EXPLANATORY MEMORANDUM TO

THE ACCESS TO JUSTICE ACT 1999 (DESTINATION OF APPEALS) ORDER

2016

2016 No. XXX (L. XXX)

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 This instrument makes provisions as to determining the court to which an appeal will lie against a decision in civil proceedings.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This instrument applies only to England and Wales because it relates to the distribution of business within the courts in England and Wales. It is made under the powers contained in section 56 of Access to Justice Act 1999 ("the 1999 Act"). This section extends only to England and Wales (by virtue of section 109(6) of that Act). The instrument does not have minor or consequential effects outside England and Wales.

3.3 In the view of the Ministry of Justice, for the purposes of House of Commons Standing Order 83P, the subject matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly, if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter, and the Scottish Parliament if equivalent provisions in relation to Scotland were included in an Act of the Scottish Parliament.

3.4 The Ministry of Justice has reached this view because it considers that the primary purpose of the instrument relates to the distribution of business within the court system, which is within the devolved legislative competence of both of the devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedule 2 or 3 to the Northern Ireland Act1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act).

3.5 Disregarding minor or consequential changes, the territorial application of this instrument relates exclusively to England and Wales.

4. Legislative Context

4.1 Part 56 of the Access to Justice Act 1999 empowers the Lord Chancellor, to provide, by order, that appeals which would otherwise lie to the County Court, the High Court or the Court of Appeal should lie instead to another of those courts, as specified in the Order. The Access to Justice Act 1999 (Destination of Appeals) Order 2000 ("the 2000 Order"), currently makes provision in this regard and, in particular, alters the routes of appeal provided for in section 16(1) of the Senior Courts Act 1981 and section 77 of the County Courts Act 1984. The Access to Justice Act 1999 (Destination of Appeals) Order 2016 ("the 2016 Order") revokes and replaces the 2000 Order and changes the routes of appeal so that, subject to some exceptions, appeals from both interim and final decisions in the County Court now lie to the High Court instead of the Court of Appeal.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister of State for Civil Justice (Lords Minister), Lord Faulks, considers the provisions of the Access to Justice Act 1999 (Destination of Appeals) Order 2016 are compatible with the Convention rights.

7. Policy background

7.1 There are a number of legislative provisions which determine the appropriate court of appeal in civil proceedings. These may be changed by section 56 of the 1999 Act. In particular, the County Courts Act 1984, provides that appeals from decisions in the County Court shall lie to the Court of Appeal. However, the 2000 Order provides for two exceptions to this provision, namely: (i) appeals from interim decisions of the County Court, other than decisions of District Judges lie to the High Court, unless (ii) the appeal is from a decision of a District Judge, in which case the appeal lies to a Circuit Judge. This exception is itself subject to a further exception which provides that appeals against final decisions of both District and Circuit Judges in multi-track cases and decisions from (non-insolvency) Companies Acts proceedings, probate claims and specialist courts, lie directly to the Court of Appeal.

7.2 The distinction made in the 2000 Order between "final" and "interim" decisions in cases allocated to the Multi-Track causes confusion in cases where both the type of the proceedings in question and the judge's decision are relevant in deciding the route of appeal. In addition, the 2000 Order makes separate provision for appeals against final decisions made in the specialist courts (for example the Mercantile or Technology and Construction Court) which, whether originating in a County Court or the High Court, are made to the Court of Appeal.

7.3 A considerable amount of time is spent by court staff trying to decide whether an appeal lies to the High Court or the Court of Appeal and litigants frequently file appeals in courts which do not have the jurisdiction to deal with them, causing delay and additional expense, and sometimes they lose their opportunity to appeal altogether.

7.4 In order to clarify and simplify the appeals process, the 2016 Order is intended to ensure that, as far as possible, an appeal should lie to the next level of judge. A key change in the new Order is the removal of the distinction between interim and final decisions and, in turn, the exceptions by which an appeal against certain final decisions currently lie to the Court of Appeal.

7.5 Rather than a hearing before a court of up to three Lord Justices of Appeal in the Court of Appeal, appeals routed to the High Court by this instrument will be heard by a single judge with the relevant expertise for the matter in hand, sitting in the appropriate Division of the High Court. This will reduce the senior judicial resource required for these types of appeals. Re-routing certain appeals to the High Court instead of the Court of Appeal may also lead to a reduction in the time taken for these appeals to be heard. By reducing the number of appeals to the Court of Appeal, this change may also benefit the flow of cases in that court, allowing for more effective and expeditious determinations of other appeals.

7.6 The new Order also reflects amendments made by the Crime and Courts Act 2013 to section 5 of the County Courts Act 1984, which widened considerably the definition of "judge of the county court". This will ensure that appeals from decisions of a District Judge (or a judge of the County Court of similar level) sitting in the County Court continue to be heard by a Circuit Judge (or another judge of the County Court of similar level) rather than the High Court. An exception is made in respect of proceedings under the Companies Acts so that, in such cases, an appeal will lie to the High Court.

7.7 The proposed changes under the new Order will provide for better use of judicial resources and court staff time, as well as better justice for litigants, making it much easier for litigants to understand the correct route of appeal in each case, unless the judge orders otherwise.

7.8 Court users of the Court of Appeal may see a reduction in waiting times as fewer appeals will be heard in the Court of Appeal. The High Court has the capacity to absorb the extra appeals thus lowering waiting times.

Consolidation

7.9 There is currently no intention to undertake a consolidation exercise.

8. Consultation outcome

8.1 Under section 56(4) of the Access to Justice Act 1999, there is a requirement to consult with the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division and the Chancellor of the High Court before making this instrument. All have indicated that they are content with provisions of the instrument.

9. Guidance

9.1 The Civil Procedure Rules as amended by this instrument will be available to the public and practitioners on the Ministry of Justice website https://www.justice.gov.uk/courts/procedure-rules/civil .

9.2 In addition, amendments will be made to the Practice Direction on Appeals which supplements the Civil procedure Rules. These will assist the judiciary and

practitioners in understanding the practical implications of the amendments made by the instrument.

9.3 Guidance to court staff will be updated to reflect the procedural changes arising from this instrument. Leaflets published by HMCTS for staff to provide to members of the public to inform them of the correct route of appeal will be updated.

10. Impact

10.1 There will be a small impact on businesses, charities or voluntary bodies who offer legal advice, as they will need to be aware of the amendments made by this instrument and how to apply them.

10.2 This instrument has no impact on the public sector save that Her Majesty's Courts and Tribunals Service ("HMCTS") staff will need to be aware of the amendments and how to apply them.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The changes made by this instrument are procedural changes which may increase timeliness and efficiency for those involved in the appeals process.

12.2 A statutory review clause under the Small Business, Enterprise and Employment Act 2015 has not been included in this instrument, as the provisions of this instrument relate to the distribution of business within the courts in England and Wales, and so do not impose regulation on businesses or voluntary and community bodies.

13. Contact

13.1 Anne Marie Goddard at the Ministry of Justice Telephone: 020 3334 6330 or email: Annemarie.Goddard@justice.gsi.gov.uk can answer any queries regarding the instrument.