

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2012**

2012 No. 505 (L.2)

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. **Purpose of the instrument**

- 2.1 This instrument amends the Civil Procedure Rules (S.I. 1998/3132) (the “CPR”). The CPR are rules of court, which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and county courts

- 2.2 The amendments to the CPR covered by this instrument relate to Government initiatives.

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

- 3.1 The rules in this instrument give effect to new provisions included in Practice Direction 70 – Enforcement of Judgment and Orders. Section 5(3) of the Civil Procedure Act 1997¹, enables practice directions to provide for any matter which may be provided for by the Rules themselves.

4. **Legislative Context**

- 4.1 The Civil Procedure Act 1997 created the Civil Procedure Rule Committee (“the Committee”) and gave it power to create civil procedure rules. The first CPR 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 courts, replacing the old County Court Rules (CCR) and Rules of the Supreme Court (RSC).² 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.

¹ 1997 c.12

² This work is ongoing: the few remaining CCR and RSC are included in two ‘schedules’ to the CPR.

5. Territorial Extent and Application

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 This instrument amends the CPR as follows.

Amendments are made to allow for certain applications to enforce judgment or to obtain information from the judgment debtor to be made at a local county court for those cases issued at and remaining at the Business Centre.

The Business Centre based in Salford, acting as the administrative office of Northampton County Court, will issue designated money claims (a money claim issued in the county court under Part 7 of the Rules and to which no special procedures under the Rules apply). The Business Centre will also handle the early subsequent administrative stages of defended actions and requests for judgment in default or on admission. Proceedings will only be transferred out of the Business Centre to a local county court if judicial intervention is required and, if and when an oral hearing is required. Cases that are undefended and where judgment is obtained in default or on admission will remain at the Business Centre.

For those cases remaining at the Business Centre, the obligation for the judgment creditor to apply to the court of judgment for enforcement by charging order, attachment of earnings, third party debt order, or for an order to obtain information is removed. These applications can now be made to the court for the district in which the judgment creditor or debtor (as appropriate) resides or carries on business. These provisions are made by way of amendment to Practice Direction 70 – Enforcement of Judgment and Orders, which also provides for the automatic transfer of proceedings from the Business Centre to the court in which the application is filed. This instrument makes provision as regards the circumstances in which the provisions in the Practice Direction will apply.

An Attachment of Earnings Order allows the employer of a judgment debtor to deduct monies from the debtor's earnings (including wages, salaries, fees, commission etc.) in payment of the debt.

A Third Party Debt Order can be used where the judgment debtor is owed money by a third party that can be made into an obligation to pay the debt to the judgment creditor. For example trade debts, monies in bank accounts, monies held by other responsible bodies can be used to satisfy the debt.

An Order to Obtain Information is a process by which a creditor can obtain information on a debtor's current financial circumstances to ascertain whether they

are able to pay the judgment and to provide information, such as employment details, to facilitate the best method of enforcement.

8. Consultation outcome

8.1 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). Where the Committee initiates amendments then consultation is undertaken where deemed necessary.

8.2 A formal consultation exercise was not thought necessary prior to the implementation of the policy initiatives described here. However the Ministry of Justice and Her Majesty's Courts and Tribunal Service has held discussions with members of the judiciary and key stakeholders such as, the Association of British Lawyers; the County Court Users Association; the Institute of Legal Executives; the General Council of the Bar; and, the Association of Personal Injury Lawyers. The Ministry has continued discussions during the planning of the implementation and has sought their views on implementation options, and is continuing that dialogue with other interested parties.

9. Guidance

9.1 A preview summarising the forthcoming changes will be published on the Ministry of Justice website in March 2012 at <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/index.htm>. The Ministry of Justice will also write to key stakeholders detailing the changes in March 2012.

9.2 The rules will be published by the Stationery Office and will be available on the Ministry of Justice website when the majority come into force in March 2012.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument which gives effect to a variety of changes from different sources.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide a summary of the changes in advance by writing to key stakeholders and through the CPR website.

12. Monitoring & review

12.1 These rules will form part of the Civil Procedure Rules 1998 that are kept under review by the Civil Procedure Rule Committee. The Civil Procedure Rule Committee will make any subsequent amendments to these rules.

13. Contact

Jane Wright at the Ministry of Justice (tel: 020 3334 3184 or email: jane.wright@justice.gsi.gov.uk) can answer any queries regarding the instrument.