

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 4) RULES 2004

2004 No. 3419

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The instrument amends the Civil Procedure Rules 1998 (“the CPR”) in particular by:-
 - (a) incorporating the provisions on fixed costs of the former Rules of the Supreme Court (RSC Order 62) and the County Court Rules (CCR Order 38) in schedules 1 and 2 to the CPR;
 - (b) extending the fixed costs regime to claims for possession of land (‘possession claims’) in the High Court;
 - (c) applying the fixed costs regime to claims under Part 65 for the demotion of a tenancy from secure or assured status following anti-social behaviour (‘demotion claims’) under Part 65;
 - (d) adding a new Part 67 which makes provision about certain types of proceedings against solicitors;
 - (e) making provision that a certificate of service must be verified by a statement of truth;
 - (f) adjusting the categories of defendant against whom an interim payment order may be made; and
 - (g) clarifying the fixed recoverable costs regime comprised in Section II of Part 45.
 - 2.2 In addition, other minor amendments have been made to the CPR.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 The instrument is made in exercise of the powers conferred on the Civil Procedure Rule Committee (“the CPRC”) by section 2 of the Civil Procedure Act 1997. It amends the CPR.
 - 4.2 The amendments in relation to the fixed costs regime (in rule 9 of the Amendment Rules) and in relation to solicitors (in rule 16 of the Amendment Rules) are made as part of the ongoing process of incorporating the remaining Rules of the Supreme Court and County Court Rules into the body of the CPR. This process of incorporation is an important part of the ongoing civil justice reforms.

- 4.3 The amendments in relation to statements of truth remove an inconsistency between the wording of the current rule and the wording of the statement of truth that appears on the certificate of service (Court Service Form N215). The inconsistency was highlighted in correspondence between DCA officials and members of the public.
- 4.4 The amendments in relation to interim payments stem from concerns expressed about the courts' inability to award interim payments against uninsured defendants in personal injury cases. After consideration, the Civil Procedure Rule Committee decided that it was appropriate to grant courts powers to award interim payments against uninsured defendants in all cases, save for those involving more than one defendant where the court is satisfied that one or more of the defendants will be liable but has not determined which. In such cases, the defendant against whom the order is made should be insured or a public body.
- 4.5 The amendments in relation to fixed recoverable costs form part of the ongoing implementation of an agreement reached in May 2004 between representatives of the legal professions and the liability insurance industry, which was facilitated by the Civil Justice Council.
- 4.6 The amendments do not implement EU legislation.

5. Extent

- 5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 Not applicable

7. Policy background

- 7.1 The CPR make provision for the practice and procedure in county courts, the High Court and the Civil Division of the Court of Appeal.
- 7.2 In relation to incorporating fixed costs provisions into the CPR, a new section 1 has been added into Part 45. This substitutes the existing section 1 by incorporating into the CPR the provisions for fixed costs of the former Rules of the Supreme Court (RSC Order 62) and the County Court Rules (CCR Order 38) in schedules 1 and 2 to the CPR. It also extends the fixed cost regime for possession claims to actions in the High Court not currently subject to fixed costs provisions. And, it applies fixed costs to demotion claims under Part 65. The current levels of fixed costs that will be permitted are unchanged.
- 7.3 In relation to solicitors, the instrument revokes former Rules of the Supreme Court (RSC) in Schedule 1 to the Rules, RSC Order 106. The existing provisions now form a new Part 67 of the Civil Procedure Rules

(CPR), with some modifications to bring it into line with CPR practice and terminology. This Part makes provisions about certain types of proceedings against solicitors; including applications for a solicitor to deliver a bill or cash account (Rule 67.2); applications relating to money or securities held by a solicitor for a client (Rule 67.2); applications for the assessment of a solicitor's costs (Rule 67.3); and proceedings relating to intervention by the Law Society in a solicitor's practice (Rule 67.4). Certain provisions of RSC Order 106 have been omitted from the new rules as they are already covered by general provisions of the CPR. The rules governing appeals from the Solicitors Disciplinary Tribunal to the High Court are not included in the new Part 67 but in an amendment to Practice Direction 52 which comes into force at the same time as Part 67.

- 7.4 Rule 22.1 relating to statements of truth has been amended to deal with a problem in relation to certificates of service. Subject to certain exceptions, rule 22.1 and PD 22 provides that a statement of truth may be signed either by the party putting forward the document or by that party's legal representative, but that in either case the statement of truth will refer to the client's belief in the facts stated.
- 7.5 Many court documents must be verified by a statement of truth. Such statements certify that the author of the document to which the statement of truth is attached verifies the truth of its (the document's) contents. The general rule is that the statement must be signed by, or on behalf of, the party putting forward the verified document.
- 7.6 A certificate of service is one document which the rules provide must be verified by a statement of truth (PD 22 para 1.1(6)). Certificates of service can be lodged by a party to court proceedings certifying that they have effected the service of a document (e.g. a claim form or a court order) on another party. ('Service' here means the process whereby a document is delivered to – served upon – another person).
- 7.7 Usually, where a party is represented by a solicitor, it will be the solicitor who effects the service of any documents on behalf of his/her client. But the rules as currently drafted means that, when the solicitor comes to lodge a certificate of service, s/he must sign the attached statement of truth on behalf of the party – but it is the solicitor who has first hand knowledge of the service being effected so it would be logical to allow them to sign the statement of truth in their personal capacity.
- 7.8 Rule 22.1 has therefore been amended to allow the person with direct knowledge of the facts asserted to sign statements of truth attached to certificates of service.
- 7.9 Rule 5 of the Amendment Rules relates to the categories of defendant against whom an interim payment order may be made. The existing rules permit the court to make an order for interim payment where certain conditions are met. These are, simply put, that liability is established or the

court is satisfied that if the claim went to trial the claimant would obtain judgment for a substantial sum of money from the defendant.

7.10 Rule 5 removes the current prohibition on interim payment orders against certain categories of defendant. It means that in all cases involving a single defendant an interim payment order may now be made if the defendant is not insured or a public body. The defendant's ability to pay will be considered by the court when deciding whether to make an order.

7.11 Rule 5 also extends certain conditions which currently apply to personal injury cases involving more than one defendant to all types of claim, so that all claims are treated in the same way. It also removes the link between Part 25 of the Rules on interim payments and Part 41 on provisional and further damages. There is no reason why these two Parts should be linked, and in some circumstances this could impose conditions on further damages which would result in unfairness.

7.12 In relation to clarification of the fixed costs regime, rule 45.18(2)(c) concerns fixed recoverable success fees in conditional fee agreement cases and the exemption criteria for high value cases. The current wording of Rule 45.18 (2)(c) suggests that the only time one can apply for an alternative percentage increase is where there has been a court finding on contributory negligence, which reduced the amount of the award from above, to below £500,000. This means that if, for example, in the interests of costs reductions the parties have agreed to an element of contributory negligence which reduces the award to below £500,000, they cannot apply for an additional percentage increase, even though the award would have originally been for more than £500,000. This was not the intention of the original rule, which was that a finding of contributory negligence should be disregarded when applying the test. The amendment restores this intention.

7.13 Part 45, Section II sets out the costs which will be allowed in costs-only proceedings in cases to which the section applies. The section applies where: the dispute arises from a road traffic accident; the agreed damages include damages in respect of personal injury, damage to property, or both; the total value of the agreed damages does not exceed £10,000; and if a claim had been issued for the amount of the agreed damages, the small claims track would not have been the normal track for that claim. The intention was that the fixed recoverable costs regime comprised in Part 45, Section II would be followed in all cases where the section applied, irrespective of whether or not the court's approval for the settlement was required because the claimant was an infant (infant approval)

7.14 The effect of rule 44.12A(1A) is however that a claimant may issue costs-only proceedings, notwithstanding that he has applied for the settlement to be approved, but he does not have to do so. He may think he can recover a larger sum by way of conventional assessment. The amendments ensure that all infant approval cases falling within rule 45.7 would be dealt with under the fixed costs regime.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for the instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Richard Walley at the Department for Constitutional Affairs (Tel: 020 7210 1564 or e-mail: richard.walley@dca.gsi.gov.uk) can answer any queries regarding the instrument.