

EXPLANATORY MEMORANDUM TO
THE HIGH COURT (DISTRIBUTION OF BUSINESS ORDER) 2014

2014 No. 3257 (L. 33)

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 The Order provides for the Division of the High Court to which applications for writs of habeas corpus are to be assigned.

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

3.1 To the extent that it amends primary legislation, the Order has been approved by Parliamentary Counsel.

4. Legislative Context

4.1 The Order replaces existing provision in the Senior Courts Act 1981 and in the Rules of Supreme Court 1965 (contained now in Schedule 1 to the Civil Procedure Rules 1998) in relation to the assignment of habeas corpus cases in the High Court. The Order is being made in parallel with the making of updated procedural rules for habeas corpus applications in the Civil Procedure Rules 1998 and in the Family Procedure Rules 2010.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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 High Court is comprised of three Divisions: Chancery, Queen's Bench and Family. The Senior Courts Act 1981 includes provision assigning certain types of work to a specified Division of the High Court.

7.2 The Order is being made now as new procedural rules relating to the conduct of habeas corpus cases in the High Court are being made in the Civil Procedure Rules 1998 and the Family Procedure Rules 2010; and part of that rule making exercise involves

revoking current provision which assigns certain habeas corpus cases to the Family Division. It follows that this is an appropriate time to make fresh provision for the assignment of the relevant cases to the Family Division, and to make parallel provision for the assignment of remaining cases to the Queen's Bench Division.

7.3 Currently, all applications for writs of habeas corpus "except applications made by a parent or guardian of a minor for such a writ concerning the custody of a minor" are assigned to the Queen's Bench Division. The amendments made by the Order will assign to the Queen's Bench Division all applications for writs of habeas corpus "except applications for habeas corpus for release relating to a minor", with those excepted cases being assigned to the Family Division. The reason for this slight change is that it is considered appropriate for all applications for habeas corpus for release which relate to a minor to be made to the Family Division, irrespective of whether the application is made by a parent, a guardian, or some other person, since the judiciary in that Division have particular expertise in dealing with matters relating to minors.

8. Consultation outcome

8.1 As the Order deals solely with the distribution of business in the High Court it was not considered necessary to consult widely, but the views of the Minister of State in the Ministry of Justice, the Lord Chief Justice, the President of the Family Division and the President of the Queen's Bench Division were sought and they agreed to the terms of the Order. In accordance with the requirements of the Senior Courts Act 1981, the Order is made by the Lord Chief Justice, with the concurrence of President of the Family Division, the President of the Queen's Bench Division and of the Lord Chancellor.

9. Guidance

9.1 The Civil Procedure Rules 1998 and the Family Procedure Rules 2010 will set out the procedure to be followed in making applications for writs of habeas corpus. It is not considered that separate guidance on the Order is required, as its provisions are straightforward.

10. Impact

10.1 The impact on business, charities or voluntary bodies is likely to be very small as all applications for writs of habeas corpus are already made in the High Court. The minor changes in terms of which Division habeas corpus applications are assigned to will not have a significant impact.

10.2 The impact on the public sector is limited and can be accommodated within current allocations.

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

11. Regulating small business

11.1 The legislation applies to small businesses, notably firms of solicitors.

11.2 As the impact of the requirements on firms employing up to 20 people is likely to be very small, and as the Order is very straightforward, no separate provision for such firms is considered necessary.

12. Monitoring & review

12.1 Due to the straightforward nature of the provisions of the Order and the minor nature of the changes made from the current position, the provisions will not be kept under review.

13. Contact

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