

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT No.8) RULES 2013

2013 No. 3112 (L.24)

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 1998 (S.I. 1998/3132) (“the CPR”) so that applications for jury trial in defamation cases will no longer be made within 28 days of issue of the claim but will instead be considered at the first case management hearing in the case. 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 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).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.

4.2 The Defamation Act 2013 received Royal Assent on 25 April 2013 and is coming into force on 1 January 2014. The purpose of the Act is to rebalance the law on defamation to provide more effective protection for freedom of speech while ensuring that people who have been defamed are able to protect their reputation. Among the Act’s provisions, section 11 removes the presumption in favour of trial with a jury in defamation proceedings, with the result that defamation cases will be tried without a jury unless a court orders otherwise.

¹ This work is ongoing: the few remaining CCR and RSC are contained 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Currently the existence of the right for either party to opt for trial with a jury and the role which juries (if used) have to play, can prevent early decisions being made by a judge on issues such as meaning, and hence can impede settlements and add to the length and cost of proceedings. This instrument amends the CPR to ensure that any application for the court to exercise its remaining discretion to order trial with a jury must be made at the first case management conference. The amendments to the CPR are made to implement section 11 of the Defamation Act which comes into force on 1 January 2014.

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 The Ministry of Justice published a consultation paper on the draft Defamation Bill in March 2011. Responses to that consultation were published in November 2011. There were 129 respondents comprising the legal profession, media, individuals, publishers and booksellers, insurers, non government organisations and public bodies as well as the senior judiciary. About three-quarters of responses supported the proposal to remove the presumption in favour of jury trial, and this was then enacted in the 2013 Act.

8.3 The consultation material can be seen at:
https://consult.justice.gov.uk/digital-communications/draft_defamation_bill

9. Guidance

9.1 A preview summarising the forthcoming changes will be published on the Ministry of Justice website in December 2013 at <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/index.htm>. The Ministry of Justice will also inform key stakeholders of the changes in December 2013.

9.2 The rules will be published by the Stationery Office and will be available on the Ministry of Justice website in consolidated form when they come into force on 1 January 2014.

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 specifically for this instrument but one was prepared on the provisions in the 2013 Act as a whole prior to its passage through Parliament. It indicated that as there are currently only a small number of defamation trials per year, and an even smaller number of these are heard by a jury, it was not expected that either the number of trials or the number of these that are heard by a jury would change significantly as a result of the proposal. The proposal should, though, reduce the time and number of hearings taken to reach case resolution, and the judge would be able to rule on more issues earlier so the court process would be more efficient. Claimants and defendants were expected to benefit directly from quicker case resolution. In addition, if there were fewer pre-trial hearings in future, the party who ultimately paid the costs in the case would save the court fee for these hearings. As an indicative estimate it was suggested that the proposals might result in a saving to claimants and defendants in relation to court fees of £0m - £0.3m per year.

11. Regulating small business

11.1 The legislation contained in the Defamation Act 2013 and this instrument applies to small businesses. We consider that the policy reflected in this instrument is beneficial to business as it should assist in reducing the cost and length of defamation proceedings.

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.

12. Monitoring and 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. The Defamation Act 2013 will be formally reviewed within three to five years of Royal Assent on 25 April 2013 in accordance with the usual arrangements for post-legislative scrutiny.

13. Contact

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