

EXPLANATORY MEMORANDUM TO
THE JUSTICES' ALLOWANCES (AMENDMENT) REGULATIONS 2023
2023 No. 737

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This statutory instrument removes the requirement for magistrates to submit an Annual Declaration form (the “Declaration”) each year in order to claim expenses. It removes the requirement to use a prescribed claim form, and instead specifies the information which is required to make a claim. It also makes further minor amendments to the process for making a claim.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative context

- 6.1 The instrument updates the Justices’ Allowances Regulations 2015 (“the Regulations”) in order to make changes to the process by which magistrates submit expenses claims. This is in order to ensure alignment between the updated expenses submission system and the Regulations.

7. Policy background

What is being done and why?

- 7.1 The removal of the requirement to submit a Declaration each year is desirable because it is unnecessary for claiming expenses. The Declaration asks magistrates for their personal details, evidence to support an expenses claim and to confirm that they wish to claim expenses. This same information is now gathered using a digital expenses system in a more consistent, secure and efficient way. The Declaration is also unpopular with magistrates, who find it burdensome to complete.
- 7.2 The Regulations are also being amended to ensure that they align with current practice. Since 2020 all magistrates have submitted expenses claims online, unless an agreed

alternative arrangement is in place. As a result, the old paper claim form is no longer in use and the type of information it requires magistrates to provide is out of date.

7.3 Paragraph 2 of the instrument therefore updates the information that magistrates need to provide in order to claim expenses. It also removes the old prescribed paper form.

7.4 The removal of the requirement for magistrates to submit any expenses claim *to the Lord Chancellor* is also desirable because section 15 of the Courts Act 2003 does not require this. While the Lord Chancellor is formally responsible for the payment of expenses, in practice the assessment of magistrates' expenses claims is delegated to HM Courts & Tribunals Service (HMCTS). This instrument therefore clarifies that expenses claims do not need to go to the Lord Chancellor for review.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Ministry of Justice has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 Section 21 of the Courts Act 2003 requires the Lord Chancellor and Lord Chief Justice to take all reasonable and practical steps for ensuring that magistrates are kept informed of matters affecting them in the performance of their duties and for ascertaining their views on such matters.

10.2 No public consultation has been undertaken in relation to this amending instrument, which simplifies the regulations applicable to magistrates' expenses. Nevertheless, the Ministry of Justice, HMCTS and the Lord Chief Justice have communicated and engaged with the Magistrates' Association, the Magistrates' Leadership Executive and individual magistrates on policy and procedural changes affecting magistrates' allowances, including through the use of focus groups to consider the content of the magistrates' expenses policy. The Lord Chief Justice's delegate has been involved in that process. The Regulations, as amended by this instrument, enshrine the agreed policy.

11. Guidance

11.1 It will be communicated to magistrates that they no longer need to submit a Declaration. The current magistrate expenses policy will be updated to reflect this. No further guidance is needed since the Regulations are primarily being updated to reflect existing practice.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. As the Regulations are being updated to remove a form which is no longer required and to reflect existing practice, there will be no significant impact on the magistracy.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no impact on private sector business or charities, and there is no public sector impact *per*

se as the Regulations and this instrument only outline how a magistrate should claim expenses. There will be no associated impacts as the Regulations are being updated to reflect a process which is already in place.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 No specific monitoring or review will be undertaken, beyond data collation which is already undertaken on the number and type of expenses claims, and the number of registered claimants.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Samuel Hardy at the Ministry of Justice (Email: Samuel.Hardy1@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Annabel Burns, Director for Judicial and Legal Services Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State Mike Freer at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.