

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT No. 2) RULES 2007

2007 No. 3543 (L.31)

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) extending the sanction of striking out a claim to include the non-payment of a hearing fee;
- (b) reflecting an amendment to the Supreme Court Act 1981 that allows the High Court to substitute its own decision for that of inferior courts and tribunals in judicial review proceedings;
- (c) revoking rules relating to statutory appeals under section 101 of the Nationality Immigration and Asylum Act 2002 which has now been repealed;
- (d) amending court procedures as a consequence of regulations relating to parking enforcement being made by the Department for Transport and the Welsh Assembly Government under section 82 of the Traffic Management Act 2004 (Traffic Enforcement provisions);
- (e) dealing with drafting comments made by the Joint Committee on Statutory Instruments on the rules governing control order court procedures
- (f) introducing procedures to enable applications for or relating to Serious Crime Prevention Orders (SCPOs) introduced by the Serious Crime Act 2007; and
- (g) revoking a previously incorporated scheduled rule to allow for modernisation.

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

3.1 None

4. Legislative Background

4.1 Item (a) enacts departmental policy following a full consultation and the creation of a fees order.

4.2 Items (b), (c), (d) and (e) are consequential on the introduction of new legislation.

4.3 Item (f) makes amendments following comments made by the Joint Committee on Statutory Instruments.

4.4 Item (g) enacts the Department’s policy to complete the codification and modernisation of civil procedure.

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 (“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 are a result of the most recent Civil Proceedings Fees Order which provides for the payment of a hearing fee in certain circumstances. The amendments to rule 3.7 add these hearing fees to the list of fees, the non-payment of which will attract a sanction. Rule 3.7A deals with proceedings which continue on the counterclaim only and set out the sanctions that will apply for non-payment of certain court fees. The amendments clarify which non payment of fees will attract a sanction.
- (b) 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 power created by section 141 of the Tribunals Courts and Enforcement Act 2007 amending section 31 of the Supreme Court Act 1981 allowing the High Court to substitute its own decision for that of inferior courts and tribunals on applications for judicial review;
- (c) These rules are revoked as section 101 of the Nationality Immigration and Asylum Act 2002 has been repealed. Section 101(2) of the Nationality and Immigration and Asylum Act 2002 which allowed applications to the High Court of a review of a decision of the Immigration Appeal Tribunal on an application for permission to appeal from an adjudicator was repealed with effect from 04 April 2005. Section II of Part 54 is revoked as there are no transitional provisions remaining relating to s101(2);
- (d) These changes are largely consequential to the implementation of the Civil Enforcement of Parking Contraventions General Regulations 2007 made under the provisions of section 82 of the Traffic Management Act 2004 which replaces the provisions of section 78 and Schedule 6 of the Road Traffic Act 1991. The new regulations allow a defendant to respond to an order issued by the Traffic Enforcement Centre by witness statement instead of statutory declaration. This change removes the need for the document to be sworn

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

before an officer of the court or Commissioner for Oaths, etc and thus opens up the option of filing and serving the document electronically. This provision relates only to parking contraventions at this time but it is expected to be extended to the other contraventions covered by Part 75 in due course. Additionally, Part 75 also now requires the local authority to specify the actual date by which the respondent must pay or file a witness statement on the order itself. The formula the authority will use to calculate this date will be a strict 36 days from the date on which the order was issued by the TEC, of which the local authority have 15 days to serve the order for recovery. Previously, the date used was that of the postmark which was frequently either not clear or absent. This uncertainty gave rise to a large volume of unnecessary telephone calls to the TEC Helpdesk at Northampton County Court, all seeking clarification as to the deadline date;

- (e) These amendments address the issues raised by the Joint Committee on Statutory Instruments in their fourteenth report of session 2004-2005 on the creation of Part 76 which deals with control order proceedings in the civil courts. The Prevention of Terrorism Act 2005 gave the Lord Chancellor the power to make the rules in the first instance so they were not considered by the Civil Procedure Rule Committee in the normal manner;
- (f) These amendments provide the procedure to be followed by applicants in respect of SCPOs. SCPOs are civil orders that can impose restrictions or requirements on a person or organisation's actions. Although the majority of orders are thought likely to be made in the High Court, it will also be possible for the Crown Court to make them post-conviction. SCPOs arise from the Government's response to the need for law enforcement agencies to have the appropriate tools to tackle the problems of serious crime. In July 2006, the Government published a consultation paper ("New Powers Against Organised and Financial Crime") that included proposals for a new civil order aimed at preventing serious crime before it has any opportunity to cause harm. Following the consultation process, the Government introduced the Serious Crime Bill, which included provisions for SCPOs, in the House of Lords in January 2007. The Bill received Royal Assent on 30 October 2007; and
- (g) This rule is revoked as part of the Department's ongoing policy of modernisation of rules of court, as set out in 7.1. The provision replacing the revoked rule can be found in the practice direction supplementing CPR Part 8 (Alternative Procedure for Claims).

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

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