

**EXPLANATORY MEMORANDUM TO
THE DISTRESS FOR RENT (AMENDMENT) RULES 2009**

2009 No. 873 (L.11)

1. This explanatory memorandum has been prepared by the Ministry of Justice.

2. Purpose of the instrument

2.1 This instrument amends the Distress for Rent Rules 1988 (“the 1988 Rules”) to require lists of certificated bailiffs to be published on the website of Her Majesty’s Courts Service, and to require applicants for bailiffs’ certificates to provide a criminal conviction certificate, a standard criminal record certificate or an enhanced criminal record certificate with their applications. The instrument also makes various changes to the allocation of county courts that are responsible for issuing bailiffs’ certificates, and makes other minor amendments to update and clarify the 1988 Rules.

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

3.1 None

4. Legislative Context

4.1 The 1988 Rules make provision for county courts in England and Wales to issue certificates (“bailiffs’ certificates”) authorising persons to act as certificated bailiffs and levy distress. Certificated bailiffs may enforce magistrates’ court liability orders as to payment of council tax, non-domestic rates and drainage rates and charges, and may also enforce road traffic penalty charges, by levying distress, that is, by seizing and selling debtors’ goods. Certificated bailiffs may also act on behalf of landlords to enforce the payment of overdue rent by seizing goods from tenants and holding them until overdue rent is paid.

4.2 Currently, under the 1988 Rules, each county court that issues bailiffs’ certificates must compile a list of certificated bailiffs carrying on business within its issuing area, and the list must be exhibited in the public area of the court office of each county court in that area. The primary purpose of this instrument is to introduce an additional requirement in the 1988 Rules for these lists of certificated bailiffs to be published on the website of Her Majesty’s Courts Service.

4.3 The Distress for Rent (Amendment) Rules 1999 amended the 1988 Rules to require applicants for bailiffs’ certificates to provide results of criminal record searches with their applications. This requirement was subsequently abolished by the Distress for Rent (Amendment) Rules 2000. Another major purpose of this instrument is to reinstate a similar requirement in the 1988 Rules for applicants for bailiffs’ certificates to provide a criminal conviction certificate, a standard criminal record certificate or an enhanced criminal record certificate issued pursuant to Part V of the Police Act 1997. Applicants will be required, at a minimum, to provide a criminal conviction certificate (which discloses all convictions other than convictions that are spent in accordance with the Rehabilitation of Offenders Act 1974), or may instead provide a standard criminal record certificate (which discloses all convictions and cautions, including spent convictions and cautions) or an enhanced criminal record certificate (which discloses details of every relevant matter in criminal records relating to the applicant).

4.4 The 1988 Rules allocate responsibility for issuing bailiffs' certificates to certain county courts, known as "issuing county courts". A further purpose of this instrument is to make various changes to the allocation of county courts as issuing county courts.

4.5 The Parliamentary Under Secretary of State, Ministry of Justice, made a written ministerial statement on 17 March 2009 (Hansard column 41WS) on implementation of Parts 3 and 4 of the Tribunals, Courts and Enforcement Act 2007. This gave assurances as to implementation of an online register of certificated bailiffs to enable debtors to check bailiffs' certification status, and a requirement for all bailiffs to provide criminal record checks with their applications. This instrument gives effect to those assurances.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is not subject to any parliamentary procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 There is a high level of public interest in the behaviour of bailiffs and other enforcement agents in the light of media coverage and the current financial climate. The changes made by this instrument are designed to introduce further safeguards to the scheme for certification of bailiffs, by requiring further evidence of the suitability of applicants to act as certificated bailiffs, and by making it easier for members of the public to make complaints about the conduct of certificated bailiffs.

7.2 The instrument adds to the existing requirement for lists of certificated bailiffs to be exhibited in public areas of county court offices, by introducing a requirement for these lists to be published on the internet. This will make it easier for members of the public to check the certification status of certificated bailiffs and to make complaints about the conduct of such bailiffs to the appropriate county court.

7.3 This instrument will also require each application for a bailiff's certificate to be accompanied by a criminal conviction certificate as a minimum. An informal consultation showed general agreement that provision of criminal conviction certificates, which provide the minimum level of criminal record disclosure, is needed to assess the suitability of applicants to act as certificated bailiffs. Applicants will also be able to meet the requirement by providing a standard or enhanced criminal record certificate, which provide higher levels of disclosure of applicants' criminal records. This is to avoid forcing applicants to obtain a criminal conviction certificate if they have already obtained a standard or enhanced criminal record certificate for another purpose (for example, for the purpose of an application to act as a High Court Enforcement Officer).

7.4 In addition, the instrument makes various changes to the table of issuing county courts:

(a) to reflect the merging of Clerkenwell county court and Shoreditch county court to

form Clerkenwell and Shoreditch county court;

(b) to change the issuing county court for Mold county court and Wrexham county court to Wrexham county court, in response to requests from the courts in the North Wales Area to bring the 1988 Rules into line with the separation of Cheshire from the Wales Region of Her Majesty's Courts Service which took effect on 1 April 2007; and

(c) to change the issuing county court for Uxbridge county court and Wandsworth county court to Wandsworth county court, following requests from the courts for work to be distributed more efficiently between the Circuit Judges available.

- ***Consolidation***

7.5 The Ministry of Justice does not intend to consolidate the amended instrument.

8. Consultation outcome

8.1 The Ministry of Justice conducted an informal consultation with the Council of Circuit Judges, the District Judges Association, HM Courts Service Regional and Area Directors, county court managers, the Civil Procedure Rule Committee, the Association of Civil Enforcement Agencies, and the Enforcement Services Association. The stakeholders consulted were given 16 days to reply. A formal consultation was not considered necessary given that these are minor amendments which only affect the groups of stakeholders consulted.

8.2 On the proposal to publish a register of certificated bailiffs on the internet, 28 responses were received. Three of these expressed concerns that bailiffs' home addresses might be published and lead to attacks against them. However, we do not intend to publish any business or home addresses, but only the bailiff's name, the name of the bailiff's employer or the organisation to which the bailiff is contracted, the dates of issue and expiry of the bailiff's certificate, and the issuing court. This information is already available in the public area of the courts.

8.3 On the proposed changes to the allocation of issuing county courts, 17 responses were received. The majority were supportive, but the Association of Civil Enforcement Agencies and the Enforcement Services Association expressed concern about the reduction in the number of issuing county courts and the extra delays this may cause. This appears to be a misunderstanding as we are actually increasing the number of issuing county courts by adding Wrexham county court, and the changes are motivated by a desire to speed up the process by allocating work more appropriately according to the availability of Circuit Judges.

8.4 The majority of the 29 responses were supportive of the proposal for evidence of a criminal record check to be required. One response from a small bailiff company was opposed on the grounds of cost.

9. Guidance

9.1 The Ministry of Justice will alert county and combined court managers to the changes by a news posting on the HM Courts Service intranet. We will also update the certificated bailiff guidance for courts staff on the intranet.

9.2 We will write to the two professional associations for certificated bailiffs (the Association of Civil Enforcement Agencies and the Enforcement Services Association) and all independent certificated bailiffs prior to these provisions coming into force.

10. Impact

10.1 We do not foresee any impact on business, charities or voluntary bodies.

10.2 We do not foresee any impact on the public sector.

10.3 Applicants for bailiffs' certificates will need to pay a fee to obtain a criminal conviction certificate. Since most applicants already provide, and most judges expect to see, a criminal conviction certificate or a criminal record certificate, this should be seen as a formalisation of the current situation rather than an additional expense.

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The register will be maintained and monitored by Enforcement Division officials in Her Majesty's Courts Service. County courts will be expected to provide up to date information to Her Majesty's Courts Service Headquarters when bailiffs' certificates are issued, amended or cancelled. A review will be made after 3 months of operation, to consider any feedback received from the county courts, from certificated bailiffs or from officials who maintain the certificated bailiff register.

13. Contact

Michael Johnstone at the Ministry of Justice, tel: 020 3334 6355 or email: michael.johnstone@justice.gsi.gov.uk can answer any queries regarding the instrument.