

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2014

2014 No. 407 (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 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 on bailiff and enforcement reform; the introduction of the single County Court; bringing extant Rules of the Supreme Court and County Court Rules into the CPR, and miscellaneous amendments.

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

3.1 The Committee’s attention is drawn to rules 6(d) and (e), 8(b), 9(b), 10(h), 14(d), (f) and (g), 15(e), 16(c), (d) and (e), 21, 22(b) and (d), 23, 24(c) 28(a) and (d), 30(c), 40(b) in this instrument, and the Schedule to it which inserts in the CPR new rules 83.3, 83.4, 83.7, 83.9, 83.10, 83.13, 83.15, 83.17, 83.18, 83.19, 83.20, 83.22, 83.23, 83.26, 83.28, 83.29, 85.5, 84.6, 84.7 where the expression “will” is used. We note the contents of the Committee’s First Special Report published on 15th May 2013, and in particular, paragraphs 11 and 12 of that report and, accordingly, make no further comment of 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).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.

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

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.

(a) Introduction of the single County Court

Sections 17(1) and (2) of the Crime and Courts Act 2013 provide for the removal of geographical jurisdictional boundaries of county courts to allow for a single national court. The County Court will sit at various locations within England and Wales in a way similar to the High Court and will have a single seal and a single identity to indicate its national jurisdiction. The court houses in which it will convene will act as hearing centres with court administrative offices attached to them (and references in the CPR to “a county court” are accordingly changed to references to “the County Court”, and references to a specific county court or courts are changed to references to a specific County Court hearing centre or centres). The changes will take effect upon the commencement of sections 17(1) and (2) of the Crime and Courts Act 2013 to ensure alignment with the introduction of the single Family Court. The principal areas of change are:

Definition of judges: Further to amendment of s.5 of the County Courts Act 1984 changes are made to reflect that certain judges other than the current Circuit Judges and District Judges may now sit as “as judges of the County Court”. Judges will no longer be bound by the old district boundaries but will be able to sit in any part of the country, allowing for flexible use of resources to meet demand.

Changes in terminology: In addition to the changes of references to “a county court” or to specific county courts as explained above (which account for the great majority of amendments), the definition “home court” is revised to reflect the national jurisdiction, with the address of the property or party being used to establish their local hearing centre; the definition “designated money claim” is removed as all money only claims made under Part 7 of the CPR will now be processed at one of the two business centres; cases will no longer be judicially “transferred” between county courts but will be sent between court offices.

Streamlining of process: Claims issued at the County Court Money Claims Centre or at the renamed County Court Business Centre (including those issued online through Money Claim Online) will remain at the business centre up to the point where a hearing is required, or claimant wishes to enforce a judgment other than by way of issue of a warrant. This will allow efficient handling of process and assist with the functioning of the small claim mediation scheme.

Other claims: Part 8 claims (those that are unlikely to involve a substantial dispute of fact) and possession claims that cannot be issued online (forfeiture, landlord and tenant claims) may now be started at any County Court office and will be sent to the

appropriate hearing centre by that office, thus providing court users with a choice of location when issuing a claim.

(b) Implementation of bailiff and enforcement reforms

Major work on regulation of the private sector bailiff industry and the implementation of Part 3 of the Tribunals Courts and Enforcement Act 2007 will help debtors, creditors and bailiffs understand what their rights and responsibilities are when debts are enforced. Part 3 of the 2007 Act replaces the existing body of mixed statutory and case law relating to the seizure and sale of goods for most purposes. Schedule 12 of the Act sets out a new unified procedure to be followed by enforcement agents when taking control of and selling goods to recover a debt. The Taking Control of Goods Regulations (S.I. 2013/1894²) made to supplement Schedule 12 replace some of the procedures previously covered by the CPR, the old rules have been removed, and in accordance with usual practice existing legislation is not replicated in the rules but users will be directed to the appropriate regulations and links to the documents will be provided. Amendments to the enforcement provisions in the rules have been made with the introduction of the single County Court in mind and there are many consequential amendments encompassing both initiatives. The principal areas of change are:

Streamlining the rules: The existing procedures for enforcement that are contained separately in the Rules of the Supreme Court (RSC) and the County Court Rules (CCR) in Schedules 1 and 2 to the CPR respectively are amended and assimilated into the CPR.

Changes in terminology: To reflect the 2007 Act's renaming of writs and warrants as writs or warrants of control, the terminology in the rules is changed; and a new Part 83 consolidates and updates the extant RSC and CCR taking into account the 2007 Act's changes.

Taking Control of Goods: Provisions to reflect the Taking Control of Goods Regulations 2013 are set out in a new Part 84. The right to use the Taking Control of Goods procedure arises once a writ or warrant of control is obtained.

Applications: A number of new applications may now be made to the court including a debtor's right to challenge the legality of the enforcement; or an enforcement officer's application to exceed the prescribed fees (fees are prescribed by the Taking Control of Goods (Fees) Regulations 2014 (S.I. 2014/1³). The existing procedure for applications to the court under Part 23 of the CPR is utilised.

These amendments come into force on 6th April 2014 (the usual common commencement date) to coincide with the two sets of Regulations already made.

(c) Miscellaneous amendments

(i) An amendment to the High Court and County Court Jurisdiction Order, which determines whether claims are issued in the County Court or High Court, is reflected in the amended rules. Those claims where a party expects to recover no more than £100,000 (excluding personal injury claims) must now be issued in the County Court rather than the High Court. The increase from £25,000 to £100,000 is intended to

² <http://www.legislation.gov.uk/uksi/2013/1894/contents/made>

³ <http://www.legislation.gov.uk/uksi/2014/1/contents/made>

remove straight forward claims from the High Court to the County Court and to increase the judicial resources available in the High Court to deal with more complex cases.

(ii) The small claims mediation scheme currently operating under a pilot scheme is made permanent. For those claims under £10,000 where all parties indicate that they wish to mediate the claim will be referred to the Her Majesty's Courts and Tribunals Service (HMCTS) Small Claims Mediation Service. The HMCTS Small Claims Mediation Service is a free in-house service which allows parties with the assistance of a trained mediator to negotiate and draw up a settlement without the need for a formal court hearing. Parties may subsequently enforce the agreement or ask the court to restore the claim if a party does not comply with the agreement.

(iii) Amendments are made to allow any person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act) to be entered on the court record. This reflects all those legal representatives who now have the right to conduct litigation, including legal executives, costs lawyers, patent attorneys, trade mark attorneys and, from next year, barristers.

(iv) Amendments are made to the rules concerning appeals to provide that, where an order refusing permission to appeal is made, the order will specify the court to which any further application for permission should be made, and the level of judge who will hear the application. The change will provide clarification to appellants as to the correct court to make an application.

(v) A requirement for permission to appeal in respect of an appeal to the High Court against a decision of the Pension Ombudsman is introduced. Since an appeal can be brought as of right, there is currently no permission to appeal process to filter out any appeal made on fact not on law. Thus there may be appeal hearings where the appellant is a litigant in person and the respondent is legally represented, where the appeal is dismissed for not raising a point of law. The appellant may then face a significant bill of costs and conversely, the respondent may have to incur substantial irrecoverable costs on a hopeless appeal. The introduction of the permission filter is supported by the Pension Ombudsman.

(vi) An amendment is made to enable service to be effected on a UK address, in respect of a registered right in an Intellectual Property claim, where the address for service given for that right is in the appropriate register at the United Kingdom Patent Office or the Office for Harmonisation in the Internal Market.

(vii) The opportunity has been taken to revise the existing rules on interpleaders (a claim to goods taken in execution or a competing claim against a person who is under a liability in respect of a bet or money for goods or chattels that are the subject of a civil claim). The procedure is has been clarified and takes into account the changes brought about by the bailiff reform process. The rules that were previously contained in Schedule 1 and Schedule 2 of the CPR now form Parts 85 and 86 of the CPR.

(viii) Numerous minor amendments are made in consequence of the changes introduced by the commencement of the single County Court and other amendments are made to correct errors in the existing rules.

Consolidation

7.2 No further consolidation of the rules is planned at present.

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. Consultation on the two main initiatives contained in the Statutory Instrument, the single County Court and bailiff and enforcement reform were undertaken by the Ministry of Justice.

8.2 Following from Sir Henry Brooke's inquiry⁴ into the question of court unification, the Ministry of Justice published a consultation document entitled *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system*⁵. The consultation paper, which was aimed at reforming the civil justice system in England and Wales, sought views on whether a single county court should be established by posing the question: '*Do you agree that a single County Court should be established?*'

8.3 This question was answered by 161 respondents, of whom 136 (84%) agreed and 25 (16%) disagreed. The majority of the 136 respondents in favour of a single County Court measure were legal practitioners. Others in favour included members of the judiciary and judicial bodies such as the Association of District Judges and the Council of Circuit Judges, regulatory bodies such as the Law Society, representative bodies such as the Civil Courts Users Association, businesses representative bodies including the National Farmers, Local Authorities, Mediators, Citizens Advice Bureaus, financial organisations, members of the public, and HMCTS.

8.4 In summary, the creation of a single County Court was supported by the majority of affected parties. The reasons given for support included that: the amalgamation of the county courts could provide greater administrative efficiency; the current "geographical and jurisdictional boundaries create inefficiencies"; streamlining would lead to costs reductions and reduce backlogs in some courts.

8.5 The 25 respondents against the proposal included legal practitioners, a Citizens Advice Bureau, and a landlord. The reasons given included that: The High Court and the County Court should be amalgamated to provide a single civil court instead of a single County Court; having a local court is important to litigants for

⁴ *Should the Civil Courts be Unified?* Sir Henry Brooke, Judicial Office 2008, which is available at: <http://www.judiciary.gov.uk/publications-and-reports/reports/civil/civil-courts-unification>

⁵ Consultation Paper CP6/2011 March 2011, which can be found at: <http://www.justice.gov.uk/downloads/consultations/solving-disputes-county-courts.pdf>

effective delivery of justice; because justice is likely to be delivered more effectively. And a single County Court could be seen to reduce the importance of County Court.

8.6 The Government announced its intention to implement its proposal for the establishment of a single county court by a written ministerial statement accompanied by the published response to consultation. <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/chan264.pdf> https://consult.justice.gov.uk/digital-communications/county_court_disputes/results/solving-disputes-in-cc-response.pdf

8.7 The Ministry of Justice's "Transforming Bailiff Action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections" consultation paper was published on 17 February 2012. The paper set out and sought views on the Government's assertion that the implementation of Part 3 and Schedule 12 of the TCEA 2007 would address the majority of the root causes of aggressive bailiff action. In particular, the proposals set out the need for a clear enforcement process. The consultation period ran until 14 May 2012 and received 254 responses. It was aimed at the public, the enforcement industry, creditors, the free debt advice sector and all those with an interest in civil enforcement in England and Wales. Copies of both the consultation paper and the Government's response are on the Ministry of Justice website at: <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action>. Details of the consultation responses are set out in the analysis section of the response report.

8.8 In summary, the consultation responses re-affirmed that the current legislation, which governs the actions of enforcement via the seizure and sale of goods, can lead to abuses of the system by some enforcement agents and delivers little protection against aggressive bailiff action. There was widespread support for reform and general agreement that the implementation of Part 3 and Schedule 12 of the TCEA 2007 would be an appropriate solution.

9. Guidance

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

9.2 The rules will be published in consolidated version and will be available on the Ministry of Justice website when the majority come into force in April 2014.

10. Impact

10.1 The majority of the amendments will impact on businesses and individuals, some will directly impact on charities and voluntary bodies.

10.2 An Impact Assessment has not been provided for this instrument. However, an Impact Assessment and Equality Impact Assessment covering two recommendations in the Brooke report, including the recommendation to establish a single county court,

was published alongside the consultation paper and response document and is available at: https://consult.justice.gov.uk/digital-communications/county_court_disputes.

10.3 The impact on business and the voluntary sector of the bailiff and enforcement reforms is estimated to be an annual average benefit of £5 million. The benefits of savings associated with the ongoing saving of doorstep visits, streamlining of the law, simplification of the system and fewer complaints were calculated to offset the costs such as familiarisation with the new system and ongoing training costs. An Impact Assessment was carried out to consider the impact of the introduction of the bailiff and enforcement reforms and is available at: <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action>.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 There has been extensive consultation with relevant bodies, including claimant and defendant representative groups throughout the development of these provisions. We do not anticipate that the requirements will have any special impact on small firms over and above those that apply to any other party in civil litigation.

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

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.