EXPLANATORY MEMORANDUM TO

THE ALLOCATION AND TRANSFER OF PROCEEDINGS (AMENDMENT) ORDER 2011

2011 No. 1460

and

THE CIVIL COURTS (AMENDMENT) ORDER 2011

2011 No. 1465

1. This explanatory memorandum has been prepared by The Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 The purpose of these instruments is to close 23 county courts in England and Wales. The Civil Courts (Amendment) Order 2011 removes the requirement for a county court to be held in specified locations and removes civil and divorce jurisdiction from these courts. The Allocation and Transfer of Proceedings (Amendment) Order 2011 removes jurisdiction in family cases.

2.2 The Civil Courts (Amendment) Order 2011 also corrects omissions regarding district registry districts in, firstly, the Civil Courts (Amendment No. 2) Order 2006 (S.I. 2006/2920) which concerned the closure of Gravesend County Court and, secondly, the Civil Courts (Amendment No. 2) Order 2009 (S.I. 2009/3320), which concerned the closure of Nelson County Court.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Lord Chancellor's decisions on changes to the court estate in England and Wales were announced to Parliament by the Parliamentary Under-Secretary of State, Jonathan Djanogly, on 14 December 2010. The closure of Leigh County Court was announced to Parliament by way of a written statement by the Lord Chancellor on 23 June 2010.

5. Territorial Extent and Application

5.1 These instruments apply to England and Wales.

6. European Convention on Human Rights

6.1 The Allocation and Transfer of Proceedings (Amendment) Order 2011 is subject to negative resolution procedure. The Civil Courts (Amendment) Order 2011 is laid before each House of Parliament. Neither Order amends primary legislation and therefore no statement is required.

7. Policy background

7.1 As at June 2010 there were 530 courts across England and Wales, many of which had poor facilities and did not have sufficient workload to sustain them in the long term. In 2009-10 on average a county court courtroom was used for only 180 days of the year. In addition, many courts are located in close proximity to one another. The county court estate did not take into account demographic changes and improvements in personal mobility.

7.2 By closing courts that are underused, have poor facilities or are close to an alternative court with capacity to take additional work, the remaining county courts will be better placed to deliver justice. The county courts will cost the taxpayer less money to operate and resources will be targeted in a more focused way so that less money is spent on running and maintaining unnecessary buildings. This should leave more money to be invested in upgrading facilities, improving services and developing innovative ways to deal with cases to the benefit of those who use the courts and the community at large.

8. Consultation outcome

8.1 On 23 June 2010 the Lord Chancellor consulted on the provision of court services in England and Wales. Separate consultations were undertaken for 16 areas within England and Wales, which taken together proposed the closure of 103 magistrates' courts and 54 county courts.

8.2 Each consultation paper set out the national estates strategy, which comprises key principles, including: improve utilisation of the courts to at least 80%; ensure access to courts – enabling the majority of the public to be within a 60 minute commute of their nearest court by public transport; have specialist facilities in large strategic locations only and provide greater flexibility through co-location of criminal courts and civil courts with tribunal hearing centres.

8.3 The consultation papers went on to provide additional information on specific areas and courts to set out how the courts being consulted on

fit or do not fit with the estates strategy and the likely costs and benefits of closure. The consultations period ran until 15 September 2010.

8.4 Across all HMCS areas over 2,500 responses were received. Consultees responded sometimes to the proposals on a national basis but more usually to proposals affecting individual areas or courts. Many of the consultation responses focused on the provision of local justice and the length and cost of travel to attend court. Estimates of the current and future location of courts indicate that, prior to closures, just under 90% of the population were within a 60 minute public transport journey of their nearest magistrates' or county court. Following all the proposed court closures that figure will reduce to around 85%.

8.5 Following the closure of the consultation period each proposal was analysed again against the principles of the national estates strategy and in light of the responses that were received. The Lord Chancellor announced in December 2010 his decision to close 92 magistrates' courts and 49 county courts and to retain ten magistrates' courts and five county courts.

8.6 A more detailed analysis of the consultation outcome is available in the response papers regarding the provision of court services in each of the 16 former HMCS Areas. The response papers can be found on the Ministry of Justice website at:

http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/consultations/consultations-closed-with-response.htm

Leigh County Court

8.7 In May 2008 Leigh County Court was extensively damaged by fire in an arson attack, resulting in the building's closure. The extent of the damage was such that it was not cost effective to reinstate the County Court in the building. A 12 week formal consultation exercise on proposals to close Leigh County Court closed 5 January 2010. The consultation document was sent to individuals and stakeholder groups including Andy Burnham, MP for Leigh, the local Courts Board, the District Council, the judiciary, solicitors, representative bodies, Local Authorities, court users and staff members. A total of 16 responses to the consultation paper were received. Of these, six responses were from national organisations representing legal or judicial interests. The other 10 were from local respondents – the Leigh Member of Parliament, two from local solicitors, two from members of HMCS staff, one from a residents' forum and four linked to the local authority.

8.8 The concerns that were raised covered a range of points but focussed on the impact on local people and business, and that closure would make access to justice more difficult by increasing travelling time and

costs. The responses were considered in full but it was determined that to provide a county court service in Leigh would require significant financial expenditure in order to equip a building (be it a reconstruction, new build or shared premises) that could offer the necessary standard of facilities to satisfy court users and HMCS requirements. It was concluded that the proposal to close Leigh County Court was the best option to achieve a more efficient service delivery to the public in the Leigh area.

9. Guidance

9.1. The nature of these orders makes it unnecessary to publish guidance in relation to them.

9.2 Court users in areas where a county court is to close will be informed in advance of the closure date by way of notices displayed at court. The Lord Chancellor has made a Direction which sets out the details of the localities affected by a county court closure and which court districts they will now come within. The Direction can be found on the Ministry of Justice website at:

http://www.justice.gov.uk/publications/bills-and-acts/index.htm

10. Impact

10.1 Impact Assessments were prepared for each of the 16 area consultations. These identified some increase in the cost of travelling to court for some court users although there would be benefits due to the receiving courts generally providing a better and fuller range of facilities. Significant financial savings for HMCTS were also identified.

10.2 16 Equality Impact Assessments were also undertaken which showed that, overall, while some court users would be affected by longer journeys, the quality of facilities at remaining courts, including those for disabled court users and victims and witnesses, would be better than at closing courts.

11. Regulating small businesses

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The Ministry of Justice plans to conduct a Post Implementation Review to evaluate the changes to the provision of magistrates' and county court services in England and Wales. The Post Implementation Review will assess the impact of a reduced court estate on the public and the Justice System to inform potential future court estate strategy. Further detail can be found in the Impact Assessments accompanying

each of the consultation response papers on the Departmental website at:

http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/consultations/consultations-closed-with-response.htm

13. Contact

13.1 Lee Howse at the Ministry of Justice Tel: 0203 334 6298 or e-mail: lee.howse@hmcourts-service.gsi.gov.uk can answer any queries regarding the instrument.