EXPLANATORY MEMORANDUM TO THE

JUSTICES OF THE PEACE (SIZE AND CHAIRMANSHIP OF BENCH) RULES 2005

2005 No.553

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty

2. Description

2.1. These Rules replace the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002 (SI 2002/193) and the amended rules 2004 (SI 2004/1514). The amended Rules 2004 changed the procedure for the appointment of Bench Chairs and Deputy Chairs contained in the Justices of the Peace (Size and Chairmanship of Bench Rules 2002

2.2. In the 2005 Rules all references to Justices' Chief Executives (JCE's) have been replaced with Justices' Clerks to reflect the abolition of the post of JCE and the reality of the Justices' Clerks undertaking the conduct of these elections on the ground. All references to Petty Session Areas have been replaced with new references to Local Justice Areas.

2.3. All references to Bench Training Development Committees and training (Sections 14-16 and 18 of the Bench Rules 2002 as amended in 2004) have been transferred from the Bench Rules into the Justices of the Peace (Training, Development and Appraisal) Rules 2005.

2.4. The rules are subject to negative resolution procedure.

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

3.1. None.

4. Legislative Background

4.1. The rules are made under section 17 of the Courts Act 2003. The Department amended the 2002 rules in 2004 in response to concerns expressed by the magistrates' courts community about the complexity of the existing rules for determining the results of bench elections and about unintended consequences which the rules can produce (see Policy Background below).

4.2. The 2005 Rules bring together Statutory Instruments 2002 No 193 and 2004 No 1514 and replaces all references to Justices' Chief Executives (JCE's) and Petty Session Areas with references to Justices' Clerks and Local Justice Areas respectively to reflect the statutory changes made under sections 6 and 8 of the Courts Act 2003.

5. Extent

5.1. This Order extends to England and Wales.

6. European Convention on Human Rights

6.1. There are no human rights implications.

7. Policy Background

7.1. Each year, the justices for each Local Justice Area must elect a chairman and one or more deputy chairmen from among their number. However, the previous system established by the 2002 rules had unintended and undesirable consequences. This system operated on the basis of voters ranking candidates nominated for election in order of preference, i.e. first, second, third choice vote etc, where the exercise is for the selection of 1 chairman and 1 deputy chairman. Where a clear winner did not emerge, there was a complex system of eliminating candidates with the fewest votes and redistributing their first choice votes to the second choice candidates of the magistrates who voted for them. This could allow a less popular candidate to be elected on just one first choice vote, over a more popular candidate who may have received a number of second choice votes but no first choice votes. The amending rules 2004 were aimed at redressing this unintended consequence.

7.2. The system under the 2002 rules had similar unintended consequences where more than one deputy chairman is to be chosen. Rule 8 of the 2002 rules provided for this to be determined solely on the number of the first choice votes cast.

7.3. The amending rules 2004 provided for one vote per vacancy for all elections of bench chairman and deputy chairmen. This applied in the 2004 bench elections. Voting magistrates were able to cast as many votes as there are vacancies (one per candidate). This is similar to the system currently used for filling vacancies at parish elections in 'single' ward electoral areas. This has prevented less popular candidates being elected on the basis of a single first-preference vote while others, with a number of second-choice votes, are passed over.

7.4. The amending rules 2004 also removed the existing ban on notifying candidates of the result of a postal ballot before the annual election meeting.

7.5. The changes made under the 2005 rules are outlined in paragraphs 3 and 4.

8. Impact

8.1. No Regulatory Impact Assessment has been prepared because there is no regulatory impact on any part of the private or voluntary sector. There are no implications for the Exchequer.

8.2. There will be no interest in the 2005 Rules outside the magistrates' courts community. Consultation (which includes mandatory consultation with the Magistrates Courts Rule Committee constituted under section 144 of the Magistrates' Courts Act 1980) has indicated support for the changes.

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