

**EXPLANATORY MEMORANDUM TO
THE COURT FUNDS (AMENDMENT) RULES 2010**

2010 No. 172

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 purpose of the instrument is to amend the Court Funds Rules 1987 to simplify the administration and management of funds held in court.

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

3.1 None.

4. Legislative context

4.1 Part VI of the Administration of Justice Act 1982 (AJA) confers general power on the Lord Chancellor, with the agreement of the Treasury, to regulate the administration and management of funds held in court. These rules are made under section 38 of the AJA.

5. Territorial extent and application

5.1 This instrument applies to England and Wales only.

6. European Convention on Human Rights

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

7. Policy background

• *What is being done and why*

7.1 Under the AJA, the Court Funds Office (CFO), acting on behalf of the Accountant General of the Senior Courts, provides a banking and administration service for the civil courts in England and Wales including the Court of Protection. CFO currently administers around 141,000 client accounts worth approximately £4.4 billion. Money held by CFO originates from three main sources:

- Damages awarded to children as a result of civil litigation. These funds are held in court until the child reaches majority (18 years);

- Funds belonging to people who lack the capacity to manage their own financial affairs who are subject to an order of the Court of Protection; and
- Money held on deposit pending settlement of court proceedings or under a variety of statutory legislation.

7.2 These Rules make a number of amendments to the Court Funds Rules 1987 in order to simplify the administration and management of funds held in court. In particular:

- Rule 19 is modified to allow litigants in person involved in proceedings at the Royal Courts of Justice who do not have a bank account and persons who are required by or under an enactment to give security for costs in respect of election petition proceedings to make cash payments at the Mayor's and City of London Court;
- Rule 40 is amended to remove the requirement for personal attendance at CFO of persons claiming to be entitled to funds held in court where there is a question as to their entitlement or identity;
- Rule 45A is inserted to enable the Accountant General to transfer money held on a special account to a basic account when he is notified, or becomes aware, that a person ceases to be under a disability;
- Rule 57 is amended to clarify arrangements for transferring funds belonging to children to an account of unclaimed balances;
- Rule 58 is modified to remove the obligation imposed on the Accountant General to facilitate the inspection of the list of unclaimed balances accounts by members of the public during office hours. Instead, access will be provided via telephone and on written request and may also be made available over the internet in the future;
- Rule 59 and rule 60 are combined to enable the Accountant General to sell both securities and effects that are eligible to be carried over to the account of unclaimed balances and to pay the proceeds into that account.

- ***Consolidation***

7.3 Ministry of Justice is planning to consolidate the amendments to the Court Funds Rules in 2012. In the meantime, commercial publishers will continue to produce consolidated versions of the Rules, both in electronic and hard copy.

8. Consultation outcome

8.1 A 12 week informal consultation exercise on proposals to simplify the CFO service model closed on 31 October 2009. The consultation document was sent to 16 key stakeholder groups including the judiciary, solicitors, client representatives, representative bodies, Her Majesty's Court Service, the Court of Protection, the Office of the Public Guardian and CFO staff members. 6 responses were received to the consultation. These generally agreed with the proposals, with some requests for further clarification. One specific concern was raised in relation to the proposal to sell unclaimed effects. The proposal has been modified so that the Accountant General is able to sell unclaimed effects but is not required to do so under legislation. This will enable the Accountant General to make alternative arrangements for any unclaimed effects that are not suitable for sale.

9. Guidance

9.1 Information about the practical implications of these amendments to the Court Funds Rules 1987 will be published on CFO's website. CFO has a customer services team who will be the first point of contact and advice to anyone who needs help or further guidance.

10. Impact

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 CFO intends to conduct regular independent client satisfaction surveys which will give clients the opportunity to provide feedback on accessibility, limitations and impact of the service.

13. Contact

13.1 Ben Luscombe at the Court Funds Office Tel: 020 7947 7943 or email: Ben.Luscombe@justice.gsi.gov.uk can answer any queries regarding the instrument.