

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEEDINGS COURTS (CONSTITUTION OF COMMITTEES
AND RIGHT TO PRESIDE) (AMENDMENT) RULES 2007
2007 No. 2621 (L.26)

THE YOUTH COURTS (CONSTITUTION OF COMMITTEES AND RIGHT TO
PRESIDE) (AMENDMENT) RULES 2007
2007 No. 2622 (L.27)

1. This explanatory memorandum has been prepared by the Directorate of Judicial Offices for England and Wales and is laid before Parliament by Command of Her Majesty

2. Description

- 2.1 The new rules will amend Rule 7 of both the Family Proceedings Courts (Constitution of Committees and Right to Preside) Rules 2007 (“the Family Panel Rules”) and the Youth Courts (Constitution of Committees and Right to Preside) Rules 2007 (“the Youth Panel Rules”). This statutory instrument will correct a defect in those rules affecting the eligibility for re-election as chairmen or deputy chairmen of youth and family panels. Those rules currently provide that, when assessing eligibility for re-election, time served as chairmen or deputy chairmen on outgoing panels (namely panels established under former legislative provisions) should be taken into account. These Rules amend those provisions, and provide that time served on outgoing panels will not be taken into account.

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

- 3.1 None

4. Legislative Background

- 4.1 The Family Panel Rules and the Youth Panel Rules deal with the administration and maintenance of the process for authorising magistrates to sit and preside in family proceedings courts and youth courts.

5. Extent

- 5.1 The Regulations apply to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

- 7.1 Rule 7 of the Family Panel Rules and of the Youth Panel Rules deal with eligibility for re-election as chairmen or deputy chairmen of youth and family panels. That rule provides for maximum periods of service in those offices, and also provides that service as chairman or deputy of an outgoing panel (defined as a panel established under the former legislation) counts towards determining whether that maximum period of service has been reached.
- 7.2 This has raised practical concerns. The restrictions regarding chairmen may mean that panels will lose an element of continuity, with several panel chairmen being unable to stand for re-election this year.
- 7.3 The restrictions regarding deputy chairmen are potentially more serious and are likely to cause substantial difficulties. Rule 7 currently provides for a maximum period of service of 5 years for deputy chairmen. However, under the previous Rules of court a deputy chairman of a panel was not a 'second in command' to the chairman, and the role was not an office as envisaged by the 2007 rules. Instead, they were one of a number of magistrates entitled to preside in the youth or family courts. Deputy chairmen are therefore generally more experienced magistrates, often having been acting in that role for many years. The effect of Rule 7 in the Family Panel Rules and Youth Panel Rules is to prevent any magistrate who had been a deputy chairman for more than five years from being elected as deputy chairman of the panel. This will mean that in general only the less experienced members of a panel will be able to stand for this post at the election meetings in 2007 (and for several years thereafter). This was not the intended policy. The deputy chairman will be required to deputise for and assist the Chairman and it is therefore desirable, as is current practice, for experienced magistrates to be able to fulfil this role.
- 7.4 Given that elections for chairmen or deputy chairmen of youth and family panels are due to take place in October it is essential that the proposed Rules come into force by 1 October if the defect is to be corrected in time to allow experienced chairmen or deputies to stand.
- 7.5 This issue was identified following initial feedback from the Justices Clerk Society (JCS) and the Magistrates Association (MA) as they prepared to facilitate the October 2007 elections and needed to confirm the impact of the Rules on the preparatory papers they were sending out. The matter was referred to the original working group comprised (in addition to the MA and JCS) of the Judicial Studies

Board (JSB) and officials from the Directorate of Judicial Offices and the MOJ. Discussions within that group confirmed that the current wording would not achieve the policy intention. However it was agreed that the proposed amendment would deal with the problem by giving all panel chairmen and deputy chairmen a clean slate from appointment under the new Rules. Future appointees would only be able serve three years at a time as chairmen. Further, more experienced magistrates will be able to fulfil the role of deputy chairman to deputise and assist the Chairman.

- 7.6 The amendment will have no consequential effect on the remaining rules or the related Justices of the Peace (Training and Development Committee) Rules 2007 that came into force on the same date.
- 7.7 The Family Procedure Rule Committee, the Magistrates' Rule Committee and the Criminal Procedure Rule Committee and the Lord Chancellor have been consulted. Given the need to correct the defect in time for the elections in October the Rule Committees were asked to consider the drafts out of committee between 20 and 31 August and the Parliamentary under Secretary of State was consulted on behalf of the Lord Chancellor on 3 September. Neither the Rule Committees nor the Parliamentary under Secretary of State raised any concerns.
- 7.8 As these SIs are amending two defective SIs they will be available free to all known recipients of the defective SI and the SI Registrar has been notified accordingly.]

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.

9. Contact

- 9.1 Any enquiries about the contents of this memorandum should be addressed to:
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