EXPLANATORY MEMORANDUM TO

THE CRIME AND COURTS ACT 2013 (COUNTY COURT AND FAMILY COURT: CONSEQUENTIAL PROVISION) ORDER 2014

2014 No. [DRAFT]

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes amendments to both primary and secondary legislation which are needed in consequence of the provisions in the Crime and Courts Act 2013 ("the 2013 Act") establishing a family court for England and Wales and a county court for England and Wales.

2.2 It amends the Access to Justice Act 1999 to provide for legal aid for advocacy in the family court and to reflect the fact that the magistrates' courts will no longer hear family proceedings. The purpose of the instrument is to reflect in the Access to Justice Act 1999 the creation of the family court.

2.3 It also makes amendments to the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 ("the 1991 Order") to provide that interest will carry on judgments or orders made, or registered, in the family court as it did in a county court prior to the implementation of the family court. The amendments to the 1991 Order also amend various references from "a county court" to "the county court". The purpose being to reflect the creation of the family court in section 74 of the County Courts Act 1984 and to reflect the creation of the family court and the single county court in the 1991 Order.

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

3.1 To the extent that it amends primary legislation, the Order has been approved by Parliamentary Counsel.

3.2 The Committee will note that this Order is stated to come into force on the day after the day on which it is made. This drafting device has been used as at the time of laying this Order in draft we can not be sure when the Order will be made as it is subject to the affirmative resolution procedure. The new family court and county court will have been commenced on 22 April.

4. Legislative Context

4.1 This order makes amendments to primary legislation required because the 2013 Act provides for the setting up of a national family court for England and Wales, so references to courts dealing with family proceedings need to be changed. An earlier Order made amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to ensure legal aid for advocacy is available for cases that will come before the new court. This Order makes the equivalent amendments to ensure legal aid can be provided for advocacy in the family court (in pending cases governed by the Access to Justice Act 1999) and to correctly reflect the jurisdiction of the magistrates' court.

4.2 This order also makes amendments to the County Courts Act 1984 and the 1991 Order so that provisions in respect of interest will apply in respect of judgments or orders made by, or registered in, the family court in the same way as those provisions applied in respect of such judgments or orders in a county court prior to the creation of the family court. These amendments also change references in the 1991 Order from "a county court" to "the county court" to reflect the fact that there is now a single county court for England and Wales.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Shailesh Vara, has made the following statement regarding Human Rights:

In my view the provisions of The Crime and Courts Act 2013 (County Court and Family Court: Consequential Provision) Order 2014 are compatible with the Convention rights.

7. Policy background

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

7.1 In its response to the Family Justice Review, published in February 2012, the Government accepted the recommendations that a single family court should be created to deal with family proceedings, replacing the current three tier of court structure, with the High Court retaining exclusive jurisdiction for certain matters. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was made in the 2013 Act. The 2013 Act makes a large number of changes to primary legislation required to enable the family court to be set up. Two earlier orders made further changes to

primary and secondary legislation required in consequence of setting up the family court. This Order makes further such consequential changes.

7.2 Currently family proceedings, and proceedings for the variation or enforcement of orders made in family proceedings, can be heard in a magistrates' court, a county court or the High Court.

7.3 The new family court which was commenced on 22 April will be able to deal with all family proceedings, except for a limited number of matters which will be exclusively reserved to the High Court. Family proceedings courts will cease to exist and magistrates' courts and the new single county court will not be able to deal with family proceedings.

7.4 The amendments made by Article 3 of this Order are required to enable the provision of legal aid for advocacy in the family court, in circumstances set out in legal aid legislation, and to remove references to matters which will no longer be dealt with in magistrates' courts.

7.5 The amendments made by Article 2 and 4 are required so that provisions in respect of interest on judgments or orders will apply in the family court (as specified) as well as the county court. The single county court provided for also in the Crime and Courts Act 2013 was also commenced on 22 April and so references to "a county court" have been amended to "the county court" to reflect the single county court.

- ***Consolidation***

7.6 There are no current plans to consolidate the Access to Justice Act 1999 or the County Courts Act 1984 or the 1991 Order amended by this Order.

8. Consultation outcome

8.1 The setting up of a single family court was a recommendation of the independently chaired Family Justice Review. The Review Panel's public consultation found there was overwhelming support for the single Family Court - 309 (75%) out of 412 respondents agreed a single Family Court should be established, including members of the public and family justice professionals. The Review Panel's final report can be accessed at: https://www.gov.uk/government/publications/family-justice-review-final-report.

8.2 The Government has not carried out a separate consultation on the changes required to primary and secondary legislation as the amendments made by this Order do not alter the substance of the primary or secondary legislation. They are necessary to ensure that the remaining law not captured by the earlier consequential orders will continue to operate as intended when the new family court commences.

9. Guidance

9.1 This Order and all the other instruments related to the setting up of the family court will be published on www.legislation.gov.uk.

10. Impact

10.1 There may be a secondary impact on legal professions, who are small businesses, who will need to familiarise themselves with the legislative changes. The impact of the changes on their businesses is minimal. The consequential changes necessary to the family legal aid remuneration schemes as a result of the implementation of the new single Family Court aim to make no change to the fee income of providers. There is no impact on charities or voluntary bodies other than where it affects a contractual relationship between the Legal Aid Agency and those providing family legal aid services.

10.2 There is no impact on public bodies as the consequential amendments provide for a change in venue and not procedures.

10.3 The Impact Assessment was first published in December 2013 and covered the first instrument making consequential amendments to primary legislation. This has been amended to include the impact of this order and is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. There is a second Impact Assessment relating to the introduction of the Family Court which was published alongside earlier legislation. Reference is made to the second Impact Assessment in the one attached here.

11. Regulating small business

11.1 The legislation does apply to small businesses in so far as it enables advocacy to be paid for proceedings in the family court. The impact of the changes on their businesses is minimal.

12. Monitoring & review

12.1 The implementation of the new family court will be reviewed within five years of implementation.

13. Contact

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