EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEDURE ACT 1997 (AMENDMENT) ORDER 2017

2017 No. 1148 (L. 18)

1. Introduction

1.1 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 instrument

2.1 This Statutory Instrument amends section 2 of the Civil Procedure Act 1997 to widen the judicial membership of the Civil Procedure Rule Committee to enable the appointment of a judge with particular experience of the law applicable in Wales

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 Civil Procedure Rule Committee, and charged it with making the Civil Procedure Rules.

4.2 Section 2 of that Act specifies the membership of the Committee and the method of appointing members, and establishes the judicial cohort. Judicial members are appointed by the Lord Chief Justice following consultation with the Lord Chancellor.

4.3 Section 2A enables the Lord Chancellor to amend section 2, including provisions with regard to the membership of the Committee, with the concurrence of the Lord Chief Justice, following consultation with the Head of Civil Justice (the Master of the Rolls) and the Deputy Head (if there is one).

5. Extent and Territorial Application

5.1 This extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

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 The growth and expansion of the legislative competence of the Welsh Assembly has led to a divergence as between the laws of England and those of Wales. This divergence is particularly acute in terms of housing law, but it also extends to welfare law and others.

7.2 The Civil Procedure Rule Committee has reached the conclusion that effective rule-making would require an additional judicial member drawn from either the Senior Courts or the Circuit or district bench who has particular experience of the law applicable in Wales.

7.3 Appointing a judge on this basis will have the effect of adding a fully independent member of the committee, who will be able to provide a more informed view on matters pertaining to Wales and civil procedure generally. The Civil Procedure Rule Committee will therefore be more effective.

Consolidation

7.4 There are no plans to consolidate the act at this time.

8. Consultation outcome

8.1 There was no formal consultation on this amendment. However as noted above the catalyst has been the increase in Welsh-centric legislation relevant to the civil courts. Senior members of the judiciary, and the committee as a whole were consulted on how do meets this challenge; it is with their agreement that this exercise was commenced.

9. Guidance

9.1 The issue of guidance does not arise at this time.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector. Members of the CPRC are not paid, receive no additional allowance, and require no extra support. Any additional claims for travel and subsistence will be met out of the existing allocation.

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 The Civil Procedure Rules Committee is an arm's length body as such it has an internal program of review, and publishes an annual report

13. Contact

13.1 David Hamilton at the Ministry of Justice Telephone:07956418231or email: david.hamilton5@hmcts.gsi.gov.uk can answer any queries regarding the instrument.