

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 4) RULES 2013

2013 No. 1412 (L. 14)

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”). 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 Judicial Review procedure and would implement proposals in the government response to the consultation on *Judicial Review: proposals for reform*. Their purpose is to:

- shorten the time limit for bringing a Judicial Review to six weeks in certain planning cases and thirty days in certain procurement cases, and
- remove the right to a reconsideration at a hearing of the refusal of permission to bring Judicial Review (oral renewal) in cases where the application is certified as totally without merit by the Judge considering the application on the papers.

2.3 This Order will take effect from 1 July 2013.

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

3.1 None

4. Legislative Context

4.1 The Civil Procedure Act 1997 established the CPR Committee and gave it power to make civil procedure rules. The first CPR were made in 1998. The intention behind 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). 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.

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 In December 2012, the Government launched an engagement exercise seeking views on a series of proposals to reform Judicial Review. Further details are provided at paragraph 8 below. On 23 April the Government published its response, outlining the reforms it intends to take forward (Available here: <https://consult.justice.gov.uk/digital-communications/judicial-review-reform>).

7.2 The measures proposed by the Government which are covered by this instrument relate to time limits for filing a claim form and the procedure applying to decisions on permission to proceed. A proposal for the introduction of a new fee for an oral renewal will be implemented separately via a Fees Order.

Time limits

7.3 The policy intention of shortening time limits is to reduce delay, the rationale being that it will align time limits for bringing a Judicial Review in planning and procurement cases with the relevant limits applying to statutory appeals in those areas. In planning cases, there is a six week period for a statutory appeal under section 288 of the Town and Country Planning Act 1990 and in the Public Contracts Regulations 2006, challenges are required to be brought within 30 days.

7.4 In planning cases the Government intends the six week time limit to apply to all Judicial Review proceedings relating to a decision whether or not to grant planning permission made under the various planning acts, and any procedural decision that relates to the final determination.¹ It will apply, for example, to Judicial Reviews challenging:

- decisions of the Secretary of State or the Local Planning Authority on the grant or refusal of planning permission;
- decisions of the Secretary of State whether or not to “call in” an application for planning permission;
- decisions of the Secretary of State or the Local Planning Authority in respect of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, for example, a challenge to whether there is a requirement to undertake an EIA, or to the adequacy of an EIA.

¹ As defined in section 336 of the Town and Country Planning Act 1990. These are the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 as amended.

7.5 The reduced time period will not apply in relation to challenges to planning policy decisions, for example, challenges to the development of national or local policy, including development plans.

7.6 In procurement cases, the new 30 day time limit would apply to proceedings for Judicial Review relating to a decision governed by the Public Contracts Regulations 2006 where the decision is affected by the duty to comply with those regulations and enforceable EU obligations (for example in relation to a contract or design contest).

7.7 There is a Pre-Action Protocol for judicial review applications, which sets out the behaviour expected of the potential parties to a judicial review application prior to issue of the claim, and the court is able to have regard when assessing costs to the extent to which the parties have complied with the Protocol. The Government accepts that the shorter time limits will not always provide sufficient time to fulfil the requirements of the Pre-Action Protocol in procurement cases, and may not provide sufficient time in planning cases. The Pre-Action Protocol will accordingly be revised so that, although parties will continue to be encouraged to comply where possible in those cases where the time period is shorter, no adverse implications will follow, for example, as to costs, if they are unable to do so in the time available.

Oral renewal

7.8 The policy intention of the removal of oral renewal where an application is considered by a judge as totally without merit is to reduce delays and costs by targeting weak, frivolous and unmeritorious cases, ensuring that they are filtered out at an early stage of proceedings.

7.9 A person who wishes to appeal a decision to refuse permission where the application has been recorded as totally without merit would be entitled to appeal to the Court of Appeal (on the papers).

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 These reforms were the subject of an engagement exercise held between December 2012 and January 2013. Over 250 responses were received from a range of stakeholders, including professional lawyers, the judiciary, representative bodies, businesses, public authorities and interested individuals. The majority of responses were opposed to the Government's proposals. There was, however, a body of support for reforms, principally among businesses and public authorities.

8.3 The Government response to the engagement exercise, setting out the reforms the Government intends to take forward, was published on 23 April 2013 (see paragraph 7 above). Having carefully considered all the responses to the exercise, the Government has concluded that these reforms are necessary to tackle the problems identified.

9. Guidance

9.1 The forthcoming changes will be published on the Civil Procedure Rules Website once the Statutory Instrument is laid. The Ministry of Justice will also write to key stakeholders detailing the changes in June 2013.

9.2 The amended rules will be consolidated into the web version of the Civil Procedure Rules when they come into force on 1 July 2013.

10. Impact

10.1 The reforms will impact on claimants, defendants and third parties to judicial review applications. This includes businesses, individuals and third sector organisations such as charities and voluntary groups.

10.2 An Impact Assessment has not been prepared for this instrument. However, an Impact Assessment was published alongside the Government response to the engagement exercise and is available on the [Ministry of Justice consultation website](#).

10.3 In summary, the Impact Assessment indicates that shorter time limits for planning and procurement cases and the removal of a right to an oral renewal for cases judged as being totally without merit may result in quicker resolution of cases. This would result in costs for those who do not have an interest in quicker case resolution and benefits for those that would prefer quicker resolution, including third parties who are impacted negatively by delays to Judicial Review decisions. In addition, under the second change, if there are fewer oral renewal hearings some claimants, defendants and Her Majesty's Courts and Tribunal Service (HMCTS) may experience resource savings. Any resource savings to HMCTS would allow administrative and judicial time to be devoted to other matters, rather than generating financial savings. It is assumed that these changes would not result in a change in the number of Judicial Review cases brought and would result in a reduction in the number of oral renewal hearings.

11. Regulating small business

11.1 The legislation applies to small business.

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 up to three months in advance by writing to key stakeholders and through the CPR website.

11.3 Relevant bodies have been consulted during the development of these provisions. We do not anticipate that the requirements will have any special impact on small firms over and above those that apply to any other party in Judicial Review proceedings.

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

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jane.wright@justice.gov.gsi.uk can answer any queries regarding the instrument.