

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2023
2023 No. 788 (L. 8)

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 five matters, explained in paragraph 7, below: (a) Foreign Evidence Requests; (b) Appeals (Contempt of Court); (c) HM Courts and Tribunal Service back-office changes; (d) Simplification Work; and (e) 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 twenty-ninth report and forty-second reports 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 Foreign Evidence Requests – two amendments are made. The first is to provide a power to the High Court to make an order for the issue of “letters of request” to courts abroad for evidence for use in Tribunal proceedings. Currently, Tribunal judges do not have power to order the issue of a letter of request under Tribunal Procedure Rules. The proposed amendment would be consistent with provision in Practice Direction 34A which gives the High Court such power in respect of witness summonses, where the witness is within the jurisdiction. The second amendment is to ensure that all letters of request for England & Wales sent under the Evidence Convention or otherwise are sent to the Foreign Process Section at the Royal Courts of Justice (RCJ). This is to centralise the processing of all requests for evidence made after 1st January 2021 (EU exit) so that they are made to the Foreign Process Section of the RCJ, irrespective of where the witness lives. The Foreign Process Section at the RCJ is a designated department with trained court staff, and a body of judges familiar with such requests. It is also proposed to allow the same route for obtaining evidence abroad for Tribunal proceedings.
- 7.3 Appeals (Contempt of Court) - this addresses three issues: (i) applying for permission to appeal from the county court in contempt proceedings; (ii) applying for permission to appeal to the Supreme Court, both in contempt proceedings from a decision of a single High Court Judge on appeal, the Divisional Court or the Court of Appeal and from a decision of the Court of Appeal in non-contempt proceedings (the CPR may not provide for practice and procedure in the Supreme Court itself, but may make provision regarding applications for permission to appeal to the Supreme Court when made to the court in which the decision subject to appeal was made); and (iii) responding to caselaw - changes to rule 52.8 to reflect the Court of Appeal decision in *R (Kearney) v Chief Constable of Hampshire Police* [2019] EWCA Civ 1841 (the effect of the decision (and of s.18(1)(a) Senior Courts Act 1981) is that no route of appeal lies to the Court of Appeal against refusal of permission on a Judicial Review in a criminal cause or matter).
- 7.4 HM Courts and Tribunal Service back-office changes – technical amendments are made following organisational changes in the back-office units at the County Court Business Centre (at Northampton) and County Court Money Claims Centre (at Salford) which are being replaced by the creation of the Civil National Business Centre (CNBC) at Northampton.
- 7.5 Simplification Work – 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. Reforms and consequential amendments are made to: (i) Part 14 on Admissions, with an associated suite of consequential amendments to Part 12 (Default Judgment), Part 19 (Parties and Group Litigation), Part 20 (Counterclaims and other Additional Claims), Part 26 (Case management), Part 40 (Judgments, Orders etc), Part 45 (Fixed Costs), Part 58 (Commercial Court) and Part 59 (Circuit Commercial Courts). The central reforms to Part 14 replace the existing with a new Part 14, intended to reduce the overall length, simplify the language and improve clarity, where necessary. Changes have also been made to provide gender neutrality throughout; (ii) and (iii) a suite of changes are also

made to Part 22 Statements of Truth and Part 23 General Rules about ‘Applications for Court Orders’. The changes made provide for gender neutrality and clarity. In relation to Part 22, the amendments are designed to promote clarity and reduce duplication and unnecessary text both within the Part and as between the Part and the accompanying practice direction, so that for example a reference to a response is removed from the list in rule 22.1 as it is already covered by the reference to a statement of case in that rule. Provisions are also relocated from the accompanying practice direction into the Part and vice versa to ensure provisions are more logically and appropriately located, so that for example certain requirements in relation to documents to be signed by a person who is unable to read or sign other than by reason of language alone are moved into the Part; amendments in consequence of the Part 22 reforms are also made to Part 18 (Further Information); Part 55 (Possession Claims) and Part 56 (Landlord and Tenant etc); (iv) Part 24 on Summary Judgments. Changes include some renumbering/re-ordering within the Part to improve usability; two clarificatory amendments are also made to: (v) Rule 3.3 (Court’s power to make an order of its own initiative) and (vi) Rule 39.1 (definition of a hearing) and to bring it in line with the like amendment in Rule 23.1. It does not change the law or practice; it is purely a technical amendment.

- 7.6 Tidying Up: various minor corrections and/or dealing with lacunae arising (i) from the Civil Procedure (Amendment) Rules 2023; (ii) following the Joint Committee of Statutory Instruments’ twenty-ninth report of session 2022-23; (iii) anonymity of other persons in Part 39 – this extends the scope to protect the interests of a person different from the person anonymised from “that” [person] to “any” [person]; (iv) fixed recoverable costs – some minor corrections to cross references etc in the Civil Procedure (Amendment No.2) Rules 2023 are made, arising from user feedback; (v) following the Joint Committee of Statutory Instruments’ forty-second report of session 2022-23.

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. This work 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 the senior judiciary in the specific areas affected, for example in respect of 7.2, 7.3 and 7.4 (above) 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. Consultations were conducted on Part 14 in April and May 2022 (which elicited three positive responses). The respondents were generally supportive of the proposed amendments and also made some suggestions for further reform. The amendments were revised in response to the consultation, although not all suggested revisions were adopted, because they were outside the scope of the project. Further consultation, of a more informal nature (as described above) was conducted in order to settle the amendments. A further consultation was conducted on Parts 22 and 23 (which also made reference to Part 39) in February 2023, which provided two positive responses and on Part 24 in March 2023, which did not elicit any response to the consultation.

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.

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.

¹ About us - Civil Procedure Rule Committee - GOV.UK (www.gov.uk)

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

- 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.