

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2019**  
**2019 No. 1113 (L. 8)**

**1. Introduction**

- 1.1 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”), which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and the County Court. The amendment covers two matters, explained in paragraph 7, below: (a) extending the regime for costs protection in environmental claims to cover statutory reviews previously falling outside the regime; and (b) providing a fuller foundation in the rules for the Media and Communications List established in 2017.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Civil Procedure Act 1997 established the Civil Procedure Rule Committee (“CPRC”) and gave it power to make Civil Procedure Rules, which are rules governing practice and procedure in civil proceedings in the County Court, High Court and Court of Appeal (Civil Division). 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). The CPR had a number of policy objectives, two of the more prominent being to improve access to justice through

transparent straightforward procedure and reduce, or at least control, the cost of civil litigation in England and Wales. The first CPR were made in 1998, and amendments are regularly made in response to practical experience of the operation of rules or decisions of the higher courts, to provide procedure for new matters such as new types of order provided for in new Acts of Parliament, for updating generally and for modernising purposes such as making provision for online or other electronic methods. References below to a rule, or Part, by number alone are references to the rule or Part with that number in the CPR.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Costs protection in environmental claims - Rule 3 of these Rules amends CPR rule 45.42(2)(a), which defines an “Aarhus Convention claim”. Only “Aarhus Convention claims” come within the costs protection regime, so this definition defines the scope of the regime. The existing definition does not include all statutory reviews within the scope of Article 9 of the Aarhus Convention, and the amendment substitutes for that definition a revised definition which does include all such statutory reviews. The significance of this change is explained below.
- 7.2 Article 9 of the Aarhus Convention (the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark on 25 June 1998) requires States Parties to the Convention to have access to procedures for review or challenge of certain environmental matters (in paragraphs (1), (2) and (3) of the Article), and further requires (in paragraph (4) of the Article) that such procedures are, among other things, not ‘prohibitively expensive’. The UK is a signatory to the Aarhus Convention, as an individual state and as a member of the EU, which is also a signatory. The UK’s obligations under the Aarhus Convention will remain the same, irrespective of the UK’s EU membership status.
- 7.3 The costs protection regime for “Aarhus Convention claims” in the CPR, which is directed to ensuring that such claims are not “prohibitively expensive”, involves the capping (subject in exceptional cases to variation by the court) of the costs which may be recovered from a party at £5,000 for individual claimants, £10,000 for other claimants, such as NGOs or businesses, and £35,000 for defendants, which are generally public authorities.
- 7.4 Over recent years the CPR have been extended to include more cases within the scope of the cost protection regime as being “Aarhus Convention claims”. At present, the definition of “Aarhus Convention claims” covers challenges brought by statutory review or application for judicial review relating to access to environmental information (Article 9(1) of the Aarhus Convention) or challenging decisions, acts or omissions subject to the Convention (Article 9(2) of the Aarhus Convention); and applications for judicial reviews which challenge acts or omissions of public authorities which contravene provisions of national environmental law (Article 9(3)). Not presently covered, however, are statutory reviews (such as challenges made under section 288 of the Town and Country Planning Act 1990) which challenge acts or

omissions of public authorities which contravene provisions of national environmental law (Article 9(3)).

- 7.5 The intention of this amendment to the CPR is to bring statutory reviews which relate to national environmental law within the environmental cost protection regime, to facilitate full compliance with Article 9(3) of the Aarhus Convention. This would achieve parity between judicial reviews and statutory reviews, so that the only difference between judicial reviews and statutory reviews in this area would be the identity of the decision-maker and/or the identity of the claimant.
- 7.6 It is anticipated that most of these statutory reviews would be challenges made under section 288 of the Town and Country Planning Act 1990 or section 113 of the Planning and Compulsory Purchase Act 2004.
- 7.7 On 20 December 2017 the matter was brought into sharper focus when a complaint was made by a member of the public to the Aarhus Convention Compliance Committee (ACCC/C/2017/157) citing that the UK was not compliant because statutory reviews were not afforded cost protection, contrary to the requirement of Article 9(3) of the Aarhus Convention. Specifically, “non-compliance with Article 9(3) because the Environmental Cost Protection Regime (ECPR) does not extend to planning challenges brought under s.288 of the Town and Country Planning Act 1990”.
- 7.8 Following further consideration, it was concluded that the best way forward was to make the simplest change to achieve compliance with 9(3) of the Aarhus Convention, so that statutory reviews relating to national law are included within the Environmental Cost Protection Regime.
- 7.9 Part 53 Media and Communications List: The amendment here substitutes for Part 53 (defamation claims) a new Part 53 which provides for the operation of the Media and Communications List (“MAC List”), which is a specialist list in the High Court for defamation claims and other media and communications claims. The MAC List was established in March 2017 to give new focus to this expanding specialism (beyond defamation) and to modernize the listing arrangements. The scope of the MAC List can be described as cases involving one or more of the main media torts (defamation, misuse of private information and breach of duty under the Data Protection Act) and related or similar claims including malicious falsehood and harassment arising from publication or threatened publication by the print or broadcast media, online, on social media, or in speech, cases involving one or more of the main media torts (defamation, misuse of private information and breach of duty under the Data Protection Act) and related or similar claims including malicious falsehood and harassment arising from publication or threatened publication by the print or broadcast media, online, on social media, or in speech.
- 7.10 Following a judicially-led consultation which particularly sought views as to the adequacy or otherwise of the relevant CPR and Practice Directions, and areas for improvement, a range of topics was identified for attention, and a MAC List User Group was created and worked during 2018 on proposals for amendment of the relevant rules. The resulting proposals were considered and revised by the Civil Procedure Rule Committee, resulting in the new Part 53 substituted by this instrument. The main changes brought in by the new Part 53 are the formal identification of the

MAC List as a specialist list; expansion of the scope of Part 53 to cover the range of media and communications claims more generally dealt with in the MAC List; providing for some cases (those including claims for libel, misuse of private information, data protection, or harassment by publication) to be brought in the MAC List only and others to be able to be brought in the MAC List if the claimant considers this appropriate; and provision for “transfer in” to the MAC List of cases brought elsewhere.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

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

## **10. Consultation outcome**

10.1 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). The Committee consults, as it considers appropriate to the rules or amendments to rules in question, in a number of ways of differing degrees of formality, including specific correspondence with bodies considered appropriate to be consulted; involving representatives of interested organisations in the work of sub-committees reviewing particular aspects of the rules; inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn; and inviting and reviewing suggestions from relevant Government Departments and other authorities affected by rules of civil procedure. The amendment relating to Aarhus Convention claims was not considered to require wide consultation. The issue was referred to in a consultation in 2015 (see paragraph 7), in which the majority of respondents were supportive of proposals to extend ECPR to other challenges, including statutory reviews under Article 9(3); and the Ministry of Housing, Communities and Local Government was in agreement with the drafting approach adopted to achieve the extension to such reviews.

10.2 The amendments in relation to the Media and Communications List arose, as explained above, out of a short judicially-led consultation in May 2017 of Court users dealing with a narrow range of simple questions. One of the three consultation topics was “The adequacy or otherwise of the relevant CPR and Practice Directions, and areas for improvement”. This was a public consultation, though the overwhelming majority of responses were from specialist legal professionals. 90% of Respondents did not consider that the CPR and Practice Directions adequately catered for the needs of those who litigate in this area. A range of topics was identified for change or attention. Prominent among them were proposals that there should be a rule or Practice Direction mandating the commencement in the MAC List of claims falling within its scope. In November 2017, a user group was created, and over the past year several sub-committees worked on the drafting of amended rules and a revised Pre - Action Protocol, to meet the requests of the consultees. The Civil Procedure Rule Committee considered the proposals and suggested revisions of them, which were

agreed by the representatives of the user group. The Committee did not consider that any wider consultation was required.

## **11. Guidance**

- 11.1 Amendments to the CPR are drawn to the attention of participants in the civil justice system by correspondence addressed by the CPR Committee secretariat to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant legal publications; as well as by publicity within HM Courts and Tribunals Service. News of changes to the rules, together with the consolidated version of the rules, are published on the Ministry of Justice website at <https://www.justice.gov.uk/courts/procedure-rules/civil>.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is for the amendments to form part of the Civil Procedure Rules which are kept under continuous review by the Civil Procedure Rule Committee, and may be subject to amendment accordingly.

## **15. Contact**

- 15.1 Amrita Dhaliwal at the Ministry of Justice. Direct line telephone 020 3334 6306 and email: [amrita.dhaliwal@justice.gov.uk](mailto:amrita.dhaliwal@justice.gov.uk) can answer any queries regarding this instrument.
- 15.2 Andrew Waldren, Deputy Director, Access to Justice Directorate, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Paul Maynard MP, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.