EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT No.2) RULES 2010

2010 No. 1953 L. 13

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

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"). 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. The rules are a vehicle for implementation of new initiatives, modernisation of the rules, and introduction of European directives and regulations.

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

3.1 None

4. Legislative Context

4.1 The amendments to the CPR covered by this instrument mostly relate to Government or judicial initiatives.

4.2 There are three matters which are consequential on the commencement of primary legislation-

- amendments consequential to the Policing and Crime Act 2009;
- amendments consequential to the Terrorism Act 2000 by the Crime (International Cooperation) Act 2003; and
- amendments consequential to the Mortgage Repossessions (Protection of Tenants etc) Act 2010;

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Civil Procedure Act 1997 created the Civil Procedure Rule Committee ("the Committee") and gave it power to create civil procedure rules. The first CPR were made as the Civil Procedure Rules (1998). The intention of 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.

7.2 This instrument amends the CPR, in particular by:

(a) providing rules for applications for injunctions under Part 4 of the Policing and Crime Act 2009 ("the 2009 Act"). Under Part 4 of the 2009 Act either a chief officer of police for a police area or a chief constable of the British Transport Police Force or a local authority may apply to a county court (or the High Court) for an injunction against an individual aged 18 or above to prevent gang-related violence from occurring. An injunction may be granted if the court is satisfied that the individual has engaged in, or has encouraged or assisted, gang related violence and the court thinks it necessary to grant the injunction to prevent the individual from engaging in, encouraging or assisting gang related violence or to protect that individual from gang-related violence;

This injunction seeks to prevent the violence associated with gangs by imposing a range of restrictions or requirements (such as prohibiting an individual from being in a particular place or requiring the individual to be at a particular place between particular times on particular days) with the aim of:

- preventing acts of serious violence from occurring;
- breaking down gang culture and preventing gang members' behaviour from escalating; and
- providing local agencies with the opportunity of engaging with gang-members so as to develop effective strategies and options for them to exit the gang lifestyle.

Breach of an injunction may be punishable in accordance with the Contempt of Court Act 1981 and under that Act may result in committal to prison for up to 2 years and/or the imposition of an unlimited fine. The rule amendments will come into force when Part 4 of the 2009 Act comes into force;

(b) providing for applications for domestic freezing order certificates, in relation to property outside the United Kingdom, and the registration of an overseas freezing order, in relation to property in the United Kingdom. The amendments are made to support the implementation of Schedule 4 of the

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

Crime (International Co-operation) Act 2003 which amends Schedule 4 to the Terrorism Act 2000;

(c) updating and transferring certain provisions from Schedule 1 of the CPR to the main body of the CPR. These provisions relate to an application made under the Criminal Procedure and Investigation Act 1996 to quash an acquittal where interference or intimidation of a juror or witness has led to an acquittal. This supports an ongoing programme of work to transfer the remaining provisions of the Rules of the Supreme Court and County Court Rules from the two Schedules to the CPR to the main body of the CPR;

(d) supporting new provisions about the disclosure of electronically stored information in new Practice Direction 31B by confirming that the questionnaire in that Practice Direction may be treated as a disclosed document;

(e) making amendments to assist a tenant whose landlord has not received consent to let from their mortgagee, and the mortgagee has commenced possession proceedings. The amendments—

- allow the court, on an application by the tenant, to postpone the date of possession for a period of not more that two months, and

- require the mortgagee to notify tenants and occupiers of their intention to apply for a warrant of possession so that a tenant may apply to the court for a stay or suspension of execution of the warrant.

These amendments give the tenant time to find alternative accommodation. The amendments support the provisions set out in the Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 (S.I.2010/1809); and

(f) introducing amendments to the rules relating to intellectual property claims. Following proposals in Lord Justice Jackson's review of civil litigation costs together with proposals by the Intellectual Property Court User's Committee Working Group, amendments have been made to provide a streamlined process in the patents county court. The amendments also introduce scale costs for each stage of the process with a total cap on costs of £50,000 for a claim relating to liability and £25,000 for an inquiry as to damages or account of profit.

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Consolidation

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 the Committee initiates amendments then consultation is undertaken where deemed necessary.

8.2 No formal consultation on the provisions in the Policing and Crime Act 2009 was undertaken prior to its introduction.

8.3 No formal consultation was undertaken before implementation of Schedule 4 of the Crime (International Co-operation) Act 2003.

8.4 No consultation was carried out in respect of the relocation of Scheduled Rule RSC Order 116 to the main body of the Civil Procedure Rules.

8.5 The Department of Communities and Local Government conducted a consultation on the need for additional protections for tenants in the summer of 2009. There were 33 responses including those from the lender sector, the advice and charity sectors. Respondents were supportive of the need to give tenants a notice period of possession; however the lender sector were less convinced of the need for lenders to notify the tenants of the intention to apply for a warrant of possession. The consultation paper, which includes the Impact Assessment, can be found at: http://www.communities.gov.uk/publications/housing/lenderrepossessionconsult

8.6 As a result of concerns about the high level of costs in intellectual property litigation, the Intellectual Property Court Users Committee (IPCUC) formed a working group whose remit was to formulate proposals for the reform of the Patents County Court. A consultation was undertaken in June 2009 and a final report was published on 31 July 2009. Comments were received from 27 individuals and organisations, including: the legal profession, professional and trade representatives, individual judges, barristers, solicitors, patent and trade mark attorneys and academics. There was considerable support for the proposed reforms and as a result of the consultation modifications were made to the level of the costs cap and some of the detail of the proposed streamlined process. The Working Group's Consultation on Proposals for the Reform of the Patents County Court and Working Group's Final Report on Proposals for Reform of the Patents County Court can be found at: http://www.judiciary.gov.uk/

9. Guidance

9.1 A preview summarising the forthcoming changes to the Civil Procedure Rules will also be published on the Ministry of Justice website in August 2010 at http://www.justice.gov.uk/civil/procrules_fin/index. The Ministry of Justice will also write to key stakeholders detailing the changes in August 2010. The rules will be published by the Stationery Office and will be available on the Ministry of Justice website in August 2010. On coming into force on 1st October 2010 the amendments to the CPR will be made on the website, which will coincide with the issue of the printed version of the consolidated version of the CPR.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide a summary of the changes up to three months in advance through the CPR website and by writing to key stakeholders.

12. Monitoring & 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.gsi.gov.uk can answer any queries regarding the instrument.