EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT NO.2) RULES 2014

2014 No. 482 (L. 2)

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 Government initiatives on bailiff and enforcement reform.

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

3.1 None.

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 This instrument amends the CPR by providing for procedure for applications under section 64 of the Tribunals Courts and Enforcement Act 2007 (TCEA 2007) for issue of a certificate to act as an enforcement agent, and for complaints about enforcement agents. Further provisions are made for changes to certificates and the renewal process. The principal provision for such matters is made in the Certification of Enforcement Agents Regulations 2014 (S.I. 2014/421), and this instrument, taken together with those Regulations, provides the essential procedural framework.

7.2 Applications for a certificate will (as with other applications under Part 3 of the Tribunals, Courts and Enforcement Act 2007 for which provision is made in Part 84 of the CPR) be made by way of the procedure in Part 23 of the CPR, which modifications. They must be issued centrally at the County Court Business Centre in Northampton, although the application will be determined at one of 25 nominated County Court hearing centres (to be nominated in the supporting Practice Direction).

7.3 For a complaint that a person holding a certificate is not a fit and proper person to hold a certificate, the person making the complaint must submit the relevant form (prescribed in Practice Direction 4 supporting the CPR, which lists forms prescribed for use under the CPR) to the County Court hearing centre at which the certificate was issued. The applicant may respond to the complaint both in writing and at the hearing. Complainants will not be liable for any costs incurred by the applicant in responding to the complaint, except in very exceptional circumstances where the court may award costs in respect of spurious complaints, or where there is an abuse of the court's process.

7.4 The rules also make transitional provision to cover the period between the commencement of the reforms in Part 3 of the Tribunals, Courts and Enforcement Act 2007 and the commencement of the reform establishing the single County Court.

Consolidation

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

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 Ministry of Justice's "Transforming Bailiff Action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections" consultation paper was published on 17 February 2012. The paper set out and sought views on the Government's assertion that the implementation of Part 3 and Schedule 12 of the TCEA 2007 would address the majority of the root causes of aggressive bailiff action. The consultation period ran until 14 May 2012 and received 254 responses. It was aimed at the public, the enforcement industry, creditors, the free

debt advice sector and all those with an interest in civil enforcement in England and Wales. Copies of both the consultation paper and the Government's response are on the Ministry of Justice website at: https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action. Details of the consultation responses are set out in the analysis section of the response report.

8.3 In summary, the consultation responses re-affirmed that the current legislation, which governs the actions of enforcement via the seizure and sale of goods, can lead to abuses of the system by some enforcement agents and delivers little protection against aggressive bailiff action. There was widespread support for reform and general agreement that the implementation of Part 3 and Schedule 12 of the TCEA 2007 would be an appropriate solution.

9. Guidance

9.1 A preview summarising the forthcoming changes will be published on the Ministry of Justice website in March 2014 at http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/index.htm. The Ministry of Justice will also write to key stakeholders detailing the changes in March 2014.

9.2 The rules will be published in consolidated version and will be available on the Ministry of Justice website when the majority come into force in April 2014.

10. Impact

10.1 The majority of the amendments will impact on businesses and individuals, some will directly impact on charities and voluntary bodies.

10.2 The impact on business and the voluntary sector of the bailiff and enforcement reforms is estimated to be an annual average benefit of £5 million. The benefits of savings associated with the ongoing saving of doorstep visits, streamlining of the law, simplification of the system and fewer complaints were calculated to offset the costs such as familiarisation with the new system and ongoing training costs.

10.3 An Impact Assessment was carried out to consider the impact of the introduction of the bailiff and enforcement reforms and is available at: https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 There has been extensive consultation with relevant bodies, including claimant and defendant representative groups throughout the development of these provisions. We do not anticipate that the requirements will have any special impact on small firms over and above those that apply to any other party in civil litigation.

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

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