

EXPLANATORY MEMORANDUM TO
THE HIGH COURT AND COUNTY COURT JURISDICTION (AMENDMENT)
ORDER 2014

2014 No. 821 (L. 12)

1. This explanatory memorandum has been prepared by the Ministry of Justice (“MoJ”) 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 instrument (“the 2014 Order”) amends the High Court and County Courts Jurisdiction Order 1991 (S.I. 1991/724) (“the 1991 Order”).
- 2.2 It makes consequential amendments on the coming into force of amendments made by the Crime and Courts Act 2013 (c.22) (“the 2013 Act”).
- 2.3 It confers jurisdiction on the County Court in respect of contentious probate proceedings.
- 2.4 It increases the financial limit below which a claim for money must be commenced in the County Court.
- 2.5 In addition, it allocates particular proceedings to the High Court, in respect of which the High Court and the County Court previously had concurrent jurisdiction, and makes consequential amendments to primary legislation in light of these amendments.

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

- 3.1 This Order, which comes into force on 22 April, was laid on 7 April, and the Ministry of Justice regrets that it therefore breaches the 21 day rule by six days. Although it had been intended to lay the Order on 31 March/1 April, the decision was taken to include a further amendment to the 1991 Order at the suggestion of the senior judiciary. The amendment necessitated a further consequential amendment to primary legislation. Although the consequential amendment was minor, the MoJ considered it appropriate to consult Parliamentary Counsel on it, and accepts responsibility for the fact that the instrument was ultimately not able to be laid in time to comply with the 21 day rule.
- 3.2 The amendments to primary legislation made by the 2014 Order have been approved by Parliamentary Counsel.

- 4. Legislative Context**

- 4.1 The 2014 Order is made under sections 1 and 120 of the Courts and Legal Services Act 1990 (c.41) (“the 1990 Act”). Under section 1, the Lord Chancellor may, by order, confer jurisdiction on the High Court or the County Court to hear specified civil proceedings, and may allocate proceedings to the High Court and/or the County Court, by specifying where proceedings must be commenced or taken. In addition, section 1 provides for consequential amendments to be made to primary legislation to reflect

amendments made in an order under that section. The powers in section 1 are subject to consultation with the senior judiciary and, in some instances, with the concurrence of the Lord Chief Justice.

- 4.2 The majority of the amendments made by the 2014 Order are consequential upon the coming into force of section 17 of, and Schedule 9 to, the 2013 Act. The 2013 Act establishes a single County Court for England and Wales, which replaces the structure of individual county courts for specific districts which previously exercised jurisdiction. Additionally, the Order gives effect to certain of Sir Henry Brooke's recommendations in his report: "*Should the Civil Courts be Unified*"¹ ("the Brooke report").
- 4.3 Minor consequential amendments are made to the 1991 Order by substituting references to "the County Court" for references to "a county court", and references to "patents county courts" following their abolition under the 2013 Act are omitted.
- 4.4 Jurisdiction is conferred on the County Court in respect of contentious probate proceedings where the net value of the deceased's estate does not exceed £30,000. Jurisdiction was previously conferred by section 32 of the County Courts Act 1984 (c.28), which was repealed by the 2013 Act, with the intention of re-conferring jurisdiction under the 1990 Act. With some modifications, the wording reflects that previously used in the County Courts Act. By reason of section 1(1A) of the 1990 Act, this particular amendment requires the concurrence of the Lord Chief Justice.
- 4.5 The sum below which a claim for money (except for personal injury claims) must be started in the County Court is increased to £100,000. This amendment gives effect to a recommendation in the Brooke report.
- 4.6 In those cases where a company's registered office is in the London insolvency district, winding up proceedings under the Insolvency Act 1986 (c.46) may now only be commenced in the High Court. Previously, provisions in Civil Courts Order 1983 (SI 1983/713) prevented the county courts comprised in the London insolvency district from exercising jurisdiction in winding up proceedings. However, following the coming in to force of amendments made by the 2013 Act, it was no longer possible to limit the County Court's jurisdiction in this way. In addition, consequential amendments are made to section 117 of the Insolvency Act (c.45) to reflect the amendments made in the 2014 Order.
- 4.7 Proceedings under section 1 of the Variation of Trusts Act 1958 (c.62) and section 98 (application to court to cancel resolution) and Part 10 (reduction of share capital) of the Companies Act 2006 (c.46), in respect of which the High Court and County Court previously had concurrent jurisdiction, may now only be commenced and taken in the High Court. Consequential amendments are made to section 23 of the County Courts Act 1984 (c.28) and section 641 of the Companies Act 2006 to reflect the amendments made in the 2014 Order. Save for the amendment to section 98, these amendments give effect to recommendations in the Brooke report. The amendment to section 98 was suggested by the senior judiciary following consultation on the 2014 Order. Proceedings under this section are rare, and rarer still in the County Court. In the circumstances, it was considered that, for consistency, the High Court alone should have jurisdiction to hear them.

¹ Which can be found at: <http://www.judiciary.gov.uk/publications-and-reports/reports/civil/civil-courts-unification>

- 4.8 Part II of the Schedule to the 1991 Order is amended by omitting references to the County Courts Jurisdiction Order 1981 (S.I. 1981/1123) which has been revoked and replaced by the County Court Jurisdiction Order 2014 (S.I. 2014/503).

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

What is being done and why?

- 7.1 This Order amends the 1991 Order to make consequential amendments on the coming into force of amendments made under the 2013 Act, which establish a single County Court for England Wales. In addition, it gives effect to certain of Sir Henry Brooke's other recommendations in his 2008 report *Should the Civil Courts be Unified?*², with particular regard to the jurisdiction of both the High Court and the County Court and the allocation of work between them.
- 7.2 In January 2008, the Judicial Executive Board, chaired by the then Lord Chief Justice, commissioned Sir Henry Brooke to conduct an inquiry into the question of civil court unification. Following extensive consultation with the judiciary and Her Majesty's Courts and Tribunals Service ("HMCTS"), Sir Henry published his report in August 2008. The Brooke report did not recommend civil court unification, but instead made a number of recommendations to improve the administration of civil justice and to provide a more efficient use of judicial resources. One of the principal recommendations concerned giving consideration to establishing a single County Court, with a national jurisdiction, in England and Wales. Other recommendations included increasing the financial limit (with the exception of personal injury claims), below which claims for money may not be started in the High Court, the financial limit having been increased in April 2009 from £15,000 to £25,000, and reviewing instances of exclusive jurisdiction in both the High Court and the county courts.
- 7.3 The judicial working group which subsequently considered the implications of implementing Sir Henry's recommendations supported the amalgamation of the separate, district-based, county courts and suggested that claims for variation of trusts and proceedings in respect of reductions of share capital under the Companies Act 2006, which were typically transferred to the High Court because of their complexity, should be removed from the jurisdiction of the County Court.
- 7.4 The MoJ consulted on these recommendations, including establishing a single County Court, in its consultation paper: *"Solving disputes in the County Courts: creating a simpler, quicker and more proportionate system"*³, which was published in March 2011. 84% of respondents supported the establishment of a single County Court. With regard to increasing the financial limit below which claims for money may not be started in the

² Ibid.

³ CP6/2011, which is available at:

<http://webarchive.nationalarchives.gov.uk/20110406054056/http://www.justice.gov.uk/docs/solving-disputes-county-courts.pdf>

High Court, the *Solving Disputes* consultation proposed raising the limit to £100,000. 70% of respondents supported this increase. In respect of the recommendation that particular specialist proceedings should be removed from the jurisdiction of the county courts, the *Solving Disputes* consultation proposed that these proceedings should only be issued in the High Court, 89% of respondents agreed.

- 7.5 On 9 February 2012, accompanied by a written ministerial statement (House of Commons, Official Report, column 53WS)⁴, the Government published its response to the consultation (CM 8274)⁵, announcing its intention to implement the recommendation to establish a single County Court and to accept other of the Brooke recommendations. This Order, in part, gives effect to the Government's proposals.

Consolidation

- 7.6 The Department has no plans to consolidate any legislation as a result of this legislation.

8. Consultation outcome

- 8.1 The consultation lasted for twelve-weeks (29 March 2011 to 30 June 2011) and copies of the consultation paper were sent to:

- **Judicial and legal bodies** including the Senior Judiciary, the Council of HM Circuit Judges, the Association of District Judges, The Law Society, The Bar Council, and the Institute of Legal Executives.
- **Consumer bodies, representative bodies and business organisations** for example The County Court Users' Association, British Bankers Association, Confederation of British Industry, Finance and Leasing Association, The Trade Union Congress.

- 8.2 Responses were also welcomed from anyone with an interest or views on the proposals. Responses from individual practitioners, or members of the public were also sought.

- 8.3 The Brooke recommendations, set out in the consultation paper to which this explanatory memorandum refers, are:

(a) Establish a single County Court for England and Wales

- 8.4 The consultation paper posed the question: '*Do you agree that a single County Court should be established?*' A total of 161 respondents answered this question, of which 136 respondents agreed that a single County Court should be established, and 25 respondents disagreed.

- 8.5 The majority of the 136 respondents in favour of a single County Court measure were legal practitioners. Others in favour included members of the judiciary and judicial bodies such as the Association of District Judges and the Council of Circuit Judges, regulatory bodies such as the Law Society and the City of London Law Society, representative bodies such as the Civil Courts Users Association, Association of Personal Injury Lawyers and Forum of Insurance Lawyers, businesses representative bodies including the National Farmers Union and the Medical Defence Union, Local Authorities, Mediators and Mediation Advocates, Academics, Citizens Advice Bureaus,

⁴ Which is available at: <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/chan264.pdf>

⁵ Which is available at: https://consult.justice.gov.uk/digital-communications/county_court_disputes/results/solving-disputes-in-cc-response.pdf

financial organisations such as the Institute of Credit Management and the Cooperative Financial Services, members of the public, and HMCTS.

8.6 In summary, the creation of a single County Court was supported by the majority of affected parties. The reasons given for support included that:

- There was no need to retain the geographical distinctions between courts in the present day and that the amalgamation of the County Court into a single entity could provide greater administrative efficiency and enable great improvements to the administration of justice.
- The current “geographical and jurisdictional boundaries create inefficiencies.”
- The current system is archaic, unwieldy and expensive.
- Streamlining the system would lead to costs reductions.
- The proposal was a sensible way of making best use of reduced resources by ensuring that work could be distributed throughout the County Court estate, thereby helping to reduce backlogs in some courts.
- The intended benefits of Business Centres are hampered by the need to maintain the individual jurisdictions of each County Court and that by having just one County Court; much of the current duplication could be removed.

8.7 The 24 respondents against the establishment of a single County Court included some legal practitioners, a Citizens Advice Bureau, and a landlord. The reasons given included that:

- The High Court and the County Court should be amalgamated to provide a single civil court instead of a single County Court.
- The idea of having a local court is important to litigants because justice is likely to be delivered more effectively.
- The current system works and a single County Court could be seen to reduce the importance of County Court.

8.8 Overall, the responses suggest that businesses and court users are supportive of the measures proposed, as are HMCTS and the judiciary.

(b) Increase from £25,000 to £100,000 the financial limit below which claims for money (except personal injury claims) must be started in the High Court.

8.9 The MoJ consultation paper posed two questions in relation to this proposal.

8.10 The first question asked: *“Do you agree that the financial limit of £25,000 below which cases cannot be started in the High Court is too low? If not, please explain why.”*

8.11 A total of 141 respondents answered this question, of which 98 respondents (70%) agreed that the High Court limit should be increased, and 43 (30%) respondents disagreed.

8.12 The majority of the 98 respondents in favour of an increase in the financial limit were legal practitioners. Others in favour included members of the judiciary and judicial bodies, regulatory bodies, representative bodies, business representative bodies, Local Authorities, Mediators and Mediation Advocates, academics, Citizens Advice Bureaus, financial organisations, members of the public, and HMCTS. The reasons given for support included that:

- The financial limit is too low and that there is sufficient expertise and ability within the County Court to resolve disputes in excess of £25,000.
- If for any reason a County Court judge feels that the case should be escalated to the High Court, then they have the discretion to do so.
- There is no need for a High Court judge to deal with a matter of value less than £100,000 unless it involves a particularly complex or novel point of law.
- The current level results in non-complex cases, for example, debt and contract cases, being started in the High Court with a subsequent transfer to the County Court, creating inefficiencies.
- An increase would promote increased use of the County Court, and ultimately lead to faster case resolution.

8.13 Those that disagreed with an increase to the current limit said that where a matter is of low financial value but is complex or a matter of public interest, the High Court should have jurisdiction to deal regardless of the amounts involved. However, this reflects current practice and would continue to be the case under the proposal.

8.14 The second question in relation to this proposal was: “...do you consider that the financial limit (other than personal injury claims) should be increased to (i) £100,000 or (ii) some other figure (please state with reasons)?”

8.15 This question was answered by 107 respondents of whom 72 (71%) expressed a preference for an increase to £100,000.

8.16 Those that disagreed expressed a range of views, with proposed limits between £50,000 and £250,000.

8.17 Overall the responses to the two questions suggest that businesses and court users are supportive of the proposal to increase the limit to £100,000, as are the judiciary and HMCTS

(c) Give the High Court exclusive jurisdiction in certain specialist proceedings and remove them from the jurisdiction of the County Court

8.18 The MoJ consultation paper asked: “Do you agree that claims for variation of trusts and certain claims under the Companies Act and other specialist legislation, such as schemes of arrangement, reductions of capital, insurance transfer schemes and cross-border mergers, should come under the exclusive jurisdiction of the High Court? If not, please explain why”.

8.19 A total of 85 respondents answered this question, of which 76 respondents (89%) agreed and 9 respondents (11%) disagreed.

8.20 A large majority of the 76 respondents in favour of the proposal were legal practitioners. Others in favour included members of the judiciary and judicial bodies, regulatory bodies, representative bodies, businesses representative bodies, Local Authorities, Mediators and Mediation Advocates, academics, Citizens Advice Bureaus, financial organisations, members of the public, HM Revenue and Customs and HMCTS. The reasons given for support included that:

- These are complicated matters that should be dealt with by the High Court.
- There is no sense in claims being issued in the County Court if they are almost inevitably going to be transferred to the High Court for case management and trial.
- Given that the body of expertise for dealing with such claims exists almost exclusively within the High Court, it makes sense that these claims are dealt with there.
- These cases are highly specialist and so require specialist judges. High Court judges will normally have the requisite experience for such cases. They also have the power to transfer appropriate cases to the County Court where necessary.

8.21 Of those that disagreed, some respondents said that:

- The proposal may result in increased waiting times.
- There would be no need to make the changes as long as there are suitably trained and qualified specialist judges at the County Court.
- The proposal would result in longer travel times as High Courts are further away.

8.22 Overall the responses suggest that businesses and court users are supportive of the proposed measure to confer exclusive jurisdiction in some specialist proceedings on the High Court.

9. Guidance

9.1 Information about the Order will be published on the MoJ, Judicial and HMCTS channels of the Government website, alerting the Judiciary, court staff and court users of the changes.

10. Impact

10.1 An Impact Assessment has not been provided for this instrument. However, an Impact Assessment⁶ (which was cleared by the Regulatory Policy Committee) and an Equality Impact Assessment⁷ were published alongside the consultation paper and response document.

10.2 This instrument has no impact on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We do not envisage that the Order will create significant additional workload for County Courts.

13. Contact

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

⁶ Which is available at: https://consult.justice.gov.uk/digitalcommunications/county_court_disputes/results/reforming-civil-jurisdiction-limits-response-ia.pdf

⁷ Which is available at https://consult.justice.gov.uk/digitalcommunications/county_court_disputes/results/reforming-civil-jurisdiction-limits-response-eia.pdf

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