

**EXPLANATORY MEMORANDUM TO
THE COURT FUNDS RULES 2011**

2011 No. 1734

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 This statutory instrument governs the administration and management of funds held in court. It is divided into six parts which deal with preliminary matters, depositing funds in court, investment options, payment out from a fund in court, unclaimed funds and miscellaneous provisions.

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

3.1 None.

4. Legislative Context

4.1 This instrument replaces the Court Funds Rules 1987.

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 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 Administration of Justice Act 1982 (AJA), the Court Funds Office (CFO), acting on behalf of the Accountant General of the Senior Courts, provides investment and banking administration services for clients whose money is held under the control of the civil courts of England and Wales, including the Court of Protection.

7.2 CFO currently administers around 140,000 client accounts worth approximately £3.3 billion. Money held by CFO originates from three main sources:

- Damages awarded to children as a result of civil legal action in a county court in England or Wales or the High Court of Justice. These assets are held on their behalf until the child reaches majority (18 years of age);
- Assets belonging to people who lack the capacity to manage their own financial affairs where the Court of Protection has appointed someone else to manage their affairs;
- Cases where money is held in court pending settlement of civil court action, or on behalf of dissenting shareholders, widows and other clients whose funds are held under a variety of different statutes.

7.3 CFO is working in partnership with National Savings & Investments (NS&I) to modernise the service it provides to clients. The new Court Funds Rules have been drafted as part of this modernisation work. There are a number of reasons for re-drafting the Rules - they have not been reworked since they were originally drafted in 1987, there have been a number of amendments since that time, they are outdated and drafted in difficult and old language. The re-draft reduces and simplifies the Rules so that they are clearer, less confusing and more user friendly. The new Rules also ensure that the new service provider has the powers it needs to carry out CFO's functions.

7.4 The overall policy aim has been to restate, clarify and modernise the Court Funds Rules rather than to alter their substantive effect. The key changes to the Rules are summarised below:

- To formally state that the Accountant General is unable to accept promissory notes as a form of payment;
- Money will only be transferred from a basic account to a special account from the date of receipt of a payment schedule signed and authenticated by the court directing the transfer;
- The Accountant General is no longer able to invest in securities outside of a common investment scheme established under section 42 of the Administration of Justice Act 1982;
- Money may only be invested in a common investment scheme if the fund in court amounts to £10,000 or more;
- The Public Trustee is no longer authorised to give investment directions on behalf of clients;
- Foreign currency may be converted to Sterling before it is transferred to the unclaimed balances account; and
- The Accountant General is no longer required to transfer all fractions of one penny received in respect of securities to Her Majesty's Paymaster General.

- Consolidation

7.5 Not applicable.

8. Consultation outcome

- 8.1 An informal consultation exercise seeking views on a draft version of the new Court Funds Rules was undertaken from 1 February 2011 to 26 April 2011. The consultation document was distributed to a range of interested parties. Fourteen responses were received to the consultation from a wide variety of stakeholders including the judiciary, members of the legal profession, investment advisers, the Office of the Public Guardian, the Court of Protection, Her Majesty's Courts and Tribunals Service, CFO staff and a member of the public. On the whole, respondents supported the proposals and agreed that the new Rules provide a clear framework for the management and investment of funds in court. Many of the responses related to technical and drafting points. For example, it was suggested that the rules should not refer to "a person under a disability" as this expression is no longer used in the Civil Procedure Rules 1998. This has been incorporated into the final version of the Rules.

9. Guidance

- 9.1 The CFO has a customer services team who will be the first point of contact and advice to anyone who needs help or further guidance. Up to date commentary will also be provided to the publishers of the Civil Court Practice and the White Book Service.

10. Impact

- 10.1 An Impact Assessment has not been prepared for this instrument as there are no substantive changes to the Rules.

11. Regulating small business

- 11.1 The instrument does not apply to small business.

12. Monitoring & review

- 12.1 The new Rules will be subject to review and evaluation as part of the wider modernisation programme. The new Rules will also be monitored through client feedback, regular meetings with the judiciary and ongoing discussions with the new service provider.

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.