

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO.2) RULES 2006**

2006 No. 3132 (L.13)

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 Civil Procedure Rules (S.I. 1998/3132 – “CPR”) are rules of court, which govern practice and procedure in the civil division of the Court of Appeal, the High Court and the county courts.
 - 2.2 This Statutory Instrument amends the Civil Procedure Rules 1998 (“the CPR”), in particular by amending the regime covering access to documents held by the court.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The item makes amendments following litigation in which practical difficulties were raised about the application of the rule to statements of case filed before 2nd October 2006 in proceedings that are closed.
5. **Extent**
 - 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.
7. **Policy background**
 - 7.1 The Civil Procedure Act (1997) created the Civil Procedure Rule Committee and gave it power to create civil procedure rules (CPRs). The first rules 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 court, 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

¹ This work is ongoing; the few remaining CCR and RSC are included in ‘schedules’ to the CPR.

made, and continue to be made, in response to the report Access to Justice (1996) by Lord Woolf.

- 7.2 Public interest in all aspects of civil procedure is, generally speaking, limited.
- 7.3 The policy background for the amendment relates to the provisions for access to court documents for non-parties, a facility mostly used by members of the press. Following consultation with the press and other interested parties, a rule change was introduced from 2nd October 2006 providing that statements of case would be released without application to a judge unless the court ordered otherwise. Under the rule in force prior to 2nd October 2006 only the claim form could be obtained without making an application to a judge. The term ‘statement of case’ incorporates a wider range of documents than ‘claim form’, including particulars of claim and the defence. 90% of the consultees, including the press, some judiciary and other interested parties (such as professional associations) approved this scheme.
- 7.4 However, an injunction was obtained on the Friday prior to the rule coming into force preventing the implementation of the rule with regard to documents filed before 2nd October 2006. It was said that there were practical difficulties about how the rule operated in relation to documents filed before 2nd October 2006 in proceedings that are closed. This injunction was subsequently replaced by an interim declaration making similar provision. A judicial review hearing was listed for 28th/29th November. However, the DCA has been in negotiation with the parties to the litigation, all of whom have accepted the proposals agreed by the Rule Committee to settle the substantive issues in the case. The settlement that has been agreed provides for the rules in force immediately before 2nd October 2006 to continue to apply to statements of case filed before 2nd October 2006. For ease of reference this rule has been reproduced in the Part 5 Practice Direction in so far as it related to statements of case. In addition we have taken the opportunity to make a minor clarificatory drafting amendment.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it does not have an impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is generally limited to HM Courts Service.

9. Contact

Steve Uttley at Her Majesty’s Courts Service (Tel:020 7210 8578 or e-mail: steve.uttley@hmcourts-service.gsi.gov.uk) can answer any queries regarding the instrument.