EXPLANATORY MEMORANDUM TO

THE COURT FUNDS (AMENDMENT NO. 2) RULES 2023

2023 No. 1356

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Court Funds Rules 2011 to allow for the payment into the Consolidated Fund of funds in the Unclaimed Balances account maintained by the Court Funds Office which have been dormant for at least 30 years, provided certain conditions are fulfilled (further details are provided at paragraphs 6 and 7 below). It also corrects an error in one of the amendments made by S.I. 2023/987 to make provision for deposit of funds in court by electronic means.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument includes provision (explained in paragraph 7.7 below) to correct an error identified by the Committee in its Third Report of Session 2023-24.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution 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. Extent and Territorial Application

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

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 negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Court Funds Office administers funds which are vested in the Accountant General under section 38 of the Administration of Justice Act 1982, which makes provision about the Accountant General's functions in relation to such funds, and for rules to be made about administration and management of funds in court including the deposit, payment, delivery and transfer in, into and out of any court of funds in court. The rules are presently the Court Funds Rules 2011 (S.I. 2011/1734) made (as is this instrument) under subsections (7) to (9) of that section.

6.2 As with any financial institution the CFO holds dormant funds in an account of unclaimed funds (for which provision is presently made under rule 36 of the Court Funds Rules 2011). There was previously no provision as to the retention of funds which are paid into court but which are not claimed, and in the absence of a person coming forward to claim such funds they would remain in the CFO in perpetuity. However, section 350 of the Finance (No. 2) Act 2023 amended section 38(8) of the Administration of Justice Act 1982 by inserting a new sub-paragraph enabling Court Funds Rules to make provision for the payment of a sum of money into the Consolidated Fund if the sum has been vested in the Accountant General for at least 30 years and any conditions prescribed by the rules are met. This instrument makes that provision.

7. Policy background

What is being done and why?

7.1 Under the Administration of Justice Act 1982 (AJA), the Court Funds Office (CFO), acting on behalf of the Accountant General, provides investment and banking administration services for clients whose money is held under the control of the civil courts of England and Wales, including the Court of Protection.

7.2 The Accountant General holds £3bn of funds with circa 164,500 clients[1] which have been paid into court under his custodianship. Funds held by the Accountant General originate from three main sources:

- Damages awarded to children as a result of civil legal action in the county court in England or Wales or the High Court of Justice. These assets are held on the child's behalf until the child reaches majority (18 years of age) and submits a request for payment out.
- Assets belonging to people who lack the capacity to manage their own financial affairs where the Court of Protection has appointed someone else to manage their affairs.
- Cases where money is held in court pending settlement of civil court action, or on behalf of dissenting shareholders, widows and other clients whose funds are held under a variety of different statutes.

7.3 Up until now funds held in accounts that have been classified as dormant, which is when there have been no transactions or communication other than the standard accruing of interest for a period, are transferred to the unclaimed funds account where the funds would stay in perpetuity until a successful claim is made upon the account. This has resulted in a large quantity of funds remaining in the unclaimed funds account with almost no possibility of ever being claimed due to the difficulty in finding the true beneficiary. Following the amendment of section 38(8) of the Administration of Justice Act 1982 outlined in paragraph 6.2 above, it is now possible for unclaimed funds to be paid into the Consolidated Fund provided they have been vested in the Accountant General for at least 30 years, if Court Funds Rules so provide. The basis on which the amendment of section 38(8) was made is that all appropriate checks/searches having been undertaken and opportunities provided for beneficiaries to be alerted/come forward, funds which have been dormant for 30 years or more are overwhelmingly likely to remain dormant and unclaimed thereafter, so that the alternative approaches are either for the funds to remain in perpetuity under

[1] CFO fund and client numbers are based on CFO reporting from 01 November 2023.

the control of the CFO and unable to be deployed in any way, or for them to be able to be deployed for public benefit via the Consolidated Fund. The function of this instrument is to provide for a mechanism for the latter approach as authorised by section 38(8) (as amended).

Explanations

What did any law do before the changes to be made by this instrument?

7.4 Prior to the amendment of section 38(8) of the Administration of Justice Act 1982 by section 350 of the Finance (No. 2) Act 2023 to allow for funds to be paid into the Consolidated Fund, there was no mechanism in place for unclaimed funds to be deployed in any way other than remaining under the control of the CFO in perpetuity.

Why is it being changed?

7.5 Many of the funds in the unclaimed funds account are unlikely ever to be claimed due to the difficulty in finding the true beneficiary, meaning that nobody derives any benefit from them; and it becomes progressively less likely with the passage of time that a claim will ever materialise. For unclaimed funds which have been vested in the Accountant General for 30 years or more, it is overwhelmingly unlikely that there will ever be a claim resulting in payment out; and this change provides a mechanism for the transfer to the Consolidated Fund of such funds and so allows for these funds to be utilised within Government for wider benefit.

What will it now do?

7.6 The new rule 41A of the Court Funds Rules 2011 inserted by rule 2(3) of this instrument will allow the Accountant General to pay into the Consolidated Fund funds held in accounts that have been dormant for more than 30 years (and in so doing, to extinguish any claim on them), provided the conditions set out in the new rule are met. Those conditions are in essence that the fund is dormant and has been so for at least 30 years; and that the Accountant General is satisfied that all reasonable steps were taken during that 30 years to trace the person entitled to the fund, and that that person cannot be traced. The conditions for dormancy are that the account is already in the unclaimed funds account, and that for the last 30 years nothing has been done in relation to the fund other than moving it into the unclaimed funds account, automatically crediting interest or dividends and making any compulsory dealings with securities comprised in the fund, or an unsuccessful claim to the fund (if there is a claim or communication indicating a possible claim, the fund cannot be paid out unless and until that has been resolved, which is to say that the claim has been withdrawn or has been made and been unsuccessful, or in the case of communication about a possible claim, it can be confirmed that no such claim has materialised or will materialise). In addition, there is a "backstop" provision by virtue of which the Accountant General is not to pay a fund into the Consolidated Fund if the Accountant General considers there to be good reason not to make that payment.

7.7 *Correction of provision made by S.I. 2023/987.* S.I. 2023/987, among other changes, amended the Court Funds Rules 2011 to enable requests for payment of funds into court to be made by electronic means. To this end, it inserted a new rule 6A, which listed documents in electronic form required to be submitted as part of a request made by electronic means in the various cases for which rule 6 makes provision for paper requests. The documents required by rule 6A for any case are in effect electronic versions of those required for a paper request in the corresponding case in rule 6. Rule

6A(3)(d), however, which makes provision corresponding to that for paper requests made by rule 6(5), does not reflect the wording of rule 6(5) in the way that the other provisions of rule 6A(3) mirror the wording for the corresponding cases in rule 6. It has been concluded that it would be preferable for rule 6A(3)(d) to reflect the wording of rule 6(5) more closely; and rule 2(2) of this instrument substitutes a new rule 6A(3)(d) which does that.

8. European Union Withdrawal and Future Relationship

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 have been few amendments to the Court Funds Rules 2011, and there are no present plans for consolidation.

10. Consultation outcome

10.1 A public consultation was undertaken in July and August 2023 on the mechanisms for implementing the new policy for payment of funds into the Consolidated Fund, before proceeding to amend the Court Funds Rules.

10.2 The consultation ran from 7 July to 31 August 2023. There was very little comment on the detail of the proposed mechanism; but in response to a comment about the need for a "lead-in" period to enable enquiries by or on behalf of potential claimants, a four-month notice period before the initial payment into the Consolidated Fund of funds already meeting the criteria for such payment was agreed. This four-month period will commence on 1st February 2024 when this instrument comes into force, and is underpinned by the transitional provision made by rule 3 of this instrument.

11. Guidance

11.1 The CFO customer services team will be the first point of contact and will offer advice to anyone who needs help or further guidance. Up to date commentary will also be provided to the publishers of the Civil Court Practice and the White Book Service and via the CFO pages on www.gov.uk.

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 A full Impact Assessment has not been prepared for this instrument because we do not anticipate the changes presented here to be significant enough to necessitate the completion of a full IA.

13. Regulating small business

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

14. Monitoring & review

14.1 Monitoring and reviewing this process will be via client feedback, regular meetings with stakeholders and ongoing discussions.

14.2 The instrument does not require a statutory review clause.

15. Contact

15.1 Elizabeth Jeary, Head of Service, Policy, Legislation and Communications for the Office of the Accountant General Telephone: 07580 906768 or email: Elizabeth.Jeary@justice.gov.uk can answer any queries regarding the instrument.

15.2 Vignes Mahalingam, Deputy Director for Commercial Finance & Income, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State & Lord Chancellor, Alex Chalk at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.