

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2007**

2007 No. 2204 (L.20)

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. 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) Making provision to increase the amount of costs which the court may award as the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track for fast track trials commencing on, or after 1st October 2007;
- (b) increasing the time within which an appeal decision of an authorised court officer relating to detailed assessment of costs may be filed from 14 to 21 days;
- (c) introducing a standard procedure for third parties to apply to intervene in statutory appeals;
- (d) revoking a number of rules to allow for modernisation;
- (e) amending the provisions on parenting contracts and parenting orders in the Anti-social Behaviour Act 2003 to provide that local authorities and registered social landlords can enter into parenting contracts and apply for parenting orders as a consequence of Section 24 of the Police and Justice Act 2006 and the provisions relating to anti-social behaviour injunctions as a consequence of Section 26 & 27 of the Police and Justice Act 2006;
- (f) amending procedure to reflect new concepts created by the Mental Capacity Act 2005, particularly the new test for capacity (which is decision and time specific) is reflected in the procedures set out for civil courts;
- (g) amending procedure to incorporate a new two-stage procedure for permission to proceed in derivative actions as a consequence of the Companies Act 2006.

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

3.1 None

4. Legislative Background

4.1 Item (a) makes amendments following limited consultation and further targeted consultation.

4.2 Items (b) and (c) enact matters of ministerial policy.

- 4.3 Item (d) enacts the Ministry's policy to complete the codification and modernisation of civil procedure.
- 4.4 Items (e), (f) and (g) are consequential on the introduction of new legislation.

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 the 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 ("the 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 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 The policy background for each of the amendments is set out below using the numbering from para 2.2:

- (a) These amendments increase the amount of costs that the court may award as the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track under Part 46 of the Civil Procedure Rules. Following a consultation carried out by the Ministry, the Committee agreed that the fast track trial costs should be increased to take account of the rise in inflation since the costs were first introduced in April 1999. They will apply to fast track trials that commence on, or after 1st October 2007;
- (a) These amendments increase the time within which an appeal decision of an authorised court officer relating to detailed assessment of costs may be filed from 14 to 21 days and bring the procedure in line with normal appeal procedure under Part 52;
- (c) The Ministry consulted on statutory appeals and statutory review proposals for rationalising procedures in 2004-5 and the Committee considered the responses in late 2005. The Committee agreed that provision should be made for third parties to intervene in statutory appeals and apply for prospective costs orders. Consequently amendment has been made to provide for third parties to apply to the court to make representations and apply for prospective costs orders;
- (d) These rules are revoked as part of the Ministry's ongoing policy of modernisation of rules of court, as set out in 7.1. The provisions which replace the revoked rules can be found in Rule 52 and practice directions supplementing the CPR (Part 8 Practice Direction (Alternative Procedure for Claims), and Part 52 Practice Direction (Appeals));

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

- (e) These amendments are consequential in nature, and are intended to ensure that the procedures set out in the Civil Procedure Rules are consistent with the concepts and terminology of the Police and Justice Act;
- (f) These amendments are consequential in nature, and are intended to ensure that the procedures set out in the Civil Procedure Rules, particularly those with respect to the appointment of a litigation friend for a person who lacks capacity to conduct civil proceedings, are consistent with the concepts and terminology of the Mental Capacity Act. The Ministry conducted an extensive consultation process before the passing of the Mental Capacity Act, including publishing a draft Mental Incapacity Bill in 2003 for public comment and pre-legislative scrutiny by a Joint Committee for both Houses. For the MCA related amendments to the Civil Procedure Rules, no formal consultation was undertaken as the amendments are relatively minor and limited to reflecting the new terminology and institutions of the Mental Capacity Act. However, drafts of the proposed amendments were provided to a group comprising members of the judiciary and legal profession, who were brought together under the auspices of the President of the Family Division (the President designate of the new Court of Protection), to comment on the draft rules of Court for the Court of Protection. Their feedback was incorporated into the proposed amendments to the Civil Procedure Rules; and
- (g) These amendments are consequential in nature, and are intended to ensure that the procedures set out in the Civil Procedure Rules are adapted to reflect the Companies Act provisions in relation to derivative claims. This reflects the recommendation of the Law Commission that there should be a new derivative procedure with more modern, flexible and accessible criteria for determining whether a shareholder can pursue an action.

8. Impact

8.1 A full Impact Assessment (IA) has not been produced for this instrument. Where the Civil Procedure Rules implement policy developed elsewhere, where appropriate, IAs have been produced by the relevant policy team or government department responsible for that policy for the items affecting businesses, charities or the voluntary sector, except where the impact is negligible.

9. Contact

Contact Stephanie Sandison at Her Majesty's Courts Service (Tel:020 7210 2625 or e-mail: stephanie.sandison@hmcourts-service.gsi.gov.uk) with any queries regarding the instrument.