

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT No. 3) RULES 2008**

2008 No. 3327 (L. 29)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

2.1 This instrument amends the Civil Procedure Rules (S.I. 1998/3132) (the “CPR”). The CPR are rules of court, which govern practice and procedure in the civil division of the Court of Appeal, the High Court and county courts. The rules are a vehicle for implementation of new initiatives, modernisation of the rules, and introduction of European directives and regulations.

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

3.1 None

4. **Legislative Context**

4.1 The amendments to the CPR covered by this instrument mostly relate to Government or judicial initiatives. Two matters are consequential to legislation.

4.2 Amendments consequential to the Housing and Regeneration Act 2008 which amends the Housing Acts of 1985, 1988, and 1996.

4.3 Amendments consequential to the implementation of s.142 of the Tribunals, Courts and Enforcement Act 2007.

5. **Territorial Extent and Application**

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 (“the Committee”) and gave it power to create civil procedure rules. The first CPR 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 courts, 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 This instrument amends the CPR 1998 (“the CPR”), in particular by:

- (a) allowing for claims to be issued through Money Claim Online and the Claim Production Centre where the particulars of claim are to be served separately. This is part of ongoing work outlined in the Lord Chancellor’s Breakthrough Strategy launched May 2007. The strategy is to deliver systems and incentives to ensure that the majority of civil business work is initiated on line, simplifying and expediting delivery of services to the public;
- (b) increasing the financial limit of fast track procedures from £15,000 to £25,000. The increase in value will provide greater flexibility and will result in more cases being heard in the most appropriate track. There will also be an increase in the fast track trial costs scale to reflect the change as recommended by the Advisory Committee on Civil Costs;
- (c) permitting applications for, and variation of costs capping orders in order to limit the amount of future costs which a party may recover. The court may make such an order only where it is in the interest of justice, there is a substantial risk that without such an order costs will be disproportionately incurred and that this risk cannot be controlled by case management directions and detailed assessment of costs;
- (d) implementing changes in the rules relating to possession proceedings following amendments made by the Housing and Regeneration Act 2008 to the Housing Acts of 1985, 1988 and 1996, as in future the entitlement to possession will not arise until eviction and the tenancy will continue until then;
- (e) in response to representations by legal practitioners, extending the period of notice about a possession claim that must be given by the claimant to the occupant of the relevant property;
- (f) enabling enforcement of negotiated settlements in employment tribunal cases (through Arbitration Conciliation and Advisory Services) to be enforced as if payable under a court order; and
- (g) enabling requests for a review of a court officer’s decision to be determined without an oral hearing unless the person making their request asks for a hearing or the court orders a hearing in traffic enforcement cases; and to enable an authority to request the reissue of a warrant (within the 12 month

¹ This work is ongoing: the few remaining CCR and RSC are included in ‘schedules’ to the CPR.

validity period) where the respondent's address has changed since the issue of the warrant.

8. Consultation outcome

8.1 The Civil Procedure Rule Committee must before making Civil Procedure Rules consult such persons as they consider appropriate (Civil Procedure Act 1997 s.2(6)(a)). The relevant government department usually conducts a consultation exercise if rule changes are consequent to new legislation consultation. Where the Committee initiates amendments then consultation is undertaken where deemed necessary. A consultation was undertaken on the following:

8.2 A full consultation exercise following the Cabinet Office guidelines in respect of Fast Track Limits was undertaken by the Ministry of Justice between April and July 2007, and responses were published in July 2008. The legal profession, judiciary, and insurance industry were amongst those consulted and responses were received from these bodies and from trade unions, Members of Parliament, Ombudsmen, professional mediators, and private businesses. Of the 204 responses received 72% were in favour of the increase in the limit and 28% against. Those responding unfavourably were concerned that cases may be considered simply on the value of the claim and automatically assigned to fast track. However, the Ministry considered that the stringent case management powers available to judges would ensure allocation to the appropriate case track. As a result of the new limit the costs regime applying to Fast Track trials was considered and following consultation with the Advisory Committee on Civil Costs an additional cost band was agreed. The consultation and responses can be found at <http://www.justice.gov.uk/publications/cp0807.htm>

8.3 At the request of the Committee the Ministry of Justice consulted on the proposal to include rules on costs capping orders. The consultation in September - October 2008 set out the proposed rule changes and invited comments. The consultation was primarily aimed at the legal profession, insurance industry, the media and other court users with an interest in this issue. There were 64 responses 59% of which were from the legal profession. A broad range of views were expressed. Those themes that emerged were made by a very small number of respondents. Therefore limited changes were made to the rules to reflect these. The consultation paper can be found at: <http://www.justice.gov.uk/publications/costs-capping-orders-consultation>

8.4 An informal consultation exercise with stakeholders including Shelter, the Council of Mortgage Lenders, legal practitioners and the Civil Justice Council resulted in the amendment to allow for the earlier notification to the occupier of a property where possession proceedings have been issued against the mortgagor.

8.5 A full consultation on the Tribunal, Courts and Enforcement Act 2007 was completed before its introduction. The changes in this instrument are consequent to the implementation of that Act and no further consultation was necessary.

8.6 The Traffic Enforcement Centre (TEC) runs an automated registration procedure for those local authorities that have decriminalised enforcement of penal

charge notices. On reviewing this and addressing long standing operational issues at the Traffic Enforcement Centre the Ministry of Justice consulted with the local authorities that would be affected by any change. The local authorities consulted were content with the changes proposed and wider consultation was not required. The TEC will monitor and evaluate the operation of the new procedure once it has commenced.

9. Guidance

9.1 A preview summarising the forthcoming changes will also be published on the Ministry of Justice website in January 2009 at http://www.justice.gov.uk/civil/procrules_fin/index . The Ministry of Justice will also write to key stakeholders detailing the changes in January 2009. The consolidated rules will be published by the Stationery Office and will be available on the Ministry of Justice website when they come into force in April 2009. On coming into force on 6 April 2009 the amendments to the rules will be made on the website, which will coincide with issue of the printed version of the new rules.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument which gives effect to a variety of changes from difference sources. However Impact Assessments have been completed in relation to the underlying primary legislation to which some of the amendments relate (Tribunals, Courts and Enforcement Act 2007 and the Housing and Regeneration Act 2008).

10.4 A partial regulatory impact assessment was completed in relation to Fast Track Case limits.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide a summary of the changes three months in advance through the CPR website and by writing to key stakeholders.

12. Monitoring & review

12.1 These rules will form part of the Civil Procedure Rules 1998 that are kept under review by the Civil Procedure Rule Committee. The Civil Procedure Rule Committee will make any subsequent amendment to these rules.

13. Contact

Jane Wright at the Ministry of Justice Tel: 020 3334 3184 or email:
jane.wright@justice.gsi.gov.uk can answer any queries regarding the instrument.