EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2006

2006 No. 1689 (L.6)

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

2. Description

2.1 The Civil Procedure Rules (S.I. 1998/3132 – "CPR") are rules of court which govern practice and procedure in the civil division of the Court of Appeal, the High Court and the county courts.

2.2 This Statutory Instrument amends the Civil Procedure Rules 1998 ("the CPR"), in particular by:-

(a) amending the regime covering access to documents held by the court, granting further access to people not directly involved in a particular case;
(b) providing for modernisation of rules concerning litigation involving partnerships;
(c) creating a new regime for the cost of appealing against the court's decision ('appealing') in low-value cases ('small claims');
(d) allowing the Court of Appeal to refuse to grant a person or organisation involved in litigation (a 'party') an oral hearing to determine whether that party may appeal in certain circumstances;
(e) adding the phrase "(or an alternative service which provides for delivery on the next working day)" after the phrase 'First Class Post' in rule 54.28B(2);
(f) adding a procedure for notifying the Administrative Court that an appellant in an asylum and immigration appeal wishes his appeal to continue in circumstances in which it would otherwise be treated as abandoned, in accordance with section 9 of the Immigration, Asylum and Nationality Act 2006;
(g) making other minor amendments to the provisions of Rule 52 and Rule 54 which concern appeals from the Asylum and Immigration Tribunal (AIT);
(h) amending rule 59.1(3) to allow for changes in the organisation of certain specialist courts; and
(i) revoking a number of rules to allow for modernisation.

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

3.1 None

4. Legislative Background

4.1 Item (a) makes amendments following representations from, and subsequent consultation with, a number of members of the press, judiciary and legal practitioners.

4.2 Items (b), (c), (d), and (i) enact matters of departmental policy.

4.3 Item (f) is consequential on the introduction of new legislation.

4.4 Items (e), (g) and (h) are made in response to issues raised in practice and to correct out of date references.

5. Extent

5.1 This instrument applies to England and Wales.

6 European Convention on Human Rights

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

7. Policy background

7.1 The Civil Procedure Act (1997) created the Civil Procedure Rule Committee and gave it power to create CPRs. The first CPRs were made as the Civil Procedure Rules (1998). The intention of 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 court, 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.

7.2 Public interest in all aspects of civil procedure is, generally speaking, limited. The highest-profile policy areas within this statutory instrument are those of asylum and immigration appeals ((f) and (g)) and access to court documents (a).

7.3 The policy background for each of the amendments is set out below using the numbering from para 2.2;

(a) During the course of litigation, parties are normally required to file at court a number of different documents relating to their case. People who are not a party to a case may have access to some of these documents. This facility is mostly used by members of the press. Late in 2005, the DCA received a number of representations from members of the press concerning statements of case (a particular category of document which sets out a party's case in full). The complaint was that courts were not allowing release of these documents, following a rule change in October 2005 which enabled release of statements of case with permission of the court. The general complaint was that non-release was contrary to the principle of open justice. Following consultation with the press and other interested parties, the new regime shown at rule 3 of the statutory instrument was agreed. This reverses the previous position, making the default position that statements of case will be released unless the court orders that they should not be. 90% of the consultees, including the press, some judiciary and other interested parties (such as professional associations) approved this scheme.

[1] This work is ongoing; the few remaining CCR and RSC are included in 'schedules' to the CPR.

(b) Rules 4 and 10 of the statutory instrument provide for a modernised regime governing litigation by or against partnerships, replacing a number of previous RSC and CCR (as discussed at 7.1).

(c) The provisions made in Rule 5 of the Statutory Instrument concern costs in small claims, i.e. those cases allocated to the Small Claims Track (a specific procedure designed for cases of value less than £5000). These provisions previously only applied to original cases, but costs were not limited in appeals from those cases. The provisions now also apply to appeals from small claims. The department consulted on this issue in its paper 'Proposed Changes to Civil Appeals Rules' in September 2005. This amendment met with the approval of the majority of consultees who responded on the matter.

(d) Rule 7 of the Statutory Instrument makes an amendment to the procedure where the Court of Appeal grants or denies permission to appeal. The previous procedure was that an application to appeal would be considered on paper. If permission was denied, the applicant would be able to apply to have their application considered at an oral hearing. This amendment makes provision that where a paper application is considered totally without merit, the court may refuse permission for an oral hearing. This is to enable the Court of Appeal to better direct its resources towards considering meritorious appeals and reduce delays in that area. The department consulted on this issue in its paper 'Proposed Changes to Civil Appeals Rules' in September 2005. This amendment met with the approval of the majority of consultees who responded on the matter.

(e) Parts of the CPR specify the effect of serving (officially delivering) documents through certain methods, including First Class Post. With the loss of the Royal Mail monopoly on postal services on 1 January 2006, this amendment is designed to ensure that any alternative postal services are treated in an equivalent fashion.

(f) These amendments are envisaged by section 9 of the Immigration, Asylum and Nationality Act 2006, which is to come into force in October 2006. This replaces section 104(4) of the Nationality, Immigration and Asylum Act 2002 and inserts three new sub-sections. Section 104(4) currently provides that an appeal to the Asylum and Immigration Tribunal (AIT) shall be treated as abandoned if the appellant is granted leave to enter or remain in the UK, or if the appellant leaves the UK. New sub-sections 104(4B) and 104(4C) allow, in limited circumstances, an appeal in an asylum and immigration matter to continue in situations where it would otherwise be treated as abandoned. Section 104(4B) allows an appeal brought on Refugee Convention grounds to continue if an appellant is granted leave to enter or remain in the UK for more than 12 months and the appellant gives notice that he wishes his appeal to continue on those grounds. Section 104(4C) allows an appeal brought on race discrimination grounds to continue if the appellant is granted leave to enter or remain in the UK and he gives notice that he wishes the appeal to continue on those grounds. These amendments incorporate into CPR Part 54 an administrative procedure for notifying the High Court that an appellant wishes an appeal to continue under sub-sections 104(4B) and 104(4C). The Immigration Law Practitioners Association (ILPA) was consulted on, and approved, the time limits set out in rule 54.36(2).

(g) These amendments correct out-of date references to the Immigration Appeal Tribunal, which was replaced by the AIT on 4 April 2005. A further amendment formalises current practice within the Administrative Court Office by requiring that certain documents are filed with an application to the High Court under section 103A of the Nationality, Immigration and Asylum Act 2002 that the AIT reconsider its decision. The requirement that certain specified documents be filed with the application will assist the Administrative Court in obtaining all relevant documents from the AIT, and by providing full and accurate reference numbers and other information at an early stage in the process.

(h) Rule 9 makes an amendment consequential to a reorganisation of certain specialist courts.

(i) These rules are revoked as part of the department's ongoing policy of modernisation of rules of court, as set out in 7.1. The provisions which the revoked rules made are almost entirely replicated in practice directions which now supplement the CPR, with the exception of those dealing with Partnerships (see (b), above).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it does not have an impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is generally limited to HM Courts Service.

9. Contact

Richard Walley at Her Majesty's Courts Service (Tel:020 7210 2625 or e-mail: richard.walley@hmcourts-service.gsi.gov.uk) can answer any queries regarding the instrument.