

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) (No. 2) RULES 2013
2013 No. 515 (L. 3)

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”). 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 and a European Directive.

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 By virtue of paragraph 6 of Schedule 1 to the 1997 Act, Civil Procedure Rules may, instead of making provision for a matter, refer to provision made or to be made about that matter by directions.

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

- What is being done and why

7.1 This instrument amends the CPR as follows.

(a) By providing for provision to be made in directions (to be made by the Chancellor of the High Court) as to whether costs management rules should apply to multi-cases commenced in the Chancery Division after 1 April 2013. Similar provision is made for provision to be made in directions (to be made by the President of the Queen's Bench Division) in respect of multi-track cases commenced in the Technology and Construction Court and the Mercantile Court after 1 April 2013. This amendment extends the general exemption from costs management in cases in the Admiralty and Commercial Court to cases commencing in the Chancery Division and the Technology and Construction Court that have concurrent jurisdiction with the Commercial Court to ensure parity between the courts and reduce the possibility of forum shopping to avoid the burdens and tactical risks associated with costs management by the court.

(b) By amending the transitional provisions following the introduction of the proportionality test in respect of costs awarded so that the rule does not apply to work done on cases before 1 April 2013 which are issued on or after 1 April 2013. The Civil Procedure Rules are amended (SI 2013/262) to enable courts to deal with cases at proportionate cost as well as justly; the test is intended to control the costs of activity that is disproportionate to the value, complexity and importance of the claim. This rule commences on 1 April 2013 and the further amendment in this statutory instrument is made to allow that costs incurred in respect of work done before 1 April 2013 will not be disallowed if they would have been allowed under the rules in force immediately before 1 April 2013.

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 No consultation was undertaken in respect of these amendments as they are made to clarify amendments made in a previous Statutory Instrument.

9. Guidance

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

10. Impact

10.1 The majority of the amendments will impact on businesses and individuals, some will directly impact on charities and voluntary bodies. Any sectors that derive an income from civil litigation may be affected. This may include for example, Lawyers and claims management companies.

10.2 The recovery of costs landscape will change for most claimants and defendants and their representatives who will need to consider the costs will be provided in higher value cases with the introduction of costs budgets. The majority of the amendments will impact on businesses and individuals, some will directly impact on charities and voluntary bodies. The recovery of costs landscape will change for most claimants and defendants and their representatives who will need to consider the appropriate funding arrangements for any litigation. Conditional Fee Agreements will be phased out affecting small legal firms that rely heavily on personal injury cases.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

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

11.3 There has been extensive consultation with relevant bodies, including claimant and defendant representative groups throughout 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 civil litigation.

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.

12.2 Those provisions which implement provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will be reviewed as part a wider review of the entire package of reform policies implemented following the passing of that Act.

13. Contact

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