

# Proposed rule changes relating to contempt of court; redraft of CPR Part 81

This is a consultation exercise by the Civil Procedure Rule Committee

This consultation begins on 09 March 2020

This consultation ends on 01 May 2020

## Introduction

The Civil Procedure Rule Committee (CPRC) is considering whether amendments should be made to Civil Procedure Rules Part 81 concerning the practices and procedures on contempt of court.

Given the wide-ranging nature of the rules on contempt, this is a cross-jurisdictional, public consultation aimed at all users and potential users of not only the civil justice system in England and Wales, but also other jurisdictions, including people with an interest in procedural rules applying to contempt proceedings outside the CPR, i.e. in family, insolvency, criminal proceedings and any other relevant jurisdictions.

A list of the main professional bodies and representative groups that are being consulted is set out at the end of the document. This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

## Contact details/How to respond

The CPRC invites written responses from users and potential users of the new provisions.

Responses are to be received no later than 5pm on 01 May 2020. Responses to the consultation can be made by email or by post, the details are as follows:

**Email to:** [CPRCconsultation@justice.gov.uk](mailto:CPRCconsultation@justice.gov.uk). Please note "Part 81 Contempt Consultation" in the subject line of your email.

**Post to:** Carl Poole, Secretary to the Civil Procedure Rule Committee  
Post Point 10.24, c/o Ministry of Justice, 102 Petty France, London SW1H 9AJ

### Please Note:

**Submission format:** If you intend sending a PDF document it would be helpful if you could send a word document as well to assist in analysing the responses. Only the PDF document will be retained as the response document.

**Complaints or comments:** If you have any complaints or comments about the consultation process you should contact the Secretary to the CPRC, at the address given above.

**Circulation and additional copies:** Copies of the consultation document are being sent to various stakeholders, a list is included at the end of this document. The list is not exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject. Further copies can be obtained from the Secretariat as above.

**Representative groups:** Representative groups are asked to give a summary of the people and organisations they represent when they respond.

**Confidentiality:** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information and GDPR regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the CPRC. The CPRC will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

The principles that public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles, which can be viewed at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/492132/20160111\\_Consultation\\_principles\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf)

**Welsh Language:** A Welsh language consultation paper is available via the Secretariat.

For more information on the Welsh Language Scheme:

Am fyw o wybodaeth am y cynllun iaith Gymraeg yn gweld:

<https://www.gov.uk/government/publications/moj-welsh-language-scheme-2018>

**Copies of the consultation paper are being sent to:**

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

**Judicial and Legal bodies including:**

- Registrar of the Supreme Court
- Lord Chief Justice
- Master of the Rolls
- President of the Queen's Bench Division
- President of the Family Division
- The Chancellor of the High Court
- The Senior President of Tribunals
- The Senior Presiding Judge
- The Deputy Senior Presiding Judge
- Presiding Judges
- The Honourable Mrs Justice Lieven
- The Honourable Mr Justice Nicklin
- The Honourable Mr Justice Newton
- The Honourable Mr Justice Roth
- High Court Judges Association
- Council of HM Circuit Judges
- Designated Civil Judges
- Crown Court Resident Judges
- Senior Master Fontaine
- Association of High Court Masters
- The Senior District Judge (Chief Magistrate)
- Association of HM District Judges
- The Council of HM District Judges (Magistrates' Courts)

- United Kingdom Association of Women Judges
- The Magistrates' Association
- The Magistrates' Leadership Executive
- The Attorney General
- The Justices' Clerks' Society
- The Registrar of Criminal Appeals
- The Bar Council
- Chancery Bar Association
- Criminal Bar Association
- Family Law Bar Association
- The Law Commission
- The Law Society
- The Criminal Law Solicitors' Association
- The London Criminal Courts Solicitors' Association
- Solicitors Association of Higher Court Advocates
- Chartered Institute of Legal Executives
- Lawyers in Local Government
- Association of Costs Lawyers
- Association of Lawyers for Children
- Child Abduction Lawyers Association.
- Professor Ormerod QC

**Procedure Rule Committee Secretariats:**

- Family Procedure Rule Committee Secretariat
- Criminal Procedure Rule Committee Secretariat
- Tribunal Procedure Committee Secretariat
- Insolvency Rule Committee Secretariat

**Consumer Bodies and Stakeholder groups including:**

- Civil Court Users Association
- Citizens Advice
- Personal Support Unit / Support through Court
- Law Centres Network
- Association of Personal Injury Lawyers
- Forum of Insurance Lawyers
- Advice Services Alliance
- Advice for Renters
- Advice UK
- Age UK
- BPP Law School
- Chartered Institute of Credit Management
- Community Money Advice
- Credit Services Association
- Crisis
- Equality & Human Rights Commission
- Institute of Money Advisers
- Money and Mental Health Policy Institute
- National Consumer Council

- The Debt Advice Foundation
- Pink Tape
- Resolution
- Social Work England
- Which?
- Practical Law
- Whitebook
- Greenbook

**Other Government Departments and bodies including the:**

- Local Government Association
- Government Legal Department
- Whitehall Prosecutors' Group
- Ministry of Justice
- HM Courts and Tribunal Service
- The Home Office
- Crown Prosecution Service
- National Police Chiefs Council
- Serious Fraud Office
- Association of Directors of Children's Services
- British Adoption and Fostering (Coram)
- Cafcass
- Cafcass (Cymru)
- Family Mediation Council
- Family Rights Group
- Civil Justice Council
- Family Justice Council
- National Criminal Justice Board
- Children's Commissioner for England
- National Society of Prevention of Cruelty to Children

## Foreword

The Civil Procedure Rule Committee (“CPRC”) is responsible, under the provisions of the Civil Procedure Act 1997 (“the 1997 Act”), for making rules of court governing the practice and procedure to be followed in the Court of Appeal (Civil Division), the High Court and the County Court, with a view to securing that the system of justice is accessible, fair, and efficient, and that the rules are simple and simply expressed. The CPRC seeks to keep the Civil Procedure Rules (“CPR”) and their operation under review and to consider whether they are meeting those objectives.

Under section 3 of the 1997 Act, the CPRC is, before making rules, to consult with such persons as it considers appropriate. One area in which the CPR appear to be unsatisfactory is contempt of court, dealt with in Part 81. A number of senior judges have commented on the unsatisfactory wording of Part 81 and expressed the hope that the CPRC would consider revisions to it; see e.g. *A-G v Yaxley-Lennon* [2019] EWHC 1791 (Admin) and *HM Solicitor General v. Holmes* [2019] EWHC 1483 (Admin).

In July 2019, the CPRC set up a subcommittee to consider the issue. At its September 2019 meeting, the CPRC endorsed the view of the subcommittee that the procedural aspects of contempt proceedings are causing frequent difficulties and that the subcommittee should look at ways of simplifying, shortening and strengthening the procedural rules to make them operate more fairly and reduce the number of cases where procedural unfairness is found.

Part 81 comprises rules moved from the Rules of the Supreme Court, with little amendment, to the CPR. The subcommittee undertaking this exercise in 2010-12 was not given the remit to simplify and rationalise the procedural rules on contempt. It was a “lift and shift” exercise. Consequently, Part 81 is segmented, long, complicated and repetitive. It replicates substantive law as well as dealing with procedure. The procedural content is then largely repeated in a Practice Direction (PD), supplemented by a further PD and Practice Guidance (PG) from the Lord Chief Justice. CPR PD4 prescribes no less than 27 prescribed Forms for use in contempt proceedings

The existing Part 81 is not easy to operate in the present litigation environment. In a redrafted Part 81, we propose a new approach which (a) omits nearly all the substantive law (b) deals with procedure in rules not PDs (c) creates a uniform procedural code for use in all contempt proceedings where the CPR apply (d) sets out the applicable requirements in rules rather than in PDs or Practice Guidance and (e) reduces the number of prescribed forms.

Preliminary comments were sought from the Association of District Judges, the Council of Circuit Judges and the Association of High Court Judges. All three bodies expressed broad support for the proposed redrafting of Part 81, as did the Attorney-General’s office.

The subcommittee has liaised closely with the Family Procedure Rule Committee, recognising the advantages of uniformity, as far as possible, between the rules of the family court jurisdiction and the CPR jurisdictions. The consultation will also seek views from the makers of procedural rules on contempt of court in other jurisdictions, notably in criminal law and insolvency proceedings.

I look forward to receiving and considering your views on the various proposals and questions set out and posed in this consultation.

A handwritten signature in black ink, appearing to read 'R. Coulson', with a horizontal line underneath.

**Lord Justice Coulson,**

**Deputy Head of Civil Justice**

## Consultation

### CIVIL PROCEDURE RULE COMMITTEE

#### CONTEMPT SUBCOMMITTEE:

### PROPOSED REDRAFT OF CPR PART 81

(annotated)

## Part 81 - Applications and Proceedings in Relation to Contempt of Court

### Rule 81.1

#### 81.1 – Scope

- (1) This Part applies whenever the Civil Division of the Court of Appeal, the High Court or the county court determines proceedings in relation to contempt of court (“contempt proceedings”).
- (2) This Part does not alter the scope and extent of the respective jurisdictions of those courts whether inherent, statutory or at common law.
- (3) This Part has effect subject to and to the extent that it is consistent with the substantive law of contempt of court applied by those courts.

#### Note on 81.1:

*This rule (i) replicates more succinctly the disavowal in existing Part 81 of any attempt to alter the substantive law and (ii) ensures that the various kinds of contempt currently in separate sections of existing Part 81 are all included within the scope of Part 81.*

*Contempt proceedings include the exercise of the High Court’s jurisdiction, whether inherent or under any enactment, to supervise the conduct of proceedings in inferior courts or tribunals and punish persons involved in such proceedings.*

## **Rule 81.2**

### **81.2- Interpretation**

In this Part:

“claimant” means a person making a contempt application;

“contempt application” means an application to the court for an order in contempt proceedings;

“defendant” means the person against whom the application is made;

“penal notice” means a prominent notice on the front of an order warning that if the person against whom the order is made (and, in the case of a corporate body, a director or officer of that body) disobeys the court’s order, the person (or director or officer) may be held in contempt of court and punished by a fine, imprisonment or confiscation of assets.

#### Note on 81.2:

*We prefer claimant and defendant to applicant and respondent. In contempt proceedings, the important person is the defendant. Unrepresented parties are more likely to understand the word defendant than respondent.*

*There are differing forms of penal notice in existing Part 81, in Part 71 and at least one other in a guidance document. This definition is an amalgam covering as succinctly as possible all bases (prominence, corporate bodies and types of punishment).*

## **Rule 81.3**

### **81.3- How to make a contempt application**

- (1) A contempt application made in existing High Court or county court proceedings is made by an application notice under Part 23 in those proceedings, whether or not the application is made against a party to those proceedings.
- (2) If the application is made in the High Court, it shall be determined by a High Court judge of the Division in which the case is proceeding. If it is made in the county court, it shall be determined by a Circuit Judge sitting in the county court.
- (3) A contempt application in relation to alleged interference with the due administration of justice, otherwise than in existing High Court or county court proceedings, is made by an application to the High Court under Part 8.
- (4) Where an application under Part 8 is made under paragraph (3) above, the rules in Part 8 shall apply except as modified by this Part and there shall be no requirement for the defendant to acknowledge service of the application.
- (5) If permission to make the application is needed, the application for permission shall be included in the contempt application, which will proceed to a full hearing only if permission is granted.
- (6) If permission is needed and the application relates to High Court proceedings, the question of permission shall be determined by a single judge of the Division in which the case is proceeding. If permission is granted the contempt application shall be determined by a single judge or Divisional Court of that Division.
- (7) If permission is needed and the application does not relate to existing court proceedings or relates to criminal or county court proceedings or to proceedings in the Civil Division of the Court of Appeal, the question of permission shall be determined by a single judge of the Administrative Court. If permission is granted, the contempt application shall be determined by a Divisional Court.
- (8) Permission to make a contempt application is required where the application is made in relation to:
  - (a) interference with the due administration of justice, except in relation to existing High Court or county court proceedings;
  - (b) an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement.

Note on 81.3

*This rule deals with how to make a committal application and in particular with the level of court and judge to which or whom the permission application should be made, where permission is needed.*

*The new rule 81.3(8) attempts to capture, in fewer words than in the current version, the cases in which permission is currently required. The threshold for granting permission is addressed in case law.*

*It is for discussion whether permission could be granted by a single Administrative Court judge where the contempt proceedings will, if permission is granted, be determined by a Divisional Court. We do not see why not but it is a policy decision.*

*Persons authorised under s.9(1) and (4) of the Senior Courts Act 1981 to sit as a puisne judge of the High Court could have power to commit for contempt: by s.9(4) “he may act as a puisne judge of the High Court”; and by s.9(6) “while acting under this section shall, subject to ... [immaterial exceptions] be treated for all purposes as, and accordingly may perform any of the functions of, a judge of the court in which he is acting”.*

*However, procedural rules currently limit the exercise of jurisdiction by persons who are not salaried High Court judges but are authorised under s.9(1) or (4) to sit in the High Court. This accords with s.19(3)(b) of the Senior Court Act 1981: “[a]ny jurisdiction of the High Court shall be exercised only by a single judge of that court, except in so far as it is ... (b) by rules of court made exercisable by... any other person.” The power to make rules “governing the practice and procedure to be followed in... the High Court” is found in s.1 of the Civil Procedure Act 1997.*

*We have not formed a view on whether persons who are not full time salaried High Court judges but sit as judges or deputy judges of the High Court should sit in contempt proceedings. The issue could be dealt with in rules of court elsewhere in the CPR (e.g. rule 2.4 and Practice Direction 2B). The views of the senior judiciary will be important in relation to this issue.*

*Another policy decision not addressed here is whether or to what extent district judges and/or Masters should be empowered to determine contempt proceedings and punish contemnors. We have not formed a view on whether the present position should change. District judges currently deal with some contempt issues, e.g. anti-social behaviour orders (see PD 2B, para 8.1 and 8.3; cf. CPR r.2.4).*

*If the prevailing view is that the power of district judges in the county court and Masters in the High Court to deal with contempt proceedings should not be expanded beyond its present confines, that is reflected in the draft rule 81.3(2), as set out above. If not, paragraph (2) will need to be adapted.*

## **Rule 81.4**

### **81.4- Requirements of a contempt application**

- (1) Unless and to the extent that the court directs otherwise, every contempt application must be accompanied by written evidence given by affidavit or affirmation.
- (2) A contempt application must include statements of all the following, unless wholly inapplicable.
  - (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
  - (b) the terms of any order allegedly breached or disobeyed;
  - (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
  - (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;
  - (e) confirmation that any order allegedly breached or disobeyed included a penal notice;
  - (f) the terms of any undertaking allegedly breached;
  - (g) confirmation of the claimant's belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;
  - (h) the facts alleged to constitute the contempt, set out in chronological order;
  - (i) that the defendant has the right to be legally represented in the contempt proceedings and may be entitled to the services of an interpreter;
  - (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid;
  - (k) that the defendant is entitled to a reasonable time to prepare for the hearing and is entitled to produce witness evidence, written or oral, in their defence;
  - (l) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;
  - (m) that the court will only make an order of committal if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;

- (n) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment or confiscation of assets;
- (o) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;
- (p) that the court's findings will be provided in writing as soon as practicable after the hearing; and
- (q) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public.

Note on 81.4:

*This rule is the cornerstone of the new draft Part 81. It is intended to stand as the guarantor of procedural fairness and incorporates the requirements of procedural fairness to the defendant. If the rule is complied with, procedural fairness is likely to be observed.*

*The rule states what a contempt application must contain but also, crucially, educates the parties and the judge by reminding them what the requirements of procedural fairness and open justice are.*

*The rule should be accompanied by a single new form mirroring the content, with an electronic (or paper for the digitally excluded) template to be completed, in order to ensure procedural fairness. We consider that most of the numerous forms currently in use should be jettisoned, in a separate and subsequent exercise.*

*Summary disposal of contempt proceedings may be a procedural irregularity even with the accused's consent, especially if he or she is unrepresented. It can still happen in cases of contempt in the face of the court. Whether the judge in the face of whose court a contempt is committed can or should deal with it is not a matter for rules of court.*

## **Rule 81.5**

### **81.5- Service of a contempt application**

- (1) Unless the court directs otherwise and except as provided in (2) below, a contempt application and evidence in support must be served on the defendant personally.

- (2) Where a legal representative for the defendant is on the record in the proceedings in which, or in connection with which, an alleged contempt is committed:
- (a) the contempt application and evidence in support may be served on the representative for the defendant unless the representative objects in writing within seven days of receipt of the application and evidence in support;
  - (b) if the representative does not object in writing, they must at once provide to the defendant a copy of the contempt application and the evidence supporting it and take all reasonable steps to ensure the defendant understands them;
  - (c) if the representative objects in writing, the issue of service shall be referred to a judge of the court dealing with the contempt application; and the judge shall consider written representations from the parties and determine the issue on the papers, without (unless the judge directs otherwise) an oral hearing.

Note on 81.5:

*Rule 81.5(1) brings into play the rules in Part 6 of the CPR on personal service and dispensing with service. We see no need for the 85.1(1) to say more. The judge would only dispense with personal service if sure the defendant is evading service or already aware of and fully informed about the contempt proceedings.*

*Rule 81.5(2) is introduced to deal with a specific problem identified by the Attorney-General's office. They say that the personal service requirement is often unnecessary where solicitors are on the record and causes the expense and delay of applying to the court for an order dispensing with personal service. We agree, subject to safeguards to ensure the defendant is properly and fully informed about the contempt proceedings.*

**Rule 81.6**

**81.6- Cases where no application is made**

- (1) If the court considers that a contempt of court may have been committed, the court of its own initiative shall consider whether to proceed against the defendant in contempt proceedings.
- (2) Where the court does so, any other party in the proceedings may be required by the court to give such assistance to the court as is proportionate and reasonable, having regard to the resources available to that party.

- (3) If the court proceeds of its own initiative, it shall issue a summons to the defendant which includes the matters set out in rule 81.4(2)(a)-(q) (in so far as applicable) and requires the defendant to attend court for directions to be given.
- (4) A summons issued under this rule shall be served on the defendant personally and on any other party, unless the court directs otherwise. If rule 81.5(2) applies, the procedure there set out shall be followed unless the court directs otherwise.

Note on 81.6:

*While some may object that judges are already hard pressed enough, in many cases if the judge does not take the lead, serious contempts will go unpunished. It is not sufficient to notify the Attorney-General; he or she will have other important priorities.*

*There is a precedent in the judicial obligation to consider making a civil restraint order where an application is found to be totally without merit. The obligation there (and here) is only to consider the issue. The judge is not obliged to summon the defendant.*

*The redrafted rules should ease the burden; the judge will have a template containing the 81.4(2)(a)-(q) matters. Some courts may have legally qualified staff to help with drafting the summons. If not, all the judge has to do is fill in the electronic template form and instruct staff as to service of the summons on the defendant and any other parties. The judge can then forget about the matter if it is to come before another judge.*

*We do not express a view here on the question whether the judge issuing the summons should or should not, in some cases, also decide the matter. However, the summons should, we consider, indicate to the defendant whether the contempt proceedings will or may be tried by the judge issuing it or by a different judge.*

*We are aware that the term “summons” (along with “motion”) was largely superseded by “application” when the CPR replaced the old RSC. Here, a revived “summons” seems appropriate to describe this bespoke form of direct communication from court to defendant. It is accurate and, we think, still resonates with ordinary people.*

## **Rule 81.7**

### **81.7- Directions for hearing of contempt proceedings**

The court shall give such directions as it thinks fit for the hearing and determination of contempt proceedings, including directions for the attendance of witnesses and oral

evidence, as it considers appropriate. The court may not give any direction compelling the defendant to give evidence either orally or in writing.

## **Rule 81.8**

### **81.8- Hearings and judgments in contempt proceedings**

- (1) All hearings of contempt proceedings shall, irrespective of the parties' consent, be listed and heard in public unless the court otherwise directs.
- (2) Advocates and the judge shall appear robed in all hearings of contempt proceedings, whether or not the court sits in public.
- (3) Before deciding to sit in private for all or part of the hearing, the court shall notify the national print and broadcast media, via the Press Association's Copy Direct service.
- (4) The court shall consider any submissions from the parties or media organisations before deciding whether and if so to what extent the hearing should be in private.
- (5) If the court decides to sit in private it shall, before doing so, sit in public to give a reasoned public judgment setting out why it is doing so.
- (6) At the conclusion of the hearing, whether or not held in private, the court shall sit in public to give a reasoned public judgment stating its findings and any punishment.
- (7) The court shall inform the defendant of the right to appeal, without requiring permission, the time limit for appealing and the court before which any appeal must be brought.
- (8) Judgments in contempt proceedings shall be transcribed and published on the website of the judiciary of England and Wales.

#### **Note on 81.8:**

*This elevates to the rules, from the LCJ's 2015 PD, the critically important open justice provisions in the 2015 PD (and the subsequent PG clarifying the PG). The new 81.9 would operate in tandem with the recently updated rule 39.2 on sitting in public and in private.*

*It may be thought odd to include a matter of detail such as robing in a rule rather than a guidance note or PD. We think, on the contrary, that its inclusion in the rule itself gives justified emphasis to the gravity of contempt proceedings.*

*The question may arise whether to retain any existing minimum time period (e.g. 7 days in cases within existing rule 81.34(2)) that must expire between the allegation/service and the substantive contempt hearing; or whether procedural fairness is sufficiently protected by the court's duty to give the defendant adequate time to prepare.*

## **Rule 81.9**

### **81.9- Powers of the court in contempt proceedings**

- (1) The court may make such order as it thinks fit including imposition of a fine or a period of imprisonment or confiscation of assets.
- (2) Execution of an order of committal requires issue of a warrant of committal. An order of committal and a warrant of committal have immediate effect unless and to the extent that the court decides to suspend execution of the order or warrant.
- (3) A committal order must be personally served on the defendant unless the court directs otherwise.
- (4) To the extent that the substantive law permits, a court may attach a power of arrest to a committal order.

#### Note on 81.9:

*It may be said that the court's powers are a matter of substantive law. We have struck a balance between brevity and informing readers of the rule (including judges in the lower courts and litigants, represented and unrepresented) what the court's powers are.*

*"[C]onfiscation of assets" in 81.9(1) embraces the currently used term "sequestration" which is difficult for unrepresented parties to understand. "Sequestration" or seizure of assets is a remedy for contempt of court which is particularly useful for enforcing payment of fines by corporate or other bodies (see generally, Arlidge, Eady and Smith on Contempt, 5<sup>th</sup> ed., at 14-128ff).*

*However, sequestration is also, separately, a method of execution not linked to contempt of court and governed by CPR Part 83. By rule 83.2A, confusingly, an application for a writ of sequestration to enforce a judgment, without any contempt of court, must be made under Part VII of the current Part 81, which is supposed to be about contempt proceedings rather than execution.*

*We question whether rule 83.2A is appropriate. It may be better to confine Part 81 to contempt proceedings and leave enforcement proceedings (including by seizure of assets) to Part 83, which already contains general provisions on methods of enforcing judgments by writs and warrants. If that is the right way forward, the current lengthy and complex rules in existing Parts VII and VIII of Part 81 seem unnecessary.*

*We consider that whether a court can attach a power of arrest is a matter of substantive law. HHJ Birss QC (as he then was) decided in *Westwood v Knight* [2012] EWPC 14 at [136]-[147] that under s.38(1) of the County Courts Act 1984 the county court, as well as the High Court, can issue a bench warrant to compel a contemnor's attendance.*

*The question arises whether we should include a time limit of, say, two years after which the warrant of committal lapses (under existing rule 81.30(3)); to protect the contemnor against oppressive delay in enforcing the warrant. We have not included such a provision in the draft rule but it is a matter for consideration.*

## **Rule 81.10**

### **81.10- Applications to discharge committal orders**

- (1) A defendant against whom a committal order has been made may apply to discharge it.
- (2) Any such application shall be made by an application notice under Part 23 in the contempt proceedings.
- (3) The court hearing such an application shall make such order as it thinks fit.

#### Note on 81.10:

*This reduces to a few lines a lot of material in existing Part 81 on the subject of purging contempt, early release from prison, etc.*

## **Questions**

We would appreciate your views to the Questions at page 21 to page 26

## **Response document**

### CIVIL PROCEDURE RULE COMMITTEE CONSULTATION

**Title:**

**Proposed rule changes relating to contempt of court; redraft of CPR Part 81**

This consultation begins on 09 March 2020

This consultation ends on 01 May 2020

The Civil Procedure Rule Committee welcomes responses to this consultation paper.

Please email your completed form to [CPRCconsultation@justice.gov.uk](mailto:CPRCconsultation@justice.gov.uk) or send it to

Carl Poole, Post Point 10.24, c/o Ministry of Justice, 102 Petty France, London SW1H 9AJ

**Thank you for participating in this consultation exercise.**

## About you

Please use this section to tell us about yourself and attach it to your response

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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**Please attach this to your response.**

## Questionnaire

We welcome responses to the following questions set out in this consultation paper.

Please [use the online questionnaire to respond](#). Alternatively, you can submit your answers to the following questions via email to [CPRCconsultation@justice.gov.uk](mailto:CPRCconsultation@justice.gov.uk) or send it to Carl Poole, Post Point 10.24, c/o Ministry of Justice, 102 Petty France, London SW1H 9AJ

## Questions

**Q1 Overall, do you agree that the proposed reforms to CPR Part 81 are an improvement on the current provisions?**

**Yes**

**No (please explain your answer below)**

**Comment:**

**Q2 Do you agree with the drafting of rule 81.1?**

**Yes**

**No (please explain your answer)**

**Comment:**

**Q3 (i) Do you agree with the use of the terms, 'claimant' and 'defendant' in rule 81.2?**

**Yes**

**No (please explain your answer)**

**Comment:**

**Q3 (ii) If you have any other views on the definitions in 81.2, please include them here:**

**Q4**

*On rule 81.3 we have not formed a view on whether persons who are not full-time salaried High Court judges but sit as judges or deputy judges of the High Court should sit in contempt proceedings. The issue could be dealt with in rules of court elsewhere in the CPR (e.g. rule 2.4 and Practice Direction 2B). The views of the senior judiciary will be important in relation to this issue.*

**Q4 (i) If you have views on this, please include them here:**

*Another policy decision not addressed within the proposed rule 81.3 is whether or to what extent district judges and/or Masters should be empowered to determine contempt proceedings and punish contemnors. We have not formed a view on whether the present position should change. District judges currently deal with some contempt issues, e.g. anti-social behaviour orders (see PD 2B, para 8.1 and 8.3; cf. CPR r.2.4).*

**Q4 (ii) If you have views on this, please include them here:**

**Q4 (iii) If you have any other comments on rule 81.3, please include them here:**

**Q5** Rule 81.4 proposes *that the rule should be accompanied by a single new form mirroring the content, with an electronic (or paper for the digitally excluded) template to be completed, in order to ensure procedural fairness. We consider that most of the numerous forms currently in use should be jettisoned, in a separate and subsequent exercise.*

**Q5 (i) Do you agree?**

Yes

No (please explain your answer)

Comment:

**Q5 (ii) Currently rule 81.4 is drafted in chronological order. An alternative would be to draft it in subject matter sequence. If you have a view either way, please state it here:**

**Q5 (iii) If you have any other comments on rule 81.4, please include them here:**

**Q6 (i) Do you agree with the drafting of rule 81.5?**

Yes

**No (please explain your answer)**

**Comment:**

**Q6 (ii) If you have any other comments on rule 81.5, please include them here:**

**Q7** In drafting rule 81.6 we have not expressed a view on the question of whether the judge issuing the summons should or should not, in some cases, also decide the matter. However, the summons should, we consider, indicate to the defendant whether the contempt proceedings will or may be tried by the judge issuing it or by a different judge.

**Q7 (i) Do you agree with the drafting of rule 81.6?**

**Yes**

**No (please explain your answer)**

**Comment:**

**Q7 (ii) If you have any other comments on rule 81.6, please include them here:**

**Q8 (i) Do you agree with the drafting of rule 81.7?**

**Yes**

**No (please explain your answer)**

**Comment:**

**Q8 (ii) If you have any other comments on rule 81.7, please include them here:**

**Q9** It may be thought odd to include a matter of detail such as robing in a rule rather than a guidance note or Practice Direction. We think, on the contrary, that its inclusion in the rule itself gives justified emphasis to the gravity of contempt proceedings.

**Q9 (i) Do you agree with the drafting of rule 81.8?**

**Yes**

**No (please explain your answer)**

**Comment:**

**Q9 (ii) The question may arise whether to retain any existing minimum time period (e.g. seven days in cases within existing rule 81.34(2)) that must expire between the allegation/service and the substantive contempt hearing; or whether procedural fairness is sufficiently protected by the court's duty to give the defendant adequate time to prepare. If you have views on this, please include them here:**

**Q9 (iii) If you have any other comments on rule 81.8, please include them here:**

**Q10** We question whether rule 83.2A (application for permission to issue a writ of sequestration) is appropriate. It may be better to confine Part 81 to contempt proceedings and leave enforcement proceedings (including by seizure of assets) to Part 83, which already contains general provisions on methods of enforcing judgments by writs and warrants. If that is the right way forward, the current lengthy and complex rules in existing Parts VII and VIII of Part 81 seem unnecessary.

**Q10 (i) Do you agree with the drafting of rule 81.9?**

**Yes**

**No (please explain your answer)**

**Comment:**

**Q10 (ii) The question arises whether we should include a time limit of, say, two years after which the warrant of committal lapses (under existing rule 81.30(3)); to protect the contemnor against oppressive delay in enforcing the warrant. We have not included such a provision in the draft rule but it is a matter for consideration. If you have views on this, please include them here:**

**Q10 (iii) If you have any other comments on rule 81.9, please include them here:**

**Q11 (i) Do you agree with the drafting of rule 81.10?**

**Yes**

**No (please explain your answer)**

**Comment:**

**Q11 (ii) If you have any other comments on rule 81.10, please include them here:**

**Q12 Do you have any other comments on any aspect of the proposed re-draft of CPR Part 81 on Contempt? If so, please include them here:**

**Thank you for responding**