

EXPLANATORY MEMORANDUM TO

THE COURT OF PROTECTION (AMENDMENT) RULES 2011

2011 No. 2753 (L.19)

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

2. Purpose of the instrument

2.1 To amend the Court of Protection Rules 2007 to enable authorised court officers to exercise the court's jurisdiction in the circumstances specified in the relevant practice direction. Such officers will not be able to deal with any application or proceedings by way of a hearing nor with an application for the reconsideration of their own or another authorised court officer's decision. Authorised court officers will be required to refer any issue that arises to a judge for the judge's consideration.

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

3.1 None

4. Legislative Context

4.1 The Court of Protection (the Court) was created in 2007 under the Mental Capacity Act 2005 (MCA) to make decisions (or to appoint others – known as deputies – to make decisions) on behalf of those who lack capacity. At present all applications to the Court must be decided by a judge, even if the issue involved is not contentious, such as an undisputed application for a person to become a 'property and affairs deputy' in order to make financial decisions on behalf of a relative or friend.

4.2 Following concerns about the Court's processes, an ad hoc Rules Committee was set up in 2009 by Sir Mark Potter, then President of the Court, to review the Court of Protection Rules 2007. The Committee's report was published in July 2010.

Recommendation 5 of the Committee was: *“Strictly defined and limited non-contentious property and affairs applications should be dealt with by court officers (e.g. applications for a property and affairs deputy by local authorities and in respect of small estates that do not include defined types of property). The provisions will also have to provide for an automatic right to refer any such decision to a judge and internal monitoring and review by the judges”*. The Committee made this recommendation since *“many of the issues placed before the court are in effect administrative, or are straightforward and undisputed”* and delegation of this work to authorised court officers would *“free up judge time and reduce delay in respect of all decision making”*.

4.3 This SI amends the Court of Protection Rules 2007 to allow non-contentious property and affairs applications to be dealt with by “authorised court officers”. This is expected to reduce the time it takes to deal with routine matters and improve the service to users, often some of the most vulnerable members of society, whose interests are best served by having their cases processed as quickly as possible. The change will also free up judicial time to focus on the more difficult and sensitive issues the Court has to deal with.

4.4 A public consultation on the detail of the proposals was conducted (details below), and the response to the proposals was overwhelmingly positive.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Rule amendments will enable straightforward applications to the Court of Protection, as specified in the relevant practice direction, to be delegated to authorised court officers. At present, all applications to the Court have to be decided by a judge, even when the issue involved is straightforward and non-contentious – such as an undisputed application to become a “property and affairs deputy”. Judges will continue to take all decisions which relate to health and welfare issues, but, with these amendments, some types of application for property and affairs deputyships (which form a large proportion of the Court’s work) will be dealt with by authorised court officers. This will free up judicial time to focus on the more difficult and sensitive issues the Court has to deal with, and reduce the time it takes to deal with routine matters, thereby improving the service to users.

8. Consultation outcome

8.1 A consultation paper on these proposals, *Court of Protection: Authorised Officers (CP9/2011)* was published on 28th June 2011. Consultation closed on 20th September 2011. Copies were sent to known stakeholders in the judiciary, the legal profession and the voluntary sector, and the consultation paper was placed on the Ministry of Justice website, inviting responses from others with an interest.

8.2 A total of 42 responses was received. The overwhelming majority of respondents supported the proposals, with some disagreement only around the range of applications to be decided by “authorised” court officers. The Government’s Response to the consultation, which includes details of the responses, was published on 2nd November 2011. This Statutory Instrument was circulated in draft for technical comments to the Court of Protection User Group and other known stakeholders from 3rd to 10th November 2011.

9. Guidance

9.1 The detail of the applications which will in future be decided by “authorised” court officers will be contained in a Practice Direction. The authorised officers will work

under the supervision of the judges, and the senior judge will issue guidance on what should be referred up. This will give the court the ability to adapt as circumstances change. Since the effect of the Statutory Instrument will not result in any changes to the procedures to be followed by Court users, it is not intended that guidance should be issued to them.

10. Impact

10.1 The provisions will have negligible impact on business, charities or voluntary bodies.

10.2 The impact of these provisions on the public sector is also negligible.

10.3 In light of these negligible impacts, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply specifically to small business.

12. Monitoring & review

12.1 The effect of these provisions, and of the Practice Direction, will be subject to internal review after 12 months, and the Practice Direction may be amended accordingly.

13. Contact

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