EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2021

2021 No. 553 (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 Her 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 (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. It makes minor consequential amendments to various cross-references in Part 27 of the CPR. It further amends the Civil Procedure (Amendment No. 2) Rules (S.I. 2021/196) ("the 2021 Rules"), which come into force on 31st May 2021, to correct a drafting error.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Following consultation with the S.I. Registrar as required by paragraph 4.7.6 of the Statutory Instrument Practice, this instrument is being issued free of charge to all known recipients of S.I. 2021/196.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 on at least

one occasion, 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 These Rules address two matters, both of which concern Part 27 of the CPR and new Practice Direction 27B: Claims Under the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents – Court Procedure ("PD 27B"), which comes into force on 31st May 2021. PD 27B and the amendments made by the 2021 Rules give effect, in part, to the Government's reforms concerning road traffic accident related personal injury claims, and, in particular, claims for whiplash injuries. Rule 6 of the 2021 Rules amends rule 27.2 of the CPR to enable a rule or practice direction to require or permit a particular procedure to be used under Part 27 (the Small Claims Track) and to disapply or modify rules made under Part 27. PD 27B is made under this rule.

7.2 These Rules amend Part 27 by substituting cross-references to "Practice Direction 27A" for cross-references to "Practice Direction 27" in anticipation of the coming into force of PD 27B on 31st May 2021.

7.3 Further, these Rules amend rule 6 of the 2021 Rules, by removing some words included in error. While, notwithstanding this error, it is considered that the rule operates as intended, to remove any possible doubt, as well as for the benefit of the reader, the decision was taken to make the amendment now. Additional amendments have been made to improve the grammar of the new provision which is inserted by rule 6.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 No further consolidation of the rules is planned at present.

10. Consultation outcome

10.1 The CPRC must, before making CPR, consult such persons as they consider appropriate (section 2(6)(a) of the Civil Procedure Act 1997). The Committee does not always undertake a formal public consultation on proposed amendments to the rules, but 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; and involving representatives of interested organisations in the work of sub-committees reviewing particular aspects of the rules.

10.2 In respect of the amendments made by this instrument, these amendments were identified by members of the Committee and the judiciary and conveyed to the Committee by the sub-committee appointed by the CPRC to review the rules required to implement the Government's reforms in this instance.

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 As with the 2021 Rules which it amends, the legislation applies to activities that are undertaken by small businesses including claimant law firms. However, given the purpose of the instrument, it would be inappropriate to apply an exemption from this legislation to these firms. Therefore, no specific action is proposed to minimise the regulatory burden on small businesses.

14. Monitoring & review

14.1 The rules do not include a statutory review clause but will be monitored via the normal process for monitoring Civil Procedural Rules. Anyone who has reason to consider the rules to be wrong in some way is at liberty to make those representations, in writing, through the committee secretariat. Such objections will then be considered for planning into committee business and receive impartial and objective consideration.

15. Contact

15.1 Tajinder Bhamra, Policy Advisor at the Ministry of Justice (Telephone: 07394 715354 or email: tajinder.bhamra1.@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 David Parkin, Deputy Director for Civil Justice and Law Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Wolfson QC, Parliamentary Under Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.