EXPLANATORY MEMORANDUM TO

THE CONTRACTING OUT (ADMINISTRATIVE AND OTHER COURT STAFF) (AMENDMENT) ORDER 2008

2008 No. 2791

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

2. Description

2.1 This instrument amends article 2 of the Contracting Out (Administrative and Other Court Staff) Order 2001 (S.I. 2001/3698) to enable the Lord Chancellor to enter into contracts for the provision of administrative staff to the Court of Protection and magistrates' courts as well as to the Supreme Court and county courts.

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

None

4. Legislative Background

4.1 The 2001 Order was made pursuant to section 27(3) of the Courts Act 1971 (c. 23) (and by that section as applied by section 4(7) of the Taxes Management Act 1970 (c. 9) and section 82(3) of the Value Added Tax Act 1994 (c. 23)). Section 27 of the 1971 Act permitted the Lord Chancellor to appoint such officers and other staff for the Supreme Court and county courts for the purposes of, among other things, maintaining an administrative court service and generally carrying out the administrative work of those courts. Article 2 of the 2001 Order therefore applies only to the Supreme Court and the county courts.

4.2 Section 27 of the 1971 Act was repealed by paragraph 139(a) of Schedule 8 to the Courts Act 2003 (c. 39)[1]. Section 1 of that Act confers a duty on the Lord Chancellor to ensure that there is an efficient and effective system to support the carrying on of the business of the Supreme Court, the Court of Protection, the county courts and the magistrates' courts, and that appropriate services are provided for those courts.

4.3 The transitional provision in paragraph 2 of Schedule 9 to the 2003 Act states that any order made under section 27(3) of the 1971 Act shall have effect as if made under section 2 of the 2003 Act. Therefore it could be argued that no amendment to the 2001 Order is required to enable the Lord Chancellor to

[1] As amended by paragraph 47(2) of Schedule 6 to the Mental Capacity Act 2005 (c. 9)

contract out the provision of services in the magistrates' courts. However, for the purposes of transparency, it was thought appropriate to expressly include magistrates' courts in the amending Order.

5. Territorial Extent and Application

This instrument applies to England and Wales

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The amendment to article 2 of the 2001 Order allows the Lord Chancellor to enter into contacts for the provision of staff and services to carry out the administrative functions of the Court of Protection and the magistrates' courts, in addition to the Supreme Court and the county courts. The need to include the Court of Protection in the 2001 Order arose because of the amendment by the Mental Capacity Act 2005 to section 1 of the 2003 Act to include the Court of Protection in the list of courts to which the Lord Chancellor owes a duty. The addition of the magistrates' courts is for purposes of clarity.

7.2 All of the offices listed in section 2(7) of the 2003 Act were consulted and they all stated that they had no comments or objections to the draft Order. No time limit was imposed for the consultation. In addition, the Magistrates Association and the National Bench Chairmen's Forum were consulted. A month was allowed for this consultation. The replies of both organisations indicated that they had no objections. Finally, the relevant trades union was advised of the proposal but was not formally consulted.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies and does not impose new burdens.

9. Contact

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can answer any queries regarding the instrument.