

**EXPLANATORY MEMORANDUM TO  
THE CIVIL PROCEDURE (AMENDMENT No. 2) RULES 2009**

**2009 No. 3390 (L.31)**

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. **Purpose of the instrument**

2.1 This instrument amends the Civil Procedure Rules (S.I. 1998/3132) (the “CPR”). The CPR are rules of court, which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and county courts. The rules are a vehicle for implementation of new initiatives, modernisation of the rules, and introduction of European directives and regulations.

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

3.1 None

4. **Legislative Context**

4.1 The amendments to the CPR covered by this instrument mostly relate to Government or judicial initiatives.

4.2 There are also two matters which are consequential on the commencement of primary legislation—

- amendments consequential to the Legal Services Act 2007; and
- amendments consequential to the implementation of the Tribunal Courts and Enforcement Act 2007.

4.3 There is one amendment consequential to a European Directive 2006/123/EC on Services in the Internal Market.

5. **Territorial Extent and Application**

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

The Civil Procedure Act 1997 created the Civil Procedure Rule Committee (“the Committee”) and gave it power to create civil procedure rules. The first CPR 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 courts, replacing the old County Court Rules (CCR) and Rules of the Supreme Court (RSC).<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 This instrument amends the CPR, in particular by:

- (a) making amendments to the definitions of terms such as “legal representative” as a result of the new regulatory framework for the provision of legal services under the Legal Services Act 2007. The 2007 Act defines and lists reserved legal activities and explains who may carry out those activities. Approved regulators will authorise and regulate persons to carry out such reserved legal activities.
- (b) making an amendment relating to the doing of any act at the court office to take account of new Practice Direction 5C This Practice Direction provides for proceedings to be started and subsequent steps taken electronically in the Admiralty, Commercial, London Mercantile Courts, Technology and Construction Courts and the Chancery Division (including Patents Court, Bankruptcy and Companies Courts) of the High Court at the Royal Courts of Justice.
- (c) making amendments throughout the CPR to remove inconsistent references to practice directions and replacing references with a simple number based system.
- (d) making amendments to allow for service of documents on a party’s legal representative who is qualified to practise in England and Wales but is based in another EU member state in order to comply with the EU Directive on Services in the Internal Market.
- (e) making amendments as a result of the transfer of the functions of the Asylum and Immigration Tribunal (“AIT”) to the First-tier and Upper Tribunals as part of the new unified tribunal structure established under the Tribunals Courts and Enforcement Act 2007.

## 8. Consultation outcome

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

8.1 The Civil Procedure Rule Committee must, before making Civil Procedure Rules, consult such persons as they consider appropriate (Civil Procedure Act 1997 s.2(6)(a)). Where the Committee initiates amendments then consultation is undertaken where deemed necessary.

8.2 Both the Tribunal, Courts and Enforcement Act 2007 and the Legal Services Act 2007 were subject to extensive consultation before their introduction. The relevant amendments in this instrument are consequent to the implementation of those Acts and no further consultation was necessary.

## **9. Guidance**

9.1 A preview summarising the forthcoming changes will also be published on the Ministry of Justice website in January 2010 at [http://www.justice.gov.uk/civil/procrules\\_fin/index](http://www.justice.gov.uk/civil/procrules_fin/index). The Ministry of Justice will also write to key stakeholders detailing the changes in January 2010. The consolidated rules will be published by the Stationery Office and will be available on the Ministry of Justice website when they come into force in April 2010. On coming into force on 6 April 2010 the amendments to the rules will be made on the website, which will coincide with issue of the printed version of the new rules.

## **10. Impact (any must be attached as annex)**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument which gives effect to a variety of changes from different sources.

10.4 However, regulatory impact assessments were prepared in respect of the primary legislation for the Legal Services Act 2007 which can be found at <http://www.justice.gov.uk/publications/legalservicesbill.htm> and for the Tribunals Courts and Enforcement Act 2007 which can be found at <http://www.justice.gov.uk/publications/tribunalscourtsandenforcementact.htm>.

## **11. Regulating small business**

11.1 The legislation applies to small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide a summary of the changes up to three months in advance through the CPR website and by writing to key stakeholders.

## **12. Monitoring & review**

12.1 These rules will form part of the Civil Procedure Rules 1998 that are kept under review by the Civil Procedure Rule Committee. The Civil Procedure Rule Committee will make any subsequent amendments to these rules.

### **13. Contact**

Jane Wright at the Ministry of Justice Tel: 020 3334 3184 or email:  
[jane.wright@justice.gsi.gov.uk](mailto:jane.wright@justice.gsi.gov.uk) can answer any queries regarding the instrument.