

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PROCEDURE (AMENDMENT No. 2) RULES 2011**

**2011 No. 1979 (L.17)**

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

- 2.2 The amendments to the CPR covered by this instrument mostly relate to Government or judicial initiatives.

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

- 3.1 The JCSI drew to the attention of the Ministry of Justice a defect in the drafting of Civil Procedure (Amendment) Rules 2011 (SI 2011/88). The amendment allowed the address of a European Lawyer in a European Economic Area state or for a litigant in person, the litigant’s normal residence or place of business in the UK or failing that any EEA states as an address for service. However, the amendment failed to provide for the case where a solicitor is instructed to accept service of the claim form on behalf of the defendant at a business address in Scotland or Northern Ireland. The Ministry of Justice undertook to make amendments to rectify the omission.

- 3.2 The JCSI also drew special attention to the Civil Procedure (Amendment No.4) Rules 2010 (S.I. 2010/3038) for defective drafting, which arose from the insertion of a new section 3 (appeals in relation to designations under the 2010 Act) into Part 79 (proceedings under the Counter-Terrorism Act 2008 and Part 1 of the Terrorist Asset Freezing Etc. Act 2010) and, in particular, rule 79.14C(2)(b) (appellant’s notice), which requires an appellant to file and serve any evidence in support of “the application”. The JCSI asked what was meant by the reference to ‘the application’, given that there is no reference to ‘application’ elsewhere in the section. The Ministry of Justice replied to the JCSI suggesting that although the meaning was clear from the context, with hindsight the word ‘appeal’ might have been better, and undertook to ask the Committee to consider an amendment to this effect as part of the next instrument updating the CPR.

4. **Legislative Context**

- 4.1 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).<sup>1</sup> 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.

## **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 This instrument amends the CPR as follows.

(a) Amendments are made to explicitly provide for circumstances where a solicitor is instructed to accept service of a claim form on behalf of the defendant at a business address in Scotland or Northern Ireland.

(b) Minor consequential amendments clarify that for claims issued electronically through the Court Production Centre, Money Claim Online or Possession Claims Online, the defendant must have an address for service in England and Wales and the claimant must have an address for service in the United Kingdom. These changes are required to reverse the consequential amendments made in the December 2010 statutory instrument.

(c) Amendments are made to reduce uncertainty in the operation of rules dealing with formal offers to settle proceedings (which have specific consequences in relation to costs) where the offer is not accepted and the offer made is not beaten after a trial. The amendment makes it clear that, in relation to money claims or the money element of a claim, factors other than the amount of money offered cannot be taken into account when determining whether an offer has been beaten.

(d) Amends further the rules relating to the Counter-Terrorism Act 2008 and the Terrorist Asset-Freezing etc. Act 2010, to correct a drafting error and to omit the obligation to file and serve material which the disclosing party does not rely upon but which adversely affects the other party's case, i.e. inculpatory (incriminating) material which the disclosing party does not wish to rely upon in the proceedings.

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<sup>1</sup> This work is ongoing: the few remaining CCR and RSC are included in two 'schedules' to the CPR.

## **8. Consultation outcome**

8.1 The Civil Procedure Rule Committee must, before making Civil Procedure Rules, consult such persons as they consider appropriate (section 2(6)(a) of the Civil Procedure Act 1997). Where the Committee initiates amendments then consultation is undertaken where deemed necessary.

8.2 A consultation exercise which sought views on the recommendations contained in Lord Justice Jackson's Review of Litigation Costs: Final Report was undertaken by the Ministry of Justice. The proposal to amend Part 36 of the Civil Procedure Rules to clarify the position in respect of formal offers to settle and costs consequences received the greatest support on all sides of the debate with 388 respondents in relation to the proposal of which 77% were in support.

8.3 Lord Justice Jackson's Review of Civil Litigation Costs: Final Report can be found at <http://www.judiciary.gov.uk/publications-and-reports/reports/civil/review-of-civil-litigation-costs.htm>. Chapter 41 deals with offers made under Part 36 of the Civil Procedure Rules.

8.4 The Ministry of Justice consultation and response paper Proposals for Reform of Civil Litigation Funding and Costs in England and Wales can be found at: <http://www.justice.gov.uk/consultations/jackson-review.htm>

## **9. Guidance**

9.1 A preview summarising the forthcoming changes will also be published on the Ministry of Justice website in August 2011 at <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/index.htm>. The Ministry of Justice will also write to key stakeholders detailing the changes in August 2011.

9.2 The rules will be published by the Stationery Office and will be available on the Ministry of Justice website when the majority come into force in October 2011.

## **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 different sources.

## **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 up to three months in advance by writing to key stakeholders and through the CPR website.

## **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 amendments to these rules.

## **13. Contact**

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