

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PROCEDURE (AMENDMENT) RULES 2021**

**2021 No. 117 (L. 2)**

**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 nine matters, explained in paragraph 7, below: (a) vulnerable parties and witnesses; (b) service of claims out of the jurisdiction; (c) use of affidavits outside the proceedings in which they are served; (d) accruing of interest on sums offered in settlement of a claim; (e) enabling temporary modifications of rules to cater for emergencies; (f) recognition of certain foreign judgments; (g) procedure in relation to the “breathing space” scheme; (h) consequential changes arising from previous amendments on contempt; (i) other minor corrections and clarifications. References to a Part or rule by number alone are references to the Part or rule so numbered in the CPR.

**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 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 The CPR are amended for the following purposes—
- 7.2 Vulnerable parties and witnesses: following recommendations in the report by the Civil Justice Council Vulnerable Witnesses and Parties in Civil Proceedings – Current position and recommendations for change (published in February 2020), Part 1 (the Overriding Objective) is amended to make it clear that dealing with a case justly includes ensuring, so far as practicable, that the parties can participate fully and that parties and witnesses can give their best evidence.
- 7.3 Service out of the jurisdiction: rule 6.33 is amended so that permission of the court is not required to serve out of the jurisdiction a claim where jurisdiction is based on a choice of court agreement (with consequential amendment in Part 12). This amendment arises from proposals of the Lord Chancellor’s Advisory Committee on Private International Law to reduce unnecessary procedural hurdles after the UK’s exit from the EU.
- 7.4 Evidence: this amendment makes it clear that the provisions of rule 32.12 preventing the collateral use of witness statements outside the proceedings in which they are served extends also to affidavits. The need for this amendment was highlighted by the case of *Official Receiver v Skeene* [2020] EWHC 1252 (Ch).
- 7.5 Offers to settle: this change arises from *King v City of London* [2019] EWCA Civ 2266. The rule change provides clarity, particularly for litigants in person, that an offer to settle (a “Part 36 offer”) can include accruals of interest but where it is silent on this point, the presumption will be that the offer is inclusive of all interest.
- 7.6 Coronavirus and other emergencies: this change makes it possible for practice directions to modify or disapply any provision of the CPR in order to respond to issues for the work of the courts arising from emergencies such as the coronavirus pandemic. This is intended to enable provision which is explicitly temporary but is not of the nature of a pilot scheme (which would be covered by rule 51.2) following consideration by the Court of Appeal in *Arkin v Marshall* [2020] EWCA Civ 620 of the nature and limits of provision under rule 51.2.
- 7.7 Judgments: Part 70 is amended to clarify that for foreign judgments not requiring registration in order to be enforceable (so that the provision that they are treated as a judgment of the court in which they are registered does not apply), such a judgment is to be treated for enforcement purposes as if it were a judgment of the High Court or County Court. This closes a lacuna identified by case of *Shafenacker v Horvat* [2020] EWHC 506.
- 7.8 Debt respite scheme: this change makes it possible for procedural provision which is needed in respect of any debt respite scheme under the Financial Guidance and Claims Act 2018 to be made by way of practice direction. The debt respite scheme which is now established is under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (S.I. 2020/1311). Those regulations (which allow for a 60-day breathing space

period which prevents enforcement action by creditors during that period) make extensive provision for procedural issues, so the necessary provision which will be included in a new practice direction deals only with issues not addressed in the regulations.

7.9 Consequential changes flowing from the changes in contempt proceedings (Part 81) in SI 2020/747: The changes fall into three categories. The first (substitution of rule 65.47(4), amendment of rule 71.2(7), replacement of rule 71.8(2)-(4) and amendment of rule 74.48) are consequential amendments made in order to update, or make consistent, language or cross-references, including reference to punishments for contempt as being a fine, imprisonment, confiscation of assets or other punishment under the law (such other punishment including an injunction restraining the repetition of a contempt, and a hospital order or guardianship order under the s.37 of the Mental Health Act 1983 or an interim hospital order under s.38 of the Mental Health Act 1983 (see Contempt of Court Act 1981 s.14)). The second are amendments for the court procedure for sequestration as a method of enforcement to be governed by Part 83 and in particular by new rule 83.14A (amendments to rules 83.1, 83.2, and 83.27, the introduction of new rule 83.14A, revocation of rule 83.2A and omission of rule 2(1) of the Civil Procedure (Amendment No. 3) Rules 2020 that preserved the pre-existing position on enforcement sequestration); sequestration as a sanction for contempt is governed by Part 81. The third category are amendments to make it clear that proceedings under Part 89 are not contempt proceedings (amendment to rule 89.1).

7.10 Other minor matters or corrections: By way of ‘housekeeping’ some minor amendments are made which align terminology in some costs provisions with that elsewhere in the Rules (replacing “interlocutory” with “interim”) and make provision concerning judgments in default in Admiralty proceedings corresponding to that for proceedings generally.

## **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. For matters in this instrument, this has included consultation with, in particular, HM

Treasury, the Civil Justice Council and the Lord Chancellor's Advisory Committee on Private International Law.

- 10.2 The Committee also had the benefit, in relation to the amendments to Part 1 on the Overriding Objective, of consultation carried out by the Civil Justice Council for the report 'Vulnerable Witnesses and Parties in Civil Proceedings – Current position and recommendations for change', published in February 2020. An initial raft of consultation took place with all Designated Civil Judges and High Court Masters. Further, given the specific reference to claims in respect of sexual abuse/assault, the Association of Personal Injury Lawyers undertook a survey of its members which provided 50 responses. A further consultation was undertaken from 3 September 2019 until 11 October 2019. After careful consideration of the responses, significant amendments were reflected in the recommendations in the report.

## **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 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 Chris Philp MP, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.