

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT No.3) RULES 2006**

2006 No. 3435 (L.15)

- 1.** This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 The Civil Procedure Rules (S.I. 1998/3132 – “CPR”) are rules of court which govern practice and procedure in the civil division of the Court of Appeal, the High Court and the county courts.
- 2.2 This Statutory Instrument amends the Civil Procedure Rules 1998 (“the CPR”), in particular by:-
- (a) Removing the requirements for defendants to make payments into court and creating a new regime for offers to settle. Defendants wishing to offer to settle a claim by payment of a sum of money will now simply make a written offer to settle. The rules then require that an accepted offer must be paid within 14 days, or the claimant will be able to enter judgement and the defendant will lose the costs protection afforded by the rules.
 - (b) simplifying and clarifying the process for offers to settle, so that the permission of the court is not generally required to accept an offer or to withdraw it.
 - (c) giving admissions (where a party to a case admits the truth of the whole or any part of another party’s case) made before proceedings start equal weight with those made during proceedings.
 - (d) revoking a number of rules to allow for modernisation
 - (e) introducing provision for applications for drinking banning orders under the Violent Crime reduction Act 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

4. Legislative Background

- 4.1 Items (a) and (b) makes amendments following full public consultation and further targeted consultation. These amendments to Part 36 and 37 of the Civil Procedure Rules are the first in a series of comprehensive reviews of key areas of the Civil Procedure Rules.
- 4.2 Item (c) enacts matters of departmental policy.
- 4.3 Item (d) enacts the department’s policy to complete the codification and modernisation of civil procedure.
- 4.4 Item (e) is consequential on the introduction of new legislation.

5. Extent

5.1 This instrument applies to England and Wales.

6 European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Civil Procedure Act (1997) created the Civil Procedure Rule Committee and gave it power to create CPRs. The first CPRs were made as the Civil Procedure Rules (1998). The intention of the CPR was to create a single procedural code for matters in the Civil Division of the Court of Appeal, the High Court and county court, replacing the old county court rules (CCR) and Rules of the Supreme Court (RSC)¹. The CPR had a number of policy objectives, two of the more prominent being to improve access to justice through transparent, straightforward procedures and reduce, or at least control, the cost of civil litigation in England and Wales. The changes were made, and continue to be made, in response to the report Access to Justice (1996) by Lord Woolf.

7.2 Public interest in all aspects of civil procedure is, generally speaking, limited.

7.3 The policy background for each of the amendments is set out below using the numbering from para 2.2;

- (a) HMCS consulted earlier this year on proposals to simplify Part 36, in particular, on the possibility of removing the requirement for defendants to make offers to settle money claims in the form of a payment into court. The consultation clearly showed wide support for the proposal to remove the requirement for the majority of defendants (deemed 'good for the money'). The Civil Procedure Rule Committee conducted a follow-up consultation over the Summer on the possibility of abolishing payments into court altogether, subject to suitable safeguards. A slight majority of respondents agreed, and HMCS and the Committee have adopted this proposal. This reform also supports the department's Investment and Banking Review by significantly reducing the future workload of the Court Funds Office.
- (b) These ancillary amendments to Part 36 and 37 are part of the larger package outlined in 7.3(a) and aim to reduce the number of circumstances in which parties wishing to settle are required to make applications to the court, for example to accept an offer, or to file documents with the court.
- (c) Giving weight to admissions made before the commencement of proceedings will mean that the party to whom the admission is made will be able to rely on a pre-action admission. This should reduce costs on both sides. There was a consultation in Summer 2006 to around fifty individuals and organisations from the division's standard consultation list. The majority of respondents were in favour of giving weight to pre-action admissions.

¹ This work is ongoing; the few remaining CCR and RSC are included in 'schedules' to the CPR.

- (d) These rules are revoked as part of the department's ongoing policy of modernisation of rules of court, as set out in 7.1. The provisions which the revoked rules made are now replicated in a practice direction which supplements the CPR (Part 8 Practice Direction (Alternative Procedure for Claims)). The opportunity has been taken at the same time to simplify that Practice Direction.
- (e) Rule 14 of the Statutory Instrument facilitates applications for drinking banning orders and interim orders, which are to be heard in the county courts as enacted in section 4 and 9 respectively of the Violent Crime Reduction Act 2006.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it does not have an impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is generally limited to HM Courts Service.

9. Contact

Steve Uttley at Her Majesty's Courts Service (Tel:020 7210 8578) or e-mail: steve.uttley@hmcourts-service.gsi.gov.uk) can answer any queries regarding the instrument.