

123rd UPDATE – PRACTICE DIRECTION AMENDMENTS

The new Practice Direction 55C supplementing the Civil Procedure Rules 1998 is made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by the Lord Chancellor.

The new Practice Direction 55C comes into force on 23 August 2020.

The Right Honourable Sir Terence Etherton
Master of the Rolls and Head of Civil Justice

The Right Honourable Robert Buckland QC MP:

Lord Chancellor

Date: 17th July 2020

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

- 1) After Practice Direction 55B insert Practice Direction 55C as set out in the Schedule to this Update.

SCHEDULE

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

This practice direction supplements CPR Part 55

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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 sub-paragraph (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).)