

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PROCEDURE (AMENDMENT No.7) RULES 2013**

**2013 No. 1974 (L. 19)**

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 1998 (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 relate to Government initiatives.

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

- 3.1 In rules 21(a), 22, 26(c),(k)(l) and (q) in this instrument, and the Schedule to it, which amends CPR rules 68.4(2) and (3) and 68.5, the expression “will” is used. We note the contents of the Committee’s First Special Report published on 15<sup>th</sup> May 2013 and, in particular, paragraphs 11 and 12 of that report and, accordingly, make no further comment on the use of this expression at this time.

4. **Legislative Context**

- 4.1 The Civil Procedure Act 1997 established the CPR Committee and gave it power to make civil procedure rules. The first CPR were made in 1998. The intention behind 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.

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

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to the 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) The Patents County Court (PCC) was established as a specialist jurisdiction within the county court by the Copyright, Designs and Patents Act 1988. The Patents County Court may hear and determine various actions and counterclaims including: infringement of patents, designs, trade marks, copyright and other intellectual property rights; amendment of patents, declarations on non-infringement. It provides a less costly and less complex alternative to the High Court Patents Court. The Crime and Courts Act 2013 makes provision for the introduction of a single County Court for England and Wales by removing the geographic and jurisdictional boundaries from the county court structure. The Act also repeals existing statutory provisions which confer specialist jurisdiction upon the county court. In particular, the Act repeals those provisions which established the PCC. As from 1<sup>st</sup> October this year, the PCC will cease to exist and will be reconstituted as a free-standing specialist list in the Chancery Division, to be called the Intellectual Property Enterprise Court in recognition of its broad Intellectual Property jurisdiction. Currently, although the PCC is part of the Central London County Court (CLCC) it is physically separate from the CLCC and sits within the same building as, and is administered as part of, the Chancery Division. This is confusing for parties who would normally deal with the Chancery Division, but, for some purposes, have to deal with CLCC. In addition, the PCC has both a specialist and an ordinary jurisdiction – patents, registered designs and plant variety rights falling under its specialist jurisdiction as a patents county court and all other intellectual property matters under its ordinary jurisdiction. These parallel jurisdictions have given rise to operational difficulties in the past. Accordingly, reconstituting the work of the PCC as a specialist list within the Chancery Division and extending its specialist jurisdiction to all intellectual property claims will assist the administration of the court's work, promote efficiency and assist court users. On that basis, rule 20 and, in particular, rule 26 of this instrument amend the Civil Procedure Rules to confer jurisdiction on the Intellectual Property Enterprise Court and to enable the transfer of proceedings between courts and the allocation of work to the appropriate level of judiciary and to clarify the route of appeal.

(b) Part 68 of the CPR which deals with referral of a question to the European Court for a preliminary ruling is amended to reflect changes made to the European Union Treaties and the coming into force of the Treaty on European Union and the Treaty on the Functioning of the European Union. Changes to the procedure for requests for preliminary rulings set out in the Rules of Procedure of the European Court are accommodated.

(c) Rule 22 of this instrument modifies an existing rule to clarify the amount of costs that may be recovered for matters that do not go beyond provisional assessment of costs, and whether that amount includes court fees and VAT.

(d) The remaining amendments are made to update cross references, remove duplication or redundant wording, correct typographical errors and ensure the rules are gender neutral.

7.2 The Ministry of Justice does not plan to consolidate the amending instruments. However, a consolidated version of the amended rules is available to the public free of charge at: <http://www.justice.gov.uk/courts/procedure-rules/civil/rules> . Copies of the rules may be downloaded and printed as required.

## **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 Intellectual Property Court Users Committee (IPCUC) formed a working group whose remit was to formulate proposals for the reform of the Patents County Court. A consultation was undertaken in June 2009 and a final report was published on 31 July 2009. Comments were received from 27 individuals and organisations, including: the legal profession, professional and trade representatives, individual judges, barristers, solicitors, patent and trade mark attorneys and academics. The proposals were supported by Lord Justice Jackson in his report Review of Civil Litigation Costs. The Government accepted the recommendations following which the Intellectual Property Office (IPO) sought representations from the industry, including the judiciary and the Chancellor of the High Court.

8.3 The Working Group's Consultation on Proposals for and Final Report on the Reform of the Patents County and Lord Justice Jackson's Review of Civil Litigation: can be found at: <http://www.judiciary.gov.uk/> and <http://www.judiciary.gov.uk/publications-and-reports/reports/civil/review-of-civil-litigation-costs.htm>

## **9. Guidance**

9.1 A preview summarising the forthcoming changes will be published on the Ministry of Justice website in August 2013 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 2013.

9.2 The rules will be published by the Stationery Office and will be available on the Ministry of Justice website in consolidated form when they come into force on 1 October 2013.

## **10. Impact**

10.1 The amendments will impact on businesses and individuals and, to a more limited extent, on charities and voluntary bodies.

10.2 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 as soon as possible before implementation by writing to key stakeholders and through the CPR website.

11.3 The changes in relation to the Patents County Court will be cost neutral for businesses. The name change is expected to have a positive impact in that it will clarify the court's jurisdiction, which covers all Intellectual Property, not just patents. This should help businesses, particularly SMEs, to understand the Court and its purpose, allowing them to better identify it as the appropriate court within which to resolve their Intellectual Property disputes, and thus improve access to justice.

## **12. Monitoring and 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**

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