

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2011**

2011 No. 88 (L.1)

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. There are two amendments consequential to European Directives.

- Ensuring compliance with Regulation 1393/2007 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters (the Service Regulation), in the light of Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services.
- Implementation of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of civil and commercial matters relating to mediation (“the Mediation Directive”). The aim of the Directive is to promote the use of mediation in certain cross-border disputes.

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

3.1 None

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).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.

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

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 allow for the recovery of fixed costs in successful claims for the recovery of money in relation to tax and other statutory debts where litigation is conducted by an officer of HM Revenue and Customs (HMRC). This will give effect to part of the Government's policy of ensuring HMRC has the right tools to tackle those who deliberately do not pay tax and other statutory debts.

When creditors take legal action through a solicitor in England and Wales they may claim costs, in addition to court fees. Creditors who represent themselves can also claim disbursements and costs (which are capped at two thirds of the costs which a solicitor would have charged for the work). If an officer of HMRC is successful in conducting court action to recover a debt no such costs (other than court fees) are currently recoverable. It can be cheaper for a debtor to owe money to HMRC rather than to a commercial creditor. This gives scope for debtors to pay others before HMRC, so putting HMRC and those who pay their tax at the right time at a disadvantage.

The amendment to the CPR permits HMRC officers to recover fixed costs in successful debt claims in the county courts in England and Wales will level the playing field, so that HMRC may recover the cost of work done by its non-legally qualified officers.

- (b) Amendments are made in Part 6 of the CPR to relax certain restrictions on the address which a party may provide as that party's address for service in relation to claims proceeding on paper, to ensure continuing compliance with the Service Regulation and Council Directive 77/249/EEC, as follows.
- A party may provide as that party's address for service the address of a solicitor qualified to practise in England and Wales but based in another European Economic Area (EEA) State.
 - Amendments are also made to permit use as an address for service of the address of a European Lawyer in any EEA Member State.

- Litigants in person whose normal place of residence or business is in an EEA state may use that place as their address for service.
 - In the case of claims proceeding not on paper but via HMCS' online systems, Money Claim Online (MCOL) and Possession Claim Online (PCOL), however, restrictions on the electronic exchange of information between parties contained in the Service Regulation would render the system unworkable if addresses for service abroad were used. For MCOL and PCOL claims, therefore, a party must still have an address for service in England and Wales.
- (c) The approach to implementation of the Mediation Directive has been to make the minimum necessary legislative changes to ensure comprehensive implementation. To this end, this instrument amends the CPR in relation to Article 6 (enforceability of agreements resulting from mediation) and Article 7 (confidentiality of mediation) of the Mediation Directive. The main provisions are contained in a new Section III to Part 78, in particular in rules 78.24 and 78.26. Rule 78.24, in relation to Article 6 of the Mediation Directive, sets out how a party (or parties) to the mediation settlement agreement can obtain a mediation settlement enforcement order, making the mediation settlement agreement enforceable. Rule 78.26, in relation to Article 7, sets out the procedure for applying for the disclosure or inspection of mediation evidence in the control of the mediator or mediation administrator.

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 The proposal to permit HMRC officers to claim fixed costs in successful debt litigation cases was one of a range of measures included in an HMRC public consultation in June 2007 entitled 'Payments, Repayments and Debt: the Developing Programme of Work'. It was discussed in more depth in a second public consultation entitled 'Payments, Repayments and Debt: the Next Stage' in November 2008. Overall there was general support for HMRC officers being able to claim fixed costs in successful debt actions in the county court. Concerns were raised about adding further to the debt of those who cannot pay, and clarity was sought on exactly when the costs would apply and to whom, and the type of cases in which HMRC use officers as opposed to solicitors to conduct proceedings.

8.3 A discussion paper considering the scale of fees to apply was published on 1 July 2010. Respondents agreed that the scale proposed was justifiable and reasonable, and were reassured by the link to a scale of costs set independently from HMRC. It was also accepted that HMRC officers are in a distinct position regarding their statutory right to conduct proceedings.

8.4 The consultation papers and summary of responses to the two consultations can be found on the HMRC website at: <http://www.hmrc.gov.uk/about/review-powers-con-docs.htm>.

8.5 A formal public consultation exercise was not thought necessary prior to the implementation of the EU Directive on Mediation in the Civil Procedure Rules. However, the Ministry of Justice has held discussions with some members of the judiciary and key stakeholders, such as, the Civil Mediation Council, Centre for Effective Dispute Resolution, as well as the devolved administrations and other government departments. The Ministry has had continued discussions during the planning of the implementation of the Directive and has also sought their views on the implementation options; and is continuing that dialogue with other interested parties.

9. Guidance

9.1 A preview summarising the forthcoming changes will also be published on the Ministry of Justice website in January 2011 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 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 April 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

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