struggling with their rent.

In terms of wider legislative measures, the Government laid a Statutory Instrument on 28 August to amend Schedule 29 of the Coronavirus Act 2020 to require landlords to provide tenants with six months' notice until the end of March 2021, in all but the most serious cases. These Regulations came into force on 29 August and apply to England only. This means that renters now served notice can stay in their homes over winter, with more time to find alternative support or accommodation. We also recognise that in some circumstances, landlords have been dealing with difficult situations where there is no reasonable alternative to possession proceedings. We have therefore lowered notice periods for cases involving anti-social behaviour, domestic abuse, fraud and egregious rent arrears of more than six months to enable landlords (particularly those who are in the most difficult financial circumstances) to progress these cases more quickly. In addition, the Government remains committed to bringing forward legislation to abolish section 21 in due course. Such legislation must balance greater security of tenure with an assurance that landlords are able to recover their properties where they have valid reasons to do so.

I trust this sufficiently addresses the points you and your Committee have raised. Please be assured that I take your concerns regarding the rule of law very seriously and I remain committed to ensuring that significant legislative changes will be brought forward at the earliest possible time.

Yours ever

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly slanted style.

RT HON ROBERT BUCKLAND QC MP