

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 2) RULES 2021
2021 No. 196 (L. 4)

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.

2. Purpose of the instrument

- 2.1 This instrument amends the Civil Procedure Rules (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 give effect to, or are consequential upon (a) changes to the CPR regarding the allocation of personal injury claims arising from road traffic accidents which occur on or after 31 May 2021 to the small claims track and fast track; (b) new Practice Direction 27B (“PD-27B”): *Claims Under the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents – Court Procedure*; and (c) the *Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents* (“the RTA Small Claims Protocol”). The amendments are explained in paragraph 7, below. References to a Part or rule by number alone are references to the Part or Rule so numbered in the CPR.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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)

- 3.2 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 meets before making rules, as it did (in an extraordinary meeting) 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 The costs attached to investigating and settling high numbers of road traffic accident (RTA) related whiplash claims is transferred to consumers in England and Wales through increased motor insurance premiums. The relatively high level of compensation currently paid to claimants is out of proportion to the level of injury suffered. As such, controlling the costs of civil litigation for whiplash claims, whilst ensuring proportionate compensation is paid to genuinely injured claimants, is a government priority.
- 7.2 The Chancellor of the Exchequer outlined the government's reform proposals in the 2015 Autumn Statement. The then Chancellor described the government's commitment to ending 'the cycle in which responsible motorists pay higher premiums to cover false [whiplash] claims by others'.
- 7.3 Successive governments have retained this commitment as a key policy objective. In June 2017, the government made a commitment to "reduce insurance costs for ordinary motorists by tackling the continuing high number and cost of whiplash claims" included in the 2017 Queens Speech (<https://www.gov.uk/government/speeches/queens-speech-2017>).
- 7.4 The government remains concerned with the continuing high volume of these claims, despite there being fewer accidents and safer cars on our roads. There were around 830,000 personal injury claims made in 2019/20, of which around 653,000 were RTA related and around 85% of these were for whiplash injuries.
- 7.5 The government's reforms are comprised of primary legislation included in Part 1 of the Civil Liabilities Act 2018 ("CLA"), regulations made under that Act regarding RTA related whiplash injuries (as defined under the Act), and changes to the CPR to increase the small claims track ("SCT") limit, in so far as it applies to damages for PSLA in RTA related personal injury claims, from £1,000 to £5,000.
- 7.6 Claimants subject to these reforms will be supported by a new pre-action protocol – the RTA Small Claims Protocol – and the development of a new online service: the Official Injury Claim portal is an accessible service developed in conjunction with stakeholders which will enable both represented and unrepresented claimants to process and settle RTA related personal injury claims, where the claim for PSLA is valued at no more than £5,000. There will be guidance for the claimant to assist them where necessary, and claimants who are unable to use the online service may seek assistance from a dedicated support centre. Where a dispute is not resolved through the RTA Small Claims Protocol, PD 27B sets out the procedure by which a dispute (or part of a dispute) is resolved by the court.
- 7.7 The CPR are amended for the following purposes.
- 7.8 The small claims track limit– rule 26.6 is amended to increase the small claims track (SCT) limit for personal injury claims arising from a road traffic accident (RTA) to £5,000. The new limit will apply to claims where the accident occurs on or after 31

May 2021. This limit applies to the figure for pain, suffering and loss of amenity for the injury alone. The overall SCT limit for the value of all parts of the claim remains at £10,000. For RTAs before 31 May 2021 and for employer's liability and public liability accidents and all other injury claims before and after that date, the SCT injury limit remains at £1,000.

- 7.9 There are other exceptions to the new £5,000 limit, these are all categories of cases excluded from the RTA Small Claims Protocol and new online service. These are:
- the exceptions specified in new rule 26.6A, in respect of which the old SCT injury limit of £1,000 will continue to apply to claims, namely:
 - where, on the date that proceedings are started, the claimant is a child or protected party;
 - where, when the accident occurred, the claimant was a “vulnerable road user”, which means, motor cyclists and pillion/sidecar passengers, cyclists, pedestrians, horse riders and those using mobility scooters;
 - where, on the date that proceedings are started, the claimant is an undischarged bankrupt, or the claimant or defendant acts as a personal representative of a deceased person; and
 - where, on the date that the accident occurred, the defendant's vehicle was registered outside the United Kingdom; and
 - children or protected parties – because these claimants are excluded from the new RTA SCT limit and the RTA Small Claims Protocol, they will not be able to source their own medical report, which under the CLA is required to settle claims for whiplash injuries, via the online service. New rule 26.6B provides that where the claim arises from an RTA which occurs on or after 31 May 2021, and the claim is for, or includes a claim for a whiplash injury, the normal track for that claim will be the fast track and the claim must not be allocated to the SCT. This means that, for now, these claimants will be able to instruct a legal representative who may obtain a medical report on their behalf and their costs of legal representation will remain recoverable.
- 7.10 Practice Direction 27B – rule 27.2 is amended to enable a rule or practice direction to require or permit a particular procedure to be used under Part 27 (the Small Claims Track) and to disapply or modify rules made under Part 27. New PD 27B is made under this rule. Where proceedings are started under this Practice Direction, new rule 26.5 provides that the claim shall be treated as if it has been allocated to the SCT.
- 7.11 The RTA Small Claims Protocol – a claim for personal injuries arising from a road traffic accident on or after 31 May 2021 and which is subject to the increase in the small claims track limit, should be started under the RTA Small Claims Protocol. In certain circumstances, the Protocol may no longer apply to the claim, for example where the claim for damages for injuries is valued at more than £5,000. In those cases, new rule 45.29N provides that the fixed recoverable costs provisions in Section IIIA of Part 45 will apply to the claim as if it had been started under the RTA Protocol. However, where a successful claimant has not proceeded under, or has not complied with, the RTA Small Claims Protocol, new rule 45.29M enables the court to order a defendant to pay the claimant no more than the costs which they may recover under new Practice Direction 27B.
- 7.12 Medical reports in whiplash claims: rule 35.4 is amended to specify the medical evidence that may be obtained in respect of a claim for a road traffic accident related

personal injury claim which consists of, or includes, a claim for a whiplash injury where the court gives its permission. In most cases that evidence must be a fixed cost medical report sourced via the MedCo Portal. This reflects requirements in respect of medical evidence to be obtained under the RTA Small Claims Protocol. Exceptions exist, however, where the claimant lives outside England and Wales, or where the claimant suffers a more serious injury as well as a whiplash injury, in which case permission may be given to use that report.

- 7.13 **Consequential amendments:** in light of the amendments to rule 26.6, rule 16.6 is amended to require a claimant to specify on their claim form whether they expect to recover, as general damages for pain, suffering and loss of amenity, not more or more than £5,000, where the claim is for personal injuries arising from a road traffic accident which occurs on or after 31 May 2021. Rule 14.1B is amended to extend that rule to cover admissions made under the RTA Small Claims Protocol. Rule 46.14 is amended to ensure that the procedure specified in that rule, which concerns pre-issue entitlement to costs, is not used for disputes arising under the RTA Small Claims Protocol and that the procedure in Practice Direction 27B for dealing with costs disputes is used.

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 or 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 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). The Committee does not always undertake a formal public consultation on proposed amendments to the rules, but consults, as it considers appropriate to the rules or amendments to rules in question, in a number of ways of differing degrees of formality, including specific correspondence with bodies considered appropriate to be consulted; and involving representatives of interested organisations in the work of sub-committees reviewing particular aspects of the rules.
- 10.2 The proposals giving rise to this instrument were initially developed by Ministry of Justice Officials following widespread public consultation between 17 November 2016 and 6 January 2017. The consultation response was published on 23 February 2017 and is available here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593431/part-1-response-to-reforming-soft-tissue-injury-claims.pdf.
- 10.3 Following the publication of the response to this consultation, the government has engaged with a wide range of stakeholders including with a sub-committee of the Civil Procedure Rules Committee (CPRC) to develop the new Rules, Pre-Action Protocol and Practice Direction required to support this change.

11. Guidance

- 11.1 There are no plans to issue specific statutory guidance for this instrument, but operational guidance in relation to using the new service will be provided to support claimants affected by the implementation of these reforms. All updates to the CPR are published online at <https://www.gov.uk/government/collections/civil-procedure-rules> . An explanatory note will be provided to support changes made to the CPR by this Statutory Instrument.

12. Impact

- 12.1 A detailed Impact Assessment was produced when the Whiplash Reform Programme received Royal Assent as part of the CLA. Full details of the impacts and savings associated with the reform programme can be found here: <https://www.gov.uk/government/publications/civil-liability-bill>.
- 12.2 Overall, businesses, charities and voluntary bodies are estimated to experience a direct net benefit of around £740m a year as a result of implementing the whiplash reform programme. This is made up of £870m in benefits and £130m in costs.
- 12.3 In particular, the reforms are expected to result in savings of approximately £1.2 billion for industry. However, implementation is also expected to lead to an increase in unrepresented claimants, which could lead to increased costs for the third sector. In terms of impacts on the public sector we expect:
- an overall reduction in court disputes as the application of the tariff will minimise quantum disputes. Where there are court savings to insurers, these would be a short-term cost to Her Majesty's Courts and Tribunals Service which operates at cost recovery in the long term.
 - savings of around £1m in medical report VAT income for Her Majesty's Revenue and Customs from the estimated additional 38,000 claims which will require a medical report.
 - a reduction in the number of people attending National Health Service hospitals as outpatients and a reduced burden on doctors' time. However, this will have cost implications of approximately £6m in outpatient fees that will no longer be recoverable.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses including claimant law firms. However, given the purpose of the reforms it would be inappropriate to apply an exemption from this legislation to these firms. Therefore, no specific action is proposed to minimise the regulatory burden on small businesses.

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause but will be monitored via the normal process for monitoring Civil Procedural Rules. Anyone who has reason to consider the rules to be wrong in some way is at liberty to make those representations, in writing, through the committee secretariat. Such objections will then be considered for planning into committee business and receive impartial and objective consideration.

15. Contact

- 15.1 Tajinder Bhamra, Policy Advisor at the Ministry of Justice (Telephone: 07394 715354 or email: tajinder.bhamra1.@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Civil Justice and Law Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Wolfson QC, Parliamentary Under Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.