

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2014**

2014 No. 610 (L. 10)

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 courts.

2.2 The amendments to the CPR covered by this instrument relate to the creation of a Property Court in the High Court.

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

3.1 There are no matters of special interest to the Committee.

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.

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

7. Policy background

7.1 The policy objective of creating the Planning Court is to ensure that planning cases, including those with the potential impacts on economic growth and recovery, are resolved more quickly and efficiently.

7.2 The Civil Procedure (Amendment No. 3) Rules 2014 amend the Civil Procedure Rules to establish a new Planning Court within the High Court. This is achieved by inserting a new section into Part 54 of the Civil Procedure Rules which provides for planning-related judicial reviews and statutory challenges to be dealt with in a specialist list forming the Planning Court.

7.3 Currently planning judicial reviews and appeals are considered in the Administrative Court, which is part of the Queen's Bench Division. In July 2013, the Court took measures to ensure planning cases are dealt with expeditiously; the President introduced new procedures to identify planning cases as early as possible and to prioritise their management and progress in line with new targets and shorter deadlines; this was termed the 'planning fast track'. A specialist Planning Liaison Judge was nominated to review planning cases and to ensure that all major infrastructure cases are heard by a specialist High Court Judge.

7.4 Following a public consultation when over 100 respondents gave their views on the merits of either continuing with the planning fast track in the High Court or creating a new Planning Chamber in the Upper Tribunal, the decision was made to build on the planning fast track and create a Planning Court. Approximately half of those who commented on planning (mainly members of the judiciary and legal representatives) wanted time to assess the impacts of the first phase of reforms to judicial review and the impact of the planning fast track. The senior judiciary however proposed that the planning fast track should be developed into a Planning Court in the High Court with a longer term aim of streamlining how planning and environmental cases are dealt with overall.

7.5 The amendment to the CPR sets out which matters will be dealt with in the Planning Court, explains the role of the Planning Liaison Judge and ensures significant cases will be dealt with by specialist planning judges.

7.6 The rules also make transitional provision so that any case started before this instrument comes into force is transferred to the Planning Court after that date and the rules apply to the case from the date of transfer.

7.7 The amendment to the CPR is supplemented by a new Practice Direction (PD 54E) which explains the categorisation of cases in the Planning Court and sets out the time limits for dealing with significant cases.

Consolidation

7.8 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 amendments are required in consequence of initiatives which have themselves been the subject of consultation, the Committee will not generally undertake additional formal consultation.

8.2 The consultation *Judicial Review: Proposals for further reform* (<https://consult.justice.gov.uk/digital-communications/judicial-review>) ran from 6 September 2013 until 1 November 2013. The consultation put forward proposals to ensure Judicial Reviews, including those relating to planning with the potential impacts on economic growth and recovery, are resolved more quickly and efficiently. One proposal was to create a Planning Chamber in the Upper Tribunal; after analysing the responses to the consultation it was proposed a Planning Court as part of the High Court should be established to build on progress already made with revised procedures.

9. Guidance

9.1 Changes will be made to IT systems and related templates, forms and letterheads and guidance will be amended to reflect the changes.

9.2 The rules will be published in consolidated version and will be available on the Ministry of Justice website.

10. Impact

10.1 The proposal will enable planning cases to be resolved more quickly due to more efficient listing and deployment of specialist judges to hear these cases. There is also the potential for all types of cases heard in the Administrative Court to proceed more quickly as planning cases are diverted out of the general list. There is no evidence that this will impact less favourably on small businesses, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument. The Impact assessment for the consultation *Judicial Review: Proposals for further reform* can be found at <https://consult.justice.gov.uk/digital-communications/judicial-review>.

11. Regulating small business

11.1 The legislation applies to small businesses but there is no evidence that they would be affected significantly or disproportionately. Currently delays and uncertainties in proceeding with planning projects, caused by a judicial review, may generate cash flow problems and other finance costs for small businesses. Where small businesses are the claimant or an interested party in a judicial review they may therefore benefit from quicker case resolutions in the Planning Court.

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

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