EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE (AMENDMENT NO.3) RULES 2010

2010 No. 2577 (L.14)

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") to make clear by explicit provision that applications for judicial review, or renewed applications for permission, will be listed for hearing by a Divisional Court where the court so directs.

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

3.1 The instrument will come into force on the day after it is made and will therefore breach the 21 day rule. The instrument is not intended to change current practice and procedure, but merely to clarify the basis for it. The urgency arises from the fact that once the desirability of such clarifying provision was identified, it was decided by the responsible senior judiciary that until the amendment is in force, all applications for judicial review be heard by a single judge court as a precautionary measure to ensure that there could be no doubt about the exercise of jurisdiction to hear those applications. A two-judge Divisional Court is able to deal more efficiently with the more difficult or important cases, and should the 21 day rule be observed, a backlog of potentially important cases would quickly build up, with impacts not only in the delayed cases, but also for other areas of business.

4. Legislative Context

4.1 Section 19(3) of the Senior Courts Act 1981 provides that any jurisdiction of the High Court shall be exercised only by a single judge of that court except where, by or by virtue of rules of court, the jurisdiction is required to be exercised by a Divisional Court (which under section 66(3) of the 1981 Act consists of not fewer than two judges). It is common ground that a direction by the court under a power conferred by rules of court that the case must be heard by a Divisional Court has the effect that the jurisdiction is required by virtue of rules of court to be exercised by the Divisional Court. Directions in appropriate cases requiring listing before a Divisional Court have since 2000 been made in the exercise of broad general powers replacing the explicit provision for such directions made by the former Rules of the Supreme Court. The amendments to rules 54.10 and

54.12 of the CPR make clear the continuing basis for the exercise of the power by restoring the explicit statement of it.

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 The amendments in this instrument, however, do not arise from a specific policy initiative or implementation of primary legislation or a European obligation, but from a judicial query about the construction of the rules. The query having been raised, it was considered appropriate to make provision in the rules to clarify the issue, rather than leave any possible room for doubt.

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.

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

9. Guidance

9.1 A note summarising the changes to the Civil Procedure Rules will be published on the Ministry of Justice website in October 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 October 2010.

9.2 The consolidated version of the rules will be updated on the common commencement date of 6 April 2011 and published by the Stationery Office together with other amendments to be made later in 2010.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

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

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