

**EXPLANATORY MEMORANDUM TO THE
JUSTICES CLERKS RULES 2005**

2005 No.545 (L.10)

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty

2. Description

2.1. The Rules list the functions of a single justice that can be performed by a justices' clerk and the functions of a justices' clerk that can be performed by an authorized assistant. This instrument substantively reproduces the Justice Clerk Rules 1999 (S.I. 1999/2784) which were made under Section 45 of the Justices of the Peace Act 1997. The 1999 Rules will no longer have any effect when Section 45, along with the rest of the Justices of the Peace Act, is repealed by the Courts Act 2003 on 1 April 2005.

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

3.1. None

4. Legislative Background

4.1. The Rules are made under Section 28 of the Courts Act 2003. The opportunity has been taken to update references to many of the enactments under which the powers of justices' clerks and their assistants are exercised.

4.2. These rules are subject to negative resolution procedure.

5. Extent

5.1. This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1. There are no human rights implications.

7. Policy Background

7.1. The rules are being put in place to ensure continuity of existing functions (which include Criminal, Civil and Family work) carried out by Justices' Clerks and assistants authorized by Justices' Clerks.

7.2. The Rules are centred on preserving the 1999 Rules for Justice Clerks Functions in order to ensure continuity during the transition to Her Majesty's Court Service (HMCS). This is therefore a routine transition issue to assure normal business continuity and for this to be effective re-enacted rules are required.

7.3. The Rules are a replication of the Justices' Clerk Rules 1999 with the exception of a few small changes of language. This has in particular focused on substituting "same" for "like" in relation to functions connected with bail provisions.]

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2. There will be no interest outside the Magistrates' Courts Community. We have consulted all statutory rule committees, as required under Section 20 of the Courts Act 2003.

9. Contact

9.1. Mike McIver at the Department for Constitutional Affairs (Tel: 020 7210 0419 or e-mail mike.mciver@courtservice.gsi.gov.uk can answer any queries regarding the instrument.