

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PROCEDURE (AMENDMENT No. 6) RULES 2014**

**2014 No. 2044 (L. 28)**

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

**2. Purpose of the instrument**

2.1 This instrument amends the Civil Procedure Rules 1998 (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.

2.2 The amendments to the CPR covered by this instrument relate to Government initiatives to: reform the claims process for low value (between £1,000 and £25,000) whiplash claims arising from road traffic accidents; to implement appropriate rules for court proceedings following new or amendments to Acts; and to make changes to reflect current practice in courts and to correct omissions and inconsistencies in the rules.

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

3.1 There are no matters of special interest to the Joint Committee on Statutory Instruments.

**4. Legislative Context**

4.1 The Civil Procedure Act 1997 established the CPR Committee and gave it power to make Civil Procedure Rules. The first CPR were made in 1998. The intention behind 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.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

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

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 This instrument amends the CPR as follows.

(a) Amendments both provide for fixed costs in relation to medical reports obtained pursuant to, and deal with offers to settle in respect of, low value soft tissue personal injury claims (whiplash injuries) started under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (RTA PAP). The RTA PAP, which is not a statutory document, describes the process by which claims arising out of road traffic accidents may be settled between parties without the need for the claimant to start court proceedings. The RTA PAP defines both “fixed cost medical report” and “soft tissue injury claim”. Amendments to Part 36 – ‘offers to settle’ – are made in respect of those claims which are started under the RTA PAP, but which are no longer subject to it and instead are pursued in court. The amendments are intended to deter a defendant from making an offer to settle a claim, and the claimant from accepting that offer, before the defendant receives the claimant’s fixed cost medical report in support of the claim. The amendments apply to those claims where an offer is made by the defendant to settle the claim, and the claimant either accepts the offer after the specified date for acceptance, or fails to beat the defendant’s offer following trial. The amendments provide that, in these circumstances, where the defendant makes an offer to settle before receipt of a fixed cost medical report, the parties’ entitlement to costs which would normally follow will not, and cannot, do so until such time as the report is received by the defendant.

Amendments to Part 45 – ‘fixed costs’ – detail the costs allowed for certain medical reports. The cost of the first medical report is fixed at £180. If a subsequent medical report is justified, fixed costs are applicable in four disciplines: Consultant Orthopaedic Surgeon £420; Consultant in Accident and Emergency Medicine £360; General Practitioners registered with the General Medical Council £180; and Physiotherapists registered with the Health and Care Professions Council £180. A secondary specialist report may be obtained, but only where the initial examination identifies a justifiable need for this. Fixed fees are also set for the provision of medical records. Amendments further provide that no fee shall be allowed for the costs of obtaining a medical report from a medical expert who has provided treatment or is associated with an expert who has provided treatment.

(b) Amendments are made to provide for new court based procedure enabling those left behind when a person disappears to obtain a declaration from the High Court that the missing person is to be deemed to have died. The High Court will make the declaration if it is satisfied that the missing person has died or has not been known to be alive for a period of at least seven years. The declaration must include a finding as to the date and time of presumed death. This will allow the missing person’s property to pass to others and his or her marriage or civil partnership will end in the same way as if the missing person had actually died. The amendments are made following the Presumption of Death Act 2013 receiving Royal Assent.

(c) The commencement of the Anti-social Behaviour, Crime and Policing Act 2014 requires amendments to the rules in four distinct areas:

**Anti-Social Behaviour Injunctions** - Amendments are made to cater for a new form of injunction which will replace most of the existing orders and injunctions with a single procedure. The provisions put in place a Government commitment to introduce effective measures to tackle anti-social behaviour.

**Public Spaces Protection Order** – A new order intended to deal with a particular nuisance or problem in an area that is detrimental to the local community’s quality of life, by imposing conditions on the use of that area is introduced. It will replace designated public place orders, gating orders and dog control orders. Examples of where a new order could be used include prohibiting the consumption of alcohol in public parks or ensuring dogs are kept on a leash in children’s play areas. The order can be issued either by a local authority or by a body designated by the Secretary of State in respect of land that it has the power to regulate by virtue of any enactment.

**Independent Police Complaints Commission disclosure of information** - Under the Act the Independent Police Complaints Commission (IPPC) has the power to require the disclosure of information from third parties. An information notice will be served on the party and they will have the right to appeal the information notice through the First-tier Tribunal. Should a party fail to provide the appropriate information the IPCC may certify that fact to the High Court. The High Court may then inquire into the matter and, after hearing any witness who may be produced against or on behalf of the person, and after hearing any statement offered in defence, deal with the person as if the person had committed a contempt of court. The rules are amended to provide that the IPCC is included in the list of bodies that may make certifications to the High Court.

**Appeal to the High Court in extradition cases** - The procedure for rights of appeal to the High Court against orders approving or refusing extradition made in the magistrates’ court or by the Secretary of State under the Extradition Act 2003 is currently set out in the rules. The Anti-social Behaviour, Crime and Policing Act 2014 amends the Civil Procedure Act 1997 and the Courts Act 2003 in such a way as to transfer from the Civil Procedure Rule Committee to the Criminal Procedure Rule Committee the power to make rules governing the procedure on extradition appeals to the High Court. Consequently the rules relating to appeals under the Extradition Act 2003 are omitted from the CPR.

(d) Section 4 of the Inheritance (Provision for Family and Dependents) Act 1975 has been amended to ensure that proceedings can be commenced before a grant of representation has been obtained, further to a Law Commission recommendation. In consequence the rules have been amended to provide that nothing should prevent a claim under the 1975 Act being commenced before the grant of probate or letters of administration in respect of the deceased’s estate have been granted.

(e) A number of amendments are made to reflect current procedures, correct omissions and to address inconsistencies in the rules. A brief description on each follows:

**Transfer of cases** - An amendment is made to remove the power of judges of the Commercial Court and the Technology and Construction Court to transfer cases out of the Chancery Division into their own specialist lists and for the power to be reserved to the Chancery Division itself.

**Provision of transcripts at public expense** - A general provision governing the power to direct that a transcript be obtained at public expense is included in CPR Part 52 which will cover transcripts of judgments, evidence and proceedings. A respondent as well as an appellant may apply for a transcript. The exercise of the power will be subject to a “financial need” condition, and the exercise of the power should be subject to a further condition that the court is satisfied that it is necessary in the interests of justice for such a transcript to be obtained. This amendment corrects the inconsistencies in rules covering appeals in the Court of Appeal, High Court and County Court.

**Discrepancies in respect of documents to be filed and served** - Amendments are made to address the inconsistencies between the rules and practice directions (supplementary documents which support the rules) in respect of the material that must be served and filed in relation to protected party and child settlement claims.

**Time limits for appeals** - Amendments are made to reflect different time limits allowed for appeal and to define the point at which the time for making an appeal starts.

**Corrections to enforcement proceedings** - Amendments are made to correct the omission of Chancery Chambers in the list of jurisdictions that can issue writs of control and execution. Amendments are also made to correct an unintended consequence in relation to warrants and writs that contain both taking control of goods - essentially seizing and selling – elements, and non-taking control of goods elements (hybrid warrant or writ). The unintended consequence allowed an Enforcement Officer to levy on certain elements of a hybrid warrant or writ at any time. Restrictions are usually imposed as to the times or days on which an Enforcement Officer may seek execution on non-hybrid warrants or writs.

## **Consolidation**

7.2 No further consolidation of the rules is planned at present.

## **8. Consultation outcome**

8.1 The Civil Procedure Rule Committee must, before making Civil Procedure Rules, consult such persons as they consider appropriate (section 2(6)(a) of the Civil Procedure Act 1997). Where the Committee initiates amendments then consultation is undertaken where deemed necessary. Consultation on one initiative contained in the Statutory Instrument on the reduction of the number of claims and costs in whiplash claims has been undertaken by the Ministry of Justice.

8.2 Following a Government commitment to reduce the number and cost of whiplash claims and the impact of such claims on the costs of motor insurance, a consultation on reform was conducted in 2013. The proposals for reform were published in the response to consultation in October 2013 and outlined a robust system for medical examination, evidence and reporting of claims. In May 2014 Lord Faulks, Minister of State for Civil Justice and Legal Policy, wrote to key stakeholders seeking views on proposed changes to Civil Procedure Rules and the RTA PAP. 143 responses were received from the legal (claimant and defendant), insurance and medical sectors in respect of Lord Faulks' letter. There was strong support from stakeholders for extending and mandating a fixed fee regime for medical reports. Overall 64 (45%) stakeholders provided views on the proposal to introduce mandatory fixed fees. 58 of these respondents supported the proposal and 6 objected to it. Of those in favour 14 were from a claimant background, 29 were insurers or defendant lawyers, 12 were medical professionals with 3 from other backgrounds including the judiciary.

8.3 The 2012 consultation document and the Government's response to it can be seen at: <https://consult.justice.gov.uk/digital-communications/reducing-number-cost-whiplash> and Lord Faulks' letter to stakeholders and its attachments can be found at: <http://www.justice.gov.uk/civil-justice-reforms/personal-injury-claims>.

8.4 No further consultation was undertaken in respect of amendments made by implementation of the Anti-social, Behaviour Crime, and Policing Act 2014, Presumption of Death Act 2013 or the Inheritance and Trustees' Powers Act 2014.

8.5 No consultation has been undertaken in respect of the other amendments which either reflect changes in court procedure or address inconsistencies, omissions or errors in the rules.

## **9. Guidance**

9.1 A preview summarising the forthcoming changes will be published on the Ministry of Justice website in July 2014 at <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/index.htm>. The Ministry of Justice will also write to key stakeholders detailing the changes in July 2014.

9.2 The rules will be published in consolidated version and will be available on the Ministry of Justice website when they come into force in October 2014.

## **10. Impact**

10.1 The majority of the amendments will impact on businesses and individuals, some will directly impact on charities and voluntary bodies.

10.2 An Impact Assessment has not been provided for this instrument. An Impact Assessment and Equalities Statement in respect of the reform of soft tissue claims (whiplash) has been prepared and will be published shortly at: <http://www.justice.gov.uk/civil-justice-reforms/personal-injury-claims>.

## **11. Regulating small business**

11.1 The legislation applies to small businesses.

11.2 There has been extensive consultation with relevant bodies, including claimant and defendant representative groups throughout the development of the provisions in respect of the whiplash reforms. We do not anticipate that the requirements will have any special impact on small firms over and above those that apply to any other party in civil litigation.

## **12. Monitoring and 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.gov.gsi.uk](mailto:jane.wright@justice.gov.gsi.uk) can answer any queries regarding the instrument.