

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 2) RULES 2022

2022 No. 783

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 amendments cover 11 matters, explained in paragraph 7 of this memorandum under the following headings: (a) Welsh Housing; (b) Vulnerable Parties; (c) Service Out of Jurisdiction; (d) Environmental Review; (e) Alternative Procedure for Claims; (f) Statements of Case; (g) Intellectual Property Enterprise Court (IPEC) Costs Caps; (h) Specialist Proceedings; (i) Transcripts; (j) Admiralty Claims and (k) some minor amendments and other tidying up of the Rules.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

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 Welsh Housing – The Renting Homes (Wales) Act 2016 (the 2016 Act), which is due to come into force on 1 December 2022, is intended to make it simpler and easier to rent a home in Wales and provides a single legal framework which replaces current legislation in respect of tenancies and licences, subject to a limited number of exceptions. The changes to the CPR insert new rules in Parts 55 and 56 and amend existing rules in Part 65 to cater for procedure in proceedings under the 2016 Act, including adopting the significant changes in terminology at the heart of the Act.
- 7.3 Vulnerable Parties – the amendment to CPR rule 6.23 on ‘Service’ will allow a vulnerable individual to withhold sharing their address from another party or parties (other than the court) in certain circumstances e.g. domestic abuse, as a protective measure.
- 7.4 Service out of jurisdiction – several amendments to rules in Parts 6, 62 and 73 are made as part of a package of changes, including revision of Practice Direction 6B (which lists the “gateways” for service out of the jurisdiction with permission), which will allow for comprehensive coverage of the circumstances in which the court may give permission for a claim to be served out of England & Wales.
- 7.5 Environmental Review – amendments to Part 46 (Costs: special cases) and Part 54 (Judicial Review and Statutory Review) are made in consequence of the Environment Act 2021, in which the new statutory Office for Environmental Protection was created. These amendments are to implement section 38 of the Act which establishes the new litigation mechanism of environmental review in the High Court. The Act provides for the Office for Environmental Protection to bring applications for environmental review against public authorities in relation to alleged serious failures to comply with environmental law; and the amendments to the CPR (in particular the new Section III which is inserted in Part 54) establish procedure (modelled on the rules for judicial review) for the new form of review.
- 7.6 Alternative Procedure for Claims – as part of the ongoing exercise of reviewing the CPR and their associated practice directions to simplify them and reduce their size, the amendment to Part 8 removes confusion over whether the use of the procedure under this Part is discretionary by clarifying when it must be used; and a change to rule 8.5 imports into the rule a provision previously in a practice direction on extensions of time for evidence, enabling reduction in the size of the practice direction as well as more suitable location for the provision.
- 7.7 Intellectual Property Enterprise Court (IPEC) Costs Caps - IPEC is a specialist list of the High Court intended primarily to provide access to justice for small and medium sized enterprises which would otherwise be deterred from enforcing their IP rights or defending themselves against another party’s enforcement because of the cost. The rules concerning IPEC scale costs are relocated from Part 45 (Fixed Costs) to Part 46

(Costs - Special Cases), which better reflects the nature of these provisions, while the overall and stage costs caps are increased to £60,000 and £30,000 respectively.

- 7.8 Specialist Proceedings - Part 49 is replaced by a new Part which acts as the covering provision for a considerable body of procedural provision in practice directions. That involves removing, from the practice directions supporting the early generic parts of the CPR, non-generic materials which are still useful and/or necessary (including provision for specific modifications of procedure for specific sorts of proceedings, for example proceedings under specific statutes such as the Representation of the People Act 1983) and placing them in practice directions under this Part which specifically concerns specialist proceedings. The title of the Part has correspondingly been reworded to refer to “Specific Proceedings”.
- 7.9 Transcripts – two matters arise (i) Public Expense– amendments to rule 52.14 are made in response to caselaw in *Anwer v Central London Bridging Loans [2022] EWCA Civ 201* in order to ensure that the procedural provisions are not read as requiring a copy of an Order (sealed or otherwise) as a condition of an appeal and (ii) Transcripts on Committal (Part 81) – clarificatory amendment that transcripts are only provided (unless of public importance) where a custodial sentence (immediate or suspended) is passed in proceedings for contempt of court.
- 7.10 Admiralty Claim - amendments are made to rule 61.4(2), to remove any doubt that, under that rule, in a collision claim a collision statement of case is served instead of particulars of claim, and rule 61.9 in response to the judgment in *Tecoil Shipping Ltd v The Owners of the Ship “Poseidon” [2020] EWHC 393 (Admlty)* to address a lacuna, and so provide, that judgment in default of an acknowledgment of service is available in Admiralty collision claims.
- 7.11 Minor amendments and tidying up – some of which (including some consequential amendments) arise from the current work of the CPR to try to make rules which are both simple and simply expressed, this being a statutory duty under s.2(7) of the Civil Procedure Act 1997. Modest changes are made to the following: Application and Interpretation of the Rules (Part 2); The Court’s Case Management Powers (Part 3); Forms (Part 4) - the amendments are largely linguistic, however, rule 4(6) has been updated, in the interest of the digitally excluded, to oblige the court office to provide a paper copy of a court form upon request; How to Start Proceedings, the Claim Form (Part 7) is amended to simplify, eliminate repetition and improve clarity that the Part 8 “alternative procedure” is for claims unlikely to involve substantive disputes of fact; Defence and Reply (Part 15) is amended to simplify the language, to introduce changes on gender neutrality and import elements from the practice direction which are not deemed as guidance. Part 15, along with rules 3.4(7) and 24.4(2), is also amended following the judgment in *King v Stiefel [2021] EWHC 1045 (Comm)* to clarify that a defendant who applies for summary judgment need not file a defence before the application is heard, and to apply that principle also where a defendant applies to strike out a claim. Statements of Case (Part 16) is consolidated and streamlined. Some general tidying up is also done in the following terms: amendment to Part 12 (Default Judgment) as a non-urgent, clarificatory correction concerning the last SI, Civil Procedure (Amendment) Rules 2022; amendment to CPR 38.3 to draw to

litigants' attention that a notice of discontinuance must be in the prescribed form, unless the court orders otherwise.

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 The Committee is engaged in a rolling programme of reviewing the CPR. That is producing a certain amount of consolidation within Parts of the rules and may result in further consolidation.

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.
- 10.2 For matters in this instrument, differing approaches to consultation were taken. In addition to the less formal sort of consultation outlined above, more formal consultation was undertaken on a number of the measures included in this instrument. For the changes in relation to Welsh Housing, the Welsh Government were engaged and consulted (and in agreement with the draft). On the changes in relation to Part 6 on service out of the jurisdiction, the Lord Chancellor's Advisory Committee on Private International Law (chaired by Lord Mance and Lord Wolfson QC and comprising senior judicial members, legal professionals and academics) was consulted and a four-week focused consultation took place between 24 March 2022 and 21 April 2022 with professional and judicial bodies. For the revisions under Part 61 in relation to Admiralty Claims, the Admiralty Court Users Committee were engaged in formulating the amendments. There was a programme of continuous (online) consultation from December 2021 to May 2022 on Parts 2 - 4, Parts 7 and 8, Parts 15 and 16, and Part 49 which arose from the Committee's programme of review of the rules, which is taking an approach of rolling consultation, whereby proposals for review and amendment are published on the Committee's website and revised in the light of responses received.

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 Bellamy QC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.