EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT No. 5) RULES 2014

2014 No. 1233 (L.24)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Civil Procedure Rules 1998 (S.I. 1998/3132) ("the CPR"). The CPR are rules of court, which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and county courts.

2.2 The amendments to the CPR covered by this instrument relate to a change in procedure allowing parties to agree extensions of time and to clarify who will be responsible for the nomination of specialist planning judges to deal with significant Planning Court claims.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are no matters of special interest to the Committee.

4. Legislative Context

4.1 The Civil Procedure Act 1997 established the CPR Committee and gave it power to make Civil Procedure Rules. The first CPR were made in 1998. The intention behind the CPR was to create a single procedural code for matters in the Civil Division of the Court of Appeal, the High Court and county courts, replacing the old County Court Rules (CCR) and Rules of the Supreme Court (RSC).[1] The CPR had a number of policy objectives, two of the more prominent being to improve access to justice through transparent straightforward procedures and reduce, or at least control, the cost of civil litigation in England and Wales. The changes were made, and continue to be made, in response to the report 'Access to Justice' (1996) by Lord Woolf.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

[1] This work is ongoing: the few remaining CCR and RSC are contained in two schedules to the CPR.

7. Policy background

7.1 Rule 3.8 currently provides that where a party fails to comply with a rule, practice direction or court order, any sanction imposed by the court for that failure will have effect unless the party in default applies to the court for, and obtains, relief from the sanction. Rule 3.8 also provides that where a party is required under a rule, practice direction, or court order to do something within a specified period, and specifies the consequences of failure to comply, the time for doing the act in question may not be extended by agreement between the parties. If, for example, a party fails to comply with a court order to file a witness statement by a specified date, the sanction is engaged and that witness may not be called to give oral evidence unless the court gives permission. The defaulting party is then required to make an application to the court for the sanction to be lifted and further time to file the required document.

7.2 The rule 3.8 is amended to provide that parties may agree, in writing, to an extension of time, up to a maximum of 28 days without an application to the court. The parties may not make such an agreement, if the court has ordered that such an agreement cannot be made, or if any extension of time agreed puts the hearing date at risk.

7.3 A consequence of recent costs reforms has been a more robust approach by the court for failure to comply with orders. A recent decision in *MA Lloyd & Sons Limited v PPC International Limited [2014] EWHC 41 (QB)*, has focussed attention on rule 3.8, and has resulted in a large number of applications to the court for extensions of time, so adding substantially to the pressures to which it is already subject. In order to avoid increasing costs and further burdening the court by requiring agreed extensions of time to be the subject of formal applications, the amendments introduce a more flexible regime. There remain constraints within the amendments to ensure that parties adhere to case management timetables and that hearing dates are met.

7.4 An amendment to rule 54.22 provides that the President of the Queen's Bench Division will be responsible for the nomination of both specialist planning judges and other judges to hear Planning Court claims. The recently established Planning Court (see the Civil Procedure (Amendment No. 3) Rules 2014, S.I. 2014/610[2]) puts on a formal basis the early identification and prioritisation of cases of particular significance and formalises the listing and allocation structure as well as the timetable on which such cases are to proceed.

7.5 Minor amendments are made to correct a typographical error and to remove doubt about the operation of a transitional provision in previous amending statutory instruments.

Consolidation

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

[2] http://www.legislation.gov.uk/uksi/2014/610/contents/made

8. Consultation outcome

8.1 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). Where amendments are required in consequence of initiatives which have themselves been the subject of consultation, the Committee will not generally undertake additional formal consultation.

8.2 The consultation *Judicial Review: Proposals for further reform (https://consult.justice.gov.uk/digital-communications/judicial-review)* ran from 6 September 2013 until 1 November 2013. The consultation put forward proposals to ensure Judicial Reviews, including those relating to planning with the potential impacts on economic growth and recovery, are resolved more quickly and efficiently. One proposal was to create a Planning Chamber in the Upper Tribunal; after analysing the responses to the consultation it was proposed a Planning Court as part of the High Court should be established to build on progress already made with revised procedures.

9. Guidance

9.1 The rules will be published in consolidated version and will be available on the Ministry of Justice website.

10. Impact

10.1 The amendments to rule 3.8 will reduce the burden on both the courts and litigants by removing the need for parties to make a formal application to the court where they all agree to an extension of time.

10.2 The Planning Court will enable planning cases to be resolved more quickly due to more efficient listing and deployment of specialist judges to hear these cases. There is also the potential for all types of cases heard in the Administrative Court to proceed more quickly as planning cases are diverted out of the general list. There is no evidence that this will impact less favourably on small businesses, charities or voluntary bodies.

10.3 An Impact Assessment has not been prepared for this instrument. The Impact assessment for the consultation *Judicial Review: Proposals for further reform* can be found at https://consult.justice.gov.uk/digital-communications/judicial-review.

11. Regulating small business

11.1 The legislation applies to small businesses but there is no evidence that they would be affected significantly or disproportionally.

12. Monitoring and review

12.1 These rules will form part of the Civil Procedure Rules 1998 that are kept under review by the Civil Procedure Rule Committee. The Civil Procedure Rule Committee will make any subsequent amendments to these rules.

13. Contact

Jane Wright at the Ministry of Justice Tel: 020 3334 3184 or email: jane.wright@justice.gov.gsi.uk can answer any queries regarding the instrument.