

EXPLANATORY MEMORANDUM TO
THE ASSISTANTS TO JUSTICES' CLERKS (AMENDMENT)
REGULATIONS 2007

2007 No. 1448 (L.7)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by command of Her Majesty.

2. Description

2.1 These regulations amend The Assistants to Justices' Clerks Regulations 2006 to allow persons who were qualified to carry out the duties of an assistant clerk on 1st January 1999 (mainly diploma holders) and persons registered with the Law Society to do so on a permanent basis.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Assistants to Justices' Clerks Regulations 2006, in regulation 3, set out the qualifications for assistants to justices' clerks who can be employed as clerks in court. They provide that people who have qualified as barristers or solicitors and have passed the exams for either of those professions or have been granted an exemption are qualified to be assistants to justices' clerks which means that they can carry out matters on behalf of the justices' clerk. The 2006 Regulations also enable the Lord Chancellor to make temporary appointments of people to act as clerks in court where he is satisfied that they are, in the circumstances, suitable and that no other arrangement can reasonably be made.

4.2 These Regulations replace regulation 3 of the 2006 Regulations. The effect is to clarify that those:

- i. who are in employment as an assistant registered by the Law Society under regulation 23 of the Training Regulations 1990;
- ii. who hold a valid training certificate granted by a magistrates' courts committee before 1st January 1999; or
- iii. who acted as a clerk in court before 1st January 1999 and were qualified to act as such under the Justices' Clerks (Qualification of Assistants) Rules 1979 (as amended) to carry out the duties of assistant clerks can act;

may act as clerks in court. This reinstates changes made by the 2006 regulations as explained below.

5. Extent

- 5.1 These regulations apply to England and Wales

6. European Convention on Human Rights

- 6.1 Since the instrument is subject to the negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy Background

- 7.1 The amendments are needed because representations were made by Justices' Clerks that the Assistants to Justices Clerks Regulations 2006, which themselves were made to both simplify rules on assistant clerks and allow flexibility for the Lord Chancellor where necessary, had the inadvertent effect of throwing the existing power of some experienced assistant clerks to act as clerks in court into doubt. This was a consequence of the revocation of the Justices' Clerks (Qualification of Assistants) Rules 1979 which were abolished by the 2006 Regulations on the basis that they were no longer needed and that their revocation would not affect the status of existing assistant clerks. Clarity on the power of all assistant clerks is important for the proper functioning of the magistrates' courts.
- 7.2 The 1979 Rules allowed persons, including holders of diplomas from specified institutions, to act as clerks in court. They were amended by the Justices' Clerks (Qualification of Assistants) (Amendment) Rules 1999 and 2001 (SIs 1999/2814 and 2001/2269) to remove the ability to qualify via a diploma and vocational training. Those amendments applied after 1st January 1999. Transitional provision was required to protect those who were already qualified to act as clerks in court so that they could continue to act as clerks in court. That transitional protection is replicated in the 2007 Regulations to protect individuals who were acting as clerks in court and were qualified to do so under the 1979 Rules as they stood on 1st January 1999, and whose right to continue to act may arguably have been affected by the 2006 Regulations. Therefore, the existing provision in the 2006 Regulations is amended so that holders of training certificates at 1st January 1999 are protected under regulation 3(1)(c) and persons who acted as a clerk in court as at 1st January 1999 and were qualified to do so are still qualified under regulation 3(1)(d). Holders of training certificates as at 1st January 1999 should have qualified, but are protected in the 2007 Regulations because they were protected before 2006. The amendments are intended to ensure only that persons who were able to act before the 2006 regulations are still able to do so.
- 7.3 The detailed representations by justices' clerks about the 2006 Regulations were that it was unclear whether or not holders of diplomas in Magisterial Law (diplomas conferred by institutions detailed in schedule 2 of the 1979 rules as amended) were caught by the 2006 Regulations meaning that reliance had to be placed on the transitional provisions in Schedule 9 to the Courts Act 2003. Certainty was needed and so as a temporary measure the approximately

320 persons affected were designated under the power in regulation 4 of the 2006 Regulations. The 2007 Regulations are a permanent solution to ensure that there is no doubt about the ability of assistant clerks, who are vital to the maintenance of the magistrates' court system (they form about 16% of the total number of clerks in court), to undertake their role.

- 7.4 The 2007 Regulations were consulted upon with selected justices' clerks, legal advisers and representatives of the wider community of legal advisers. Those consulted fed their views into an early draft, amendments were made as a result and they are now content that the approach removes any concerns that they had and have approved the draft regulations in the form that they have been made.

8. Impact

- 8.1 There is no regulatory impact on the private or public sector because the regulations will enable existing clerks in court to continue to act and those in training to continue to carry out the duties of an assistant clerk and so no Regulatory Impact Assessment is required. There is no impact on the Exchequer.

9. Contact

- 9.1 Any enquiries about the contents of this memorandum should be addressed to : Mr C Folkman, Criminal Justice Delivery Unit, Ministry of Justice; email Chris.folkman@hmcourts-service.gsi.gov.uk; telephone 020 7210 0415