EXPLANATORY MEMORANDUM TO

THE FAMILY COURT (CONTEMPT OF COURT) (POWERS) REGULATIONS 2014

2014 No. 833

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 limits the committal and fining powers in relation to certain types of contempt of court for judges below circuit judge level in the single family court.

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

3.1 The Committee's attention is drawn to the two matters set out below.

3.2 The first matter is that in making these Regulations, reliance is placed on section 13 of the Interpretation Act 1978. There are two reasons for this.

3.3 The first reason is that it is considered that the provision made by these Regulations will be necessary for the purpose of giving full effect to section 31A of the Matrimonial and Family Proceedings Act 1984, as inserted by section 17(3) of the Crime and Courts Act 2013 when that section comes fully into force. In essence, without the provision made by these Regulations, the policy objective of the family court will not be able to be met in full.

3.4 The second reason for placing reliance on section 13 of the Interpretation Act 1978 is that there is a concern that if the approach were taken to commence the provisions in the Crime and Courts Act 2013 which amend the powers to make these Regulations, the ability to make provision under the current powers conferred by those provisions as unamended would be lost. This could be avoided by the inclusion in any commencement order of some complex savings provisions, but it is considered expedient to avoid this additional complexity by anticipatory exercise of the relevant powers.

3.5 The second matter drawn to the attention of the Committee is that these Regulations form only part of a package of statutory instruments which will be needed for the purposes of the family court. The instruments will be made and laid at various dates in 2014 with the intention that all of these associated statutory instruments will come into force on the same date. A separate Explanatory Memorandum will be published for each instrument.

3.6 Despite the links outlined above, there is no intention to lay any negative statutory instrument which includes any provision which is dependent on the approval by Parliament of an affirmative statutory instrument, until that approval has been given.

4. Legislative Context

4.1 The regulations and this explanatory memorandum should be read in conjunction with section 17 of the Crime and Courts Act 2013[1].

4.2 Section 17 and Schedules 10 and 11 of the Crime and Courts Act 2013 establish a single family court for England and Wales and transfer jurisdiction for what were family proceedings in magistrates' courts to the new family court. This includes a power for the Lord Chancellor, in consultation with the Lord Chief Justice, to make regulations limiting or removing powers exercisable by the family court when dealing with a person for contempt of court. Unless such regulations are made, all judges in the family court will have the powers of the High Court.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

The family court

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 tiers of court structure. The High Court should retain exclusive jurisdiction in a limited number of areas, such as the exercise of its inherent jurisdiction. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was enacted by Parliament in the Crime and Courts Act 2013.

7.2 The general policy objective is to create a new family court which is flexible, which allows for efficient use of judicial and court resources, and which is easier for users to navigate. It should reduce delay and, where possible, enable increased judicial continuity and leadership in dealing with cases. It should be able to deal with all relevant family matters, and in practice should be the only court able to deal with the majority of

[1] http://www.legislation.gov.uk/ukpga/2013/22/section/17

family matters. As part of improvements to efficiency, there should be a reduced need to transfer cases between courts and appeals should be heard at the most appropriate level.

7.3 A package of secondary legislation is now being brought forward to implement the single family court in April 2014. These regulations form one part of that package.

The current situation

7.4 Currently a judge's committal and fining powers when dealing with a person for contempt of court are derived from the court in which the judge is sitting. The current maximum powers are summarised in the table below.

Court	*Breach of judgment or order*	*Contempt in the face of the court*
Magistrates' Court		
• Lay magistrates	Two months/up to £5,000 fine	One month/up to £2,500 fine
• District Judges (Magistrates' Court)	Two months/up to £5,000 fine	One month/up to £2,500 fine
County Court		
• District Judges	Two years/unlimited fine	One month/up to £2,500 fine
• Circuit Judges	Two years/unlimited fine	One month/up to £2,500 fine
High Court	Two years/unlimited fine	Two years/unlimited fine

The proposed legislation

7.5 Judges from lay magistrates to judges of High Court judge level will all be able to sit in the new single family court. With such a broad range of judges sitting in one court the intention is that judges will derive their committal and fining powers from their level of seniority. Section 14(4B) of the Contempt of Court Act 1981 and section 31E of the Matrimonial and Family Proceedings Act 1984 provide that all judges sitting in the family court will have the powers currently available to the High Court, but section 31H of the 1984 Act allows for regulations to be made to restrict or remove powers in relation to contempt of court. It has always been the intention that such regulations would be made, in order to ensure that judges have powers which are proportionate and appropriate to their level of seniority. In order to achieve this objective, it is proposed to restrict the committal and fining powers of judges to their current powers, with certain exceptions.

7.6 The first exception is in relation to judges of circuit judge level (as defined in the Family Court (Composition and Distribution of Business) Rules 2014) who will have the committal powers of a judge of High Court judge level. The reason for this exception is to maximise efficiency in dealing with more serious instances of contempt of court within the family court as a whole.

7.7 The second exception relates to District Judges (Magistrates' Courts). A District Judge (Magistrates' Courts) is a professional district judge who currently sits in the Family Proceedings Courts, magistrates' courts and Youth Courts. They currently have the committal and fining powers of the magistrates' court. In the family court, in line with the Government's acceptance of a recommendation in the Family Justice Review, it is intended that District Judges (Magistrates' Courts) will sit as judges of district judge level and will have the same powers as any other district judge in the family court.

7.8 The third exception relates to fining powers, where it is proposed to standardise the fines which may be imposed for contempt of court in the family court. Currently, different judges in different courts may impose fines of varying levels for various types of contempt. In the family court, all judges, except judges of High Court judge level who will have unlimited fining powers, will be able to impose a fine up to the maximum specified by level five of the standard scale of fines for summary offences. This is currently £5,000.

7.9 The proposed maximum powers are summarised in the table below.

Court	Breach of judgment or order	Contempt in the face of the court
Magistrates' Court		
• Lay magistrates	Two months/up to Level 5 fine	One month/up to Level 5 fine
• District Judges (Magistrates' Court)	Two years/up to Level 5 fine	One month/up to Level 5 fine
County Court		
• District Judges	Two years/up to Level 5 fine	One month/up to Level 5 fine
• Circuit Judges	Two years/up to Level 5 fine	Two years/up to Level 5 fine
High Court	Two years/unlimited fine	Two years/unlimited fine

7.10 The proposed powers will only apply to instances of contempt that are alleged to have been committed before 22nd April 2014 (the date the single family court legislation comes into force).

Consolidation

7.11 This is the first instrument made under the new power, and so no question of consolidation arises.

8. Consultation outcome

8.1 The President of the Family Division, as the Lord Chancellor's nominee, and the Family Procedure Rule Committee (FPRC) have been consulted in the course of the drafting of this instrument. The instrument as drafted reflects the outcome of these consultations in respect of the powers to be allowed to Circuit Judges and District Judges (Magistrates' Court), but falls short of their desire to see increased powers for judges at all levels.

9. Guidance

9.1 Training for justices' clerks, assistant justices' clerks, the judiciary, magistracy and court staff will be provided prior to the implementation of the new family court.

10. Impact

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

10.2 The impact on the public sector is that it is expected that there may be some transitional costs to HMCTS as a result of this measure. It is also expected that there will be small increased costs to HMCTS, the Prison Service and the Probation Service if circuit judges and District Judges (Magistrates' Court) make use of their higher committal powers. HMCTS may receive small benefit from increased fine income as a result of this measure.

10.3 The Impact Assessment covering this instrument is attached to this memorandum and has already been published at www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The use of committal and fining powers for contempt of court will be monitored. The functioning of the new family court will be reviewed within five years of implementation.

13. Contact

Liz Eaton at the Ministry of Justice, Tel: 020 3334 5619 or email: liz.eaton@justice.gsi.gov.uk can answer any queries regarding this instrument.