

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT No.8) RULES 2014**

2014 No. 3299 (L. 36)

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

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 Court.

2.2 The amendments to the CPR covered by this instrument relate to Government initiatives and the implementation of European Regulations.

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 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).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.

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 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:

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

(a) The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (RTA PAP), which is not a statutory document, describes the process by which claims arising out of road traffic accidents may be settled between parties without the need for the claimant to start court proceedings. The RTA PAP is amended to reflect the introduction of a new system for sourcing medical reports in soft tissue injury claims brought under the RTA PAP. A 'not for profit' company called 'MedCo Registration Solutions' ('MedCo') has been set up to operate this system, and from 6 April 2015, medico-legal experts and medical reporting organisations (MRO) will need to be registered with MedCo in order to provide medico-legal reports for RTA soft tissue injury claims brought under the RTA PAP. Users will be able to use the MedCo Portal to search for individual experts or MROs and will receive a number of randomly generated results from which to choose, to prevent the potential for conflicts of interest between those commissioning and those providing medico-legal reports. In addition, there will also be a new accreditation requirement for medico-legal experts and MRO to help improve the quality of medical evidence and drive up standards. The amendments will also require solicitors to undertake 'previous claims' checks on potential claimants and to confirm to the defendant that this has been done. These measures implement a cross-industry data sharing arrangement. Amendments are made to the rules to reflect the changes to the RTA PAP.

(b) Amendments to the rules allow for implementation of Regulation (EU) No. 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters² (the "Protection Measures Regulation"). This Regulation provides for mutual recognition and enforcement between EU Member States of "protection measures". Protection measures are decisions imposing one or more obligations on the person causing the risk with a view to protecting another person, when the latter person's physical or psychological integrity may be at risk, for example a prohibition or regulation on entering the place where the protected person resides, works or regularly visits or stays. The majority of such measures will be contained in orders made in the family jurisdiction, and corresponding amendments are being made to the Family Procedure Rules 2010, but such orders may be made in civil proceedings for example under the Protection for Harassment Act 1997. Regulations are also being made under section 2(2) of the European Communities Act 1972 to facilitate implementation of the Protection Measures Regulation, including to provide for the county court to have power to enforce protection measures issued in other Member States.

(c) Amendments are made to address the growing number of applications made at approval hearings for payment out of damages awarded to a child or a protected party (a person lacking capacity to make decisions) to meet the success fee provided for in a conditional fee agreement or damages-based agreement entered into between the litigation friend (who represents the interests of the child or protected party) and the solicitor for the child or protected party. The rules are amended to reflect when and how a deduction from damages of a sum to meet any shortfall between the costs recoverable from the other party and the 'solicitor and own client' costs payable to the

² OJ No L 181, 29.6.2013, p.4.

child or protected party's solicitors applies. The amendments are confined to cases where the damages agreed or orders to be paid do not exceed £25,000.

(d) Part 36 of the CPR set outs the procedure to be followed where a party makes an offer to settle a matter, or part of a matter, and the consequences of making such offers. Since the rules were substantially amended in 2007 there has been a large amount of case law (judicial decisions which set a precedent or authority which is binding on or persuasive when deciding a case with similar issues or facts) in respect of the application of the rules to various aspects of settlement including fraudulent claims and offers in respect of a two part trial (determining liability and damages separately). The changes reflect the case law and aim to simplify the rules as far as possible to make them more accessible to court users, particularly litigants in person.

(e) Amendments are made to the rules in respect of transfer of cases, to require litigants engaged in disputes in regional courts to state the reasons why a particular case should be transferred to London for determination when the appropriate specialist courts are available regionally.

(f) The introduction of a new Part 87 dealing with applications for Habeas Corpus is part of the ongoing work of the CPR Committee to transfer the remaining Rules of the Supreme Court into the CPR. The rules are modified to update the language and to reflect the process in the Administrative Court which deals with such applications. Part 87 sets out the procedure code to be followed where the court is required to determine whether a custodian has the lawful authority to detain a prisoner. Many of the Latin terms have been replaced with simpler English phrases to assist the court user, the one exception being “Habeas Corpus” which has been retained as a widely recognised term.

(g) Amendments are made to correct two numbering errors in the Civil Procedure (Amendment No. 7) Rules 2014 (S.I. 2014 No. 2948 (L. 32)).

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 Following an insurance summit in February 2012 the Government committed to take action to reduce the number and cost of whiplash claims, in order to tackle the impact such claims were having on the cost of motor insurance. The Ministry of Justice has subsequently consulted extensively – in December 2012, May 2014 and, most recently, during September of this year. The proposals for reform were published in the response to consultation in October 2013 which confirmed the Government’s intention to introduce a new system to safeguard the independence and

quality of medical reporting in whiplash claims, including a new accreditation requirement for medico-legal experts. In May 2014 Lord Faulks QC, Minister of State for Civil Justice and Legal Policy, wrote to key stakeholders seeking views on proposed changes to Civil Procedure Rules and the RTA PAP. Responses were received from the legal (claimant and defendant), insurance and medical sectors.

In response to the September consultation, 91% (63) of respondents took the opportunity to comment on the development of an accreditation process. 28 responses were received from defendants, 20 responses were received from claimant organisations, 12 were from medical stakeholders and 3 came from other types of organisation. There was strong support for a transitional period, to allow medical experts sufficient time to attain accreditation.

9. Guidance

9.1 A preview summarising the forthcoming changes will be published on the Ministry of Justice website in January 2015 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 December 2014.

10. Impact

10.1 The amendments in relation to soft tissue injury claims will impact on businesses and individuals, and an impact assessment in relation to the “whiplash” reforms has been published and can be found here: <http://www.justice.gov.uk/civil-justice-reforms/personal-injury-claims>. In respect of other amendments there will be a small impact on business; solicitors and barristers will need to be aware of the amendments and how to apply them.

10.2 There is otherwise no foreseen impact on business, charities or voluntary bodies, save to the extent that charities or voluntary bodies who support individuals when going to court and assist in other legal matters may also need to familiarise themselves with the amendments.

10.3 An Impact Assessment has therefore not been submitted in respect of this instrument.

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.

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 can answer any queries regarding the instrument.