

**EXPLANATORY MEMORANDUM TO  
THE CRIME AND COURTS ACT 2013 (FAMILY COURT: CONSEQUENTIAL  
PROVISION) ORDER 2014**

**2014 No. [DRAFT]**

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. Purpose of the instrument**

- 2.1. This instrument makes amendments to primary legislation which are needed in consequence of the provisions in the Crime and Courts Act 2013 (“the 2013 Act”) establishing a family court for England and Wales. It mainly replaces references in primary legislation to magistrates’ court and county court with references to the family court, as these courts will no longer be able to hear family proceedings when the new family court is commenced. The purpose of the instrument is to reflect in existing Acts the creation of the family court.

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

- 3.1. To the extent that it amends primary legislation, the Order has been approved by Parliamentary Counsel.
- 3.2. The Committee will note that this Order is stated to come into force on the date on which section 17(3) of the 2013 Act is brought fully into force. This drafting device has been used as at the time of laying this Order in draft, a final decision as to the commencement date has yet to be made, so it would not have been appropriate to include a calendar date in the coming into force provision of this Order.

**4. Legislative Context**

- 4.1. This Order makes amendments to primary legislation required because the 2013 Act provides for the setting up of a national family court for England and Wales, so references to courts dealing with family proceedings need to be changed. County courts and magistrates’ courts will cease to have jurisdiction to deal with family proceedings which will instead be dealt with in the family court and the High Court.
- 4.2. This Order is one of a large group of instruments required to set up the new family court for England and Wales which will be laid before Parliament before the family court comes into force. But separate Explanatory Memorandums are being published for each instrument as they cover quite different aspects of the new family court.

## **5. Territorial Extent and Application**

5.1. This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1. The Minister of State, Simon Hughes has made the following statement regarding Human Rights:

“In my view the provisions of the Crime and Courts Act 2013 (Family Court: Consequential Provision) Order 2014 are compatible with the Convention rights.”.

## **7. Policy background**

- **What is being done and why**

7.1. In its response to the Family Justice Review, published in February 2012, the Government accepted the recommendations that a single family court should be created to deal with family proceedings, replacing the current three tiers of court structure, with the High Court retaining exclusive jurisdiction for certain matters. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was made in the 2013 Act. The 2013 Act makes a large number of changes to primary legislation required to enable the family court to be set up. This Order makes further such consequential changes.

7.2. Currently family proceedings, and proceedings for the variation or enforcement of orders made in family proceedings, can be heard in a magistrates' court, a county court or the High Court.

7.3. When the new family court is commenced, the new court will be able to deal with all family proceedings, except for a limited number of matters which will be exclusively reserved to the High Court. Family proceedings courts will cease to exist and magistrates' courts and the new single county court will not be able to deal with family proceedings.

7.4. The amendments to primary legislation set out in this Order mainly amend references to courts to reflect this change.

7.5. Amendments made by articles 2 to 4 are to legislation listing types of maintenance order. The amendments are required as the family court rather than the magistrates' court will be dealing with enforcement of maintenance orders.

7.6. The amendments made by article 5 are required as the family court will need to be able to deal with attachments of earnings orders concerning payments due under maintenance orders, rather than the magistrates' court.

- 7.7. The amendments made by articles 6 to 11 are required as when the family court commences it will no longer be possible to register a maintenance order in the High Court for enforcement purposes.
- 7.8. The amendments made by articles 12 and 18 give the family court similar powers to those the county court currently has to make orders for the delivery of a bill of costs by a solicitor.
- 7.9. The amendment made by article 13 removes a reference to the county court as it is no longer required.
- 7.10. The amendments made by articles 14 to 16 are required so that an order for the payment of costs made in family proceedings in the High Court can be enforced through an application for a charging order made in the High Court or the family court.
- 7.11. The amendment made by articles 17 and 20 add the family court to the list of courts where money paid and deposited in or under the custody of the court can be vested in the Accountant General.
- 7.12. The amendment made by article 19 adds the family court to a list of courts so that, where a person takes steps to enforce a judgment or order of the court for the payment of a sum due, the costs of any previous attempt to enforce the judgment can be recovered.
- 7.13. The amendment made by article 21 enables the family court rather than the magistrates' court to make a recovery order under section 23 of the Jobseekers Act 1995 (to the extent that that section remains in force).
- 7.14. The amendments made by articles 22 to 24 enable the family court to deal with an application, from a creditor in relation to a judgment debt, for information about what enforcement action to take to recover that debt.
- 7.15. The amendment made by article 25 adds the family court to the list of courts that can in specified circumstances, order a party to make a payment to charity.
- 7.16. The amendments made by article 26 are required to enable legal aid payments to be paid for advocacy in the family court, in circumstances specified in legal aid legislation, and to remove references to matters which will no longer be dealt with in magistrates' courts.

- ***Consolidation***

- 7.17. There are no current plans to consolidate any of the Acts amended by this Order.

## **8. Consultation outcome**

- 8.1. The setting up of a single family court was a recommendation of the independently chaired Family Justice Review. The Review Panel's public consultation found there was

overwhelming support for the single Family Court – 309 (75%) out of 412 respondents agreed a single Family Court should be established, including members of the public and family justice professionals. The Review Panel’s final report can be accessed at: <https://www.gov.uk/government/publications/family-justice-review-final-report>.

- 8.2. The Government has not carried out a separate consultation on the changes required to primary legislation as the amendments made by this Order do not alter the substance of the primary legislation. They are necessary to ensure that all existing law will continue to operate as intended when the new family court commences.

## **9. Guidance**

- 9.1. This Order and all the other instruments related to the setting up of the family court will be published on the [www.legislation.gov.uk](http://www.legislation.gov.uk).
- 9.2. Training for court staff, the judiciary, magistrates and their legal advisers will be provided in the run up to implementation.

## **10. Impact**

- 10.1. There may be a secondary impact on legal professionals, who are small businesses, who will need to familiarise themselves with the legislative changes. The impact on charities or voluntary bodies who support individuals when going to court and assist in other legal matters is that they may also need to familiarise themselves with the legislative changes.
- 10.2. The impact on the public sector is that the Ministry of Justice would face certain costs associated with judicial training and changes to the family court computer systems. Her Majesty’s Courts and Tribunals Service may also face certain costs associated with handling in the family court the registration and enforcement of maintenance orders which are currently handled in magistrates’ courts.
- 10.3. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

- 11.1. The legislation does not apply directly to small businesses.

## **12. Monitoring & review**

- 12.1. The implementation of the new family court will be reviewed within five years of implementation.

### **13. Contact**

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