

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEEDURE (AMEDMENT NO.6) RULES 2020

2020 No. 1228 (L. 21)

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes three amendments to the Civil Procedure Rules 1998 in respect of the changes made by the Civil Procedure (Amendment No.3) Rules 2020 (S.I. 2020/747) in response to feedback on operational issues which have arisen regarding the effect of elements of those changes. The amendments made by this instrument are considered urgent because of the potential operational impact.

Explanations

- 2.2 The first amendment ensures that District Judges and Deputy District Judges are able to determine contempt proceedings where a rule or practice direction so provides (in particular those relating to breach of antisocial behaviour injunctions), rather than having such proceedings reserved in the county court to Circuit Judges.
- 2.3 The second amendment enables certain applications for permission to make a contempt application and, if permission is granted, for the contempt proceedings themselves, to be determined by a wider range of judges (namely, judges of the Queen's Bench Division, rather than limiting them to the Administrative Court).
- 2.4 The third amendment re-establishes the requirement for the court's permission to issue a writ of restitution in aid of a writ of possession notwithstanding that permission may not be required to issue the writ of possession itself (a writ of restitution may be issued in the High Court to support a writ of possession where the person required to give up possession of the property has come back into occupation after eviction).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Following consultation with the S.I. Registrar as required by paragraph 4.7.6 of the *Statutory Instrument Practice*, this instrument is being issued free of charge to all known recipients of S.I. 2020/747.

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 Civil Procedure Rules are made by the Civil Procedure Rule Committee (CPRC) under the Civil Procedure Act 1997, section 2(6) of which requires the CPRC before making rules to meet (unless inexpedient to do so) and consult such persons as they consider appropriate. The CPRC meets nine times a year and except in very rare circumstances considers any proposed matters for inclusion in the rules in at least one meeting (as it did for the matters in the present instrument). Consultation is addressed in section 10 of this memorandum.

7. Policy background

What is being done and why?

- 7.1 These amendments address three issues that are having (or may have) an impact on HMCTS' operational efficiency which is considered likely to become acute if the amendments are not made.
- 7.2 The first two amendments are to Part 81 of the Civil Procedure Rules and concern provision for judicial deployment for contempt proceedings. The first change is to provision in rule 81.3(2) which limits certain hearings in the county court to Circuit Judges. In the past, these hearings have been able to be conducted before a District Judge or Deputy District Judge, and the change made by this instrument will allow that to happen again where a rule or practice direction so provides (which will in particular be the case for hearings in relation to breach of antisocial behaviour injunctions and similar cases).
- 7.3 The second change is to rule 81.3(8), and broadens the range of judges who may determine certain contempt of court permission applications (and any subsequent substantive proceedings), changing this from being a judge of the Administrative Court to being a judge of the Queen's Bench Division.
- 7.4 The third change re-establishes provision requiring permission to issue a writ of restitution in certain circumstances (where the writ is required in aid of a writ of possession). This provision previously appeared in rule 83.13, and was omitted in the consolidation of amendments to that rule. While proceedings for a writ of restitution in these circumstances are rare, it has been confirmed that they are still possible, and that the provision requiring permission for issue remains appropriate and should be restored.

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 There are no plans to consolidate the rules.

10. Consultation outcome

10.1 The CPRC does not always undertake a formal public consultation on proposed amendments to the rules, but does endeavour to ensure that its development of proposals and drafting is informed by relevant views from outside the Committee (such as operational experts in her Majesty's Courts and Tribunals Service, relevant Government departments, members of the judiciary and practitioner and lay advice sector interests (in particular via the Civil Justice Council), as appropriate to a particular proposal and the circumstances in which it arises.

10.2 In respect of the amendments made by this instrument, the need for the amendments was identified and conveyed to the Committee by senior members of the judiciary; and the drafting was checked with them before being approved.

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 These changes eliminate potential unforeseen impacts of the Civil Procedure (Amendment No.3) Rules 2020 (S.I. 2020/747) insofar as they relate to the efficient operation of the Courts.

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 can answer any queries regarding this instrument.

- 15.2 David Parkin, Deputy Director for Civil Policy & Law, Access to Justice Directorate, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alex Chalk MP, Parliamentary Under-Secretary of State at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.