
STATUTORY INSTRUMENTS

2020 No. 100

**FAMILY COURT, ENGLAND AND WALES
JUSTICES OF THE PEACE,
ENGLAND AND WALES
MAGISTRATES' COURTS,
ENGLAND AND WALES**

The Courts and Tribunals (Judiciary and Functions
of Staff) Act 2018 (Consequential, Transitional
and Saving Provision) Regulations 2020

<i>Made</i>	- - - -	<i>27th January 2020</i>
<i>Laid before Parliament</i>		<i>3rd February 2020</i>
<i>Coming into force</i>	- -	<i>6th April 2020</i>

The Lord Chancellor, in exercise of the powers conferred by section 3(2) and (4) of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 ^{M1}, makes the following Regulations:

Marginal Citations

M1 2018 c. 33.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020 and come into force on 6th April 2020.

(2) In these Regulations, “the 2018 Act” means the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.

(3) These Regulations extend to England and Wales.

Consequential provision

2. The Schedule makes consequential provision in relation to the Schedule to the 2018 Act.

Saving provision: rules of court

3. Notwithstanding the repeal by paragraphs 19 and 38 of the Schedule to the 2018 Act of paragraph 2 of Schedule 1 to the Civil Procedure Act 1997^{M2} and section 51(2)(d) of the Mental Capacity Act 2005^{M3} (exercise of jurisdiction by officers or other staff of the court)—

- (a) any provisions of the Civil Procedure Rules 1998^{M4}, as in force immediately before the coming into force of the repeal of paragraph 2 of Schedule 1 to the Civil Procedure Act 1997, which provide for functions which would be relevant judicial functions within the meaning of section 67A of the Courts Act 2003^{M5} to be performed by officers or other staff of the court, shall continue in force and shall have effect as if made under section 67B(1) of the Courts Act 2003 and may be varied or revoked accordingly;
- (b) any provisions of the Court of Protection Rules 2017^{M6}, as in force immediately before the coming into force of the repeal of section 51(2)(d) of the Mental Capacity Act 2005, which provide for functions which would be relevant judicial functions within the meaning of section 67A of the Courts Act 2003 to be performed by officers or other staff of the court, shall continue in force and shall have effect as if made under section 67B(1) of the Courts Act 2003 and may be varied or revoked accordingly.

Marginal Citations

M2 1997 c. 12.

M3 2005 c. 9.

M4 S.I. 1998/3132.

M5 2003 c. 39. Sections 67A to 67G were inserted by the [Courts and Tribunals \(Judiciary and Functions of Staff\) Act 2018 \(c. 33\)](#), [Schedule](#), paragraph 32.

M6 S.I. 2017/1035.

Transitional provision

4. On and after 6 April 2020, anything done before that date by a justices' clerk or an assistant to a justices' clerk under any of the provisions amended by the Schedule shall, so far as necessary for its continuing validity, for any question as to its validity or for any proceedings in respect of it, have effect as if done under that provision as so amended.

Ministry of Justice
27th January 2020

Chris Philp
Parliamentary Under Secretary of State]

SCHEDULE

Regulation 2

CONSEQUENTIAL PROVISION

Amendment of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

1.—(1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ^{M7} is amended as follows.

(2) In Schedule 1—

(a) in Part II (offices, employments and work), in paragraph 4, for “justices' clerks and assistants to justices' clerks” substitute “justices' legal advisers”;

(b) in Part IV (interpretation), for the definition of “assistants to justices' clerks” substitute—
““justices' legal adviser” means a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003 ^{M8}.”.

Marginal Citations

M7 [S.I. 1975/1023](#), to which relevant amendments were made by [S.I. 2001/1192](#), [S.I. 2005/617](#) and [S.I. 2006/2143](#).

M8 [Section 28](#) was substituted by the [Courts and Tribunals \(Judiciary and Functions of Staff\) Act 2018 \(c. 33\)](#), [Schedule](#), paragraph 26.

Amendment of the Magistrates' Courts Rules 1981

2.—(1) The Magistrates' Courts Rules 1981 ^{M9} are amended as follows.

(2) In rule 2 (interpretation), in paragraph (1), after the definition of “the Act of 1998” insert—
““justices' legal adviser” means a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003;”.

(3) In rule 3A (case management), in paragraph (7)(a), for “, justices' clerk or assistant to a justices' clerk” substitute “or justices' legal adviser”.

(4) In rule 86 (requirements to be complied with before release), in paragraph (1)(b), for “a justices' clerk” substitute “a justices' legal adviser”.

Marginal Citations

M9 [S.I. 1981/552](#), to which relevant amendments were made by [S.I. 2009/3362](#).

Amendment of the Costs in Criminal Cases (General) Regulations 1986

3. In regulation 5 (the appropriate authority) of the Costs in Criminal Cases (General) Regulations 1986 ^{M10}, in paragraph (2)(d), for “the justices' clerk” substitute “a justices' legal adviser (a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003)”.

Marginal Citations

M10 [S.I. 1986/1335](#), to which relevant amendments were made by [S.I. 2008/2448](#).

Changes to legislation: There are currently no known outstanding effects for the The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020. (See end of Document for details)

Amendment of the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991

4. In rule 2 (general) of the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991 ^{M11}, in paragraph (2), for “justices' clerk” substitute “ designated officer for the court ”.

Marginal Citations

M11 [S.I. 1991/2096](#).

Amendment of the Civil Procedure Rules 1998

5.—(1) The Civil Procedure Rules 1998 ^{M12} are amended as follows.

(2) In rule 2.3 (interpretation), in paragraph (1) after the definition of “jurisdiction” insert—
““justices' legal adviser” means a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003;”.

(3) In rule 65.48 (recognizance), in paragraph (1)(c), for “clerk” substitute “ legal adviser ”.

(4) In rule 77.6 (scope and interpretation), in paragraph (3)(d)(ii), for “clerk” substitute “ legal adviser ”.

Marginal Citations

M12 [S.I. 1998/3132](#), to which relevant amendments were made by [S.I. 2010/1953](#).

Amendment of the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999

6.—(1) The Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 ^{M13} are amended as follows.

(2) In rule 3 (hearsay notices), in paragraph (2), omit “or the justices' clerk”.

(3) In rule 4 (power to call witness for cross-examination on hearsay evidence)—

(a) in paragraph (3)(a), for “justices' clerk” substitute “ designated officer for the court ”;

(b) in paragraph (5)—

(i) after “The court”, omit “or the justices' clerk”;

(ii) after “if the court”, omit “or the justices' clerk, as the case may be,”.

Marginal Citations

M13 [S.I. 1999/681](#), to which relevant amendments were made by [S.I. 2001/615](#) and [S.I. 2005/617](#).

Amendment of the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002

7.—(1) The Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002 ^{M14} are amended as follows.

(2) In rule 5 (interim orders)—

(a) in paragraph (1), for “justices' clerk” substitute “ court ”;

(b) in paragraph (2)—

Changes to legislation: There are currently no known outstanding effects for the The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020. (See end of Document for details)

- (i) for “justices' clerk” substitute “ court ”;
 - (ii) for “he” substitute “ it ”.
- (3) Omit rule 8 (delegation by justices' clerk).

Marginal Citations

M14 [S.I. 2002/2784](#).

Amendment of the Magistrates' Courts (Detention and Forfeiture of Cash) Rules 2002

8. In rule 2 (interpretation) of the Magistrates' Courts (Detention and Forfeiture of Cash) Rules 2002 ^{M15}, omit paragraph (b) (definition of “justices' clerk”).

Marginal Citations

M15 [S.I. 2002/2998](#), to which there are amendments not relevant to these Regulations.

Amendment of the Magistrates' Courts (Forfeiture of Political Donations) Rules 2003

9. In rule 2 (application for forfeiture) of the Magistrates' Courts (Forfeiture of Political Donations) Rules 2003 ^{M16}, in paragraph (2), for “justices' clerk” substitute “ designated officer for the court ”.

Marginal Citations

M16 [S.I. 2003/1645](#), to which there are amendments not relevant to these Regulations.

Amendment of the Community Legal Service (Funding) Order 2007

10.—(1) The Community Legal Service (Funding) Order 2007 ^{M17} is amended as follows.

(2) In article 3 (interpretation), in paragraph (1)—

(a) omit the definition of “assistant to a justices' clerk”;

(b) omit the definition of “justices' clerk” and in its place insert—

““justices' legal adviser” means a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003;”.

(3) In Schedule 1 (fees and hourly rates)—

(a) in Table 2(c), in the second column, for “Assistant to a justices' clerk, justices' clerk” each of the 5 times those words occur, substitute “Justices' legal adviser”;

(b) in Table 3(e), in the second column, for “Assistant to a justices' clerk, justices' clerk” both times those words occur, substitute “Justices' legal adviser”;

(c) in Table 3(f), in the second column, for “Assistant to a justices' clerk, justices' clerk” both times those words occur, substitute “Justices' legal adviser”;

(d) in Table 3(g), in the second column, for “Assistant to a justices' clerk, justices' clerk” both times those words occur, substitute “Justices' legal adviser”;

(e) in Table 9(a), in the heading to the third column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;

Changes to legislation: There are currently no known outstanding effects for the The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020. (See end of Document for details)

- (f) in Table 9(b), in the heading to the third column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”.
- (4) In Schedule 2 (family advocacy scheme: fees and rates)—
 - (a) in Table 1(a), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (b) in Table 1(b), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (c) in Table 2(a), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (d) in Table 2(b), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (e) in Table 2(c), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”.

Marginal Citations

M17 [S.I. 2007/2441](#), to which relevant amendments were made by [S.I. 2011/2066](#) and [S.I. 2014/1818](#).

Amendment of the Magistrates' Courts Fees Order 2008

11. In Schedule 1 (fees to be taken) to the Magistrates' Courts Fees Order 2008 ^{M18}, in the Note below fee 2.1, for “justices' clerk” substitute “justices' legal adviser”.

Marginal Citations

M18 [S.I. 2008/1052](#). Schedule 1 was substituted by [S.I. 2014/875](#).

Amendment of the Family Proceedings Fees Order 2008

12. In Schedule 1 (fees to be taken) to the Family Proceedings Fees Order 2008 ^{M19}, in fee 6.1, for “, a justices' clerk or an assistant to a justices' clerk” substitute “or a justices' legal adviser”.

Marginal Citations

M19 [S.I. 2008/1054](#). Schedule 1 was substituted by [S.I. 2014/877](#).

Amendment of the Community Infrastructure Levy Regulations 2010

13. In regulation 102 (magistrates' courts) of the Community Infrastructure Levy Regulations 2010 ^{M20}, omit paragraph (3).

Marginal Citations

M20 [S.I. 2010/948](#). Paragraph (3) was amended by [S.I. 2019/1103](#).

Amendment of the Civil Legal Aid (Remuneration) Regulations 2013

14.—(1) The Civil Legal Aid (Remuneration) Regulations 2013 ^{M21} are amended as follows.

Changes to legislation: There are currently no known outstanding effects for the *The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020*. (See end of Document for details)

- (2) In regulation 2 (interpretation), in paragraph (1)—
- (a) omit the definition of “assistant to a justices' clerk”;
 - (b) omit the definition of “justices' clerk” and in its place insert—
““justices' legal adviser” means a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003;”.
- (3) In Schedule 1—
- (a) in Table 2(c), in the second column, for “Assistant to a justices' clerk, justices' clerk” each of the 5 times those words occur, substitute “Justices' legal adviser”;
 - (b) in Table 3(f), in the second column, for “Assistant to a justices' clerk, justices' clerk” both times those words occur, substitute “Justices' legal adviser”;
 - (c) in Table 3(g), in the second column, for “Assistant to a justices' clerk, justices' clerk” both times those words occur, substitute “Justices' legal adviser”;
 - (d) in Table 3(h), in the second column, for “Assistant to a justices' clerk, justices' clerk” both times those words occur, substitute “Justices' legal adviser”;
 - (e) in Table 9(a), in the heading to the third column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (f) in Table 9(aa), in the heading to the third column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (g) in Table 9(b), in the heading to the third column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”.
- (4) In Schedule 3—
- (a) in Table 1(a), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (b) in Table 1(b), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (c) in Table 2(a), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (d) in Table 2(b), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”;
 - (e) in Table 2(c), in the first column, for “Assistant to a justices' clerk, justices' clerk” substitute “Justices' legal adviser”.

Marginal Citations

M21 [S.I. 2013/422](#), to which relevant amendments were made by [S.I. 2014/586](#).

Amendment of the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014

15. In article 2 (appeals to the family court) of the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014 ^{M22}, in paragraph (3)(s), for “a justices' clerk or an assistant to a justices' clerk” substitute “ a person nominated by the Lord Chancellor who is authorised to exercise functions under section 31O(1) of the Matrimonial and Family Proceedings Act 1984 ^{M23} ”.

Changes to legislation: There are currently no known outstanding effects for the The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020. (See end of Document for details)

Marginal Citations

M22 S.I. 2014/602.

M23 1984 c. 42. Section 31O was substituted by the [Courts and Tribunals \(Judiciary and Functions of Staff\) Act 2018 \(c. 33\)](#), [Schedule](#), paragraph 14.

Amendment of the Family Court (Composition and Distribution of Business) Rules 2014

16.—(1) The Family Court (Composition and Distribution of Business) Rules 2014 ^{M24} are amended as follows.

(2) In rule 2 (interpretation), in paragraph (1), omit the definitions of “assistant to a justices' clerk” and “justices' clerk”.

(3) In rule 6 (composition: appeals heard by a judge of circuit judge level or a judge of High Court level), in paragraph (2)(d), for “a justices' clerk or an assistant to a justices' clerk” substitute “a person nominated by the Lord Chancellor who is authorised to exercise functions under section 31O(1) of the Matrimonial and Family Proceedings Act 1984 ”.

Marginal Citations

M24 S.I. 2014/840.

Amendment of the Magistrates' Courts (Injunctions: Gang-related Violence) Rules 2015

17. In rule 9 (recognizance) of the Magistrates' Courts (Injunctions: Gang-related Violence) Rules 2015 ^{M25}, in paragraph (c), for “a justices' clerk” substitute “a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003 ”.

Marginal Citations

M25 S.I. 2015/421.

Amendment of the Magistrates' Courts (Injunctions: Anti-Social Behaviour) Rules 2015

18. In rule 9 (recognizance) of the Magistrates' Courts (Injunctions: Anti-Social Behaviour) Rules 2015 ^{M26}, in paragraph (c), for “a justices' clerk” substitute “a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003 ”.

Marginal Citations

M26 S.I. 2015/423.

Amendment of the Justices of the Peace Rules 2016

19.—(1) The Justices of the Peace Rules 2016 ^{M27} are amended as follows.

(2) In rule 3 (interpretation), omit the definition of “justices' clerk” and in its place insert—
““justices' legal adviser” means a person nominated by the Lord Chancellor who is authorised to exercise functions under section 28(1) of the Courts Act 2003;”.

(3) In the following rules, for “justices' clerk” each time those words appear substitute “justices' legal adviser”—

- (a) rule 7 (eligibility of justices and family justices), paragraph (3);
- (b) rule 8 (procedure for elections), paragraph (3);
- (c) rule 10 (notice of candidacy procedure), paragraphs (2), (3), (4), (7) and (8);
- (d) rule 11 (secret ballot), paragraphs (1), (2) and (3);
- (e) rule 12 (determining result of secret ballot), paragraphs (3), (5) and (6);
- (f) rule 13 (miscellaneous provisions about secret ballots), paragraphs (1) (where the words appear three times) and (3);
- (g) rule 14 (withdrawal of notices of candidacy), paragraphs (1)(g) and (2);
- (h) rule 15 (absence or insufficiency of notices of candidacy), paragraphs (1) (where the words appear twice) and (3);
- (i) rule 16 (material irregularity in election procedure), paragraphs (1) (where the words appear twice), (2), (3), (4), (5)(a), (6)(b) and (7);
- (j) rule 17 (duration of term in office and vacancies), paragraphs (3) and (5)(a).

(4) In rule 22 (membership of JTAAAC), for paragraph (1)(c) substitute—

“(c) the justices' legal adviser or an assistant nominated by them who is also a person authorised to exercise functions under section 28(1) of the Courts Act 2003;”.

(5) In rule 26 (membership of FTAAAC), for paragraph (1)(c) substitute—

“(c) the justices' legal adviser or an assistant nominated by them who is also a person authorised to exercise functions under section 28(1) of the Courts Act 2003;”.

(6) In the following rules, for “justices' clerk” each time those words appear substitute “justices' legal adviser”—

- (a) rule 29 (JTAAAC and FTAAAC decisions), paragraph (4);
- (b) rule 30 (grant of approval or authorisation), paragraph (2);
- (c) rule 31 (review of competence), paragraph (4)(d);
- (d) rule 32 (review of approvals and authorisations), paragraph (5)(f);
- (e) rule 35 (review of excess authorisations), paragraph (1).

Marginal Citations

M27 [S.I. 2016/709](#).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33) (“the 2018 Act”) makes provision for authorised court and tribunal staff to provide legal advice to judges of the family court and justices of the peace, and to exercise judicial functions where

Changes to legislation: *There are currently no known outstanding effects for the The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020. (See end of Document for details)*

procedure rules so provide. That provision includes repealing or amending provision in primary legislation which refers to the offices of a justices' clerk or assistant to a justices' clerk (since those offices will no longer exist as a result of the changes made by the 2018 Act). These Regulations make amendments to secondary legislation in consequence of the provision made by the Schedule to the 2018 Act, and also make transitional and saving provision.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

Changes to legislation:

There are currently no known outstanding effects for the The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020.