

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2020
2020 No. 747 (L. 16)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 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 1998 (S.I. 1998/3132) (“the CPR”), which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and the County Court. The amendments cover nine matters, explained in paragraph 7, below:(a) Costs budgeting and variation; (b) Welsh judicial reviews; (c) False Statements; (d) Requests for Evidence following EU Withdrawal; (e) Legal Adviser Unless Order provisions; (f) Tainted Acquittals; (g) Contempt of Court; (h) Possession and (i) minor amendments, including one which clarifies an earlier amendment to the rules.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is subject to the negative resolution procedure. Most of its provisions will come into force on 1 October this year. However, rules 6 and 16(1) and (2) of these Rules which respectively amend Part 30 (which, amongst other matters, concerns the transfer of proceedings from the county court to the High Court for the purposes of enforcement) and Part 83 (which includes provisions in respect of writs and warrants of possession), come into force on 23 August 2020. While that is more than 21 days after the instrument was laid, a considerable proportion of that period falls after Parliament has risen.
- 3.2 While these amendments are permanent, their coming to force date has been expedited as part of the arrangements for managing the resumption of possession proceedings under Part 55 of the Rules, following the expiration of Civil Procedure (Amendment No. 2) (Coronavirus) Rules 2020 (S.I. 2020/582), which extended for two months (to 23 August 2020) the stay on possession proceedings imposed by Practice Direction 51Z. These amendments are in addition to those to come into force on 23 August under the Civil Procedure (Amendment No. 4) (Coronavirus Rules) 2020 which specifically make provisions to address the lifting on the stay on possession proceedings.
- 3.3 The Ministry of course acknowledges the general desirability of observing the “21-day rule”, but in the current fast-moving circumstances of the coronavirus pandemic and the need to have appropriate arrangements in place when the stay on possession proceedings is lifted on 23 August, the Ministry’s view is that the coming into force

of these rules cannot be delayed for the period necessary to allow for 21 days while Parliament is sitting.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Civil Procedure Rules are made by the Civil Procedure Rule Committee (CPRC) under the Civil Procedure Act 1997, section 2(6) of which requires the CPRC before making rules to meet (unless inexpedient to do so) and consult such persons as they consider appropriate. The CPRC meets nine times a year and except in very rare circumstances considers any proposed matters for inclusion in the rules in at least one meeting (as it did for the matters in the present instrument). Consultation is addressed in section 10 of this memorandum.

7. Policy background

What is being done and why?

- 7.1 Costs budgeting and variation - the current structure of the rules on variations to cost budgets is rationalised. The changes have reduced the existing structure which involved three sources of rules (CPR Rules, a Practice Direction (PD) and a lengthy Guidance Note) down into two documents – a set of Rules and a PD which is intended only to include practice guidance.
- 7.2 Welsh judicial reviews - makes provision for any claim against Welsh public bodies which challenges the lawfulness of their decisions to be issued and heard in Wales. This follows the recommendation in the 2019 Justice in Wales for the People in Wales report by the Commission for Justice in Wales.
- 7.3 False Statements – a contempt provision is provided for in relation to a person who makes a false statement in a document, before or during court proceedings, and therefore can be held in contempt of court. This is in response to case law arising from *Jet 2 Holidays Ltd v Hughes* [2019] EWCA Civ 1858.
- 7.4 Requests for Evidence following European Union (EU) Withdrawal - provide for a new procedure for the making of requests for the taking of evidence, primarily under the relevant Hague Convention, when the EU Taking of Evidence Regulation ceases to have effect at the end of the Transition Period following the UK's withdrawal from the EU.

- 7.5 Legal Adviser Unless Order provisions – in the exercise of delegated judicial function this provides for an additional delegated power to legal advisors to order a judgment creditor, in certain Final Charging Order proceedings, to file specific material with the court by a specified date. Where this is not complied with the Charging Order application will be dismissed by the Court and the interim charging order discharged.
- 7.6 Tainted Acquittals - provides for time limits for an application to the High Court under section 54(3) of the Criminal Procedure and Investigations Act 1996 (Acquittals tainted by intimidation, etc.) following a request from the Criminal Procedure Rules Committee arising from a decision of the High Court in *Director of Public Prosecutions v Goldsmith* [2019] EWHC 3051 (Admin). Whilst the time limit for an application to the High Court in such circumstances is rare, it could nonetheless present an obstacle. This amendment provides for an application for an order quashing an acquittal under this section to be made within 28 days.
- 7.7 Contempt of Court - the new Part 81 reforms procedural rules on contempt of court for all types of contempt in the Civil Procedure Rules. After a public consultation, extensive revisions have been undertaken to condense the rules down and set out a uniform procedure. The new Part 81 reduces the number of rules from 38 to 10 and dispenses with two PDs and a Practice Guidance document. The contempt reforms have necessitated consequential amendments to the Civil Procedure Rules.
- 7.8 Possession - procedures for enforcement of possession of the High Court and County Court are now aligned. The changes provide for a fairness of approach by enforcement officers (whether in the High Court or the County Court) whereby a notice period be given by the enforcement officer to a tenant before eviction in private and social housing as well as commercial property/land. It also provides for the removal of the issue of a writ requiring judicial permission and procedure for transfer from the County Court to the High Court for the purpose of enforcement is more specifically regulated in the Rules. These amendments, which were developed and were the subject of consultation pre-Covid, become even more important post-Covid for an orderly return of possession cases and its enforcement process.
- 7.9 Minor amendments to the Rules - amendments are made to the headings in Tables 6 and 6A in rule 45.18, which specify the fixed costs recoverable at various stages of the pre-action protocols for low value personal injury claims in road traffic accidents and employers' liability and public liability claims. The amendments remove the words 'but not more than £25,000' from the headings to the second column of each table, which might otherwise be taken to preclude the recovery of any fixed costs in Stage 3 proceedings for damages totalling more than £25,000. In addition, a sign post has been added, at Rule 63.13, regarding amendments to PD52C and which concern Appeals from the Admiralty Court to the Court of Appeal.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No further consolidation of the rules is planned at present.

10. Consultation outcome

- 10.1 The CPRC does not always undertake a formal public consultation on proposed amendments to the rules, but does endeavour to ensure that its development of proposals and drafting is informed by relevant views from outside the Committee (such as operational experts in her Majesty's Courts and Tribunals Service, relevant Government departments, members of the judiciary and practitioner and lay advice sector interests (in particular via the Civil Justice Council), as appropriate to a particular proposal and the circumstances in which it arises.
- 10.2 Specifically, in the proposals giving rise to this instrument:
- 10.3 Welsh judicial reviews – the substantive work was undertaken by the Commission for Justice in Wales who undertook an extensive evidence based exercise in forming the recommendations. The Welsh judicial member led an internal consultation with official and lawyers from both the Welsh Government and those in England before proposals were decided to the Rule Committee.
- 10.4 Contempt of Court – a public consultation exercise took place from 9 March 2020 to 1 May 2020 to inform views leading to the rationalisation of the procedures.
- 10.5 Possession – an extensive public consultation took place from 14 February 2019 to 2 May 2019 which led to the changes as set out in the amendments. These changes form a suite of amendments following the Stay in court proceedings arising from the Coronavirus pandemic for possession proceedings in the Courts with an aim to ensure fairness of proceedings as cases resume in the courts for all parties.

11. Guidance

- 11.1 Amendments to the CPR are drawn to the attention of participants in the civil justice system by correspondence addressed by the CPR Committee secretariat to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant legal publications; as well as by publicity within HM Courts and Tribunals Service. News of changes to the rules, together with the consolidated version of the rules, are published on the Ministry of Justice website at <https://www.justice.gov.uk/courts/procedure-rules/civil>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for the amendments to form part of the Civil Procedure Rules which are kept under continuous review by the Civil Procedure Rule Committee, and may be subject to amendment accordingly.

15. Contact

- 15.1 Amrita Dhaliwal at the Ministry of Justice. Direct line telephone 020 3334 6306 and email: amrita.dhaliwal@justice.gov.uk can answer any queries regarding this instrument.
- 15.2 David Parkin, Deputy Director for Civil Policy & Law, Access to Justice Directorate, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Chancellor at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard