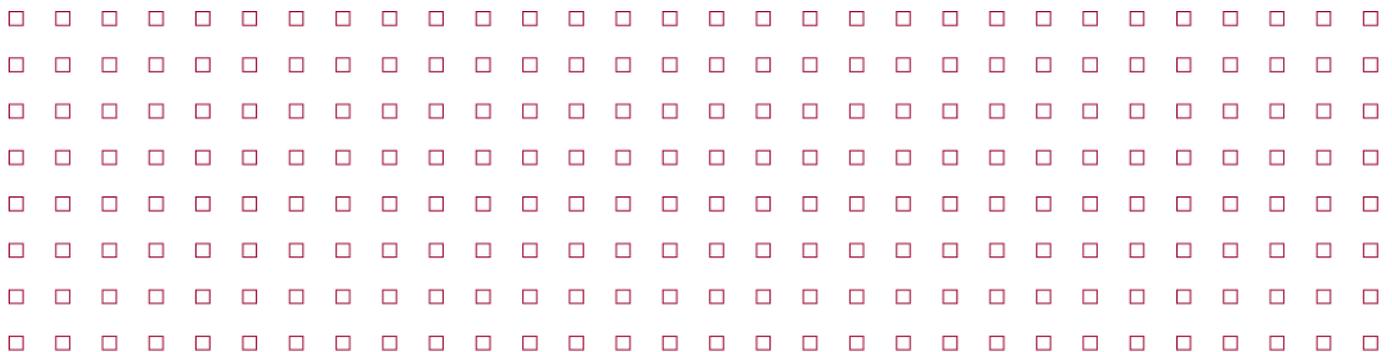




Civil Procedure Rule Committee

Annual Report 2010

October 2010





Ministry of
JUSTICE

Civil Procedure Rule Committee

Annual Report 2010

The annual report of the Civil Procedure Rule Committee for 2010 includes references to rules made during the period of the report, the Committee's terms of reference, membership and dates of meetings.

This information is also available on the Ministry of Justice website:
www.justice.gov.uk

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Terms of Reference

The Civil Procedure Rule Committee (“the Committee”) is an advisory non-departmental public body sponsored by the Ministry of Justice. Its function is to make rules of court governing the practice and procedure in

- The civil division of the Court of Appeal,
- The High Court, and
- The county courts.

Its power to make rules should be exercised with a view to securing that the civil justice system is accessible, fair and efficient and the rules are both simple and simply expressed.

The terms of reference are derived from the Civil Proceedings Act 1997 (as amended by the Courts Act 2003 and the Constitutional Reform Act 2005).

Background

The Civil Procedure Rule Committee was established in 1997 to make rules of court (Civil Procedure Rules) to replace the previous Rules of the Supreme Court and the County Court Rules.

The Committee’s aim is to provide rules of court in line with the aims stated in Lord Woolf’s 1996 report, “Access to Justice”.

Before making any rules the Committee is obliged to consult such persons as they consider appropriate and to meet (unless it is inexpedient to do so).

Rules are made into legislation by being contained in a Statutory Instrument. The Committee signs the Statutory Instruments in July and December each year. The Civil Procedure Rules are supported by Practice Directions, and whilst they are not the responsibility of the Committee, the Committee are consulted on them to maintain consistency of substance.

Membership

During the period covered by this report, the Committee comprised the following members:

Lord Neuberger of Abbotsbury, Master of the Rolls and Head of Civil Justice (ex officio)

Lord Justice Moore-Bick, Deputy Head of Civil Justice (ex officio)

Lord Justice Jackson (Supreme Court Judge Member) *

Mr Justice Henderson (High Judge Member)

Master Fontaine (Supreme Court Master Member)

Judge Stephen Stewart QC (Circuit Judge Member)

District Judge Burn (District Judge Member)

District Judge Hill (District Judge Member)

Mr William Featherby QC (Barrister Member)

Mr David di Mambro (Barrister Member) *

Mr Nicholas Bacon QC (Barrister Member)

Mr Qasim Nawaz (Solicitor Member)

Ms Katy Peters (Solicitor Member)

Mrs Amanda Stevens (Solicitor Member)

Professor David Grant (Consumer Affairs Member/Lay Advice Member)

Mr Tim Lett (Consumer Affairs Member/Lay Advice Member)

A register of members' interest is maintained, a copy of which can be obtained from the secretariat on request.

* Retired from the Committee August 2010

Remuneration

The Chair and members are not remunerated for their services to the Committee.

Meetings

The Committee met on 9 October 2009, 6 November 2009, 4 December 2009, 12 February 2010, 16 April 2010, 14 May 2010, 18 June 2010 and 9 July 2010.

In line with its commitment to openness in its working practices, the Committee held its fifth open meeting in May 2010. Those that attended observed the business of the Committee and were afforded the opportunity to put questions to the Committee.

New Rules, Statutory Instruments and Practice Direction Amendments

The Committee made a number of amendments to the Civil Procedure Rules, published as the 51st and 52nd update in April 2010 and the 53rd update in October 2010.

The rule content of these amendments were made by the following Statutory Instruments:

Civil Procedure (Amendment No.2) Rules 2009 (2009 No. 3390 (L.31))

Civil Procedure (Amendment) Rules 2010 (2010 No. 621 (L.3))

Civil Procedure (Amendment) Rules 2010 (2010 No. 1953 (L.13))

A brief note of the amendments to the Rules and Practice Directions made in each update follows:

The 51st update (came into force on 6 April 2010)

The definition of legal representative and authorised person were amended in Part 2, as a consequence of the Legal Services Act 2007, however there was no change to the class of persons authorised.

PD5C was introduced, following an earlier pilot, to allow for the electronic submission of claims and subsequent steps in the Admiralty, Commercial and London Mercantile Courts, The Technology and Construction Court, Chancery Division of the High Court, including Bankruptcy, Companies and Patents courts.

Part 6 was amended in order to comply with the EU Services Directive (2006/123/EC) to allow for service of documents on a party's legal representative who is qualified to practise in England and Wales but is based in another EEA state.

PD23A was amended to extend by two days the time by which documents can be filed at court. Further amendments were made to increase the time for filing an application notice and for service of the notice where there is a telephone hearing.

Amendments were made to PD43-48 to: include email and other electronic communications in the definition of “communications” and consequently an allowance for them under charges for work done by solicitors; and provide for at the court’s discretion an allowance for the time spent in preparation of electronic communications other than emails; remove the necessity to provide a detailed costs estimate in fast track cases at allocation to track. Amendments were also made to reflect revocation of the Conditional Fee Agreements (CFA) Regulations 2000 including disclosure of the relevant details of a CFA to enable the court to determine the level of risk undertaken by the solicitor; and removing the need to file documents with a request for detailed assessment of the costs.

Part 52 was amended to implement the new unified Tribunal structure as set out in the Tribunals Courts and Enforcement Act 2007, the Asylum and Immigration Tribunal and its functions were transferred to the First-tier Tribunal to be heard by the Upper Tribunal and the Court of Appeal rather than the High Court. These amendments came into force on 15 February 2010.

PD52 was amended to allow for regulatory appeals against decisions of the Law Society or the Solicitors Disciplinary Tribunal involving solicitors and other legal professionals to be determined in the High Court. Amendments were also made to allow for a senior lawyer in the Civil Appeals Office to be a designated Master and to take the lead in relation to quasi judicial functions carried out by Masters and Deputy Masters.

The annex to PD66 setting out the list of solicitors acting for different government departments on whom service is to be effected was substituted.

PD70 was amended to allow a High Court Enforcement Officer to file an award, register an award and issue enforcement process on behalf of an applicant who wishes to enforce Employment Tribunal and Employment Appeal Tribunal awards.

Under the Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property, lenders are obliged to consider postponing possession proceedings should the borrower be entitled to financial support under the various support schemes listed in the protocol. The protocol was amended to include a further scheme in the list.

Amendments were made to remove the inconsistencies and to renumber the practice directions in a uniform way.

As a consequence of the commencement of the new version of the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, amendments were made to Parts 6, 12, 25 and 74 (which came into force on 1 January 2010) and PD12 and PD74 (which came into force on 10 January 2010).

The 52nd update (came into force April 2010)

Part 8 was amended and PD8B and the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents were introduced to allow for the early notification of low value road traffic accident claims electronically in accordance with the Pre Action Protocol. Where the claim continues through stages 1 and 2, but cannot be agreed the claims proceed to court by way of a modified Part 8 process set out in PD8B. Amendments were made to Part 44, Part 45 and Part 36 to accommodate the scheme. These amendments came into force on 30th April 2010.

Part 55 was amended to require the claimant to notify a registered proprietor of a registered charge where a residential mortgage possession claim is started under Part 55 of the CPR.

Part 55, PD65 and the Pre-Action Protocol Possession Claims based on Rent Arrears were amended to reflect the new term “private registered provider of social housing” as a consequence of the implementation of the Housing and Regeneration Act 2008.

The 53rd update (came into force on 1st October 2010)

Part 31 was amended and a new PD31B was introduced to regulate the approach practitioners should take when considering material relevant to a case which is stored electronically. In particular it aims to focus the parties on the sources of electronic material and give guidance to those with less experience of dealing with such issues. This applies to cases that are, or are likely to be, allocated to the multi-track. The rule change supported the new PD by confirming that the questionnaire may be treated as a disclosed document.

PD39B was amended to allow for the late commencement of the Easter term in 2011.

The Automatic Orders Pilot Scheme, PD51B, was extended for a six month period until 31 March 2011.

The Defamation Proceedings Costs Management Scheme, PD51D, was extended for a six month period until 31 March 2011.

PD51E County Court Provisional Assessment Pilot Scheme was introduced for a period of one year, allowing for a streamlined procedure for the assessment of Bills of Cost under £25,000 in three county courts (Leeds, Scarborough and York). The intention is to ascertain the viability of assessing lower value bills of costs on paper in the first instance. Parties are able to request an oral hearing if they are dissatisfied with the outcome of the assessment.

Part 55 and CCR O.26 were amended to allow unauthorised tenants living in a mortgaged property to apply to the court for postponement of the date of delivery of possession. Amendments were also made requiring a lender to notify all tenants/occupiers of a property before taking steps to enforce a possession order. An unauthorised tenant may then apply to the lender for a delay in execution to allow the tenant time to find another home. If the lender does not agree to an extension of time, the unauthorised tenant may apply to the court for a decision.

Amendments were made to PD62 to regulate the material submitted in connection with the permission to appeal process.

Part 63 and PD63 were amended to provide a simpler route for lower value claims including scale costs for each stage of the process with a total cap on costs of £50,000 for a claim relating to liability and £25,000 for an inquiry as to damages or account of profits.

Part 65 was amended to allow police and local authorities to apply to the court to obtain an injunction against a gang member, where the applicant shows that the individual has engaged in, encouraged or assisted gang-related violence. Where an injunction is breached the individual may be found to be in contempt of court and liable to be punished in accordance with the Contempt of Court Act 1981. This comes into force when Part 4 of the Policing and Crime Act 2009 commences.

PD70 was amended to introduce a streamlined process to allow enforcement of settlements which have been negotiated by ACAS, which have not been honoured. The creditor may instruct a High Court Enforcement Officer to issue proceedings for a Writ of Fieri Facias on their behalf, and to undertake enforcement of the Writ.

Amendments were made to PD74A and PD74B to include Registrars sitting in the Chancery Division in the list of judiciary that can approve applications for certified copies of judgments or Certificates of Judgment.

PD75 was amended in relation to operation of the Traffic Enforcement Centre to ensure the terminology used mirrors the procedure where a court officer's decision is reviewed by the judge rather than an appeal being lodged.

RSC Order 116 was moved to Part 77 and consequently RSC O.116 was omitted.

RSC O.115 was amended to allow for application for a domestic freezing order certificate in conjunction with a restraint order where proceedings have been started against an individual for an offence under sections 15-18 of the Terrorism Act 2000 (fund raising, money laundering, fund arranging and use of money or property for the purpose of terrorism). Amendments were also made to allow for the consideration, on receipt from the Secretary of State, of an overseas freezing order and for the court to give effect to and register that order. Provisions were also made to allow any individual who is the subject of, or affected by, a domestic or overseas freezing order to make an application to the court to vary or discharge the order.

The Pre-Action Protocol for the Resolution of Clinical Disputes was amended to extend the time the defendant has to reply to a letter of claim from three to four months, and to include a provision that any letter of claim to an NHS Trust or Independent Sector Treatment Centre is copied to the NHS Litigation Authority.

The PD: Proceedings relating to Enactments relating to Equality was amended to reflect the implementation of the Equalities Act 2010 which consolidates and harmonises the existing discrimination in a single piece of legislation.

Further details of the updates are available on the Civil Procedure Rules pages of the Ministry of Justice website at: www.justice.gov.uk

Departmental Contact

Any queries about the work of the Civil Procedure Rule Committee may be addressed to:

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