

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2024

2024 No. 106

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.

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) Acknowledgements of Service (AOS) in Judicial Review proceedings; (b) Extending Fixed Recoverable Costs (FRC); (c) Penal Notices; (d) Limitation Period for Judicial Review Claims in Rail Passenger Services Public Obligation Contracts; and (e) Some minor amendments and 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.

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 Acknowledgements of Service (AOS) in Judicial Review proceedings – amendments are made to CPR 54.8A which provide certainty and limit delay, by providing in the rules, an express right for claimants to file a Reply to the AOS and to do so within seven days of receipt of the AOS. This additional provision was recommended by the Independent Review of Administrative Law and subject to public consultation (see at para 10).

7.3 Extending Fixed Recoverable Costs (FRC) - various amendments are made following the Ministry of Justice’s (MoJ) consultation on FRC issues in July 2023 (‘the 2023 FRC consultation’), and in response to issues that have been raised outside of the consultation process following the implementation of the extended FRC regime on 1 October 2023 (those amendments having been made in the Civil Procedure (Amendment No. 2) Rules 2023; S.I. 2023/572). These Rules are the product of further collaborative work between the CPRC costs sub-committee and the MoJ. The amendments that have been made to the extended FRC regime are as follows.

- Rule 26.7 has been amended to clarify that the court shall allocate a claim to track after the parties have filed their directions questionnaires, not at the point at which the directions questionnaires are filed.
- Rule 26.9(10)(b) has been amended to make explicit that, in the circumstances in which a claim for clinical negligence may be allocated to the intermediate track rather than the multi-track, an early admission of liability must be made in the pre-action protocol letter of response. The amended rule will only apply to cases where there has been an “admission of liability in full”, which is defined in the amended rule. This issue was raised in the 2023 FRC consultation.
- New rule 26.9(10)(f) provides that a claim against a public authority for trespass to the person must be allocated to the multi-track, unless, having regard to rule 26.13(1), the court considers that it would not be in the interests of justice to do so. The interests of justice test is intended to ensure that less complex and/or lower value claims, such as low-level assaults and negligent late release cases, which might otherwise be suitable for the fast track or intermediate track, and so be subject to FRC, are not allocated to the multi-track by default.
- Rules 28.2 and 28.12, have respectively been amended, to provide that the court shall give directions when it allocates a claim to the fast track, unless it fixes a case management conference (CMC), but may give directions or fix a CMC when it allocates a claim to the intermediate track and that, in the intermediate track, the holding of a CMC is discretionary, not mandatory.
- Rule 28.14(3)(c) has been revised, to provide clarity about what is, and is not, included within the 20-page limit for expert reports.
- Rule 31.5, which concerns disclosure, has been revised to clarify the case management tracks to which that rule applies.
- Rule 45.1(3) has been revised, to clarify that in claims to which Sections IV, VI, VII or VIII of Part 45 apply, parties may expressly agree that Part 45 shall not apply. New rule 45.1(9), by way of exception to rule 45.1(8), provides that any changes to the fixed recoverable costs in Tables 12, 14 or 15 in Practice Direction (PD) 45 which come into force on 6th April 2024 will apply to orders for costs made on or after that date in claims issued before that date.
- New rule 45.1(10), provides that Part 45 does not apply to costs incurred in respect of, or in connection with, inquest proceedings. As such, where these

costs are recoverable, they will be subject to assessment. This issue was raised in the 2023 FRC consultation.

- In rule 45.5(6), which concerns entitlement to costs where there is more than one claimant, the word “costs” has been substituted for “amounts” to ensure consistency of language.
- Rule 45.5(8) has been revised to address the situation where one or more claimants, jointly entitled to one set of costs under rule 45.5, might be entitled to both additional costs under Part 36 and increased costs under rule 45.13(2), rather than only additional costs or increased costs.
- New rule 45.15(A), supplemented by the inclusion of new Table 15A of PD 45, ensures that the costs of restoration proceedings will be recoverable in both the fast track and intermediate track and not, as was previously the case, only in fast track noise induced hearing loss claims. This issue was raised in the 2023 FRC consultation.

7.4 Penal Notices – amendments are made to CPR 81 (Contempt of Court) and specifically CPR 81.4(e) in response to caselaw to reverse the decision in Taray Brokering [2022]EWHC 2968 (Ch) to make clear that the Penal Notice is not part of the order – it is a warning notice added to the order as necessary.

7.5 Limitation Period for Judicial Review (JR) Claims in Rail Passenger Services Public Obligation Contracts – this amendment is made in consequence of the Public Service Obligations in Transport Regulations 2023 (a Department for Transport SI) which reinstates, into domestic law, provisions contained (pre-Brexit) in EU Regulations concerning the award of public service obligation contracts. In particular, a one-month limitation period for challenging a decision or award made under the Regulations is introduced. This includes JR challenges, as well as any private law claims for breach. The amendment to CPR 54.5 (time limit for filing claim form) aligns with the time limits in the mainstream subsidy and procurement regimes and provides express clarity in the rules, given that the timeframe for general JR claims is three months.

7.6 Tidying Up: various minor corrections to update cross references following user feedback.

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 to more specific engagement. For the changes to the AOS in Judicial Review proceedings (at para 7.2), MoJ conducted a public consultation in 2021 which garnered 80% support for the proposal. The recommendation was originally made by the Independent Review of Administrative Law, following a call for evidence in 2020. During CPRC engagement, judicial consultation also took place with the President of the King’s Bench Division.¹
- 10.3 The changes on FRC (covered at para 7.3) in respect of (i) the recoverability of, separately, (a) inquest costs and (b) restoration proceedings; (ii) the recoverability of advocates’ preparation in cases that are settled late or vacated; (iii) further inflationary uprating in PD 45, and; (iv) the position in respect of clinical negligence claims at CPR 26.9(10)(b), were subject to an MoJ consultation in July 2023 which received 74 responses. There was broad support for the changes proposed in the consultation, although in respect of issue (iv) above (on which 32.4% of respondents solely focused), some respondents argued that clinical negligence claims should be taken out of the extended FRC regime altogether. A consultation response is being published, in conjunction with the laying of this instrument, by MoJ (‘Fixed recoverable costs (FRC): consultation on issues relating to the new regime (July 2023) – the way forward’).² Further analysis of the responses to this consultation, and detail on MoJ’s proposed way forward, can be found in this document. In consequence, in addition to the amendments (covered at para 7.3) being made by this instrument:
- Amendments have been made, to Table 12 and Table 14 of PD 45, to ensure the recoverability of fixed trial advocacy fees when cases are settled late or vacated by the court shortly before trial. In respect of the fast track, the revised Table 12 provides that 100% of the fixed trial advocacy fee will be recoverable where a claim is settled or vacated on the day of trial or the day before trial, and that 75% of the applicable advocacy fee will be recoverable where a claim is settled or vacated not more than two days before the trial date. In respect of the

¹ [CP 477 – Judicial Review Reform Consultation – The Government Response \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/cp477-judicial-review-reform-consultation-the-government-response)

² <https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about>

intermediate track, the revised Table 14 provides that 100% of the fixed trial advocacy fee will be recoverable where a claim is settled or vacated on the day of trial or the day before trial, and that 75% of the applicable advocacy fee will be recoverable where a claim is settled or vacated not more than five days before the trial date. This issue was raised in the 2023 FRC consultation.

- Tables 12, 14, and 15 of PD 45 have been amended to ensure that the FRC figures are inflated by the Services Producer Price Index (SPPI) for the 9 months between January and October 2023. The fixed trial advocacy fees in Table 12, for complexity bands 1-3, have been further inflated to take into account inflationary increases between 2013 and 2016. This issue was raised in the 2023 FRC 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 HM Courts and Tribunals Service (HMCTS). News of changes to the rules, together with the consolidated version of the rules, are published on the Ministry of Justice website.³

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 Kate Gregory-Smith, 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.

³ www.justice.gov.uk/courts/procedure-rules/civil