EXPLANATORY MEMORANDUM TO

THE COURTS AND TRIBUNALS (JUDICIARY AND FUNCTIONS OF STAFF) ACT 2018 (CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISION) REGULATIONS 2020

2020 No. 100

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 These Regulations revoke or amend provision in secondary legislation which refers to the offices of a justices' clerk or assistant to a justices' clerk, since those offices will no longer exist, as a result of the changes made by the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 ("the 2018 Act"). These Regulations also make transitional and saving provision.

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 and 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 2018 Act abolishes the roles of justices' clerk and assistant to a justices' clerk and replaces them with provision for members of court staff to be authorised by the Lord Chief Justice, having met the necessary qualifications, to perform functions (presently performed by justices' clerks and assistants) of giving legal advice to lay judges in the family court and justices of the peace.

6.2 Those changes are made by amendments to and repeals of provisions in Acts which relate to justices' clerks and assistants to justices' clerks. Those amendments and repeals are contained in the Schedule to the 2018 Act; and section 3 of the 2018 Act enables regulations to make consequential, transitional, transitory and saving

provision in relation to the provision made by the Schedule. These Regulations make that provision.

7. Policy background

What is being done and why?

7.1 The Schedule to the 2018 Act abolishes the role of justices' clerk and assistant to a justices' clerk and makes provision for duly authorised court staff to be able to provide legal advice to lay justices and lay judges in the family court, and to exercise specified judicial functions where rules of court so provide. As part of these changes, provisions in Acts relating or referring to justices' clerks or assistants are amended or repealed, and in some cases replaced by provisions relating to duly authorised court staff. These Regulations revoke or amend, consequential on the provisions of the Schedule, provisions in secondary legislation which refer to the offices of a justices' clerk or assistant to a justices' clerk (since their offices will no longer exist as a result of the changes made by the 2018 Act). They also make transitional provision, and saving provision, for example for provision in certain rules of court which is identical to that which could be made under the new provisions.

7.2 A number of statutory instruments assign functions to justices' clerks, who are legally qualified, and who may delegate their functions to others, in the majority of cases to legally qualified assistants. The policy aim of these Regulations is to ensure the continued delivery of justice by ensuring that these functions continue to be carried out by suitably qualified people.

7.3 This will ensure that the provisions in secondary legislation for authorised court officers and justices of the peace exercising judicial functions and giving legal advice are clear. Without the provision made by these Regulations, secondary legislation would contain references to justices' clerks when this role no longer exists, causing confusion for the public, judiciary and court users.

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 2018.

9. Consolidation

9.1 In England and Wales none is required.

10. Consultation outcome

10.1 There has been no formal public consultation on this instrument. There has however been informal technical consultation with stakeholders such as HMCTS and the courts which has informed the drafting of these Regulations

11. Guidance

11.1 HMCTS has undertaken training and provided guidance to reflect the changes before any new staff are in place and will ensure that court officers are authorised as appropriate before performing the relevant functions to which authorisation relates.

12. Impact

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

12.2 These Regulations have no impact of themselves on the public sector, beyond the changes made by the 2018 Act.

12.3 An Impact Assessment has not been prepared for this instrument. An Impact assessment was prepared for the 2018 Act covering 'legal advice and judicial functions' and nothing has changed since then to require revisiting that assessment. The Impact Assessment can be viewed at the link below- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767589/catjafs-act-authorised-staff-ia.pdf

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 effect of the changes made by these regulations and the operation and exercise of functions of authorised court staff will be reviewed by the Heads of Legal Operations in HMCTS, as part of the wider review of the 2018 Act to make courts more efficient.

15. Contact

15.1 Olga Kostiw at the Ministry of Justice, Criminal Courts Policy, Telephone: 07892 724990 or email: olga.kostiw@justice.gov.uk can be contacted with any queries regarding this instrument.

15.2 Matthew Gould, Deputy Director of Criminal Courts and Criminal Law Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp MP, the Parliamentary Under-Secretary of State for Justice can confirm that this Explanatory Memorandum meets the required standard.