EXPLANATORY MEMORANDUM TO

THE COURT FUNDS (AMENDMENT) RULES 2026

2026 No. 593

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. Declaration

2.1 Sarah Sackman, Minister of State for Courts and Legal Services at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Vignes Mahalingam, Deputy Accountant General, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Elizabeth Jeary at the Office of the Accountant General, Telephone: 07580 906 768 or email: Elizabeth.Jeary@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The S.I.'s primary purpose is to amend the Court Funds Rules 2011 (S.I. 2011/1734) ("CFR 2011") to clarify that use of the special account is limited to funds held for children and those lacking capacity. Further, the S.I. substitutes Rule 27 to correct drafting errors in the Court Funds (Amendment) Rules 2025 (S.I. 2025/1275) ("2025 Amendment Rules").

4.2 The S.I. Registrar has been consulted, and the free issue procedure has been applied because part of the S.I. corrects errors.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Under the Administration of Justice Act 1982 (AJA), the Court Funds Office (CFO), being the accounting office 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.

5.2 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).
- 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.

5.3 The CFR 2011 set out the requirements for depositing, accruing interest and paying out funds. The Accountant General is required by the CFR 2011 to maintain two interest bearing accounts, the special account and the basic account. The special account pays a higher rate of interest than the basic account. The policy intent is to provide a higher rate of interest on the special account for children and persons lacking capacity to manage their own financial affairs as these cases tend to be held for a longer period and are for clients who are unable to make their own financial decisions. The basic account is used for funds held in other circumstances, for example for on-going court cases involving commercial disputes, where a client has died, or the beneficiary has reached 18 years of age and is able to claim their fund.

5.4 This S.I. amends Rule 11 of the CFR 2011 to limit investment in the special account to funds held for children and persons lacking capacity (in line with the previous position under the Court Funds Rules 1987 (S.I. 1987/821)).

5.5 An amendment to Rule 27 of the CFR 2011 is required to correct drafting errors made by the Amendment Rules 2025; the entirety of Rule 27 is substituted to provide clarity.

6. Legislative and Legal Context

How has the law changed?

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 amendment to Rule 11 will specify that the special account is only to be used for funds to which children or persons lacking capacity are entitled.

6.2 Rule 27 applies where a payment is to be made to a client out of a fund in court under the Civil Procedure Rules 1998. The substituted Rule 27 corrects drafting errors in the 2025 Amendment Rules. Rule 27(2) provided that the Accountant General shall make a payment if provided with either a request from a claimant or confirmation from a defendant. The Rule now reflects that what is required for a payment to be made to a claimant out of a fund in court is both a request from a claimant and confirmation from a defendant. The entire Rule is substituted to correct an ambiguity caused by a drafting error, noted by the Joint Committee on Statutory Instruments, in the 2025 Amendment Rules as to whether they omitted the remainder of Rule 27.

Why was this approach taken to change the law?

6.3 To ensure that use of the special account is limited to funds to which children or persons lacking capacity are entitled, an amendment to Rule 11 of the CFR 2011 is required.

6.4 A substitution of Rule 27 is necessary to correct a previous amendment to clarify the ability of the Accountant General to make a payment from a fund in court and to remove any ambiguity as to the content of the remainder of the Rule.

7. Consultation

Summary of consultation outcome and methodology

7.1 No formal consultation has taken place as there is no change to the policy intent.

8. Applicable Guidance

8.1 The CFO has a customer services team who will be the first point of contact and provide 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.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impact on business is minimal, and the S.I. relates to updating existing Court Funds Rules.

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is via client feedback, regular meetings with stakeholders and ongoing discussions.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Joint Committee on Statutory Instruments, in its Forty-seventh Report of Session 2024-6[1], reported the 2025 Amendment Rules on the ground they were defectively drafted. Rule 7 of those Rules substituted the words in Rule 27 of the 2011 Rules from "either" to the end of Rule 27. However, as the word "either" was used in three places in Rule 27 it was unclear to which "either" Rule 7 was intended to refer. The

[1] https://committees.parliament.uk/publications/51465/documents/285583/default/

Department acknowledged the error and confirmed its intention was to substitute the words from "either" in paragraph (2) to the end of paragraph (2) only and undertook to correct the error, which this S.I. does.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").