

**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(a), makes the following Regulations:

**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(b) and section 51(2)(d) of the Mental Capacity Act 2005(c) (exercise of jurisdiction by officers or other staff of the court)—

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(a) 2018 c. 33.  
(b) 1997 c. 12.  
(c) 2005 c. 9.

- (a) any provisions of the Civil Procedure Rules 1998(a), 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(b) 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(c), 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.

**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.

27th January 2020

*Chris Philp*  
Parliamentary Under Secretary of State]  
Ministry of Justice

**SCHEDULE**  
**CONSEQUENTIAL PROVISION**

Regulation 2

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

1.—(1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(d) 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(e);”.

**Amendment of the Magistrates’ Courts Rules 1981**

2.—(1) The Magistrates’ Courts Rules 1981(f) are amended as follows.

(2) In rule 2 (interpretation), in paragraph (1), after the definition of “the Act of 1998” insert—

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(a) S.I. 1998/3132.  
 (b) 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.  
 (c) S.I. 2017/1035.  
 (d) S.I. 1975/1023, to which relevant amendments were made by S.I. 2001/1192, S.I. 2005/617 and S.I. 2006/2143.  
 (e) Section 28 was substituted by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33), Schedule, paragraph 26.  
 (f) S.I. 1981/552, to which relevant amendments were made by S.I. 2009/3362.

“‘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”.

### **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(a), 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)”.

### **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(b), in paragraph (2), for “justices’ clerk” substitute “designated officer for the court”.

### **Amendment of the Civil Procedure Rules 1998**

5.—(1) The Civil Procedure Rules 1998(c) 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”.

### **Amendment of the Magistrates’ Courts (Hearsay Evidence in Civil Proceedings) Rules 1999**

6.—(1) The Magistrates’ Courts (Hearsay Evidence in Civil Proceedings) Rules 1999(d) 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,”.

### **Amendment of the Magistrates’ Courts (Anti-Social Behaviour Orders) Rules 2002**

7.—(1) The Magistrates’ Courts (Anti-Social Behaviour Orders) Rules 2002(e) are amended as follows.

(2) In rule 5 (interim orders)—

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(a) S.I. 1986/1335, to which relevant amendments were made by S.I. 2008/2448.  
(b) S.I. 1991/2096.  
(c) S.I. 1998/3132, to which relevant amendments were made by S.I. 2010/1953.  
(d) S.I. 1999/681, to which relevant amendments were made by S.I. 2001/615 and S.I. 2005/617.  
(e) S.I. 2002/2784.

- (a) in paragraph (1), for “justices’ clerk” substitute “court”;
- (b) in paragraph (2)—
  - (i) for “justices’ clerk” substitute “court”;
  - (ii) for “he” substitute “it”.
- (3) Omit rule 8 (delegation by justices’ clerk).

**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(a), omit paragraph (b) (definition of “justices’ clerk”).

**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(b), in paragraph (2), for “justices’ clerk” substitute “designated officer for the court”.

**Amendment of the Community Legal Service (Funding) Order 2007**

**10.—**(1) The Community Legal Service (Funding) Order 2007(c) 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”;
- (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”;

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(a) S.I. 2002/2998, to which there are amendments not relevant to these Regulations.  
 (b) S.I. 2003/1645, to which there are amendments not relevant to these Regulations.  
 (c) S.I. 2007/2441, to which relevant amendments were made by S.I. 2011/2066 and S.I. 2014/1818.

- (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”.

#### **Amendment of the Magistrates’ Courts Fees Order 2008**

**11.** In Schedule 1 (fees to be taken) to the Magistrates’ Courts Fees Order 2008(a), in the Note below fee 2.1, for “justices’ clerk” substitute “justices’ legal adviser”.

#### **Amendment of the Family Proceedings Fees Order 2008**

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

#### **Amendment of the Community Infrastructure Levy Regulations 2010**

**13.** In regulation 102 (magistrates’ courts) of the Community Infrastructure Levy Regulations 2010(c), omit paragraph (3).

#### **Amendment of the Civil Legal Aid (Remuneration) Regulations 2013**

**14.—**(1) The Civil Legal Aid (Remuneration) Regulations 2013(d) are amended as follows.

(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”;

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(a) S.I. 2008/1052. Schedule 1 was substituted by S.I. 2014/875.  
 (b) S.I. 2008/1054. Schedule 1 was substituted by S.I. 2014/877.  
 (c) S.I. 2010/948. Paragraph (3) was amended by S.I. 2019/1103.  
 (d) S.I. 2013/422, to which relevant amendments were made by S.I. 2014/586.

- (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”.

**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(a), 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(b)”.

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

**16.—**(1) The Family Court (Composition and Distribution of Business) Rules 2014(c) 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”.

**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(d), 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”.

**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(e), 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”.

**Amendment of the Justices of the Peace Rules 2016**

**19.—**(1) The Justices of the Peace Rules 2016(f) 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;”.

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(a) S.I. 2014/602.  
 (b) 1984 c. 42. Section 31O was substituted by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33), Schedule, paragraph 14.  
 (c) S.I. 2014/840.  
 (d) S.I. 2015/421.  
 (e) S.I. 2015/423.  
 (f) S.I. 2016/709.

(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).

## 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 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.

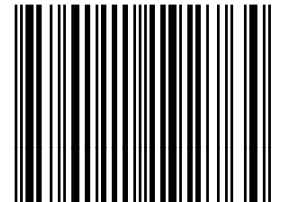
A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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