EXPLANATORY MEMORANDUM TO

THE JUSTICES' CLERKS AND ASSISTANTS (AMENDMENTS) RULES 2015

2015 No. 890 (L.12)

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 amends the Justices' Clerks and Assistants Rules 2014 (S.I. 2014/603) which authorise justices' clerks and assistants to justices' clerks to perform certain functions of the family court. Amendments are required as functions of the court have been created in secondary legislation concerning family justice and further functions relating to undefended divorce have been identified as being suitable for justices' clerks and their assistants to perform.

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

3.1 None.

4. Legislative Context

4.1 Section 27 of the Courts Act 2003 provides for the appointment by the Lord Chancellor of justices' clerks and assistants to justices' clerks, and section 31O of the Matrimonial and Family Proceedings Act 1984 allows the Lord Chancellor (with the agreement of the Lord Chief Justice or his nominated judicial office holder, and after consulting the Family Procedure Rule Committee) to make Rules specifying functions of the family court or of a judge of the court which may be carried out by justices' clerks or assistants to justices' clerks. This power was used to make the Justices' Clerks and Assistants Rules 2014, which came into force on 22 April 2014 (the date on which the family court came into operation).

4.2 This instrument makes amendments to those 2014 Rules to enable justices' clerks and their assistants to deal with undefended divorce applications more efficiently, including being able to exercise a new power of the court to make appropriate directions in relation to a hearing on costs. This new power is in rule 7.21(3) of the Family Procedure Rules 2010, inserted by the Family Procedure (Amendment) Rules 2015, which are being laid before Parliament at the same time as this instrument.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Family Justice Review made a number of recommendations concerning the role justices' clerks and their assistants should play in a new single family court and how divorce applications could be handled more efficiently and effectively. It was agreed by the Family Procedure Rule Committee, the President of the Family Division and Parliament (in passing the Crime and Courts Act 2013, which provided for the establishment of the family court) that justices' clerks and their assistants should be able to perform certain functions of the court relating to undefended divorce cases so that District Judges could be freed up to deal with more complex cases.

7.2 In making arrangements for assistant justices' clerks and assistants to deal with undefended divorce cases, it became apparent that unnecessary delay is being caused because in cases where the divorce petition needs to be amended, the case must be referred to a District Judge to give permission to amend the divorce petition before it can be returned to the applicant to amend. Giving justices' clerks and their assistants the ability to give permission to amend a petition in an undefended divorce case would reduce the number of cases needing to be referred to a judge.

7.3 It is the policy intention that undefended divorce applications should be dealt with by assistant justices' clerks as effectively and efficiently as possible. With the ability to give permission to file amendments to a petition, therefore, should go the ability to give permission to file a supplemental application and to make consequential directions regarding service and parties in undefended cases where an amended or supplemental application is made.

7.4 Enabling justices' clerks and their assistants to give directions under the new rule 7.21(3) of the Family Procedure Rules 2010 regarding hearings for costs in undefended divorce cases will allow them to make timely decisions, for instance, as to the hearing venue.

7.5 In summary, this instrument makes amendments to the Justices' Clerks and Assistants Rules 2014 to allow justices' clerks and their assistants to exercise additional powers of the court in undefended divorce cases, which should reduce delay and make more efficient use of judicial and court resources.

Consolidation

7.6 This is the third instrument made under the power in section 31O Matrimonial and Family Proceedings Act 1984. There are no current plans to consolidate the legislation.

8. Consultation outcome

8.1 The Family Procedure Rule Committee has been consulted in the course of the drafting of this instrument. Her Majesty's Courts and Tribunals Service ("HMCTS") has also been consulted throughout the drafting of the instrument. The instrument as drafted reflects the outcome of these consultations and the President of the Family Division has agreed this instrument.

9. Guidance

9.1 The changes to the rules affect assistant justices' clerks who will be dealing with undefended divorce applications. The guidance available to assistant justices' clerks will be amended to reflect these changes.

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 will be some initial costs to HMCTS, including updating training and guidance materials, as a result of this measure. But it is also expected that there will be some efficiency savings by freeing up District Judges to deal with more complex cases as a result of this measure. Currently around 20% of undefended divorce cases being considered by assistant justices' clerks need to be referred to District Judges to give permission to amend before they can be returned to the applicants for amendment.

10.3 An Impact Assessment was completed for all the legislation completed for the single family court, which included the Justices' Clerks and Assistants (Amendment) Rules 2014, which allowed justices' clerks and their assistants to perform functions relating to undefended divorce. The extra functions they will be able to perform as a result of this instrument should help realise the benefits set out in the Impact Assessment for the single family court and so a further Impact Assessment was not considered necessary. The original Impact Assessment is available at www.legislation.gov.uk/uksi/2014/603/resources.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The day-to-day role played by justices' clerks and assistant justices' clerks will be reviewed on an ongoing basis by HMCTS in order to ensure the most efficient and

effective deployment of resources within the provision of these Rules, and that the functions being carried out by justices' clerks and their assistants are appropriate.

12.2 The functioning of the new family court, including the role played by justices' clerks and assistant justices' clerks in performing functions of the court will be reviewed within five years of implementation.

13. Contact

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