

**EXPLANATORY MEMORANDUM TO THE  
CIVIL PROCEDURE (AMENDMENT NO 3) RULES 2004**

**2004 No 3129 (L.24)**

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. These Rules set out procedural requirements in respect of the provisions in section 2 of the Damages Act 1996, as inserted by sections 100 of the Courts Act 2003, regarding the payment of damages for future loss and care costs in respect of personal injury in the form of periodical payments. They insert into the Civil Procedure Rules 1998 a new Section II of Part 41 to govern proceedings involving periodical payments. Amendments are also made to Part 36 to ensure that the scheme for offers to settle and payments into court can work in cases in which periodical payments may be awarded.

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

3.1 None.

**4. Legislative background**

4.1. Section 2 of the Damages Act 1996 gave courts in England, Wales and Northern Ireland the power to order that damages for future pecuniary loss in respect of personal injury are to be paid wholly or partly in the form of periodical payments rather than a lump sum, provided that the parties consent. The power did not extend to making such an order should the parties not both consent, or to varying the order subsequently.

4.2 Section 100 of the Courts Act 2003 (together with section 101, which makes provision for enhanced protection for periodical payments) amends the 1996 Act to extend the power. It replaces section 2 of the 1996 Act with three new sections which focus primarily on enabling the court to order that damages for future pecuniary loss in respect of personal injury should take the form wholly or partly of periodical payments, and on providing that the Lord Chancellor may by Order enable a court to vary an order or settlement providing for periodical payments in specified circumstances.

**5. Extent**

5.1 This instrument applies to England and Wales.

**6. ECHR**

6.1 Not applicable.

## **7. Policy background**

7.1. In March 2002 the Lord Chancellor published a consultation paper “Damages for future loss: Giving the courts the power to order periodical payments for future loss and care costs in personal injury cases”, which sought views on the use of periodical payments in personal injury cases. The proposals contained in the consultation paper were taken forward in sections 100 and 101 of the Courts Act 2003. The post-consultation report can be accessed at <http://www.dca.gov.uk/consult/general/periodpayresp.htm>. A clear majority of responses agreed that the courts should have the power to order periodical payments without the parties’ consent.

## **8. Impact**

8.1 A Regulatory Impact Assessment in relation to the power to order periodical payments was published in November 2002. These Rules do not create any additional impact.

## **9. Contact details**

9.1 Janet Howe at the Department for Constitutional Affairs Tel: 0207 210 1221 or email [janet.howe@dca.gsi.gov.uk](mailto:janet.howe@dca.gsi.gov.uk) can answer any queries regarding the instrument.