EXPLANATORY MEMORANDUM TO

THE JUSTICES OF THE PEACE ACT 1949 (COMPENSATION) (REVOCATION) REGULATIONS 2011

2011 No. 1721

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 These Regulations revoke the Justices of the Peace Act 1949 (Compensation) Regulations 1978 (S.I. 1978/1682) (known as "the Crombie Regulations") which provide for compensation for loss of office or loss or diminution of emoluments of persons holding the office of justices' clerk and certain other employees who assist those clerks in the performance of their duties since on or before 2nd February 1995.

2.2 Regulation 3 makes saving provisions. The revocation of the Crombie Regulations does not affect those whose entitlements relate to an event which occurred before the 5th of August 2011 when these revoking regulations come into force.

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

3.1 None

4. Legislative Context

4.1 The Lord Chancellor makes the Regulations in exercise of the powers conferred by paragraph 11 of Schedule 9 to the Courts Act 2003.

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

- What is being done and why

7.1 Justices' Clerks and their assistants are currently entitled to receive higher compensation than other civil servants in certain circumstances - for loss of office, resettlement and retirement. Following consultation the Ministry of Justice has decided to revoke the entitlement.

7.2 It is the opinion of the Ministry of Justice that "Crombie" arrangements are unsustainable in terms of cost, a barrier to modernization, and unfair to the extent that they offer significantly more beneficial compensation arrangements to a particular group of staff.

7.3 These arrangements date back to 1949 at which time the governance and management of magistrates' courts was very different from the arrangements that exist today and when there was no mandatory statutory compensation for clerks or their assistants who had lost their job as a result of redundancy.

7.4 The Ministry of Justice considers the "Crombie" regulations are inappropriate as all civil servants now benefit from the protection of the Civil Service Compensation Scheme.

8. Consultation outcome

8.1 The Ministry of Justice conducted an 8 week consultation exercise in relation to its proposals to revoke the "Crombie" regulations. This exercise commenced on the 9th of May 2011 and closed on the 1st of July 2011. The exercise was not conducted as a full public consultation as it had no impact on the wider public. Instead the exercise was targeted and open to all HMCTS staff and stakeholders thought to have a clear interest.

8.2 Stakeholders invited to provide a response to the consultation included the Magistrates' Association, the National Bench Chairs Forum, Justices Clerks Society and Department Trade Union Representatives.

8.3 A total of twenty two responses to the consultation were received. The majority of responses came from current members of staff in HMCTS and included individuals both directly affected by the proposed change and others who wanted to register their opinion on the proposal.

8.4 The majority of individuals who responded expressed views in opposition to the proposal. However some of these also accepted in principle that the current arrangements needed to be reformed. Despite the relatively small number of responses it was also clear that there is a divergence of opinion amongst staff on the continuation of the regulations within HMCTS.

8.5 The principle of whether the proposed revocation of regulations is 'fair' was challenged in a number of responses. The main argument was that employees with a current "Crombie" expectation should continue to receive the protection for the remainder of their employment with HMCTS because it had become an accepted feature of their employment. The view put forward by the Ministry in the consultation that these arrangements were unfair relative to the compensation arrangements available for civil servants in general was not broadly accepted by those who acknowledged a personal interest in the regulations.

8.6 A common feature of the responses received in opposition to the proposal was the view that "Crombie" entitlement was "contractual". This was expressed in a number of different ways but generally stemmed from the assumption that the longevity of the regulations made them an implied contractual term. In some cases this was accompanied by a request for HMCTS to consider transitional arrangements or to respect the "accrued rights" of staff currently protected by the regulations.

8.7 Some responses suggested that the reference to the Ministry's Managing Organisational Change Framework (MOCF) in the consultation document was disingenuous as there would (it was claimed) be less scope for reassignment of displaced employees in the future.

8.8 The Consultation Document explained that in the event of the "Crombie" regulations being revoked, the alternative basis for compensation in the event of loss of employment would be the Civil Service Compensation Scheme (CSCS). The Consultation also referred to the provision that CSCS allows for Civil Servants who are redundant (and who are above pension age) to use their compensation to enhance their civil service pension. This point drew a number of responses on the point that not all former Magistrates' Courts staff had transferred their legacy pension arrangements relating to their service prior to 2005 from the Local Government Pension Scheme (LGPS).

8.9 The Magistrates' Association, National Bench Chairmen's Forum and Justices' Clerks Society, responded to acknowledge the proposal but did not take a position on it.

8.10 Engagement with Ministry of Justice Trade Unions took place under the Employee Relations Framework. Management met with the Trade Unions during the consultation period and statistical information on the staff groups potentially affected by the proposal was exchanged. Both PCS and Prospect submitted formal responses opposing the proposed change.

9. Guidance

9.1 Guidance as such about the revocation is not considered necessary. The Ministry of Justice will publish a consultation response and will communicate information about revocation of the "Crombie" regulations to staff employed by Her Majesty's Courts and Tribunals Service.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument because it does not impose or reduce costs on business, charities or voluntary bodies. It does not affect the private or voluntary sector and the resulting change does not impose new costs of more than £5 million per annum

10.2 A full diversity equality impact assessment was completed prior to the start of the consultation exercise, and then reviewed at its conclusion taking account of the responses received.

10.3 Positive impacts from the proposals were identified by ensuring compensation arrangements apply uniformly to all legal staff. It was recognised that the proposals would reduce benefits for a specific group of staff identified. The impacts directly affect an in-scope group of 178 staff (Justices' Clerks & Deputy Justices' Clerks). A second group of 837 Legal Advisers were also identified as potentially eligible having been in employment prior to the qualification date (February 1995). HMCTS employees approximately 700 other legal staff in magistrates' courts were appointed after the qualification date and therefore are out of scope.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 No specific monitoring and review arrangements are required.

13. Contact

13.1 Mike Thomas at the Ministry of Justice / Her Majesty's Courts Service Tel: 07770 276673 or email: mike.thomas@hmcts.gsi.gov.uk can answer any queries regarding the instrument.