

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2016

2016 No. 234 (L. 3)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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”), which apply to civil proceedings in the Civil Division of the Court of Appeal, the High Court and the County Court.
- 2.2 The amendments to the CPR covered by this instrument relate to rules governing costs budgeting procedures, reducing the documentation required for costs budgeting in lower value cases and disapplying the rules to cases involving children. The amendments also provide for the centralisation of the procedure for applications to the County Court for Charging Orders and Attachment of Earnings Orders. Further changes allow for a court officer to make an Interim Charging Order under certain circumstances and in the majority of cases for a Final Charging Order to be made without an oral hearing. The court will hear parties if an objection to the making of a Final Charging Order is lodged.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales only.

5.2 This instrument applies to England and Wales only.

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

What is being done and why

- 7.1 Costs budgeting. The existing provisions are modified to reduce delays in the pre-trial process and to maximise judicial resources. The number of cases to which costs budgeting applies is reduced. Litigants in person will not be required to provide a costs budget. Claims made on behalf of a child are also excluded from the regime, principally because of the time many such cases take to get to trial, as it may take years for injuries to stabilise before a prognosis can be given and a trial date fixed. In addition, only minimum information on proposed costs will be required in cases where the value of the claim is less than £50,000. Amendments are also made to the point at which a costs budget must be filed so that parties are not required to file a further budget if there is a long period between the budget being filed and the first hearing at which the budget will be considered. Adding a requirement that parties file agreed costs budgets seven days before the first hearing encourages parties to agree their respective costs budgets. Amendments are also made to provide that costs claimed in each phase of the proceedings, for example, alternative dispute resolution or expert evidence, are made available to the court when assessing costs at the end of a case.
- 7.2 Charging orders. The procedure for the making of a charging order is changed in that, provided that certain specified exceptions do not apply, a court officer may make an interim charging order in respect of a charge over land. Once an interim order is made and served the application will be referred to a judge for the making of a final order. The parties will have a period of 28 days between service on them of the interim order and referral to a judge to object to the making of the order. If such an objection is received the matter will be transferred to a local County Court hearing centre. Applications where the court officer may not make an interim order will be referred to a judge for a decision on the making of an interim order and or transfer of the matter to a local hearing centre.
- 7.3 Attachment of earnings orders. The procedure for the processing of applications for Attachment of Earnings orders remains largely unchanged except for the centralisation and handling of the initial application and response process. An application for an Attachment of Earnings Order will remain at the County Court Money Claims Centre, unless the judgment debtor fails to respond to the initial notice, make payment or obey an order requiring information about the debtor's earnings, whereupon the matter will be transferred to a local County Court hearing centre.
- 7.4 These initiatives in relation to charging orders and attachment of earnings orders aim to provide a streamlined process; reduce duplication of effort by court staff; provide

consistent and timely standards of service; free up judicial time; improve utilisation of the Court estate; and reduce HMCTS operating costs. In addition to centralisation, the judicial burden of the Charging Order process is reduced by providing that a court office may make an interim charging order in respect of land provided certain conditions are fulfilled. The making of the final charging order will also remain a judicial function but will be an administrative process where the judge will make the order in paperwork provided that no objection to the making of the order is lodged. This will save considerable court sitting time.

7.5 Consequential amendments are made to a number of rules in respect of the amendments detailed in 7.3 and 7.4 above.

7.6 The opportunity has been taken to make a correction in an existing rule.

Consolidation

7.7 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). The Committee did not consider that any of the proposals for rules before it required separate consultation by the Committee.

9. Guidance

9.1 The rules will be published in a consolidated version and will be available on the Ministry of Justice website but no specific guidance is considered necessary on their operation.

10. Impact

10.1 There is a minimal impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

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.

13. Contact

13.1 Jane Wright at the Ministry of Justice, jane.wright@justice.gov.gsi.uk, direct telephone line 020 3334 3184, can answer any queries regarding the instrument.