EXPLANATORY MEMORANDUM TO THE

THE MAGISTRATES' COURTS (FUNCTIONS OF AUTHORISED PERSONS: CIVIL PROCEEDINGS) RULES 2020

2020 No. 284 (L. 9)

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 These Rules allow authorised court staff to exercise some judicial functions, under powers conferred by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 in relation to civil proceedings in magistrates' courts. They replace, with some amendments and additions, the Justices' Clerks' Rules 2005.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Sections 144 of the Magistrates' Courts Act 2003 provide for the Lord Chief Justice with the concurrence of the Lord Chancellor to make rules for regulating and prescribing the practice and procedure of magistrates' courts, except in relation to any criminal cause or matter.

6.2 These rules exercise the power conferred by section 67B of the Courts Act 2003, inserted by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 ("the 2018 Act") to make rules providing for the exercise of judicial functions by staff working for Her Majesty's Courts and Tribunals Service.

7. Policy background

What is being done and why?

7.1 Justices' clerks are the most senior lawyers employed by HMCTS, however their role is limited to the work of magistrates' courts and Family Courts. In order to broaden the role of these lawyers to provide leadership across all jurisdictions, the Government is removing this role and the role of justices' clerk's assistant from statute, while preserving the functions.

7.2 Currently, staff working for Her Majesty's Courts and Tribunals Service can be authorised to carry out judicial functions in different ways in different jurisdictions, either through rules of court or by practice direction. Justices' clerks and justices' clerks' assistants can already be authorised to carry out certain functions of the court. These functions are prescribed in the Justices' Clerks Rules 2005. The 2018 Act provides a consistent regime so that rules of court can be made providing for the exercise of "relevant judicial functions" in any jurisdiction.

7.3 Under section 67A of the Courts Act 2003, inserted by the 2018 Act, 'relevant judicial function' means a function of a court to which the general duty of the Lord Chancellor under section 1 of that Act applies and a judicial function of a person holding an office that entitles the person to exercise functions of such a court. This does not include (in a magistrates' court) any function so far as its exercise involves authorising a person's committal to prison, or a person's arrest. Under section 67B of the 2003 Act, the Rules may provide for the exercise of relevant judicial functions by persons who are members of court staff and who satisfy any requirements specified in the Rules as to qualifications or experience. Such a staff member may exercise such a function only if authorised to do so by the Lord Chief Justice.

7.4 Section 67C of the Courts Act 2003 requires the Lord Chief Justice to consider whether the rules should include a right for the parties to proceedings in which a decision is made by a member of court staff to have that decision reconsidered by a judicial office holder, and to give reasons if it makes rules that do not include such a right. These rules do not include rights of reconsideration of court officers' decisions. Some of the powers of authorised officers can only be exercised with the consent of the parties, for example an order for costs, making any right of reconsideration redundant and irrational. With others, existing law already supplies such a right of reconsideration in various ways. For example, the issue of a summons can be challenged by a defendant at first hearing, and subsequently by requiring a contested hearing. Any case management decision, such as an adjournment or order for the attendance of parties is liable to review before a full court. It is not proposed that authorised officers could make a final or terminating decision against the wish of the parties. Against every act carried out there is an existing right of appeal. A further right would therefore bestow no additional benefit but could lead to unproductive delay and increase the cost to parties.

7.5 The aim in drawing up these Rules has been to maintain the status quo, both legal and practical, in relation to functions exercisable by court staff in civil proceedings in magistrates' courts, while removing current anomalies and repairing the omission of appropriate functions created since 2005.

7.6 The Rules distinguish between the powers which may be exercised by legally qualified court officers and other staff. This replicates the position under the current

Justices' Clerks Rules and also the equivalent provision in the Criminal Procedure Rules.

7.7 Terminology in these Rules is usually generic, rather than by reference to specific legislation in order to minimise the need for regular amendment. So, for example, there is no specific reference to the powers of the court in the Magistrates' Courts (Hearsay in Civil Proceedings) Rules 1999 to direct a different period of time for service of a notice. However Rule 2 provides for an authorised court officer to give or vary directions for the service of documents, which empowers the officer to vary the time for service of a hearsay notice.

7.8 Rule 3(3) provides for authorised court officers to "decline" to exercise functions (as well as exercise them). This terminology draws on that used by the Divisional Court of the Queens' Bench Division in the case of *R v Worthing Justices ex parte Norvell* ([1981] 1 W.L.R. 413), in describing the effect of a justices' clerk's "declining" an application under the previous legislation. The Divisional Court clarified that a decision to decline an application was final within the magistrates' court.

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) Act.

9. Consolidation

9.1 There are no plans to consolidate the Magistrates' Courts Rules.

10. Consultation outcome

10.1 The production of these Rules has drawn on the wide consultation carried out by the Criminal Procedure Rule Committee on the similar rules in magistrates' courts' criminal proceedings. The report of the outcome of that consultation was published at http://www.justice.gov.uk/courts/procedure-rules/criminal in November, 2019.

10.2 In addition, on the detail of the Rules, the non-criminal procedure rules consultative group of the Criminal Procedure Rules Committee was consulted, and was content with the content of the rules.

11. Guidance

11.1 News of changes to the Rules and of the effect of those changes is published on the Ministry of Justice website, at: https://www.justice.gov.uk/courts/procedure-rules/other-procedure-rules-for-magistrates-courts-and-the-crown-court

12. Impact

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

12.2 These rules have no impact of themselves on the public sector because they maintain rules and procedures that are already current and create no new powers of court.

12.3 An Impact Assessment has not been prepared for this instrument because the SI only replicates and repairs existing provision.

13. Regulating small business

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

14. Monitoring & review

14.1 From time to time these rules may be in issue in cases in which the judgment is reported. HMCTS lawyers specialising in magistrates' courts law monitor and report on such judgments.

14.2 These lawyers, with the Secretary of the Committee, support the consultative subgroup of members of the Criminal Procedure Rule Committee in reviewing the operation of rules governing civil proceedings in magistrates' courts. Each therefore draws upon his or her experience of the operation of the courts and of the Rules. Members reflect the views of the professional or other 'constituency' from which each comes.

15. Contact

15.1 David Hamilton at the Ministry of Justice Telephone: 07956418231or email: David.Hamilton5@justice.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 The Rt Hon. Chris Philp, Parliamentary Undersecretary, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard