

**EXPLANATORY MEMORANDUM TO
THE COURT FUNDS (AMENDMENT No 2) RULES 2007**

2007 No. 2617

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 The Court Funds Rules (S.I 1987/821, “the rules”) are rules of court that govern the payment in, investment and payment out of monies lodged under the Civil Procedure Rules and other statutory enactments.
- 2.2 This Statutory Instrument:-
- (a) Contains amendments to the rules consequential on the Mental Capacity Act 2005.
 - (b) Updates outdated terminology in the rules
 - (c) Revokes a rule that is now obsolete.
 - (d) Introduces some minor changes regarding payment out of monies.
 - (e) Amends a rule requiring an account to be open for ten years before transfer to an unclaimed balances account

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

- 3.1 None

4. Legislative Background

- 4.1 The instrument contains consequential amendments as a result of the Mental Capacity Act 2005.

5. Extent

- 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 policy background for each of the amendments is set out below using the numbering from para 2.2;

- (a) These amendments remove references to the Court of Protection as it existed under Part VII of the Mental Health Act 1983 and to connected terminology and also to procedures for the lodgment, investment and payment out of funds which operated under the 1983 Act. These references are replaced by references to the Court of Protection as established by the Mental Capacity Act 2005 and to connected terminology and to the new procedures under the Act of 2005 for the lodgment, investment and payment out of funds.
- (b) These amendments update the Act under which an Employment Appeal Tribunal is established and clarify the requirement for a sealed order.
- (c) Rule 9, “Certificate of a Master or Taxing Master” is revoked, as it is obsolete. Such payments are made by way of Payment Schedule.
- (d) These amendments allow for payment of monies abroad electronically and also allow the Accountant General to release funds to pay funeral expenses or inheritance tax on application prior to the issue of a grant of representation when a person entitled to a fund in court has died.
- (e) This amendment removes the requirement for an account to be open for ten years before the Accountant General can transfer the funds in that account to an account of unclaimed balances. An account can now be moved to unclaimed balances if there has been no activity (other than crediting interest/dividends or the proceeds of the sale of securities) on the account for 10 years or the Accountant General is satisfied that the person cannot be traced.

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.

9. Contact

- 9.1 Elizabeth Jeary at the Court Funds Office [Tel: 0207 947 7292 or e-mail: elizabeth.jeary@hmcourts-service.gsi.gov.uk] can answer any queries regarding the instrument.