

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT No. 3) RULES 2015

2015 No. 877 (L.11)

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 the County Court.

- 2.2 The amendments to the CPR covered by this instrument make changes to correct drafting errors in the new Part 88 inserted by the Civil Procedure (Amendment) Rules 2015, and also make a single change in each of Parts 76, 79, 80 and 82 of the CPR to ensure consistency of wording with Part 88 as amended.

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

- 3.1 The errors which this instrument rectifies were identified by the Joint Committee in its Twenty-Sixth report of Session 2014-2015.

4. **Legislative Context**

- 4.1 The Civil Procedure Act 1997 established the Civil Procedure Rule 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 the County Court, 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 Civil Procedure (Amendment) Rules 2015 were made pursuant to provision in the Counter-Terrorism and Security Act 2015 (paragraph 7 of Schedule 3 to that Act) for the initial exercise of rule-making powers for the purposes of proceedings under the Act to be by the Lord Chancellor instead of by the Civil Procedure Rule Committee. Following that first exercise, the power to make such

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

rules is exercisable by the Civil Procedure Rule Committee in the normal way for Civil Procedure Rules, and so this instrument is made by that Committee.

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 These amendments are made solely to correct drafting errors in the provisions which the Civil Procedure (Amendment) Rules 2015 inserted into the CPR. Those errors were identified by the Joint Committee on Statutory Instruments and are fully explained in the Joint Committee's Twenty-Sixth Report of Session 2014-15; but they may be summarised as follows:

- A mismatch between the reference in CPR rule 88.1(3) to information being disclosed contrary to the public interest and the reference in rule 88.2(2) to information being disclosed in a way which would be damaging to the interests of national security (corrected by amending the reference in rule 88.2(2) so that it refers to information being disclosed contrary to the public interest, which mirrors the formulation employed in the 2015 Act itself);
- The use of “will” rather than “must” in CPR rule 88.9(1) (corrected by substituting “must” for “will”);
- References in CPR rules 88.24 and 88.28 to the “relevant person”, which should refer to the Secretary of State (corrected by substituting “Secretary of State” for “relevant person”, and also removing an additional superfluous reference to the “relevant person” in rule 88.28;
- Lack of clarity as to whether CPR rule 88.28 (about procedure for certain applications and objections by the Secretary of State) applies, in relation to objections, not only where there has been an objection to a proposed communication by the special advocate, but also where there has been an objection to the form it is proposed such a communication should take (corrected by inserting the words “or to the form in which it is proposed to be made” in the relevant place in rule 88.28, and also by inserting those words in the corresponding place in rules 76.29, 79.21, 80.25(1) and 82.14 which make identically worded provision on which rule 88.28 was modelled).

Consolidation

7.2 No further consolidation of the rules is planned at present.

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). Since the changes made by this instrument are purely matters

of drafting to correct errors specifically identified in the Joint Committee's report, the Civil Procedure Rule Committee did not consider that any specific wider consultation was appropriate.

9. Guidance

9.1 The rules will be published in consolidated version and will be available on the Ministry of Justice website.

10. Impact

10.1 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

11. Regulating small business

11.1 The legislation applies to small businesses such as legal practices but impact would not be significant, being limited to familiarisation with the amendments.

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.

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.