

**EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEEDINGS (MODIFICATIONS OF ENACTMENTS) ORDER
2005**

2005 No. 3275

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 instrument amends section 97(1)(a) and (2) of the Magistrates' Courts Act 1980. The amendment will enable a justice of the peace, at the hearing of an application under the Adoption and Children Act 2002, to issue a witness summons to secure the attendance of a person to give evidence or produce documents. It also prevents the issue of a warrant of arrest rather than a witness summons in such an application.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 The Order makes changes to section 97(1) of the Magistrates' Courts Act 1980 (as substituted by section 169(2) of the Serious Organised Crime and Police Act 2005) to enable a justice of the peace at the hearing of an application under the Adoption and Children Act 2002 to issue a witness summons. As drafted, section 97 relates only to proceedings begun by a complaint. Proceedings under the Adoption and Children Act will be begun by application and the amendment is required to apply the section to such proceedings. Various rules of court already make provision for section 97 of the 1980 Act to apply to proceedings begun by application as if they had been begun by complaint.
 - 4.2 Section 97 (2) is also amended to prevent a warrant of arrest being issued instead of a witness summons in applications under the Adoption and Children Act 2002.
5. **Extent**
 - 5.1 This instrument applies to England and Wales only.
6. **European Convention on Human Rights**

Baroness Ashton has made the following statement regarding Human Rights:

In my view the provisions of the Family Procedure (Modification of Enactments) Order 2005 are compatible with the Convention rights.

7. Policy background

- 7.1 The Adoption and Children Act 2002, which replaces the Adoption Act 1976, will be implemented on 30 December 2005.
- 7.2 It updates adoption law, including that on inter-country adoption, and provides a single consolidated legislative framework for adoption across all levels of court. New rules of court, which will apply to all levels of court, will deal with the practice and procedure to be followed in proceedings under the Act.
- 7.3 The Adoption and Children Act 2002 aims to ensure that delay in the court process is reduced. This amendment will facilitate the hearing of applications under the Act, and preserve the position currently existing in applications under the Adoption Act 1976.

8. Impact

- 8.1 This order provides necessary and technical changes arising from the implementation of the Adoption and Children Act 2002. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

9. Contact

Joanna Wilkinson of the Children's Proceedings Branch, 0207 210 8324 or joanna.wilkinson@hmcourts-service.gsi.gov.uk can answer any queries regarding the instrument.