

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2013**

2013 No. 789 (L. 7)

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 a Government initiative.

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.

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.

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

7. Policy background

- 7.1 This instrument amends the CPR by amending the amount of fixed costs recoverable by a claimant in claims that have or should have followed the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”). The RTA Protocol introduced (in 2010) a pre-court procedure for the settlement of cases where liability is not disputed (“the RTA scheme”).
- 7.2 In its response to its consultation on *Solving Disputes in the County Court* (published in February 2012), the Government committed to extending the current RTA scheme vertically, to include claims up to £25,000; and horizontally, to incorporate Employers’ Liability (EL) and Public Liability (PL) claims. The Government also committed to reducing the fixed recoverable costs (FRCs) 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 forthcoming ban on referral fees. The Government believes that these changes will help to create an environment in which it is possible for insurers to pass on these savings through lower premiums.

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 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 FRCs applicable to it. An analysis of responses is available at <https://consult.justice.gov.uk/digital-communications/extension-rta-scheme>. Further to this, the Ministry of Justice also launched a consultation on 19 November 2012 on specific proposals for the levels of FRCs which should apply for claims within the current and extended RTA Protocols, and for claims that exit the current and extended Protocols.
- 8.3 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 were as follows:
- The Government believes it is reasonable and proportionate to consider referral fees as relevant to the costs and to propose adjustment to FRCs 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 will 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 under £10,000 should be subject to the “new” FRC scheme if notified after the implementation date, even if the accident occurred earlier. This point has been considered by the CPRC which determined that the new FRCs 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.

8.4 The Government is not convinced by the argument set out by some respondents, including the Civil Justice Council (CJC), that the Government should wait to see how the range of civil justice reforms currently underway have bedded in, or until further analysis has been completed before proceeding with any reduction in FRCs or extension of the RTA scheme. The Government is not clear what further data or evidence would be available in the near future which would make a sufficiently material difference to the current proposals to justify delaying their implementation.

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 March 2013.

9.2 The amended rules will be consolidated into the web version of the Civil Procedure Rules when they come into force on 30th April 2013.

10. Impact

10.1 The amendments will impact on businesses and individuals and, to a limited extent, on charities and voluntary bodies which should benefit from a reduction in their insurance premiums.

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 FRC consultation. This is available at <https://consult.justice.gov.uk/digital-communications/extension-rta-scheme> .

10.3 In summary, the FRC impact assessment indicates a reduction in income for claimant solicitors from FRCs of about £200m (mirrored by the benefit to defendant insurers from paying lower legal costs), and a possible reduced income for them 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

FRCs 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

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.