EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (AMENDMENT) RULES 2021

2021 No. 459

1. Introduction

1.1 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 Statutory Instrument provides procedural rules for applications that may be made in the magistrates' courts under Regulation 7 of the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (S.I. 2020/1311) (the Regulations). This instrument is intended to provide magistrates' courts with the powers to deal with applications made by a creditor in the circumstances set out in Regulation 7(2) of the Regulations, which states that during a moratorium period a creditor may not, in relation to any moratorium debt, take any steps unless permission for the creditor to take the step has been given by a court where legal proceedings concerning the debt have been or could be issued or started.

2.2 This Instrument amends the Magistrates' Courts Rules 1981 (S.I. 1981/552) to provide that, where the permission of a magistrates' court is required for the purposes of regulation 7(2)(b) of the Regulations, an application to a magistrates' court for such permission must be made by complaint in writing and the complainant must serve a copy of the summons on the relevant debt advice provider.

3. Matters of special interest to Parliament

Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument is made under section 144 of the Magistrates' Court Act 1980 (the 1980 Act), which confers power on the Lord Chief Justice, with the approval of the Lord Chancellor, to make rules for regulating and prescribing the procedure and practice to be followed in magistrates' courts, except in criminal matters.

6.2 The amendments made by this instrument, while of limited application for civil procedure in magistrates' courts, assist the implementation of the Regulations. Similar procedural arrangements to support the Regulations in the County Court have been made to the Civil Procedure Rules.

7. Policy background

What is being done and why?

7.1 The debt respite scheme, also known as breathing space, comes into effect on the 4 May 2021 under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (S.I. 2020/1311).

7.2 The protections afforded under the debt respite scheme apply to qualifying debts and prevent creditors from taking enforcement action. The protections apply for 60 days or, where a debtor is in a Mental Health Crisis Moratorium, for the duration of their crisis treatment and then for a further 30 days.

7.3 This change makes the procedural provision needed in respect of the debt respite scheme to enable applications by creditors who may wish to seek the permission of the court to take a step to enforce against an outstanding debt while a debtor is in a breathing space. The change will facilitate for example local authorities and the process at the magistrates' court to enforce council tax debt.

7.4 This amendment to the rules provides that local authorities will be able to apply for permission to take a step by summons on complaint. This will engage the standard procedures in Part II and VII of the Magistrates' Courts Act 1980 and the Magistrates' Court Rules 1981, in relation to service.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal)

9. Consolidation

9.1 The 1981 Rules have not been consolidated; the changes will help standardise procedures.

10. Consultation outcome

10.1 No formal consultation was undertaken on the Magistrates' Court Rules but the Secretary to the Justices' Clerks Society was consulted, and provided comments on a technical basis which were taken into account in the development of the rules.

10.2 The Debt Respite Scheme has been subject to a public consultation in 2018/2019. The consultation paper and response can be found here: https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-

on-a-policy-proposal, and Impact Assessment published in 2020: https://www.gov.uk/government/publications/breathing-space-impact-assessment.

11. Guidance

11.1 Government guidance on the scheme for debt advisers and creditors is available here: https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance.

11.2 Specific guidance for court users will be published alongside this guidance before the implementation date of 4th May 2021.

12. Impact

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

12.2 The impact on the public sector is confined to local authorities and the courts, and then only if a positive action is taken by the authority to make an application to the court.

12.3 For the reasons set out above an Impact Assessment has not been prepared for this instrument. As explained in paragraph 10.2 above, an Impact Assessment on the Debt Respite Scheme was published in 2020.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be via a general review of the Debt Respite Scheme which HMT plans to carry out.

15. Contact

15.1 David Hamilton at the Ministry of Justice Telephone: 07956418231 or email: david.hamilton5@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Parkin Deputy Director for Civil Justice and Law, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Wolfson QC, Parliamentary Under-Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.