

PALLAS

Commercial Court Public Domain Documents Pilot Scheme

We set out below a summary of the key points by reference to the new Practice Direction 51ZH (available [here](#)) ("PD 51ZH") and Guidance Note (available [here](#)). Nothing in the new Practice Direction affects the operation of existing rights and obligations under court orders or under the CPR to access court documents.

A. Scope of the Pilot Scheme

1. The Pilot Scheme will apply in the Commercial Court, London Circuit Commercial Court and Financial List, and run from 1 January 2026 to the end of 2027.
2. Under paragraph 8 of PD 51ZH, the following documents (referred to as "Public Domain Documents") once referred to in open court (i.e., after a trial or hearing), will be subject to a new filing requirement:
 - 2.1 Skeleton arguments;
 - 2.2 Written opening and closing submissions;
 - 2.3 Other written submissions provided to a judge and relied upon in the hearing;
 - 2.4 Witness statements and affidavits (excluding exhibits); and
 - 2.5 Expert reports (including exhibits).
3. In addition, a judge may order that other particularly important documents "critical to the understanding of the hearing" or referred to so extensively that it is "impossible to understand an argument without it", e.g. a contract which is at the centre of an argument about construction of a single term, qualify as Public Domain Documents. The parties may also agree that particular documents may be treated as public for the purposes of the pilot.

B. Filing Requirements and Modification Orders

4. A party must file a Public Domain Document on the public-facing domain of CE-file within the "Filing Period", which for skeleton arguments and written and closing written submissions will be two clear days after the start date of the hearing or hearing day when the document was relied upon, and for all other documents will be the period to 4pm on the 14th day after the date when the document is used or referred to in the hearing, unless otherwise ordered by the court.
5. These documents will then become publicly accessible once filed, subject to any order of the court restricting access, known as a Filing Modification Order ("FMO"), which could include:
 - 5.1 That a non-party may not obtain a copy of that Public Domain Document;

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- 5.2 Waiving or restricting the requirement to file a Public Domain Document;
 - 5.3 That the filing requirement can be complied with only after the Public Domain Document has been edited or redacted;
 - 5.4 An extension or other amendment to the Filing Period.
6. Paragraphs 13 to 19 of PD 51ZH set out provisions relevant to obtaining an FMO, and broadly are designed to be flexible and less formal, ensuring that sensitive material can be appropriately protected without unduly delaying the release of relevant documents. Where an FMO is sought by a party in advance of the hearing, it can do so by way of written request to the Judge, and the expected Filing Period is suspended until the Judge decides the request. Where a party or non-party seeks an FMO after the Public Domain Document has already been filed, any request must be made by way of formal application under the CPR 23 procedure.
7. There is also a process by which: (i) a non-party named in a document expected to become a Public Domain Document can apply to seek an FMO, and (ii) a non-party can apply to the Court to obtain an (unedited) copy of a document subject to a FMO.

C. Practical Considerations

8. Given the greater potential for written materials presented in open court to be scrutinised by the public, we suggest in advance of any upcoming hearings or trials to:
- 8.1 Assume when drafting evidence that will be relied on in open court, that these will be publicly accessible. Practically speaking, it is now much easier for the media/press, competitors or third parties to obtain copies of evidence.
 - 8.2 Consider in good time whether an FMO request is required, in particular the redaction of sensitive or confidential information.
 - 8.3 Consider whether sensitive material is necessary to be included in a narrative of a witness statement (which will become public) or to include as an exhibit to a witness statement (which will not automatically become public).
 - 8.4 Engage in advance discussions with the counterparty about agreeing whether documents may be “Public Domain Documents” (and request FMO accordingly if required) to mitigate the risk of the Court on its own motion designating documents as such at the hearing.
 - 8.5 To the extent sensitive, limit details in any skeleton arguments of parties and commercial affairs to the extent necessary, and/or consider rephrasing how such details are referred to.