EXPLANATORY MEMORANDUM TO

THE SUPREME COURT RULES 2024

2024 No. 949 (L. 13)

1. Introduction

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

2. Declaration

2.1 Shabana Mahmood, Lord Chancellor and Secretary of State for Justice at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Sally Parkinson, Director of Judicial and Legal Services Policy at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Alex Brown at the Ministry of Justice (telephone: 07523 805 559, email: alex.brown4@justice.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument implements a revised version of the Rules of the UK Supreme Court. The revised version of the Rules provides for a new digital case management portal and makes various smaller changes which reflect technological advancements or remedy issues which have become apparent since the current Rules were adopted. The overriding objective of the Rules remains to secure that the Court is accessible, fair and efficient.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is the UK.

4.3 The territorial application of this instrument is the UK.

5. Policy Context

What is being done and why?

5.1 The present iteration of the UKSC Rules have been in force since the Court's creation in 2009 and has not been amended.

5.2 The aim of the revision is four-fold:

- to reflect the introduction in December 2024 of a digital case management portal through which parties to an appeal will interact with the Registry and with each other;
- to bring the existing Rules into line with current practice (for example, to take account of e-bundles for hearings);

- to address various other changes which are needed to remedy problems that have arisen over recent years with the current rules;
- to implement new assimilated EU case law references following recent UK legislation.

What was the previous policy, how is this different?

5.3 Embracing new technology is an important way to ensure that the Court remains able to offer a world-leading service and revised Rules are needed to account for technological advancements over the Court's lifetime. Prior to this instrument, there was no ruled-based provision for the use of e-bundles or cloud sharing. Some of the technology-related language was out of date. The UKSC has developed a digital case management portal for the Registry and litigants to manage cases and file documents more-efficiently. There was no ruled-based provision for its use.

5.4 Several smaller changes are made by the instrument to bring the Rules into line with current practice or remedy problems that have arisen over recent years with the current rules. Rule 16 (Interventions in applications) only envisaged people intervening in support of an application for permission to appeal. In fact, the Court often receives submissions from those opposing a grant of permission. The wording of Rule 6 (Time limits) was revised to stiffen the informal approach to deadlines that had been adopted in response to changes of practice in the Court of Appeal.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is made by the President of the Supreme Court, Lord Reed, under section 45 of the Constitutional Reform Act 2005. This instrument is to come into force on the day the Lord Chancellor directs, under section 46(2)(a) of the Constitutional Reform Act. This instrument contains rules which replace those rules contained in The Supreme Court Rules 2009 (Statutory Instrument 2009 No. 1603).

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The UKSC Rules consultation started on 2 April and ended on 17 May 2024. It was sent to the list of statutory consultees set out in s45(5) of the Constitutional Reform Act 2005 which is as follows:

- The General Council of the Bar of England and Wales;
- The Law Society of England and Wales;
- The Faculty of Advocates of Scotland;
- The Law Society of Scotland;
- The General Council of the Bar of Northern Ireland; and
- The Law Society of Northern Ireland.

7.2 It was also sent to The Law Officers of England & Wales, Northern Ireland, Wales and Scotland; The Scottish Government; The Welsh Government; The Northern Ireland Executive; The Lady Chief Justice of England & Wales; The Lady Chief Justice of Northern Ireland; The Lord President of the Court of Session; Treasury Solicitor, Government Legal Department; General Counsel and Solicitor for HM

Revenue & Customs; Comptroller-General of the Intellectual Property Office; Senior Costs Judge of England & Wales; and UKSC Court User Group (which includes solicitors and barristers who regularly act in cases before the Court). It was also published on the UKSC website. Responses were invited in writing to the Court and via the email address ukscrulesconsultation@supremecourt.uk.

7.3 The consultation response document was published on 7 August 2024 on the UKSC website and an addendum added on 12 August to reflect the fact that the timing of the rules coming into force has now changed to December 2024. The consultation response document was emailed to statutory consultees, all those who responded to the consultation, members of the Court User Group, and published on the Court website. [1]

7.4 The responses showed broad support for and positive reactions to the proposed revisions. The proposed changes to Rule 6 (Removal of automatic extension for Legal Aid cases) drew expressions of concern from nine consultees on the basis that delays for these litigants are often due to the response times of the Legal Aid agency, and not the fault of the litigant. The Court retained the Rule on the basis that a time extension can be obtained where a party can show they have applied promptly for legal aid. This ensures that a legally aided litigant is not disadvantaged by needing to acquire public funding.

8. Applicable Guidance

8.1 This instrument does not implement or require guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is only a low level or negligible impact per business.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these changes are purely technical in nature and do not inhibit access to the Court. Ensuring the Court is accessible, fair and efficient remains an overriding principle of the Rules.

9.3 The legislation does not specifically impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector for the reasons above.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that feedback is encouraged from Court users internally to the President of the Court and Registrar, and via the bi-annual Court user group meetings. Where there is any update or explanation that is required, this is usually done via the Practice Directions issued by the President of the Court, which supplement the rules. These are updated by way of a Practice Note published on the Court's website and publicised via the news section of the website.

[1] https://www.supremecourt.uk/docs/consultation-on-revision-of-the-supreme-court-rules-summary-of-responses-and-supreme-court-response-august-2024-with-addendum.pdf

10.2 There is no requirement for the President to consult on the Practice Directions or any Practice Note he issues. In the past where there has been any divergence in practice in the Practice Directions from the Rules, it has been made clear by the Court that the Practice Directions are to be followed. This became necessary, for example, when the Rules requiring physical paper copies being filed at the Court's Registry were rendered out of date by the pandemic and the switch to filing by email. It is likely that the Rules would be updated more frequently in the future to avoid a large divergence from the Rules in the Practice Directions.

10.3 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").