

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 2) RULES 2004

2004 No. 2072 (L.11)

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. **Description**

- 2.1 The instrument amends the Civil Procedure Rules 1998 (“the CPR”) in particular by:-

- (a) making provision about the power of the court to restrain parties from issuing claims or making applications that are totally without merit (known as civil restraint orders);
 - (b) amending provisions about the supply of documents from court records;
 - (c) making provision for fixed recoverable success fees in employers liability accident cases;
 - (d) amending the current evidential requirements when applying for certain anti-social behaviour injunctions; and
 - (e) making amendments to reflect recent changes to disability legislation.

- 2.2 In addition, other minor amendments have been made to the CPR.

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

- 3.1 None

4. **Legislative Background**

- 4.1 The instrument is made in exercise of the powers conferred on the Civil Procedure Rule Committee (“the CPRC”) by section 2 of the Civil Procedure Act 1997. It amends the CPR.

- 4.2 The amendments in relation to civil restraint orders resulted from the Court of Appeal judgment in the case *Bhamjee v Forsdick* [2003] EWCA Civ 1113 (“Bhamjee”).

- 4.3 The amendments in relation to the supply of documents from court records stem from seeking to achieve an appropriate balance between the competing considerations of, on the one hand, the right to privacy (including rights under the Data Protection Act 1998 and ECHR Article 8) of parties to proceedings and other persons about whom court documents may contain personal or sensitive information and, on the other hand, rights to freedom of information and the general principle that justice should be conducted openly.
- 4.4 The amendments in relation to fixed recoverable success fees in employers liability accident cases implement an agreement reached in May 2004 between representatives of the legal professions and the liability insurance industry, which was facilitated by the Civil Justice Council.
- 4.5. The amendments in relation to the evidential requirements for certain anti-social behaviour injunctions were made to accommodate practical difficulties identified with the previous requirement to file affidavit evidence.
- 4.6 The amendments in relation to disability legislation are in consequence of amendments to the Disability Discrimination Act 1995 by the Disability Discrimination Act 1995 (Amendment) Regulations 2003.
- 4.7 The amendments do not implement EU legislation.

5. Extent

- 5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

Not applicable

7. Policy background

- 7.1 The CPR make provision for the practice and procedure in county courts, the High Court and the Civil Division of the Court of Appeal.
- 7.2 In relation to civil restraint orders, although the powers to make such orders are set out in *Bhamjee* it is the policy of the DCA that the rules should set out as fully as possible the procedures to be followed in the civil courts. Civil restraint orders, which prevent litigants from utilising court resources to bring cases that are totally without merit, enable the courts to fulfil important

aspects of the overriding objective set out in Part 1 of the CPR; in particular that of saving expense, dealing with cases in a way that is proportionate and allocating to them an appropriate share of the court's resources.

- 7.3 In relation to the supply of documents from court records, a policy review was undertaken preceding the work done by the CPRC. It follows the Department's concern to ensure that the rules and procedures surrounding the maintenance of court registers and access to court files properly reflects the various provisions relating to data protection, privacy law and freedom of information – including the long standing common law presumption of open justice. In particular the Department was concerned about permitting unrestricted access to claim forms, given the possibility that they may sometimes contain sensitive material.
- 7.4 In relation to fixed recoverable success fees in employers liability accident cases, the new rules implement an agreement facilitated by the Civil Justice Council and the DCA between representatives of the legal professions and the liability insurance industry designed to make recoverable legal costs more predictable, to speed up the settlement of cases and to reduce claims costs. The new rules apply a range of fixed success fees which solicitors and barristers can recover from the losing party in winning cases run under a conditional fee agreement ("CFA"). The level of the success fee is determined by when the case concludes. For solicitors, a fixed success fee of 25% will be recoverable, except in cases where a trial takes place that will attract a success fee of 100%. An additional uplift of 2.5% to the 25% will be provided for solicitors where the CFA claim is funded by a membership organisation (such as a Trade Union). In exceptional cases the success fees will be subject to assessment by the court. For barristers the fixed success fee will be 25% for issued cases except those that conclude at trial for which it will be 100%. For multi track cases which conclude within 21 days before trial the success fee will be 75% and for fast track cases that conclude within 14 days before trial it will be 50%.
- 7.5 In relation to the evidential requirements for certain anti-social behaviour injunctions, the policy objective is to respond to concerns from practitioners (primarily Local Authority legal departments) that the requirement for applications to be supported by an affidavit is causing practical difficulties. The amendment will allow the use of a witness statement rather than an affidavit, and will address the concerns raised.

7.6 In relation to the disability legislation, the Department for Work and Pensions requested changes to the CPR relating to procedures in the county court as a result of the introduction of the Disability Discrimination Act 1995 (Amendment) Regulations 2003.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for the instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Declan Hickey at the Department for Constitutional Affairs Tel: 020 7210 0759 or e-mail: declan.hickey@dca.gsi.gov.uk can answer any queries regarding the instrument.