

Country: United Kingdom (Crime and civil regulatory)

1. THE MOST CRITICAL PHASE OF THE CRISIS

As long as measures to prevent the spread of Covid-19 restrict freedom of movement: What are the effects of the Covid-19 crisis on civil justice?

- **Is there special legislation on the effects of the crisis on civil and criminal justice?**

Criminal Justice

The *Coronavirus Act 2020* is the key piece of legislation passed by Parliament in reaction to the pandemic.

The Act provides for the appointment of temporary judicial commissioners to oversee certain investigatory powers should the effects of Covid-19 mean that there is a shortage. It makes some changes to time limits for warrants sought under those powers, and for the retention of fingerprints, etc.

For effects on UK civil justice, please see the Fraudnet response on civil justice (UK).

- **Does the crisis have an effect on court hearings?**
 - **Do court hearings take place during the crisis?**
 - **Do court hearings take place in form of video conferences?**

Criminal

Court hearings will take place in a limited way. Courts and tribunals have been consolidated into fewer buildings (with social distancing occurring) and the Supreme Court building is closed for the foreseeable future. Cases will be conducted by video link and judgment hand-down may be done by e-mail to the parties.

No new trials will start in the Crown Courts, and no jury trials are currently running due to problems with the attendance of victims, witnesses, defendants, advocates and jurors and an inability to run such trials remotely. Magistrates' Courts will continue to deal with urgent work.

Three new Practice Directions have been introduced. PD 51Y provides for hearings to be conducted remotely (whether by video or audio). These will allow some audio or video-enabled processes to be conducted outside of criminal trials.¹

Sections 53 and 54 of (and schedules 23 and 24 to) the Coronavirus Act provides that most criminal proceedings and hearings, including sentencing hearings and some enforcement hearings, (not jury trials) can be conducted as video and audio proceedings, using live link, etc. Hearings that can be wholly heard by video include summary trials in the Magistrates' Court if a written procedure notice has been served on the defendant and where the parties agree to the proceedings being conducted wholly as video proceedings.

The Act and the practice directions attempt to balance the principle of open justice with the practical difficulties posed by the pandemic, particularly the need to limit people in attendance at hearings.

- **Does the crisis have an effect on deadlines (of procedural and substantive law)?**
 - **Are deadlines of ongoing proceedings affected?**

This is a case-by-case issue in criminal law currently; in many cases deadlines will be extended if a party is unable to comply due the current pandemic; it is likely to be in the interests of justice to do so.

In the UK, Custody Time Limits (CTL) safeguard unconvicted defendants by preventing them from being held in pre-trial custody for an excessive period of time. The Act and Regulations governing CTL require the prosecution to progress cases to trial diligently and expeditiously. The CPS protocol opines "*the coronavirus pandemic is an exceptional situation and the adjournment of CTL trials as a consequence of government health advice and of directions made by the Lord Chief Justice amounts to good and sufficient cause to extend the custody time limit.*" It remains to be seen whether any extension to CTLs by Crown Courts will be successfully challenged.

- **Are deadlines for bringing actions affected (limitation periods)?**

There are no statutory limits on the prosecution of crimes in the UK except for 'summary' offences (offences tried in the Magistrates' court which are less serious in nature).

- **Does the crisis have an effect on enforcement?**
 - **Are enforcement orders issued?**

¹Coronavirus: Interim CPS Charging Protocol between the National Police Chiefs' Council and Crown Prosecution Service 31 March 2020, *Legal Guidance*

Orders for enforcement, after confiscation proceedings under *Proceeds of Crime Act 2002* (POCA) have been conducted, can still be made. If they involve witnesses and counsel, however, enforcement hearings may well have to be adjourned. There may be implications for enforcement of CPR PD51ZA, which stays possession proceedings for 90 days from 26 March 2020.

- **Are there any effects on deadlines?**

In POCA 2002, there is a maximum statutory time limit for payment and for extension of payment (not exceeding 6 months from the date of the order per s.11). Failure to pay within the required time will result in a default term of imprisonment being imposed (for failure to repay £1m+, the default term for non-payment is 14 years maximum and the debt remains and incurs interest).

In the current climate, it is presumed it would be uniquely difficult to sell property and, therefore, fulfill a confiscation order. There does not yet appear to be any guidance on this issue and the presumption is that non-payment will continue to result in default terms being imposed.

- **Can enforcement acts be postponed due to the crisis?**

It is imagined that tasks such as appointments of receivers (s.50) may take longer, but will ultimately be possible by videolink, for example. Their work may be more difficult, as sales may be suspended and courts in other jurisdictions may be closed and/or slower.

- **How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders?**

Restraint applications are typically ex-parte and often dealt with on the papers, so it is assumed that they will continue in the same manner or, where contentious, will most likely be dealt with by way of video/audio link.

- **How do lawyers work during the crisis?**

Most lawyers are working remotely at this time.

- **How do banks work during the crisis?**

- **Does the crisis have an effect on insolvency law?**

- **Are there any further effects not addressed in the questions above?**

2. REGULATORY/ INSOLVENCY

- **Does the crisis have an effect on insolvency law**

There was a temporary adjournment of all winding up and bankruptcy petitions in the UK Courts. However, arrangements have now been made for insolvency hearings to take place via Skype and this appears to be operating well. The UK revenue authority (HMRC) is not, however, pursuing petitions at this point.

There is no restriction on the issuing of private (i.e. non HMRC) winding up or bankruptcy petitions, and the draconian effects of doing so still apply.

Other measures relating to insolvency that have been proposed include:

- A temporary suspension of wrongful trading provisions for company directors has also been proposed, to take effect as of 1 March 2020 for three months
- A moratorium of up to 90 days in duration that will grant companies facing Covid-19-related liquidity issues the time and “breathing space” to seek a rescue or to restructure and prevent creditors from enforcing debts during that period.
- The creation of a flexible “new restructuring plan” - a company rescue vehicle that includes the ability to bind classes of creditors who vote against it

It is anticipated that these measures will be formally introduced on 21 April 2020, when the UK parliament resumes.

- **What action are the UK regulatory bodies taking?**

There have been a number of regulatory measures introduced. The regulatory landscape is both very expensive to the UK state, and will leave substantial grey areas that will create complexity and disputes in the long term, leading to opportunities for fraudsters.

Of note, the UK Financial Conduct Authority (FCA) has made clear that its immediate focus is to ensure that financial firms give consumers the support they need, that people don't fall for scams and that financial services firms and markets know what the FCA expects of them during this period of uncertainty.

It has already taken swift action in providing guidance to banks, mortgage lenders, consumer credit firms and insurers on how to treat customers impacted by COVID-19, fairly. In particular, the FCA has tried to safeguard consumers' access to essential banking services and has taken unprecedented steps of directing mortgage lenders and other consumer credit firms to offer more flexibility to impacted customers through, for example, payment holidays.

UK job retention scheme

A very wide ranging scheme has also been introduced to protect jobs in the UK. Under the Coronavirus Job Retention Scheme, employers will be able to claim back from the UK state 80% of the wages (up to £2,500 per month) of employees who have been

furloughed (i.e. put on a leave of absence) in response to the COVID-19 pandemic. This is a complex area, and guidance is updated frequently.

3. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

What are the consequences of the Covid 19 pandemic once the pandemic has abated, in the gradual return to a new normality and what are the long-term effects?

- **Which measures introduced during the crisis will be withdrawn immediately?**

The UK government introduced by delegated legislation a number of other temporary measures, by the *Coronavirus Act 2020* and the *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*, which were made pursuant to powers provided by the *Public Health (Control of Disease) Act 1984*.

Section 89 of the *Coronavirus Act 2020* provides that all the relevant provisions will expire after 2 years. Section 90 provides, however, that ‘a relevant national authority’ can terminate any provision of the Act before that time or extend such a provision beyond the two year period, up to a maximum of six months. Any further extension would require an Act of Parliament.

The Regulations expire after a period of six months (regulation 12(1)) although particular restrictions or requirements may be terminated before this by the Secretary of State publishing a direction bringing them to an end.

The Secretary of State must review the need for the restrictions and requirements at least once every 21 days, with the first review being carried out by 16 April 2020 (regulation 3(2)).

- **Which measures will remain in place?**

The provisions in the *Coronavirus Act 2020* that will remain after the 2 year period are not directly relevant to the justice system.

There are no provisions within the Regulations that would survive the expiry referred to above.

That said, the financial and regulatory implications, in particular in relation to employee issues and financial regulatory conduct both during and after the crisis, will continue to come under scrutiny.

- **Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources?**

There is no doubt that the new CPS protocol (“Interim CPS Charging Protocol – Covid-19 crisis response” published on 31.03.2020) will have the effect of lowering the priority given to economic crime. It prioritises Covid-19 related offending (described as homicide, high risk domestic abuse, robbery and very serious public disorder) and cases where

defendants are in custody, which is unlikely to include much economic crime. However, two cases of economic crime have been identified as Covid-19 priority cases: Covid-19 dishonesty offences against vulnerable victims and Covid-19 fraud specifically where it would protect vulnerable victims. This is unlikely to include complex corruption cases and the CPS, SFO and Court backlog is anticipated to be significant.

Moreover, the UK Government has been promoting a wide ranging Government Counter Fraud Profession, which is alive to many of these issues and is actively responding to them. The UK FraudNet members have been in regular contact with the UK Cabinet Office in connection with this.

- **Do you expect a rise of new anti-corruption prosecutions after the crisis?**

The Global response could create opportunities for graft, including fraud and bribery stemming from critical emergency cash flows and medical supply shortages. Responses to the 2004 Banda Aceh earthquake and 2014 Ebola outbreak saw oversight of procurement contracts and the movement of funds, as well as inspections of purchased and donated supplies. According to Foreign Policy, items in high demand and short supply (i.e. personal protective equipment) are especially vulnerable to fraud, and causes particular vulnerabilities relating to procurement systems. With \$14 billion being approved on March 17 by the World Bank to support countries, experts warn that the large influx of money to countries and sectors can raise questions of accountability.

Action Fraud has reported an increase in coronavirus-related fraud by 400 per cent in March. They have reported 46 reports between 1 March and 13 March, and 38 reports in the four days between 14 March and 18 March. Action Fraud has said the majority of reports were related to online shopping scams where people had ordered protective face masks, hand sanitizer and other products which never arrived. Other frauds included ticket fraud, romance fraud, charity fraud and lender loan fraud. They also report receiving over 200 reports of coronavirus-themed phishing emails, attempting to trick people into opening malicious attachments which could cause fraudsters to steal personal information, email logins, passwords and banking details.

Action Fraud has also reported that victims have lost £800k to coronavirus related scams in just one month. Although a recent news article reports losses to be at £1.6million.

The response so far appears to be preventative. It is unclear what has resulted of the frauds identified in the above data, however a government press release on 30 March sets out some steps taken to counter misinformation about coronavirus including identification of issues by the Rapid Response Unit. They also report to be coordinating with other departments to deploy appropriate responses, including direct rebuttals on social media and engaging with social media platforms. Increased warnings have been issued as to these various scams. The CPS has also released a press-release that law enforcement, government and private sectors are working together to encourage members of the public to be more vigilant against fraud and saying that prosecutors are prepared for potential increase in fraud-related files.

- Will the ratio of third party funded matter rise?

UK Funders have already expressed that the market is much busier than anticipated at this stage of the outbreak; unlike 2008, cases (particularly contractual breach cases) are already being lodged.

Further, solvent companies who have commenced privately funded litigation are now looking to obtain partial funding to ensure continued commercial access to cash flow that was predicted pre-crisis. This is good news for UK funders who have an aggressive and crowded market and the litigants that need funders.

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