

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2018
2018 No. 975 (L. 9)

1. Introduction

- 1.1 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”), which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and the County Court. The amendments cover four matters: (a) confirming the status of the Welsh Language in civil courts and proceedings; (b) formally establishing the Business and Property Courts (previously established under practice directions) within the rules; (c) confirming the power of a District Judge to deal with proceedings to commit a person for breach of an injunction; and (d) altering the requirement for permission for the issue of writs (in the High Court) or warrants (in the County Court) following suspended orders

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Civil Procedure Act 1997 established the CPR Committee and gave it power to make Civil Procedure Rules, which are rules governing practice and procedure in civil proceedings in the County Court, High Court and Court of Appeal (Civil Division). 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 the County Court replacing the old County Court Rules (CCR) and Rules of the Supreme Court (RSC). The CPR

had a number of policy objectives, two of the more prominent being to improve access to justice through transparent straightforward procedure and reduce, or at least control, the cost of civil litigation in England and Wales. The first CPR were made in 1998, and amendments are regularly made in response to practical experience of the operation of rules or decisions of the higher courts, to provide procedure for new matters such as new types of order provided for in new Acts of Parliament, for updating generally and for modernising purposes such as making provision for online or other electronic methods. References below to a rule, or Part, by number alone are references to the rule or Part with that number in the CPR.

7. Policy background

What is being done and why?

- 7.1 The Welsh Language: two new rules (rule 1.5 and rule 5.6) explicitly confirm the principles (established by the Welsh Language (Wales) Measure 2011 and the Welsh Language Act 1993), that the Welsh language has official status in Wales and that any legal proceedings in Wales may use the Welsh language. This statement of principles has been considered desirable for some time, and the appointment of a Welsh judicial member to the CPR Committee has provided an opportunity to make the necessary amendments to the rules. Similar provision for the Family Procedure Rules is under consideration by the Family Procedure Rule Committee.
- 7.2 The Business and Property Courts: The Business and Property Courts are an umbrella covering a number of specialist courts (in particular, but not exclusively, the courts which sit in the Rolls Building) able to deal with business disputes of differing kinds. These include the Commercial Court; the Admiralty Court; the Technology and Construction Court; the Financial List; the Intellectual Property List, the Insolvency and Companies List and the Competition List. This umbrella was first established by directions, and formal establishment in the rules via the insertion of a new Part 57A enshrines the structure of the Business and Property Courts and enables specific provision for procedure in those courts to be made more easily and clearly.
- 7.3 Power of District Judges to commit for breach on an injunction: The amendments made to Part 65 resolve previous uncertainty as to whether the CPR enable a District Judge to hear committal proceedings for breach of an anti-social behaviour injunction made pursuant to the Anti-Social Behaviour, Crime and Policing Act 2014 without first obtaining specific authorisation from the relevant Designated Civil Judge to exercise the jurisdiction of a Circuit Judge. Having to obtain such specific authorisation results in adjournments, with attendant delay and cost. The proposed rule changes arose out of discussion between the Designated Civil Judges, who were subsequently consulted on a draft and were unanimously in support of it. The amendments to Part 65 also revoke rules 65.2 to 65.7, which relate to applications under legislation which has been repealed, and which are considered now to have no practical application and to be spent.
- 7.4 Enforcement of suspended possession orders: Rule 83.2(3) is amended to deal with an unintended consequence of the merging in Part 83 of what has previously been separate rules in relation to cases proceeding in the High Court and cases proceeding in the County Court. This consequence, highlighted by the case of *Cardiff v. Lee* [2016] EWCA Civ. 1034, was that the permission of the court was required for the issue of a warrant of possession for breach of any suspended possession order, regardless of the nature of the breach, when previously that had been a requirement

where the terms of suspension in the suspended possession order related to the behaviour of the defendant or compliance with non-monetary obligations, but not where the breach was in failure to pay arrears. The Committee undertook a public consultation, the majority of respondents to which supported amendment to exclude from the requirement for permission any case (not limited to suspended possession orders) where the breach of the suspended order is a failure to pay money. The amendment made by this instrument gives effect to that proposal.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

- 10.1 The CPR Committee must, before making Civil Procedure Rules, consult such persons as they consider appropriate (section 2(6)(a) of the Civil Procedure Act 1997). The CPR Committee consults, as it considers appropriate to the rules or amendments to rules in question, in a number of other ways of differing degrees of formality, including specific correspondence with bodies considered appropriate to be consulted; involving representatives of interested organisations in the work of sub-committees reviewing particular aspects of the rules; inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn; and inviting and reviewing suggestions from relevant Government Departments and other authorities affected by rules of civil procedure.
- 10.2 In the case of this instrument, consultation took a variety of forms. The rules in respect of the Welsh language were the subject of informal consultation with members of the judiciary in Wales, in particular the Welsh language liaison judges, who were strongly in support. The provisions relating to the Business and Property Courts were the subject of discussions with judges and court users in London and the regions relating to the definition and management of the work of the BPC, and the provisions reflect agreement reached on those issues. The judiciary (Designated Civil Judges) were (as explained in paragraph 7.3 above) consulted about the amendment in relation to the power of District Judges to deal with committal for breach of an injunction, and were unanimously in support. The proposal for amendment in relation to suspended possession orders was the subject of public consultation (as explained in paragraph 7.4 above): the consultation ran from 28 June 2017 to 30 August 2017 inviting views on nine specific questions regarding permission to enforce and the alignment of related High Court and county court procedures. 44 responses were received, representing four customer groups, namely, Housing Associations, Landlords, the Law Society and the Advice Sector. Not all respondents responded to all questions; but a majority (28 of 35 responses) considered that not all cases should require permission to issue a writ or warrant, and a majority (24 of 33 responses) also supported exclusion from the permission requirement of cases where non-compliance consisted of non-payment of money.

11. Guidance

- 11.1 Amendments to the CPR are drawn to the attention of participants in the civil justice system by correspondence addressed by the CPR Committee secretariat to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant legal publications; as well as by publicity within HM Courts and Tribunals Service. News of changes to the rules, together with the consolidated version of the rules, are published on the Ministry of Justice website at <https://www.justice.gov.uk/courts/procedure-rules/civil>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for the amendments to form part of the Civil Procedure Rules which are kept under continuous review by the Civil Procedure Rule Committee, and may be subject to amendment accordingly.

15. Contact

- 15.1 Amrita Dhaliwal at the Ministry of Justice. Direct line telephone 020 3334 6306 and email: amrita.dhaliwal@justice.gov.uk can answer any queries regarding this instrument.
- 15.2 David Parkin, Deputy Director for Civil Policy & Law, Access to Justice Directorate, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lucy Frazer QC, MP, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.