

EXPLANATORY MEMORANDUM TO
THE ASSISTANTS TO JUSTICES' CLERKS REGULATIONS 2006

2006 No. 3405 (L.14)

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

Description

2. The Assistants to Justices' Clerks Regulations 2006 (1) revoke and replace the previous rules about the qualifications of assistants to justices' clerks and (2) enable justices' clerks to delegate specified out of court functions to unqualified assistants.

Matters of special interest to the Joint Committee on Statutory Instruments

3. None

Legislative Background

4. The Regulations are made by the Lord Chancellor under s.27(6) of the Courts Act 2003 (c.39). This empowers the Lord Chancellor to prescribe qualifications which an assistant to a justices' clerk (an 'assistant clerk') must have and also to prescribe exceptions to these requirements. The Regulations revoke the Justices' Clerks (Qualifications of Assistants) Rules 1979 and subsequent amending instruments. Piecemeal amendments were made in 1998, 1999 and 2001 and the opportunity has been taken to write them afresh.

Extent

5. The Regulations apply to England and Wales.

European Convention on Human Rights

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

Policy Background

- 7.1 The policy aim is to enable justices' clerks to delegate non-contentious listing and case progression functions to staff who do not have the legal qualifications required of assistant clerks.
- 7.2 Before the introduction of the Courts Act 2003 it had been the practice in many magistrates' courts to delegate case progression functions to unqualified staff. The

Courts Act had the effect, probably unintended, of confining such delegation to legally qualified staff. This has meant that in practice every listing decision before listing and case progression officers in magistrates' courts has to be authorised by the justices' clerk or by a legally qualified assistant. Given the limited availability of justices' clerks and legally qualified court clerks and the volume of decisions required every day, case progression decisions are delayed and the courts' efforts to eliminate unnecessary delay in the despatch of business impeded. These Regulations will permit delegation and so assist with case progression.

7.3 Functions that may be carried out by non-legally qualified staff will be limited to out of courtroom work e.g. dealing with adjournments and the fixing of a later date for trial in when the issues are non-contentious.

7.4 The Regulations operate by treating designated court staff as assistant clerks for the purposes of the specified functions which they will be authorised to perform. Treating them as assistant clerks brings them within the scope of the Justices' Clerks Rules 2005 (SI 2005/545). This means that delegation of functions will be at the discretion of the justices' clerk and the justices' clerk will retain the overall responsibility for any functions which he or she chooses to delegate to non-legally qualified staff.

7.5 A consultation paper was published on 8 September 2005 on the proposal that legislation be amended to allow non-legally qualified staff to carry out certain delegated functions. The overall response to the consultation was in favour of amendment to secondary legislation to allow delegation to non-legally qualified staff.

Impact

8. No regulatory impact assessment has been undertaken because there is no regulatory impact on any part of the private or voluntary sector. There are no implications for the Exchequer.

Contact

9. Any enquiries about the contents of this memorandum should be addressed to: Paul Brunton, Criminal Justice Delivery Unit (Department for Constitutional Affairs) Email: paul.brunton@hmcourts-service.gsi.gov.uk. Telephone: 020 7210 0417.