EXPLANATORY MEMORANDUM TO

THE COUNTY COURT JURISDICTION ORDER 2014

2014 No. XXX (L. XX)

1. This explanatory memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1.1. This instrument ("the 2014 Order") revokes and replaces the County Courts Jurisdiction Order 1981 (S.I. 1981/1123) ('the 1981 order") and, in particular, increases the financial limit of the equity jurisdiction of the County Court from £30,000 to £350,000. The intention is to re-balance the equity jurisdiction between the High Court and the County Court. The Order will come into force on 22nd April 2014 or, if made on or after that date, the day after the day on which it is made.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Context

4.1.1. The 2014 Order is made under section 145 of the County Courts Act 1984 (c.28) ("the 1984 Act"). Section 145 enables, by Order in Council, the financial jurisdiction of the County Court to be set in a discrete number of cases. The maximum financial jurisdiction is referred to in section 145 as the "county court limit". The power under section 145 is limited to certain proceedings specified in the 1984 Act (for example, equity and contentious probate) and proceedings in other enactments (for example, certain proceedings under the Trustee Act 1925) which make provision for the application of the "county court limit". Different limits may be applied to different proceedings.

4.1.2. The 1981 Order was made under section 192 of the County Courts Act 1959 (c.22) ("the 1959 Act"). However, following the repeal of the 1959 Act, the 1981 Order was preserved and continued to apply to proceedings previously referred to in the 1959 Act (but which were, in fact, subject to section 145 of the 1984 Act) until such time as an Order was made under section 145.

4.1.3. The 1981 Order was previously amended by the High Court and County Courts Jurisdiction Order 1991 (S.I. 1991/724), but that Order did not make any amendment in respect of those proceedings subject to section 145. Now that the county court limit in respect of the County Court's equity jurisdiction is to be increased, it is considered appropriate to revoke the 1981 Order, while preserving the earlier county court limits in respect of other proceedings to which that Order applied.

4.1.4. Accordingly, save for increasing the county court limit in respect of equity proceedings, the 2014 Order does not alter the County Court's jurisdiction in respect of any other proceedings previously specified in the 1981 Order. However, references to legislation no longer subject to, but which remained on the face of, the 1981 Order have not been replicated in this Order. On that basis, the Order does not make reference to what was formally section 62 (probate) in the 1959 Act. The County Court's jurisdiction in

respect of the corresponding provision in the 1984 Act, namely section 32 (contentious probate), will no longer be subject to the county court limit when provisions under the Crime and Courts Act 2013 come into force, but will instead be subject to section 1 of the Courts and Legal Services Act 1990 (c.41). Further, with regard to the County Court's equity jurisdiction, a reference in the 1981 Order to section 52 in the 1959 Act has been replaced with a reference to the corresponding provision in the 1984 Act, namely section 23.

4.1.5. In addition, the 1981 Order prescribed the county courts' jurisdiction in respect of a number of proceedings listed in the First Schedule to the 1959 Act without specifying what those proceedings were. Following amendment of the 1981 Order and the repeal of other provisions in the First Schedule, few provisions referred to in that Schedule remain subject to the 1981 Order. On that basis, the remaining provisions (namely certain proceedings under the Administration of Estates Act 1925 and the Trustee Act 1925) have been separately identified in the 2014 Order and reference is no longer made to the 1959 Act.

5. Territorial Extent and Application

5.1. This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1. Shailesh Vara**,** Parliamentary Under Secretary of State, Ministry of Justice, has made the following statement regarding Human Rights:

"In my view the provisions of the County Court Jurisdiction Order 2014 are compatible with the Convention rights".

7. Policy background

- ***What is being done and why?***

7.1. The equity jurisdiction of the courts covers a range of cases which includes proceedings relating to the administration of the estate of a deceased person, the execution or declaration of Trust and the foreclosure or redemption of mortgages. The High Court and the county courts have concurrent jurisdiction to hear cases involving equity and there is a financial limit of £30,000 which determines where such cases should be commenced and below which proceedings should be commenced in the county courts. This limit was last set in the 1981 Order.

7.2. In January 2008, the Judicial Executive Board (JEB), chaired by the then Lord Chief Justice, commissioned Sir Henry Brooke to conduct an inquiry into the question of civil court unification. Following extensive consultation with the judiciary and Her Majesty's Courts and Tribunals Service (HMCTS), Sir Henry published his report, *Should the Civil Courts be Unified?*[1], in August 2008. In the report, Sir Henry did not recommend civil court unification, but instead made a number of recommendations to improve the administration of civil justice and to provide a more efficient use of judicial resources. One of the recommendations was that the financial limit, which divides the equity jurisdiction between the High Court and the county courts, should be removed or raised by a large amount to enable the county court's to deal with more of these cases. This recommendation was supported by senior judges who suggested

[1]Which is available at: http://www.judiciary.gov.uk/publications-and-reports/reports/civil/civil-courts-unification

either an increase in the Inheritance Tax threshold, which at the time stood at £312,000, or for an unlimited County Court jurisdiction in equity and other Chancery proceedings. The JEB considered the evidence put forward in the report and concluded that the limit should be increased to £350,000. The report was then presented to the MoJ for consideration and implementation.

7.3. Subsequent analysis of house prices, by the MoJ, confirmed that the £350,000 increase is justified on the basis that when the limit was set at £30,000, in 1981, average house prices were around £25,000[2] with comparatively little variation across the country. As a result the county courts were able to deal with the majority of cases involving domestic property. However, by May 2010, average house prices in the UK had risen to over £169,162 and in the second quarter of 2010 the average house prices in London was £290,249. As a result, few cases involving domestic property are now issued in and dealt with in the county courts despite the fact that there has been no increase in the intrinsic complexity of such cases. This has resulted in the High Court unnecessarily having to deal with cases of relatively low complexity, thereby placing unnecessary pressure on High Court resources.

7.4. On the basis of this analysis and further engagement with the judiciary, the MoJ proposed to implement the recommendation subject to the outcome of a full public consultation.

7.5. The MoJ consulted on the proposed £350,000 increase in its twelve-week public consultation entitled: "*Solving disputes in the county courts: creating a simpler, quicker and more proportionate system*[3], published in March 2011.

7.6. On 9 February 2012, accompanied by a written ministerial statement (House of Commons, Official Report, column 53WS)[4], the Government published its response to the consultation (CM 8274)[5], announcing its intention to implement the proposals, including the proposed increase in the County Court equity jurisdiction. The County Court Jurisdiction Order 2014 implements that proposal.

- ***Consolidation***

7.7. The 2014 Order makes only small amendments to secondary legislation and the Department has no plans to consolidate any legislation as a result of those amendments.

8. Consultation outcome

8.1. The consultation lasted for twelve-weeks 29 March 2011 to 30 June 2011) and copies of the consultation paper were sent to:

- **Judicial and legal bodies** including the Senior Judiciary, the Council of HM Circuit Judges, the Association of District Judges, The Law Society, The Bar Council, and the Institute of Legal Executives.

[2] Nationwide house price index, quarter, 1981, based on average UK property
[3] CP6/2011, which is available at: http://webarchive.nationalarchives.gov.uk/20110406054056/http://www.justice.gov.uk/docs/solving-disputes-county-courts.pdf
[4] Which is available at: http://www.publications.parliament.uk/pa/cm201212/cmhansrd/chan264.pdf
[5] Which is available at: https://consult.justice.gov.uk/digital-communications/county_court_disputes/results/solving-disputes-in-cc-response.pdf

- **Consumer bodies, representative bodies and business organisations** for example The County Court Users' Association, British Bankers Association, Confederation of British Industry, Finance and Leasing Association, The Trade Union Congress.

8.2. Responses were also welcomed from anyone with an interest or views on the proposals. Responses from individual practitioners, or members of the public were also sought.

8.3. The MoJ consultation paper posed two questions in relation to the equity jurisdiction. The first asked:

Question 60*: Do you agree that the current financial limit of £30,000 for County Court equity jurisdiction is too low? If not, please explain why.*

8.4. A total of 122 respondents answered this question, of which 109 respondents (89%) agreed that the current equity limit is too low and therefore an increase was needed, and 13 respondents (11%) disagreed.

8.5. A large majority of the 109 respondents in favour of an increase in the equity limit were legal practitioners. Others in favour included members of the judiciary and judicial bodies, regulatory bodies, representative bodies, business representative bodies, Local Authorities, Mediators and Mediation Advocates, academics, Citizens Advice Bureaus, financial organisations, members of the public, and HMCTS. The reasons given for support included that:

- County Court judges should be able to deal with cases within the proposed financial limit of £350,000: the current limit of £30,000 is too low.
- Experience has shown that it is already commonplace for cases to be transferred back to the County Court to be dealt with even if they are over the County Court limit.
- Transfer between courts takes time and can be costly.
- The current financial limit has become detached from contemporary property values and has not kept pace with inflation and the rising value of properties, which has risen dramatically since the limit was last set.

8.6. Further analysis of house prices in relation to the last point at 8.5, confirms that an increase is valid for that basis. Since 1981 when the limit was last set, house prices in the UK have increased by over 500% in nominal terms. The intention for setting a financial limit, in the first place, was to provide a benchmark which would ensure that only appropriate cases are heard in the Chancery Division of the High Court in order to restrict the volume of cases that are issued there. At the time, that restriction was limited to a financial value of £30,000 given the cost of residential properties averaged around £25,000. However, in 2012 average house prices in the United Kingdom had risen to over £160,000 (over six times their level in 1981 in nominal terms) and around £300,000 in London. The implication is that the £30,000 limit is now too low because inflation had eroded its value to a point where it is now far more restrictive than originally intended.

8.7. Some of the respondents against an increase in the equity limit suggested that there should be no limit at all, or that complexity rather than financial value should be the driving factor determining where a case is heard.

8.8. The second question in the consultation paper was:

***Question 61**: If your answer to Q60 is yes, do you consider that the financial limit should be increased to (i) £350,000 or (ii) some other figure (please state with reasons)?*

8.9. The question was answered by 129 respondents of whom 80 (62%) agreed with the proposed £350,000 limit. Those that did not agree proposed a wide range of other limits, from £50,000 to an unlimited amount.

8.10. Overall, the responses to the two questions suggest that businesses and court users are supportive of an increase in the equity jurisdiction of the County Court to £350,000, as are the judiciary and HMCTS.

9. Guidance

9.1. Information about the Order will be published on the judicial website, when it is laid, alerting the Judiciary that the Order is being considered in both Houses of Parliament. Information will also be placed on the HMCS website informing court staff of the impending changes if the Order is approved.

10. Impact

10.1. An Impact Assessment has not been provided for this instrument. However, an Impact Assessment[6] and Equality Impact Assessment[7] covering four recommendations set out in the Brooke report, including the recommendation to increase the equity jurisdiction of the county court, were published alongside the consultation paper and response document. That Impact Assessment was cleared, with a green rating, by the Regulatory Policy Committee.

10.2. This instrument has no impact on the public sector.

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring & review

12.1. We do not envisage that the Order will create significant additional workload for County Courts. The Impact Assessment indicates that between 250 and 500 cases may be affected and therefore County Court work might be increased by up to 500 cases. This will not represent a significant increase in the County Court's workload.

13. Contact

13.1. Any enquiries about the contents of this memorandum should be addressed to: Meg Oghoetuoma, Civil Justice Reforms, Access to Justice Policy, Ministry of Justice, 4th floor (Post Point 4.37), 102 Petty France, London, SW1H 9AH or by e-mail at magdalene.oghoetuoma@justice.gsi.gov.uk. Telephone: 020 3334 3195.

[6] Which is available at: https://consult.justice.gov.uk/digital-communications/county_court_disputes/results/reforming-civil-jurisdiction-limits-response-ia.pdf
[7] Which is available at https://consult.justice.gov.uk/digital-communications/county_court_disputes/results/reforming-civil-jurisdiction-limits-response-eia.pdf