

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO.4) RULES 2005

2005 No. 3515 (L.32)

1. This explanatory memorandum has been prepared by the Department of Constitutional Affairs 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) adding the Adoption and Children Act 2002 to the table of enactments in rule 2.1 detailing types of proceedings to which the Civil Procedure Rules do not apply;
 - (b) adding the phrase “(or an alternative service which provides for delivery on the next working day)” after any mention of “First Class Post” in the CPR;
 - (c) amending rule 16.2 to ensure that a person making a claim for a specified sum of money in a civil court records the interest he wishes to be paid on his claim form;
 - (d) substituting a revised Part 20 of the CPR (Part 20 deals with any subsequent claim issued in relation to an initial claim);
 - (e) amending Part 25 to accommodate Council Directive (EC)2004/48 on the enforcement of intellectual property rights;
 - (f) clarifying the rules surrounding transfer of cases to and from specialist lists (specialist lists are lists of cases concerned with a specific area or topic, sometimes dealt with by a particular judge, group of judges, court or procedure);
 - (g) amending the provisions surrounding the content of judgments or orders (official decisions of the court) where there is to be an appeal against those decisions;
 - (h) amending rule 44.16 to take into account the recent change in Conditional Fee Agreement (i.e. ‘no win, no fee’) regulations;
 - (i) amending a number of provisions surrounding appeals against decisions of the court;
 - (j) amending provisions in Part 54 which deal with applications for review of decisions of the Asylum and Immigration Tribunal (AIT); and
 - (k) making a minor amendment to the process by which the court manages intellectual property cases.

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

- 3.1 None

4. Legislative Background

- 4.1 A number of the amendments (i.e. (c), (f), (g) (j) and (k)) are made in response to issues raised in practice in the civil courts. These issues can be raised by the judiciary, court staff, practitioners or the Civil Procedure Rule Committee itself.
- 4.2 Item (e) in particular should be noted by the Committee, as it makes provision to accommodate European Council Regulation (EC) No 2004/48, concerning the enforcement of intellectual property rights.
- 4.3 Other items (i.e. (d) and (h)) are items of departmental policy (see below).
- 4.4 The remaining items are consequential to other changes in legislation or regulation.

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 and gave it power to create CPRs. The first CPRs 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 court, replacing the old county court rules (CCR) and Rules of the Supreme Court (RSC)¹. The CPR had a number of policy objectives, two of the more prominent being to improve access to justice 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 Public interest in all aspects of civil procedure is, generally speaking, limited. The highest-profile policy area within this statutory instrument is that of asylum and immigration appeals, but the amendments in that area are fairly minor, and several of them are made in response to suggestions from the AIT and the organisations which represent appellants (individuals using the current system).
- 7.3 The policy background for each of the amendments is set out below using the numbering from para 2.2;
 - (a) The Adoption and Children Act 2002 carried out a wholesale reform of the adoption law and implemented the proposals in the White Paper *Adoption - a new approach*; (Department of Health, 2000) which aimed to encourage wider use of adoption, particularly of children looked after by local authorities. This minor consequential amendment to the CPR ensures the provisions of this Act will be dealt with correctly by the courts, i.e. by subjecting them to Family Procedure (Adoption) Rules 2005 rather than the CPR.

¹ This work is ongoing; the few remaining CCR and RSC are included in 'schedules' to the CPR.

- (b) Parts of the CPR specify the effect of serving (officially delivering) documents through certain methods, including First Class Post. With the loss of the Royal Mail monopoly on postal services on 1 January 2006, this amendment is designed to ensure that any alternative postal services are treated in an equivalent fashion.
- (c) When making a claim for a specified sum of money in the civil courts, the person making that claim ('the claimant') may decide to claim interest on that sum. He will state the fact that he wishes to claim interest, and the amount, on the official document which begins his claim, the claim form. A fee is then charged by the court based on the amount he wishes to claim. This amendment is designed to clarify that the fee the claimant will be charged is based on the sum they wish to claim plus any interest, and is pursuant to the Department's court fee policy, as set out in the consultation paper 'Civil and Family Court Fee Increases' (2005) and enacted in the subsequent fees order.
- (d) Part 20 of the CPR deals with claims made subsequent to an initial claim, for example, where a party being claimed against ('the defendant') considers that the claimant is at fault and in actual fact owes *them* money. In that situation they will issue a 'Part 20' claim. The main effect of this revised Part 20 is to change the terminology to refer to 'Counterclaims' and 'Additional Claims' rather than 'Part 20 Claims'. It is considered that this will be less confusing for litigants and thus improve access to justice.
- (e) Council Directive (EC)2004/48 creates a common framework for the enforcement of intellectual property rights across the European Union. Minor technical amendments are made to the CPR to implement the directive in the UK courts.
- (f) The amendment with regards specialist list transfers clarifies that only a judge dealing with cases on that list may order cases to be transferred to or from it. This is to ensure the effective operation of these lists, and therefore minimise delays for litigants.
- (g) This amendment forms part of a wider review of Part 52, the section of the CPR which deals with appeals against decisions of the court ('appeals'). Most of the amendments associated with this review are dealt with under (i). This particular amendment requires the judge to set out some information in writing in the judgement or order he makes subsequent to making a decision in a case. This information concerns the methods by which the litigant may appeal.
- (h) In 2003 and 2004, the department conducted consultation exercises on the simplification of regulation surrounding Conditional Fee Agreements (CFAs). As a result of these consultations, it was decided to revoke the CFA regulations, specifically the Conditional Fee Agreements Regulations 2000 (S.I. 2000/692) and the Collective Conditional Fee Agreements Regulations 2000 (S.I. 2000/2988). These amendments to the CPR are consequential on these revocations.
- (i) As part of the review of appeals provisions, two minor but significant amendments have been made to Part 52. The first change in wording (dealt with under rule 11(b) of the SI) is designed to emphasise the court's discretion in awarding permission to appeal. This is aimed specifically at encouraging the courts to take into account proportionality when considering whether to grant permission, i.e. whether the costs of appealing are in proportion to the value of the

claim, and the legal importance of such an appeal. Rule 11(c) of the SI changes the time limit by which the party wishing to request permission to appeal ('appellant') must file the notice indicating this fact. This is designed to ensure the correct balance is struck between giving the appellant enough time to prepare their appeal, and giving the successful party finality on the court's decision.

- (j) Section III of Part 54 of the Civil Procedure Rules deals with applications for review of decisions of the Asylum and Immigration Tribunal, and was brought into force on 4th April 2005, the date on which the AIT came into existence. These amendments are aimed at clarifying certain technical aspects of the operation of these applications in response to feedback from the first six months of operation of the new system. In particular they address issues of legal representation of applicants and service of court documents on the parties to review applications, and remove the requirement to include all relevant documents with an application so long as the "filter provision" (which means the application is initially considered within the AIT) is in force.
- (k) Civil cases in general are divided by the court into one of three categories ('tracks') – in ascending order of weight; small claims, fast track and multi-track. These tracks dictate the amount of time and resource which the court dedicate to a particular case, and also have implications with regards legal costs. It has been found in practice that intellectual property cases are invariably of such complexity that they will be dealt with on the multi-track This amendment sets out this position in the CPR to enhance the information provided to litigants about the likely method of dealing with their case if they choose to take it to court.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it does not have an impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is wide-ranging, but generally limited to HM Courts Service.

9. Contact

Richard Walley at Her Majesty's Courts Service (Tel:020 7210 2625 or e-mail: richard.walley@hmcourts-service.gsi.gov.uk) can answer any queries regarding the instrument.