

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 4) RULES 2021
2021 No. 855 (L. 12)

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 eight matters, explained in paragraph 7, below: (a) recording in court; (b) payments in cases involving children/protected parties; (c) Admiralty claims; (d) striking out of counter claims; (e) appeals; (f) notice of eviction in possession claims; (g) amendments to the glossary at the end of the CPR; and (h) some minor amendments to cross-references and other tidying up of the Rules. 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 Recording in court - amendments are made to CPR Part 2 and Part 27 concerning the meaning and application of “tape recording” of proceedings. The amendments address two issues: first, amending Part 2 to bring the definitions provisions up to date so that references to “tape recording” cover any form of recording in court (particularly digital means of recording); and second, amending Part 27 to provide that rule 39.9 (dealing with recording and transcription of proceedings) applies in relation to proceedings on the small claims track (as it has always done for claims on the fast track and multi-track).
- 7.3 Payments in cases involving children/protected parties - amendments are made to CPR Part 21 to address two areas of uncertainty in the interests of streamlining of proceedings: first, to make it clear that applications for approval of voluntary and interim payments in cases involving children or protected parties should be made under Part 8 (this is, broadly, the Part of the CPR which deals with applications and claims other than claims for money) and second, that the court is able to take the step of ordering payment of costs to the child’s litigation friend in a case where detailed assessment of costs has been dispensed with under rule 46.4(3).
- 7.4 Admiralty claims - amendments are made to CPR Part 24 and Part 61 to bring the Rules in relation to Admiralty claims up to date and in line with practice, specifically in relation to summary judgment in Admiralty claims, the sale of arrested property before judgment and the determination of priorities and the directions to be given in orders for sale. This is a specialist jurisdiction; the amendments are technical in nature and largely discrete and self-contained. Part 24 is amended to remove certain Admiralty cases from the list of cases in which summary judgment may not be given against a defendant (so that it will be possible for summary judgment to be given in such cases in future on the same basis as in most other sorts of claim). Part 61 is amended to clarify that the default position for a specific power is that should be exercised – the power is for the court in an Admiralty claim in rem (action against the property rather than against the person or group of people), when making an order for sale, to set a time period within which notice of claims against the proceeds of sale must be filed is to be exercised; and the amendment provides that this power is to be exercised unless the court is satisfied that there is good reason not to.
- 7.5 Striking out of counter claims – CPR Part 25 is amended in relation to the position where a counterclaim is struck out. This amendment addresses a current lacuna in the Rules and clarifies the position where a defendant, who has brought a counterclaim, is granted an interim injunction in the counterclaim, but the counterclaim is struck out for non-payment of fees: the effect is that the interim injunction ceases to have effect after 14 days unless the defendant has within that period applied to reinstate the counterclaim.
- 7.6 Appeals – amendments are made to CPR Part 40 and Part 52 regarding appeals, to clarify when an application for permission to appeal, or an application for an extension of time to apply, may be made. The amendments cover cases where a

hearing at which a judgment or order is made is adjourned, so that an application for permission to appeal (or, for example, for extension of time for filing of an appellant's notice) may be applied for not only at the hearing, but on the adjournment of it.

- 7.7 Notice of eviction in possession claims – following changes made to possession processes in The Civil Procedure (Amendment No. 3) Rules 2020 (S.I. 2020/747) to align procedures for enforcement of possession of the High Court and the county court, this amendment to CPR 83.8A(2) provides that where eviction is not carried out as intended, the occupiers must a further minimum 7 days' notice of eviction, .
- 7.8 Amendments to the glossary at the end of the CPR – The CPR contain a glossary of terms used in the Rules, which includes the term 'Tender before Claim'. The explanation of that term is amended in response to judicial comment in the case of RSM Bentley Jennison (A Firm) & Ors v Aytton [2015] EWCA Civ 1120, thus bringing it up to date.
- 7.9 Minor amendments and tidying up- CPR Part 70 is amended to update references to Practice Direction 70 which supplements Part 70, consequential on the renumbering of that practice direction following the addition of a Practice Direction 70B also supplementing Part 70.

8. European Union Withdrawal and Future Relationship

- 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, Her Majesty's Court Service, Masters of the Queen's Bench Division, the Admiralty Court Users Committee (ACUC) which comprises the Admiralty Judge, the Admiralty Registrar, the Admiralty Marshal, and representatives of the Admiralty Bar Group and the Admiralty Solicitors Group.

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 email: amrita.dhaliwal@justice.gov.uk can be contacted with any queries regarding the 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 Lord Wolfson QC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.