EXPLANATORY MEMORANDUM TO

THE COUNTY COURTS (INTEREST ON JUDGMENT DEBTS) (AMENDMENT) ORDER 2019

2019 No. 903 (L. 4)

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 The Order amends article 2 of the County Courts (Interest on Judgment Debts) Order 1991 (the 1991 Order) so as to align the provisions with rule 40.8 of the Civil Procedure Rules 1998 (the CPR) as that rule applies to the County Court. CPR rule 40.8 enables the court to order judgment debt interest to run from the date of the judgment or a different, including earlier, date; but under article 2 of the 1991 Order, however, in the County Court judgment debt interest can only run from the date of the judgment or, if the amount of the judgment debt is to be determined at a later date, from that later date. The amendments will ensure that the County Court has the more flexible powers envisaged by CPR rule 40.8.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The mismatch between CPR rule 40.8 and the 1991 Order arose in the case of *Simcoe v Jacuzzi UK Plc Group* [2012] EWCA Civ 137, and the Court of Appeal noted that CPR rule 40.8 was arguably ineffective in relation to the County Court in so far as it envisaged a power for the County Court to order judgment debt interest to run from a date other than the date of the judgment or of the determination of judgment debt if

later. This was because power to make such provision in relation to the County Court was conferred by section 74 of the County Courts Act 1984 and required the consent of the Treasury for its exercise; and the power to make Civil Procedure Rules under section 1 of the Civil Procedure Act 1997 did not displace that provision and that requirement for its exercise. This instrument makes provision under section 74 of the County Courts Act 1984 which aligns the power of the County Court more clearly with that envisaged by CPR rule 40.8.

7. Policy background

What is being done and why?

7.1 The Ministry of Justice publicly committed to clarifying the position following the highlighting by the *Simcoe* case of the mismatch between CPR rule 40.8 and the 1991 Order. The effect of the mismatch has been that the County Court, operating under the provisions of the 1991 Order, cannot backdate interest (from the date of judgment or determination of the amount of the judgment, to an earlier date). This can mean that the unsuccessful party benefits from only having to pay interest from the date of judgment (or determination of the amount of judgment) and the successful party incurs a corresponding detriment, compared to the position had the proceedings been in the High Court. This, potentially, raises issues of access to justice as the same provisions are not being applied across the civil courts.

7.2 The amendments are confined to article 2 of the 1991 Order, which sets out the general rule that interest on a judgment debt in the County Court runs either from the date of the judgment (paragraph (1) of the article) or, where the amount is to be determined at a later date, from that later date (paragraph (2) of the article). Three amendments are made. The first two amendments qualify the general rule as set out in paragraphs (1) and (2) by adding at the end of each of those paragraphs the rider that they operate "unless the court orders otherwise"; and the third amendment inserts a new paragraph (2A) which provides that court may order interest to run from a date earlier than the date on which the judgment in question was delivered. Thus the County Court is empowered in the same way as the High Court, as envisaged by CPR rule 40.8, to order interest to run not only from the date judgment is given, but also from a different, including earlier, date; and the mismatch between that rule and the 1991 Order is addressed. These amendments will provide consistency across the civil courts and allow the flexibility when ordering interest on judgment debts which was envisaged when CPR rule 40.8 was made.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate this amendment.

10. Consultation outcome

10.1 The Civil Procedure Rule Committee (CPRC) was consulted in 2018 on the best approach to take; the Senior Costs Judge and others were also consulted on the procedures currently followed. The CPRC recommended that the 1991 Order should

be amended to bring it in line with rule 40.8 of the CPR, so as to allow for the County Court to be able, as the High Court is able, to order interest to run from a different, including earlier, date.

11. Guidance

11.1 Amendments to the civil justice system are drawn to the attention of participants, to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant legal publications by the CPR Committee secretariat; as well as by publicity within HM Courts and Tribunals Service. News of changes affecting the civil jurisdiction, are published on the Ministry of Justice website at https://www.justice.gov.uk/courts/procedure-rules/civil.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The amendments made by this instrument align the position with that under rule 40.8 of the CPR. The CPR, including rule 40.8, are kept under continuous review by the Civil Procedure Rule Committee, and may be subject to amendment accordingly. Should such review indicate a need for rule 40.8 to be amended, this would require consideration of whether the 1991 Order should also be amended.

15. Contact

15.1 Marcia Williams at the Ministry of Justice Telephone: 0203 334 4289 or email: Marcia.williams@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Parkin, Deputy Director for Civil Justice and Law, Access to Justice Policy, Justice and Courts Policy Group, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lucy Frazer QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.