

**EXPLANATORY MEMORANDUM TO  
THE CIVIL PROCEDURE (AMENDMENT) RULES 2008**

**2008 No. 2178 (L. 10)**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

**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 rules relating to service of documents (Part 6 of the CPR) following a comprehensive review of and public consultation on the current rules;
- (b) modifying existing rules as a consequence of the Child Maintenance and Other Payments Act 2008 introduced by the Department of Works and Pensions and which enables the recovery of lump sum payments from a compensation payment;
- (c) introducing new rules and modifying existing rules to provide for orders under section 194(3) of the Legal Services Act 2007 (payments in relation to pro bono representation);
- (d) amending CPR rule 52.3(4A) in relation to requests to review at a hearing a decision refusing permission to appeal to ensure consistency in appeals to the Court of Appeal in civil and family proceedings;
- (e) amendment of the rules to provide for applications under section 214 of the Housing Act 2004;
- (f) removing provisions relating to the procedure for obtaining Drinking Banning Orders under the Violent Crime Prevention Act 2006 because the implementation of the relevant sections of that Act have been delayed indefinitely;
- (g) introducing rules to ensure that the CPR is not inconsistent with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (which enables recovery of outstanding uncontested money claims in cross-border cases); and

- (h) introducing rules to ensure that the CPR is not inconsistent with Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure (which simplifies cross-border small claims litigation in civil and commercial matters).

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

3.1 Correspondence with counsel to the JCSI is ongoing regarding the use of parentheses (“signposts”) in the Civil Procedure Rules. The Civil Procedure Rule Committee will be asked to consider this issue in the near future.

### **4. Legislative Background**

- 4.1 Item (a) enacts departmental policy following a full consultation.
- 4.2 Items (b), (c) and (e) are consequential on the implementation of legislation.
- 4.3 Item (d) enacts departmental policy.
- 4.4 Item (f) is consequential to the indefinite delay of implementation of legislation.
- 4.5 Items (g) and (h) relate to Regulations of the European Parliament and of the Council.

### **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 (“the Committee”) and gave it power to make the CPR (section 2 of that Act). 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 courts, replacing the old County Court Rules and Rules of the Supreme Court<sup>1</sup>. 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 The policy background for each of the amendments to the CPR contained in this Statutory Instrument is set out below using the numbering from para 2.2:

- (a) These amendments which deal with the rules on service of documents are part of an ongoing programme of reviewing existing rules. Part 6 of the CPR, which deals with the service of documents, has been revised following a full public consultation. Rules in relation to service of documents outside the United Kingdom are still under review.

---

<sup>1</sup> This work is ongoing; the few remaining CCR and RSC are included in ‘schedules’ to the CPR.

- (b) Provisions in the Child Maintenance and Other Payments Act 2008 introduced by the Department of Works and Pensions and which amend the Social Security (Recovery of Benefits) Act 1997 intend to provide faster compensation to all people diagnosed with mesothelioma. The costs of the change will be met by compensation recovery from lump sum payments. Consequential amendments are required to the CPR in relation to compensation payments in particular in relation to offers to settle and interim payments.
- (c) Section 194 of the Legal Services Act 2007 enables the courts to make orders where the successful party was represented (whether wholly or partly) by a lawyer(s) working free of charge (or 'pro bono'). This will enable such cases to be treated in a manner similar to other "normal" fee paying case and prevent the losing party gaining the unintended benefit of escaping a costs order. The amounts awarded under these orders will be directed not to the lawyers providing the pro bono representation but to a single charity (prescribed by Order made by the Lord Chancellor) that will administer and distribute the monies to those who provide, organise or facilitate the provision of free legal advice and assistance. Following consultation on the proposals for the implementation of section 194 (published on 16 April 2007) the Ministry of Justice published its response on 30 November 2007. The overall opinion of respondents was that CPR should be amended a little as possible to accommodate the changes. Amendments have been made to the CPR to enable such orders under section 194 to be made.
- (d) A previous amendment to the appeals procedures allowed the Court of Appeal, where it refuses permission to appeal without a hearing, and it considers that the application is totally without merit, to order that the person seeking permission may not request that the decision to be reconsidered at an oral hearing. Appeals in family proceedings (as defined by section 32 of the Matrimonial and Family Proceedings Act 1984) were expressly excluded from this provision. This restriction on family proceedings is removed following consultation with the Family Lord Justices.
- (e) Section 214 of the Housing Act 2004 came into effect in April 2007. Where a landlord has failed to place a deposit in an approved tenancy deposit scheme, a tenant may apply to the county court to compel the landlord to repay the deposit or place it in an approved tenancy deposit scheme. The amendments to CPR Part 56 set out the procedure for making an application.
- (f) Procedures were put in place to enable applications to the courts for drinking banning orders under the Violent Crime Reduction Act 2006. However, the implementation of the Act has been delayed indefinitely and therefore the relevant CPR provisions are removed.
- (g) Rules are introduced to ensure that the CPR is not inconsistent with two European regulations - European Order for Payment and European Small Claims Procedure (ESCP) EC Nos 1896/2006 and 861/2007 coming into force on 12 December 2008 and 1 January 2009 respectively. The Regulations constitute an additional option for claimants who would remain free to resort to existing national procedures. The European Order for Payment allows the recovery of uncontested money claims where there is no dispute that the money is owed, but where the debtor is unwilling or unable to pay.
- (h) The European Small Claims Procedure Regulation establishes a simplified and accelerated procedure for cross-border small claims litigation in civil and commercial matters. It will also eliminate the intermediate measures necessary to enable recognition and enforcement of judgments given in one Member State in a ESCP in other Member States.

## **8. Impact**

8.1 A partial impact assessment on section 194 (then clause 185 of the Legal Services Bill) was prepared to accompany the ‘Cost Recovery in Pro Bono Cases’ consultation in 2007. No comments were made on the partial impact assessment and no additional information came to light that affected the original assessment. It was therefore republished as a full impact assessment on 3 November 2007 <http://www.justice.gov.uk/docs/probonoconsultation-draft-full-reg-assess.pdf>.

8.2 An initial impact assessment on the rules on service of documents concluded that the proposals would not have a significant or measurable impact on business, charity or the voluntary and public sectors and it was not thought necessary to conduct a more detailed impact assessment.

8.3 Where the Civil Procedure Rules implement policy developed elsewhere, where appropriate, impact assessment have been produced by the relevant policy team or government department responsible for that policy for the items affecting businesses, charities or the voluntary sector, except where the impact is negligible.

## **9. Contact**

Jane Wright at the Ministry of Justice (Tel: 020 7210 1412 or e-mail: [jane.wright@courtservice.gsi.gov.uk](mailto:jane.wright@courtservice.gsi.gov.uk)) can answer any queries regarding the instrument.