



Gibraltar Courts Service

HM Government of Gibraltar

CIRCULAR TO ALL CHAMBERS

8 April 2020

Circ. 5 of 2020

Rules of Court - Covid 19 Contingency

The Chief Justice has today published the following:

- Notice of Extension of the Supreme Court (Covid-19 Contingency) Rules 2020
- Notice of Extension of the Magistrates' Court (Covid-19 Contingency) Rules 2020

The Rules are now extended until the 7 May 2020. This may still be varied by the Chief Justice.

The Chief Justice has also today issued Notes on the Supreme Court (Covid-19 Contingency) Rules (No. 2) which you may find enclosed.

A handwritten signature in black ink, appearing to be 'H Cumbo', with a long horizontal stroke at the end.

H Cumbo (Ms)
Chief Executive

Enc. Notice of Extension of the Supreme Court (Covid-19 Contingency) Rules 2020
Notice of Extension of the Magistrates' Court (Covid-19 Contingency) Rules 2020
Notes on the Supreme Court (Covid-19 Contingency) Rules (No. 2)

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4696 GIBRALTAR Wednesday 8th April 2020

LEGAL NOTICE NO. 151 OF 2020

MAGISTRATES' COURT ACT

MAGISTRATES' COURT (COVID-19 CONTINGENCY) RULES 2020

NOTICE OF EXTENSION OF RULES

In exercise of the powers conferred upon him by rule 2(3) of the Magistrates' Court (Covid-19 Contingency) Rules 2020, the Chief Justice has extended the operation of the Rules until the 7 May 2020.

Dated 8th April 2020.

A E DUDLEY,
Chief Justice.

LEGAL NOTICE NO. 152 OF 2020

SUPREME COURT ACT

SUPREME COURT (COVID-19 CONTINGENCY) RULES 2020

NOTICE OF EXTENSION OF RULES

In exercise of the powers conferred upon him by rule 2(3) of the Supreme Court (Covid-19 Contingency) Rules 2020, the Chief Justice has extended the operation of the Rules until the 7 May 2020.

Dated 8th April 2020.

A E DUDLEY,
Chief Justice.

Notes on the Supreme Court (Covid-19 Contingency) Rules

(No. 2)

1.1 These Notes further supplement the Supreme Court (Covid-19 Contingency) Rules 2020 (“the Rules”) and the Notes issued on the 23 March 2020 and are part of the ongoing review to maximise access to the courts in the context of the Covid-19 pandemic. They may be relied upon for all proceedings in the Supreme Court, other than criminal matters and non-contentious probate applications.

Applications

2.1 Consequent upon the extension of the Rules to Thursday 7 May 2020 and the implementation of internal Gibraltar Courts Service processes, applications which may now be dealt with will no longer be limited to those which are urgent. However, in accordance with rule 3(2) determination of any such application will, in the context of prevailing circumstances, need to be in the interests of justice.

2.2 Subject to the foregoing, lawyers may wish to review actions in which they act and liaise with opposing sides to identify whether (i) the interests of justice test is met and (ii) it is feasible to progress matters. Lawyers should exercise judgment when considering whether or not it is appropriate to have the general stay lifted in respect of a particular action and whether an application is capable of being dealt with in one (or a combination) of the three ways identified below.

3.1 Upon any such applications being so identified the lawyers may send to the Registrar a draft consent order (under cover of an email) for the partial lifting of the stay and allowing for a hearing and the determination of the intended application. The parties must identify which form of hearing they consider most suitable. No fee shall be payable in respect of the filing of the draft consent order.

- 3.2 In the absence of agreement a party should file an application notice seeking the partial lifting of the stay (with an undertaking to pay the fee). The application, setting out the grounds relied upon, should be served upon every other party.
- 3.3 Unless the court orders otherwise, approval of a consent order under paragraph 3.1 or an application under paragraph 3.2 shall be determined without an oral hearing. For the purposes of determining whether the stay should be lifted the court shall consider whether the rule 3(2) interests of justice test is met.
- 3.4 Upon the lifting of the stay the substantive application may be filed (by pdf.) with an undertaking to pay the fee.
- 3.5 All documents shall be lodged electronically and must include an index and an undertaking to file original witness statements, affidavits and exhibits thereto, within 14 days of the Registry re-opening to the public.
- 3.6 Applications shall be dealt with in one of, or a combination of the three ways identified below.

Court Hearing

- 4.1 Contested applications are best determined at an oral hearing at which the parties or their advocates are present. Courtrooms provide a forum in which (particularly in cases involving only two parties) subject to reducing the number of participants, adequate social distancing can be maintained, whilst still allowing for near normal hearings to take place.
- 4.2 Lawyers or other participants who are “vulnerable people” at particular risk from Covid-19 will not be required to appear in person at a hearing.

Telephone Hearing

- 5.1 Arrangements have been put in place for hearings to be conducted by telephone through an external conference call provider.

- 5.2 The Court Registry shall be responsible for arranging the telephone conference with call connections being made at least 10 minutes before the time fixed for the hearing.
- 5.3 It is unlikely that the court will conduct a telephone hearing for applications with a time estimate of more than one hour.
- 5.4 Unless the court orders otherwise, no party, or representative of a party, to an application being heard by telephone may attend the judge in person while the application is being heard unless every other party to the application has agreed that he may do so.

Applications on Documents

- 6.1 Applications may also be dealt with without an oral hearing, with the court relying exclusively upon documents submitted electronically.
- 6.2 Dealing with an application on documents can amount to an incursion into the open justice principle, but in the context of the Covid-19 epidemic it is a proportionate measure which seeks to mitigate the impact that the epidemic is having upon the administration of justice.
- 6.3 Any substantive ruling flowing from a hearing on the documents will be handed down in public and made available in accordance with present practice.
- 6.4 For all applications that are to be dealt with without an oral hearing, the procedure in the Commercial Court Guide at CPR Volume 2 at 2A-92 is to be followed as closely as the circumstances allow. Save that, following service of written submissions and evidence (if any) in opposition, the parties shall file a statement of the issues on which they agree and on which they disagree, and they may each file further written submissions on the issues upon which they disagree.

Issue of claim forms etc.

7.1 No restrictions will be imposed upon the issuing of claim forms or other originating process. But the court after inviting submissions, may of its own motion, stay any such proceedings at any stage after they have been issued.

Anthony Dudley
Chief Justice

8 April 2020