EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT NO 2) RULES 2025

2025 No. 893

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. Declaration

2.1 Sarah Sackman KC MP, Minister of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Steven Jarman, Deputy Director for Civil Justice & Law Policy, at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amrita Dhaliwal at the Ministry of Justice email: amrita.dhaliwal@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 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 covers nine matters, explained in paragraph 5, below: (i) Digital Markets, Competition and Consumers Act 2024, (ii) Electronic Working, (iii) Summary Assessment of Costs, (iv) Judicial Review in nationally significant planning infrastructure (NSIP) cases, (v) Filing and Serving Written Evidence, (vi) Costs Orders (non-parties), (vii) Appellant's Notice, (viii) Closed Material Procedure and (ix) 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.

Where does the legislation extend to, and apply?

4.2 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

The CPR are amended for the following purposes —

5.1 Digital Markets, Competition and Consumers Act 2024 – amendments are made to rule 30.8 (transfer of competition law claims), which provides for the transfer of

certain competition law claims from the King's Bench Division to the Chancery Division of the High Court at the Royal Courts of Justice, to include claims for private redress under section 101 of the Digital Markets, Competition and Consumers Act 2024.[1] The supplementing practice direction (PD30) is also being updated, together with a significant number of other amendments to various other PDs[2] in consequence of the coming into force of the 2024 Act, which will also come into force on the 1st October 2025. Previous competition laws were not designed to address the unique barriers to competition in digital markets. To rectify this, Part 1 of the 2024 Act establishes a new digital markets regime which provides the Competition and Markets Authority ("the CMA") with new, faster, more effective tools to address barriers to competition in digital markets. The 2024 Act provides the CMA with new powers to designate firms as having Strategic Market Status ("SMS") in a particular digital activity in which they have substantial and entrenched market power and a position of strategic significance. Such designation allows the CMA to impose "relevant requirements" on firms that have SMS (see section 101(4) for the list of relevant requirements), with a duty for those firms to comply with these regulatory requirements. Under section 101 of the 2024 Act, a claimant who suffers loss or damage because of a breach of a relevant requirement may bring a private claim for redress before the Court.

5.2 Electronic Working – the CPR (Rule 2.8(5) and Rule 5.5) are updated to make provision for CE-File, which is the electronic filing and case management system in the High Court jurisdictions, District Registries of the High Court and the Court of Appeal. A new practice direction (PD5C CE-File Electronic Filing and Case Management System) will be introduced to govern the related practice, now that the existing pilot scheme is coming to an end.

5.3 Summary Assessment of Costs – amendments are made to the general rules about costs at CPR 44.1(1) and CPR 44.6, to provide sufficient flexibility by enabling a judge, other than the judge who made the original decision to summarily assess costs at the hearing, to make a summary assessment of costs where there is a good reason to do so. This arises out of the developments in caselaw, specifically the case of R(Isah) v Secretary of State [2023].

5.4 Judicial Review of nationally significant infrastructure projects (NSIPs) – an amendment to CPR Part 52 (Appeals) to remove an unnecessary reference to section 18(1)(a) of the Senior Courts Act 1981 and to facilitate the implementation of Clause 12 of the Planning and Infrastructure Bill which, upon coming into force, will remove the right of appeal for cases deemed totally without merit at the oral permission hearing in the High Court. This and other changes in relation to NSIP judicial reviews being made in the Practice Directions are intended to reduce the delays to NSIPs caused by unsuccessful legal challenges. These are some of the recommendations of the independent review by Lord Banner KC.[3], published on 28th October 2024

[1] https://www.legislation.gov.uk/ukpga/2024/13/contents

[2] The PDs amended are PD – Competition Law; PD 16 in relation to statements of case; PD30 in relation to transfer of competition law claims; PD31C concerning disclosure and inspection in relation to competition claims and PD52D concerning statutory appeals and appeals subject to special provision. The most significant changes are to introduce case management procedures for staying private redress claims under section 101 that overlap with concurrent CMA investigations.

[3] https://www.gov.uk/government/publications/independent-review-into-legal-challenges-against-nationally-significant-infrastructure-projects/independent-review-into-legal-challenges-against-nationally-significant-infrastructure-projects

alongside a government call for evidence on this matter.[4] Further information about the consultation process is set out below at paragraph 7.

5.5 Filing and Serving Written Evidence - a clarificatory amendment is made to CPR 8.5 in response to caselaw (Fit Kitchens -v- Relx 2023 EWHC 1954) to expressly provide for defendants who initially indicated an intention to contest jurisdiction, when submitting their acknowledgement of service (AoS), but then go on to defend the claim instead. In which case, the rules make it clear that the defendant has 14 days from the date of filing the AoS to file the defence evidence.

5.6 Costs Orders (non-parties) – a clarificatory amendment is made to CPR 46.2 by adding new rule 46.2(3). This follows an issue in practice raised by the judiciary. The amendment intends to clarify the procedure for when the court considers adding a party to proceedings for the purposes of costs only.

5.7 Appellant's Notice - a clarificatory amendment is made to CPR 52.12(3) to update the rule to reflect practice and to increase the deadline of service of sealed appellant's notice from seven to 14 days. The current period of seven days is considered to be unrealistic, especially if service was not electronic. A public consultation took place (which is set out below at paragraph 7).

5.8 Closed Material Procedure (CMP) – amendments are made to Part 82 to give effect to two recommendations (Rec. 4 and Rec. 8) from the 2022 Independent Report on the Operation of Closed Material Procedure under the Justice and Security Act 2013, undertaken by Sir Duncan Ouseley[5]. The first makes provision as to the circumstances in which the court may direct the relevant person to provide a draft closed defence or draft closed summary when determining a closed material application. The second, codifies an existing informal practice which allows for communication requests to be agreed between parties, without the involvement of the court. In the amendments to rule 82.23, the word "draft" and the expressions "draft closed summary" and "draft closed defence" have been used notwithstanding that new paragraphs (1B) and (1C) make clear the limits placed on their disclosure and use. It was nonetheless, considered appropriate to use the term "draft" to both underline these limitations and to distinguish them from summaries and pleadings where the use of the expression "closed summary and closed defence" may be used in proceedings in respect of which Part 82 may apply. Rule amendments to give effect to Rec. 4 and Rec. 8 will come into force on 12th September 2025. This earlier commencement date will ensure that current practices are formally recognised and are applied consistently as soon as possible. This is consistent with the approach to standardising CMP practices as demonstrated in previous related rule amendments which were introduced by the Civil Procedure (Amendment) Rules 2025 (S.I. 2025/106).

5.9 Tidying Up: various minor corrections to generally bring the CPR up to date, such as a suite of amendments to CPR Part 62 regarding arbitration claims, by omitting out of date references following legislative changes in consequence of the Arbitration Act 2025, which is due to commence on 1st August 2025.

[4] https://www.gov.uk/government/calls-for-evidence/judicial-review-and-nationally-significant-infrastructure-projects

[5] https://assets.publishing.service.gov.uk/media/6385f9bc8fa8f54d5c446fe7/closed-material-procedure-operation-report-webpdf.pdf
https://assets.publishing.service.gov.uk/media/6655c2d4d470e3279dd332bd/Government_Response_to_the_independent_report_on_CMP_under_the_JSA__web_.pdf

What was the previous policy, how is this different?

5.10 This is explained for each of the amendments in paragraph 5 above.

6. Legislative and Legal Context

How has the law changed?

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 7 of this memorandum.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 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.

7.2 For matters in this instrument, differing approaches to consultation were taken. This ranges from consultation of the more informal sort described above (involving seeking the view of HM Courts & Tribunals Service and the judiciary in the specific areas affected) for example, in respect of those set out at paragraphs 5.2 Electronic Working, 5.3 Summary Assessment of Costs, 5.5 Filing and Serving Written Evidence, 5.6 Costs Orders (non-parties), and 5.9 Tidying up, to fuller consultation (described immediately below).

7.3 More detailed consultation was taken as set out at paragraphs, 5.1 Digital Markets, Competition and Consumers Act 2024, 5.4 Judicial Review of nationally significant infrastructure projects (NSIPs), 5.7 Appellant's Notice and 5.8 Closed Material Procedure (CMP), (above). These are described immediately below:

- Digital Markets, Competition and Consumers Act 2024 - a range of internal and external stakeholders have been consulted, such as the Competition and Markets Authority (CMA) and members of the judiciary (including the Competition Appeal Tribunal ("CAT") to ensure there is consistency between the procedure adopted for claims proceeding in the High Court, and those proceeding in the Competition Appeal Tribunal ("CAT"). The CAT are content with the proposed amendments.
- Judicial Review of nationally significant infrastructure projects (NSIPs) – a government call for evidence on the recommendations of Lord Banner's review

ran from 28th October to 30th December 2024. As part of the call for evidence, the Ministry of Justice (MoJ) ran two roundtable discussions with a dozen legal academics specialising in planning and administrative law. The MoJ also wrote to a panel of planning lawyers to seek views on Lord Banner's recommendations and other options for reform.

- Appellant's Notice – (clarificatory amendment to CPR 52.12(3) - a public consultation on the proposed draft amendments took place from 10th January 2025 to 21st February 2025. 13 responses were received from judges, lawyers, and professional representative bodies. Two external respondents raised some concern that the reforms may cause administrative burden and further delay. However, whilst acknowledging the concerns, the amendment is intended to reflect, and not to alter, practice in the court and in any event, the issues are considered as being resolved by amending "filed" to "sealed."
- Closed Material Procedure CMP – following the Government's agreement to a number of the Ouseley Report's recommendations to amend Part 82, the MoJ consulted practitioners, including specialist members of the Government Legal Department Litigation teams, Special Advocates and HMG Advocates and members of the judiciary who are experienced with CMP cases, in the development and drafting of these amendments, all of whom are content with the proposals.

8. Applicable Guidance

8.1 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.[6]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because no, or no significant impact, is foreseen.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because no, or no significant impact, is foreseen.

[6] https://www.justice.gov.uk/courts/procedure-rules/civil

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring 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.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act.