

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2023

2023 No. 105 (L. 3)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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) Simplification Work; (b) Parties and Group Litigation; (c) Discontinuance; (d) Qualified One-Way Costs Shifting; (e) the new qualification of CILEX lawyer; (f) Judicial Review (Cart reviews); (g) Admiralty Claims; and (h) Some minor amendments 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 This Instrument includes provision to correct errors identified by the JCSI in its Fourteenth Report of Session 2022-23.

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 Simplification Work (Parts 17, 19, 20, 21 and 38) – a raft of reforms arising from the on-going work by the Committee, in accordance with its statutory duty, to try to make rules which are both simple and simply expressed, following public consultation: amendments to Parts 17 (Amendments to Statements of Case), these amendments include a revised rule 17.1(1) in line with the judgment in *Rawet v Daimler AG et al* [2022] EWHC 235 (QB); 19 (Parties and Group Litigation); 20 (Counter Claims and Other Additional Claims); 21 (Children and Protected Parties) and 38 (Discontinuance) (as per para 7.4 below); together with consequential amendments in particular to cross-references of numbers of rules in, or practice directions under, those Parts.
- 7.3 Parties and Group Litigation (Part 19) – the first of a possible two part exercise to review Part 19 of the CPR for an initial review for duplication, clarity and modernisation and which follows a consultation.
- 7.4 Discontinuance (Part 38) – amendment is made to the definition of “statement of case” to substitute “counter claim or other additional claim” for Part 20 Claims, because the term is no longer used in practice. Recent case law developments raised points concerning the interaction between amendment and discontinuance of claims, causes of action and proceedings. A suite of amendments, across other CPR Parts are also made in consequence.
- 7.5 Qualified One-Way Costs Shifting (Part 44) - this concerns amending rule 44.14 (effect of qualified one-way costs shifting (QOCS)) to allow the court, in cases falling within the scope of the QOCS regime for personal injury cases, to order that the parties’ costs liabilities be appropriately set-off against each other. This issue arises from the Supreme Court case of *Ho v Adelekun* [2021] UKSC 43. Additionally, to include within this rule, as well as deemed orders, agreements to pay or settle a claim for damages or costs, to allow the off-setting of costs orders made in favour of a defendant and ensure that financial offers made under CPR Part 36, come within the rule. The amendments follow a public consultation exercise in May 2022 to which 33 responses were received and carefully considered.
- 7.6 Chartered Institute of Legal Executives (CILEX) (Parts 52 and 54) - are amended to bring it up to date by adding to the list of qualifications for authorised court officers who may perform certain functions of the court, the Chartered Institute’s new qualification of CILEX lawyer. This widens the pool from which His Majesty’s Courts & Tribunal Service (HMCTS) recruits from to encompass the full range of CILEX legal qualifications (in addition to barristers and solicitors).
- 7.7 Judicial Review (Cart reviews) (Part 54) – substituting for rule 54.7A a revised rule in consequence of the provisions of section 2 of the Judicial Review and Courts Act

2022. The 2022 Act reverses the decision in *R (Cart) v Upper Tribunal [2011] UKSC 28, [2012] AC 663* and substitutes an entirely new test for the very limited circumstances in which judicial review (JR) will now be permitted where the Upper Tribunal has refused permission to appeal.

- 7.8 Admiralty Claims (Part 61) – a suite of amendments, following consultation, to (i) provide that personal injury claims arising out of accidents on ships, which do not require the expertise of the Admiralty Court, may be issued in the County Court and (ii) to update the rules in line with modern practice and with the intention to ensure early disclosure, improved particularisation of statements of case and thus enhancing the ability of the court and the parties to identify the issues in a collision action at an early stage and to manage the case appropriately.
- 7.9 Tidying Up: (i) Change of Sovereign - amendments in consequence of the change of Sovereign substituting for references to “Queen’s” and “Her Majesty’s”, to “King’s” and “His Majesty’s” in consequence of the accession of King Charles III; (ii) Renting Homes (Wales) Act 2016 – consequential amendments are made to reflect changes in terminology introduced as part of the implementation of the 2016 Act; (iii) Amendments arising from the Joint Committee on Statutory Instruments (JCSI) - to correct errors identified by the JCSI in its Fourteenth Report of Session 2022-23; (iv) Apportionment in fatal accident claims (Part 41 Damages) – a correction of an accidental lacuna arising from a reordering provision in 2006/7. This is corrected by making CPR 41.3A its own “Section 1A” within Part 41, and giving it an appropriate title of, “Apportionment in Fatality Claims”; (v) Amendments in consequence of simplification reforms (to Part 16) made in the last SI (the Civil Procedure Amendment (No. 2) Rules 2022); (vi) Default Judgment - amends rule 12.3 to align paragraph (3) with the approach of paragraphs (1) and (2) by providing for the time at which any of the conditions in the paragraph has to be fulfilled.

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, ranging from consultation of the more informal sort described above (in the case of amendments made in these Rules particularly involving seeking the view of HMCTS and senior judiciary in the specific areas affected) to fuller public consultation (described immediately below), either on specific issues or as part of a rolling consultation¹ on proposals for simplifying and modernising the drafting of the Rules. The changes in relation to Part 19 on Parties and Group Litigation (above at para 7.3) were consulted on between 24th May and 5th July 2022. For the changes in relation to Discontinuance (at para 7.4) a consultation took place between 24th May and 21st June which formed part of the exercise to consult on proposed amendment to Part 17 Statements of Case. The amendments on QOCS (para 7.5) follow a consultation exercise between 9th May 2022 and 20th June 2022. Changes to Part 61 on Admiralty Claims (para 7.8) were recommended by the User Committee (comprising the Admiralty Judge, the Admiralty Marshall, the Admiralty Bar Group and Admiralty Solicitors Group) following a consultation conducted between 1st June 2022 and 15th July 2022.

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 of England and Wales, the General Council of the Bar and the advice sector) and to the editors of relevant legal publications; as well as by publicity within HMCTS. News of changes to the rules, together with the consolidated version of the rules, are published on the Ministry of Justice website.²

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.

¹ <https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#cpr-part-22-and-pd-22-statements-of-truth-and-part-23-pd-23a-and-pd-23b-general-rules-about-applications-for-court-orders-consultation>

² www.justice.gov.uk/courts/procedure-rules/civil

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 Steven Jarman, Deputy Director for Civil Justice & Law Policy, Access to Justice Directorate, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Bellamy KC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.