

**EXPLANATORY MEMORANDUM TO
THE CONSTITUTIONAL REFORM ACT 2005 (CONSEQUENTIAL AMENDMENTS)
ORDER 2009**

2009 No. 2468

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 The purpose of this instrument is to amend certain instruments in consequence of Part 3 of the Constitutional Reform Act 2005 (the “2005 Act”), which establishes the Supreme Court of the United Kingdom and abolishes the appellate jurisdiction of the House of Lords.

2.2 This instrument is made under section 143(2)(ii) of the 2005 Act. Section 143(2)(ii) provides for the amendment or repeal of subordinate legislation.

2.3 This instrument amends the following instruments:

The Community Legal Service (Cost Protection) Regulations 2000

The Community Legal Service (Costs) Regulations 2000

The Community Legal Service (Financial) Regulations 2000

The Community Legal Service (Funding) Order 2000

The Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001

The Criminal Defence Service (General) (No.2) Regulations 2001

The Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001

The Criminal Defence Service (Funding) Order 2007

The Community Legal Service (Funding) Order 2007

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

3.1 None

4. Legislative Context

4.1 The 2005 Act modifies the office of Lord Chancellor and makes changes to the way in which some of the functions vested in that office are to be exercised. The Act also creates the Supreme Court of the United Kingdom and abolishes the

appellate jurisdiction of the House of Lords. It creates the Judicial Appointments Commission to select people for judicial appointments in England and Wales, and provides for judicial discipline in England and Wales. The Act modifies the jurisdiction of the Judicial Committee of the Privy Council and removes the right of the Lord President of the Council to sit judicially.

- 4.2 The act and accompanying Explanatory Note can be found at the following link:
<http://www.opsi.gov.uk/acts/acts2005a>

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 This instrument amends references to the House of Lords and related references in secondary legislation concerning civil and criminal legal aid. These amendments are consequential on the implementation of the 2005 Act, which establishes the Supreme Court of the United Kingdom and abolishes the appellate jurisdiction of the House of Lords.
- 7.2 This instrument makes relatively restricted changes only. The Ministry of Justice does not intend to consolidate the instruments it amends for this purpose.

8. Consultation outcome

- 8.1 A full consultation on the 2005 Act was carried out in July 2003 before its introduction by what was then known as the Department for Constitutional Affairs. The consultation gathered views on the form and responsibilities of the proposed UK Supreme Court. A summary of responses to the consultation, and a link to the consultation itself can be found at the following link:
<http://www.dca.gov.uk/consult/supremecourt/scresp.htm#part3>
- 8.2 The changes in this instrument are consequent to the implementation of the 2005 Act and no further consultation was necessary.

9. Guidance

- 9.1 This instrument will be published by the Stationery Office.
- 9.2 Information about the UK Supreme Court can be found on the Ministry of Justice website at the following link:
<http://www.justice.gov.uk/about/supremecourt.htm>
- 9.3 The website for the UK Supreme Court is
<http://www.supremecourt.gov.uk/index.html>

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible
- 10.2 The impact on the public sector is negligible.
- 10.3 An impact assessment has not been prepared for this Order, but a full Regulatory Impact Assessment (RIA) was prepared for the Constitutional Reform Bill 2005 in March 2004 and can be found at the following link:
<http://www.dca.gov.uk/risk/constrefria.htm>
A copy is also annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.
- 10.4 The RIA considers options instead of statute to create the United Kingdom Supreme Court and concludes that primary legislation is the only viable way to transfer the necessary jurisdictions.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 This instrument, and the instruments it amends are kept under review by the Ministry of Justice and the Legal Services Commission. The Ministry of Justice will make any subsequent amendments to these instruments.

13. Contact

Maggie McDonald at the Ministry of Justice Tel: 020 3334 4569 or email: Margaret.mcdonald@justice.gsi.gov.uk can answer any queries regarding the instrument.