EXPLANATORY MEMORANDUM TO

THE COURT FUNDS (AMENDMENT) RULES 2023

2023 No. 987

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.

2. Purpose of the instrument

2.1 This Statutory Instrument amends the Court Funds Rules 2011 to allow for the digitalisation of the submission of requests for deposit and for payment out, whilst retaining the option to request deposit or payment out via paper-based applications. There are also various changes of a more minor and technical nature, to reflect amendments to the Civil Procedure Rules, to amend the rules on payment into interest-bearing accounts and accrual of interest, to update the details of a court and to correct a typographical error.

2.2 Further details are included at paragraphs 6 and 7 below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 Accountant General administers client funds held under the control of civil courts in England and Wales. Section 38 of the Administration of Justice Act 1982, under which this instrument is made, 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 current Court Funds Rules 2011 (CFR) require that a request to deposit or a request for payment out is made by sending a hard copy form and necessary order or other documentation to the CFO by post, unless the Accountant General directs otherwise (Rules 3, 6-8, 12, 16, 17, 22 to 29, 39 and 41). Electronic requests are, therefore, only accepted in exceptional circumstances such as when funds are being deposited from abroad or where the deposit is particularly large. No discretion is currently allowed for electronic requests for payment out. The amended

CFR will allow for the digitalisation of the submission of requests for deposit and for payment out whilst retaining the option to request deposit or payment out via paper-based applications for those users who cannot or chose not to use electronic methods. The CFR (with the exception of minor consequential amendments relating to legal aid made in 2013) have not been amended since they came into force, and a number of other minor and technical amendments have become necessary over that period – those amendments are also included in this instrument.

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 £2.5bn of funds with circa 167,000 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 their 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 The current CFR require that a request to deposit or a request for payment out is made by sending a hard copy form and necessary order or other documentation to the CFO by post unless the Accountant General directs otherwise.

Explanations

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

7.4 All requests for deposit or payment out were to be made by post unless the Accountant General directed otherwise on an exception basis.

Why is it being changed?

7.5 Many users, including solicitors and members of the public routinely complete forms and applications via electronic means and there is an expectation that a service such as the CFO will also offer an electronic option for submitting forms. During the COVID-19 pandemic lockdowns, electronic requests were allowed as an exception and many users find it difficult to understand why this process cannot continue.

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

What will it now do?

7.6 The changes will allow the Accountant General to offer CFO users the choice to make a request for deposit or payment via electronic means once the necessary process changes are in place, whilst retaining the option to make these applications by post for users who do not have the means to apply electronically or choose not to.

7.7 Minor and technical changes. This instrument also makes a number of minor technical changes to the CFR, as follows—

- Amendments to rule 8 to change references to the Mayor's and City of London Court to refer to the County Court at Central London;
- Amendments to rule 11 in consequence of the Director of Savings having been appointed under rule 5;
- Amendments to rule 13 to change the days of the month on which accrued interest is credited to an account;
- Amending rule 13 and 27 to reflect changes in the Civil Procedure Rules to which those rules refer.

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 Not applicable.

10. Consultation outcome

10.1 No formal public consultation has taken place because the electronic request change is facilitative, being an enhancement to the service which does not remove the existing options to request deposit or payment by post. However, a limited user testing exercise was undertaken with a selected group of CFO users including both clients and HMCTS staff and there was a definite desire expressed by users to be able to make requests for deposit and payment by electronic means.

11. Guidance

11.1 The CFO has a customer services team who 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 the user testing completed identified a general desire to move to requests for deposit & payment by electronic means. There is a government wide objective to move to digital by default and there will remain an option to make these requests via a paper-based request.

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 approach to monitoring of this legislation is that the new CFR will be subject to review and evaluation as part of the wider CFO modernisation programme. The new CFR will also be monitored through client feedback, regular meetings with the judiciary and other stakeholders and ongoing discussions with the new third party service provider.

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.