

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT No.6) RULES 2013

2013 No. 1695 (L.18)

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 1998 (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 In rules 6(4) and 6(6), in this instrument, and the Schedule to it, which inserts in the CPR new rules 45.29(F)(2) 45.29(F)(10), 45.29I(1), 45.29J(1) and (3) and 45.29K(2), the expression “will” is used. We note the contents of the Committee’s First Special Report published on 15th May 2013 and, in particular, paragraphs 11 and 12 of that report and, accordingly, make no further comment on the use of this expression at this time.

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).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.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to England and Wales.

¹ This work is ongoing: the few remaining CCR and RSC are contained in two schedules to the CPR.

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 This instrument amends the CPR as follows.

(a) The amendments in rules 4, 5, 6 and 7 are made in consequence of the extension of the procedure for commencing a claim for personal injury arising from a road traffic accident where the value of the claim is between £1,000 to £10,000, as provided in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the “Protocol(s)”). The procedure will be extended to include claims up to the value £25,000 and a revised Protocol will come into force on 31st July 2013. In addition, the scheme is further extended to include most personal injury with a value of £1,000 to £25,000, as set out in the Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims (the “Protocol(s)”), which will also come into force on 31st July 2013.

(b) Section III in Part 45 of the CPR prescribes the fixed recoverable costs that may be recovered by a claimant’s legal representative when a claim has been started under the current Protocol. That section is amended by rule 7 to extend the fixed costs regime to include claims made under the revised/new Protocols and prescribes the costs a claimant’s legal representative may recover in those cases, depending upon the nature and value of the claim.

(c) A new Section IIIA, set out in the Schedule to this instrument, is also inserted into Part 45. New Section IIIA provides for a fixed costs regime in respect of those claims which exit the RTA and EL/PL Protocols and which are subsequently settled or proceed to judgment. Again the costs which might be recovered are prescribed in the rules, the amount depending upon the nature of the claim, the stage the proceedings have reached and the damages which might be agreed or awarded.

(d) Provision in Section IIIA is also made in respect of defendants’ costs in those cases where the fixed costs regime would otherwise apply. Accordingly, in those cases where a costs order is made in favour of a defendant, the court, when assessing the defendant’s costs, will have regard to, and the amount recoverable should not exceed, the amount of costs which the claimant would have been able to recover at the same stage of the proceedings had a costs order been made in favour of the claimant. This provision is subject to two exceptions: first, where a claim is struck out or found to be fundamentally dishonest and the claimant loses their protection under the qualified one way cost shifting provisions in Part 44 of the CPR, the court may assess the defendant’s costs without reference to the costs which would have been recoverable by the claimant. Secondly, this rule will not apply where the court makes an order for costs under new rules 36.10A or 36.14

(e) New rules 36.10A and 36.14A make provision in respect of the fixed costs a claimant may recover where the claimant either accepts or fails to beat a defendant’s offer to settle made under Part 36 of the CPR. Provision is also made with regard to

defendants' costs in those circumstances. If a defendant refuses a claimant's offer to settle and the court subsequently awards the claimant damages which are greater than or equal to the sum they were prepared to accept in settlement, the claimant will not be limited to receiving his fixed costs, but will be entitled to costs assessed on the indemnity basis in accordance with rule 36.14.

(f) Provision is also made both in respect of defendants' costs where a defendant successfully counterclaims and the costs recoverable by both parties in related interim applications.

(g) This instrument also makes a number of minor consequential amendments to rule 14.1B (admissions made under the Protocols) and rule 27.14 (costs where the claim no longer continues under the Protocol and falls within the small claims track) to reflect the introduction of the EL/PL Protocol;

(h) a signpost is inserted to direct users the appropriate practice direction containing details of the procedure for the detailed assessment of costs in relation to civil recovery orders; and

(i) amendments are made to RSC Order 79 rule 9, setting out the procedure for an appeal by the prosecutor to the High Court against a grant of bail made by the Crown Court to effect an amendment to the Bail (Amendment) Act 1993 brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

- ***Consolidation***

7.2 The Ministry of Justice does not plan to consolidate the amending instruments. However, a consolidated version of the amended rules is available to the public free of charge at: <http://www.justice.gov.uk/courts/procedure-rules/civil/rules> . Copies of the rules may be downloaded and printed as required.

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 In its response to its consultation on *Solving Disputes in the County Court* (published in February 2012), the Government committed to extending the current Road Traffic Accident (RTA) scheme vertically, to include claims up to £25,000; and horizontally, to incorporate employer's liability and public liability claims. The Government also committed to reducing the fixed recoverable costs available in relation to the extended RTA scheme, so that they more accurately reflect the time taken to carry out the necessary work, bearing in mind the efficiencies gained from electronic document exchange within the scheme, and in the light of the recent ban on referral fees. The Government believes that it should be possible for insurers to pass on these savings through lower premiums (or lower than they would have been had recoverable costs met by insurers not been reduced).

8.3 Following the publication of the *Solving Disputes* consultation response, the Ministry of Justice launched a Call for Evidence seeking stakeholders' views on both the extension of the RTA scheme and on the level of fixed recoverable costs applicable to it. An analysis of responses is available at <https://consult.justice.gov.uk/digital-communications/extension-rta-scheme>.

8.4 Further to this, the Ministry of Justice also launched a consultation on 19 November 2012 on specific proposals for the levels of fixed recoverable costs which should apply for claims within the current and extended RTA Protocols, and for claims that exit the current and extended RTA Protocols.

8.5 The conclusions set out in the Government's response (published on 27 February 2012 and available at <https://consult.justice.gov.uk/digital-communications/extension-rta-scheme>) have taken into account evidence provided from both the Call for Evidence and from the 19 November consultation. The key conclusions are as follows:

- The Government believe it is reasonable and proportionate to consider referral fees as relevant to the costs and to propose adjustment to fixed recoverable costs in the light of the referral fee ban in April 2013.
- The Government does not accept claimants' views that the changes will result in limiting access to justice and bring about other undesirable behavioural changes, since lawyers should still be willing to take cases on for these costs.
- In order to simplify transition and to effect a swift reduction in costs, RTA cases for claims between £1,000 and £10,000 should be subject to the "new" fixed recoverable scheme if notified after the implementation date, even if the accident occurred earlier. This point has been considered by the CPR Committee which determined that the new fixed recoverable costs should apply according to the date when the claims notification form is submitted rather than the date of accident to avoid a lengthy overlap with two systems running in parallel.

9. Guidance

9.1 A preview summarising the forthcoming changes will be published on the Ministry of Justice website in July 2013 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 July 2013.

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 at the end of July 2013.

10. Impact

10.1 The amendments will impact on businesses and individuals and, to a more limited extent, on charities and voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument which gives effect to a variety of changes from different sources. However, an impact assessment was published to support the Government response to the 19 November fixed recoverable costs consultation. This is available at <https://consult.justice.gov.uk/digital-communications/extension-rta-scheme>.

10.3 In summary, the fixed recoverable costs impact assessment indicates a reduction in income for claimant solicitors from lower fixed recoverable costs of about £200m (mirrored by the benefit to defendant insurers from paying lower legal costs), and a possible reduced income for claimant solicitors from lower success fee income (mirrored by the benefit to claimants from paying lower success fees). It is assumed that there will be no impact on case volumes and case outcomes and settlements; no change in claimant willingness to bring a claim; and no aggregate impact on claimant lawyers' willingness to take on cases. Whilst some claimant lawyers might exit the market, it has been assumed that others would enter or existing providers would expand to meet demand. This is because the proposed fixed recoverable costs are considered to reflect the amount of work which an efficient and effective provider would undertake.

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 as soon as possible before implementation by writing to key stakeholders and through the CPR website.

11.3 These changes will impact on small claimant legal firms. However, insofar as this is the case, the Government believes that efficient businesses will be able to diversify into other areas. Other small businesses should be able to benefit from a reduction in their insurance premiums.

12. Monitoring and review

12.1 The 19 November consultation process has proved again the difficulty in obtaining comprehensive and representative data in this area. The Government is prepared to review and assess the effectiveness of the RTA scheme should evidence be provided to demonstrate that this is necessary. The Government does not, however, wish to commit at this stage to a formal review fixed in 12 months' time.

13. Contact

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