

**EXPLANATORY MEMORANDUM TO
THE HIGH COURT AND COUNTY COURTS JURISDICTION (AMENDMENT)
ORDER 2009**

2009 No. 577

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 In consequence of changes to other legislation this Order: restricts money claims to the High Court to those with a value of more than £25,000; and provides that enforcement of certain types of traffic penalty must be undertaken at Northampton County Court.
- 2.2 This Order also clarifies the procedure for enforcement of awards recoverable as if payable under a county court order by way of execution against goods, by generally applying the same thresholds governing when an award may be enforced in the county courts or the High Court as apply to orders made by the county court. The two exceptions relate to awards made by the Employment Tribunal or settlements achieved through the Advisory Conciliation and Arbitration Service (ACAS), where the threshold above which an award may be enforced in the High Court is disapplied

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

- 3.1 None

4. **Legislative Context**

Amendments to article 4A of the 1991 Order.

- 4.1 The amendment to article 4A of the 1991 Order is consequential upon amendments to the Civil Procedure Rules 1998 (S.I. 1998/3132) (the CPR) relating to fast track claims. These amendments are made by the Civil Procedure (Amendment No. 3) Rules 2008 (S.I. 2008/3327) which will come into force on 6th April 2009.

Amendments to article 8 of the 1991 Order

- 4.2 Sections 27 and 142 of and paragraph 43 of Schedule 8 to the Tribunals Courts and Enforcement Act 2007 add to the types of money awards that may be recovered as if they were an order of the court to include:
 - an award by the First Tier and Upper Tribunal to be enforced as if it were an order of the High Court or a county court in England and Wales; and

- an award of an Employment Tribunal or a sum payable under certain ACAS facilitated compromise agreements to be recovered as if payable under an order of a county court in England and Wales.
- 4.3 The amendments to article 8 will apply to awards made by these Tribunals and other awards which, by enactment, are enforceable as if payable under a county court order. They generally apply article 8(1) (a) – (c) (which set thresholds governing when an award of a county court may be enforced by way of execution against goods in the county courts or the High Court) to these awards
- 4.4 However Article 8(1)(b) does not apply to the enforcement of sums payable under an award of an Employment Tribunal or under a settlement/compromise agreement achieved through ACAS. The removal of the threshold requirement contained in article 8(1)(b) of the 1991 Order for these orders will widen creditor choice as to the type of enforcement agent available for use.

Amendments to article 8A of the 1991 Order

- 4.5 The amendments to article 8A of the 1991 Order are to bring the 1991 Order up to date with legislative changes relating to the enforcement of traffic related penalties that have been introduced since 2001. The enforcement of such penalties must be undertaken at Northampton County Court (where the Traffic Enforcement Centre is based).

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Amendments to article 4A of the 1991 Order

- 7.1 All defended civil claims are allocated to one of three procedural tracks: the multi-track, the fast track or the small claims track. Currently, claims that are allocated to the fast track are those with a value that exceeds the limit of the small claims track and not more than £15,000. The upper limit for the small claims track is generally £5000. However for personal injury claims the limit is £1000 and for housing disrepair claims the limit is £1,000 for damages and £1,000 for disrepair. The multi track is the normal track for any claim that does not fall within the scope of the small claims or fast track.
- 7.2 The consultation paper: *Case track limits and the claims process for personal injury claims* (published in April 2007) proposed that the fast track limit should be increased from £15,000 to £25,000. The Civil Justice Council had previously considered this matter in its report: *Improved Access to Justice* –

Funding Options and Proportionate Costs, which also recommended an increase to £25,000.

- 7.3 Having considered the responses to the consultation, the Government concluded that the fast track limit should be increased to £25,000. The new fast track limit of £25,000 will apply to all proceedings issued on or after 6th April 2009.
- 7.4 As a result of the increase in the fast track limit, a claim for money in which the county courts generally have jurisdiction may only be commenced in the High Court if the value of the claim is more than £25,000. The amendment to article 4A of the 1991 Order achieves this.
- 7.5 The consultation paper *Case track limits and the claims process for personal injury claims* and responses can be found at <http://www.justice.gov.uk/publications/cp0807.htm>. The Civil Justice Committee report *Improved Access to Justice – Funding Options and Proportionate Costs*, can be found at <http://www.civiljusticecouncil.gov.uk/publications/publications.htm>.

Amendments to article 8 of the 1991 Order

- 7.7 Recovery of sums of money payable under a county court order, where recovery is by way of execution of goods, is subject to article 8(1)(a)-(c) of the 1991 Order. This article imposes monetary thresholds which determine whether the enforcement of such orders should take place in the High Court or the county courts.
- 7.8 Various enactments enable sums of money payable under a decision of a court, tribunal, body or person other than the High Court or a county court or a compromise to be enforced as if payable under a court order. The intention is that, generally, the same monetary thresholds will apply to these awards as to orders made by the court, where the enforcement of the payment is by way of execution against goods. The insertion into article 8 of paragraph (2) expressly achieves this.
- 7.9 However paragraph (3) of Article 8 provides that article 8(1)(b) does not apply to an award made by an Employment Tribunal or a settlement achieved through ACAS. Article 8(1)(b) sets a defined threshold below which enforcement by way of execution against goods must be carried out in the county court. The exception will allow awards by an Employment Tribunal or a settlement to be enforced by execution against goods in the High Court regardless of value and in both the High or county Court where the sum involved is less than £5000. The intention is that wider creditor choice may increase the effectiveness for these types of orders.

Amendments to article 8A of the 1991 Order

- 7.10 These amendments confirm that the enforcement of certain traffic related penalties introduced since 2001 must be undertaken at Northampton County Court (where the Traffic Enforcement Centre is based).

8. Consultation outcome

- 8.1 Section 1(9) of the Courts and Legal Services Act 1990 requires the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court and the Senior Presiding Judge (appointed under section 72) to be consulted about the amendments to the 1991 Order. Such consultation has been carried out and subject to a few minor drafting comments, the judges have agreed to the making of this instrument.

Amendments to article 4A of the 1991 Order

- 8.2 The Civil Procedure Rule Committee must, before making rules of court or amendments to the Civil Procedure Rules 1998, consult such persons as they consider appropriate (Civil Procedure Act 1997 s.2(6)(a)). Where the Committee initiates amendments then consultation is undertaken where deemed necessary.

- 8.3 A full consultation exercise following the Cabinet Office guidelines in respect of fast track limits was undertaken by the Ministry of Justice. The consultation period was from April 2007 to July 2007 and the response paper was published in July 2008. 271 responses were received which included responses from the legal profession, judiciary, insurance industry, trade unions, Members of Parliament, Ombudsmen, professional mediators, and private businesses. 204 responses were to the question of whether the fast track limit should be increased to £25,000. 72% were in favour of the increase in the limit and 28% against. The paper considered the arguments for and against raising the fast track limit and concluded that it should be raised to £25,000 for all types of claims. It was considered that this would provide greater flexibility for judges and for more cases to be heard in the appropriate track.

Amendments to articles 8 and 8A of the 1991 Order

- 8.5 No separate consultation has taken place on the amendments to articles 8 and 8A.

9. Guidance

- 9.1 Current leaflets and forms in circulation to court staff and the public will be amended to reflect the changes to the fast track limit and to article 8 of the 1991 Order.

10. Impact

- 10.1 A partial regulatory impact assessment is included in the consultation paper *Case track limits and the claims process for personal injury claims*. This indicated that there will be savings in legal costs if more cases are dealt with in

the fast track. It stated that it was difficult to estimate how many cases this rise will affect, as there are no figures relating to how many claims are issued with a value of between £15,000 and £25,000. A comparison was however made between the unit costs of a fast track and multi-track trial and estimated that fast track trial cost the court approximately £590 and approximately £1,160 for multi-track.

10.2 No impact assessment has been carried out in relation to the amendments to articles 8 and 8A.

11. Regulating small business

11.1 The amendments to articles 4A, 8 and 8A will not apply to the regulation of small business, although will apply to small businesses where they are involved in court proceedings.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide a summary of the changes three months in advance through the CPR website and be writing to key stakeholders.

11.3 In relation to article 4A, the consultation paper *Case track limits and the claims process for personal injury claims* made clear the Department involved the Federation of Small Businesses, the Confederation of British Industry and the Engineering Employers' Federation to explore the impact on business, including small business and to actively encourage small businesses to participate in the consultation.

12. Monitoring & review

12.1 The impact of any changes as a result of the increase will be monitored and the fast track limit will be reviewed in the light of changes to civil procedures and costs.

13. Contact

13.1 For the amendments relating to article 4A of the 1991 Order please contact Paul Shapiro for further information on 020 333 4 3218 or email Paul.Shapiro@justice.gsi.gov.uk

13.2 For the amendments to article 8 of the 1991 Order please contact Christine Sharples on 020 333 4 6327 or email christine.sharples2@hmcourts-service.gsi.gov.uk

13.3 For the amendments to article 8A of the 1991 Order please contact Donna Newman on 020 3334 3165 or e-mail donna.newman2@justice.gsi.gov.uk