

**EXPLANATORY MEMORANDUM TO
THE CRIME AND COURTS ACT 2013 (COMMENCEMENT NO.7 AND SAVING AND
CONSEQUENTIAL PROVISIONS) ORDER 2013**

2013 No. 3176 (C. 129)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This Order brings into force section 24 of the Crime and Courts Act 2013 (the Act). Section 24 of the Act deals with appeals relating to the regulation of the Bar, and provides that such appeals will be dealt with by the High Court rather than the Visitors to the Inns of Court (the Visitors).

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

- 3.1 Although this Order commences section 24 of the Act, it is subject to the negative resolution procedure by reason of section 58(5)(e) of the Act because the consequential provisions amend secondary legislation.

4. **Legislative Context**

- 4.1 The Order is the seventh commencement order made under the Crime and Courts Act 2013, which received Royal Assent on 29 April 2013. It brings into force section 24 of the Act, which deals with appeals relating to the regulation of the Bar. Once section 24 is commenced on 7th January 2014, the practice of High Court Judges sitting as Visitors to the Inns of Court in exercise of their extraordinary functions as judges will cease, as section 24 provides that section 44 of the Senior Courts Act 1981 ceases to have the effect of conferring jurisdiction on High Court Judges to sit as Visitors to the Inns of Court. It instead enables a right of appeal to be conferred on the High Court.

- 4.2 The Bar Council, an Inn of Court, or two or more Inns of Court acting collectively (such as in the form of the Council of the Inns of Court), may confer a right of appeal to the High Court in respect of a matter relating to (a) regulation of barristers, (b) regulation of other persons regulated by the person conferring the right (in practice, the Bar Standards Board), (c) qualifications or training of barristers or persons wishing to become barristers, or (d) admission to an Inn of Court or call to the Bar (subsection (2)). An Inn of Court may confer a right of

appeal to the High Court in respect of (a) a dispute between the Inn and a member of the Inn, or (b) a dispute between members of the Inn (subsection (3)). Any reference to a member of an Inn includes a reference to a person wishing to become a member of that Inn. This reflects the current extent of the Visitors' jurisdiction.

- 4.3 Subsection (7) provides for the person who confers a right of appeal to remove it, allowing flexibility should regulatory arrangements change in future. It further enables any Inn to remove a right of appeal conferred by the Council of the Inns of Court in so far as it relates to that Inn. This reflects the ability of any Inn to cancel or amend on its part the undertaking agreed between the Bar Standards Board and the Council of the Inns of Court. The provisions therefore reflect current and historical practice while providing the flexibility necessary to accommodate future changes in the regulation of the Bar.

5. Territorial Extent and Application

- 5.1 The provisions extend to England and Wales only. The subject matter of these provisions (legal services) is not devolved in 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 The current regulatory arrangements of the Bar (as set out in Bar Training Regulations made by the Bar Standards Board and the Hearings before the Visitors Rules 2010) provide for disciplinary decisions of the Council of the Inns of Court and decisions taken by the Bar Council's Qualifications Committee and its panels to be appealed to the Visitors. This includes decisions about, for example, professional misconduct, satisfaction of requirements for a person to be admitted to an Inn or called to the Bar as well as the conduct of students, the registration of pupillages and the approval of pupil supervisors.
- 7.2 The Visitors could also hear appeals involving disputes between Inns and their members or those wishing to become members. This is in recognition of the fact that, historically, the Visitors' jurisdiction extends to appeals from all decisions relating to the conduct of an Inn's affairs, such as the letting of chambers or payment of dues.

- 7.3 In practice, the Bar Standards Board (the regulatory arm of the General Council of the Bar) is to confer the appeal right to the High Court. This is to be done by making amendments to its regulations governing disciplinary and training matters, providing for an appeal to the High Court instead of the Visitors.
- 7.4 As well as commencing section 24 on 7th January 2014, the Order also contains a saving provision which preserves a right of appeal to the Visitors in limited circumstances. As long as the date of the decision under appeal was before 7th January and the appellant serves notice of intention to appeal in accordance with rule 4(1) of the Hearings before the Visitors Rules 2010 before 18th April 2014, an appeal will continue under the Visitors system. The time period running up to 18th April includes not only the default 21-day period for service of the notice of intention to appeal, but also any extensions of time which may be granted in accordance with rule 4(1).
- 7.5 Any appeals not covered by the saving provision in article 3(1) will go to the High Court. This includes appeals where the date of the decision was before 7th January but the appellant does not serve notice of intention to appeal before 18th April, and all appeals where the date of the decision being appealed is on or after 7th January.
- 7.6 The Order makes consequential amendments to two statutory references to the Visitors to the Inns of Court, replacing those references with the High Court. The consequential amendments do not apply to any appeal to which section 24 does not apply, meaning that for appeals which remain with the Visitors, the consequential amendments have no effect.

8. Consultation outcome

- 8.1 In December 2009 the Ministry of Justice consulted on a draft Civil Law Reform Bill which included proposals to transfer the jurisdiction of the Visitors of the Inns of Court to the High Court, although that draft Bill was not taken forward and the provision was subsequently enacted in the Crime and Courts Act 2013. Responses showed the provisions to be uncontroversial.
- 8.2 The senior judiciary, the Bar Standards Board (BSB), the General Council of the Bar and the Inns of Court have all confirmed that they support the new appeal arrangements, which are intended to improve administrative efficiency. At the same time, the Order will make the appeal arrangements for barristers more consistent with those for solicitors appealing against decisions of the Solicitors Disciplinary Tribunal whereby an appeal lies to the High Court, which will improve transparency.

9. Guidance

- 9.1 Guidance has not been prepared for this instrument.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument. The provisions will have a very limited impact since High Court judges are already dealing with these appeals, albeit in their role as Visitors and not in the High Court. As the appeals to the Visitors are heard and administered at the RCJ, there would not be any additional annual running costs in terms of court or staff time.

11. Regulating small business

11.1 The Order does not apply to small business.

12. Monitoring & review

12.1 Due to the nature of this instrument, monitoring and review will not be necessary.

13. Contact

Nalini Deen at the Ministry of Justice Tel: 02033344220 or email: nalini.deen@justice.gsi.gov.uk can answer any queries regarding the instrument.