

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEEDINGS COURTS (MATRIMONIAL PROCEEDINGS
ETC.) (AMENDMENT) RULES 2007

2007 No. 1628

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

2. Description

2.1. These Rules amend the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991 following the amendment made by section 1 of the Domestic Violence, Crime and Victims Act 2004 (C.28) providing that breach of a non-molestation order is a criminal offence. Repeals made in Schedule 11 and consequential amendments made in Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 also limit the power of the court to attach a power of arrest to an occupation order only.

2.2. A non-molestation order is a protective injunction which forbids the respondent from using or threatening violence against the applicant (and any children) and from instructing, encouraging or in any way suggesting that any other person should do so. It can also forbid the respondent from intimidating, harassing or pestering the applicant and instructing, encouraging or in any way suggesting that any other person should do so. Previously these orders would often have a power of arrest attached due to the violence involved. This meant that if the respondent breached the injunction by repeating the violence, s/he would be taken back before the court that made the order and may be sent to prison for contempt of a civil court.

2.3. An occupation order is also a protective injunction but this order sets out the future occupation of the home shared by the couple and their children to protect any party or children from domestic violence. The order can exclude an abuser from the property altogether, or divide the property to exclude him/her from part of the property. If a respondent has already left the property, an occupation order may be used to prevent him/her from re-entering and/or coming within a certain area of the property. It is rarer for an occupation order to have a power of arrest as this measure has to have evidence of violence. However, if an occupation order with a power of arrest is breached, the respondent would be taken back before the court that made the order and may be sent to prison for contempt of a civil court.

2.4. Previously courts could make a single injunction covering parts of both non-molestation and occupation orders as the provisions on and sanctions against breach of the injunction were the same. The amendment made by section 1 of

the Domestic Violence, Crime and Victims Act 2004 (c.28) to Part IV of the Family Law Act 1996 (c.27) effectively separates the two types of injunction, providing that breach of a non-molestation order is a criminal offence, as the continued violence is a very serious matter.

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

3.1. None

4. Legislative Background

4.1. These Rules arise from the implementation of the Domestic Violence, Crime and Victims Act 2004 which amends Part IV of the Family Law Act 1996.

4.2. The Rules are made, under section 144 of the Magistrates' Courts Act 1980, by the Lord Chief Justice with the concurrence of the Lord Chancellor after consulting the magistrates' courts rule committee. No comments were received from the members of the magistrates' courts rule committee.

5. Extent

5.1. The Rules apply to England and Wales.

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

7.1. These Rules amend the current process on the making and enforcement of non-molestation orders and amends the court order for the making of occupation orders.

7.2. The amendment made by section 1 of the Domestic Violence, Crime and Victims Act 2004 (c.28) to Part IV of the Family Law Act 1996 (c.27) effectively separates the two types of injunction, providing that breach of a non-molestation order is now a criminal offence, as the continued violence is a very serious matter.

7.3. This change flows from wider government policy to change attitude and behaviour that violence in one's own home is completely unacceptable.

7.4. Family courts, which make the non-molestation and occupation orders, deal with about three times as many cases of domestic violence as criminal courts. Whilst the family court orders are clearly popular with victims, court statistics show that

the number of orders made and the percentage of those orders breached has remained relatively constant for a number of years. The good news is that family courts actually make more orders than application received as protective orders are granted within other proceedings e.g. child contact cases. The not so good news is that because the volume of business has been so consistent, family courts are not recording the same change in attitudes/patterns of behaviour by victims and perpetrators in domestic violence cases as our criminal courts. I.e. increased numbers and/or more successful outcomes, including more guilty pleas at an early stage rather than more defended trials. That does not mean we are doing anything wrong just that we could do more. It was possible to change the policy and give family courts wider/greater powers on enforcement. However, it was felt that by transferring breaches to criminal courts we made use of existing sentencing powers and sent a clear message that this behaviour is unacceptable. The one place a person should feel safe is in one's own home. This was, and continues to be, widely accepted by the making and implementation of the Domestic Violence, Crime and Victims Act 2004.

7.5. These Rules amend existing court procedure, which we know from the volume of orders being made in the courts, work well. Aside from some minor changes to harmonise the processes and simplify the language of the Rules across county courts or family proceedings (magistrates' courts), the amendments change the format of the paper order made and served on the respondent and change the enforcement route on non-molestation orders when they are breached. In light of this limited impact, consultation was not public but centred on the two overarching rule committees whose membership capture the judiciary are regular professional users of the Rules. They are the Family Procedure Rules Committee and the Magistrates' Courts Rules Committee. Membership details for both family and criminal rules committees can be accessed via:
<http://www.dca.gov.uk/procedurerules.htm>

7.6. Judicial, staff and stakeholder briefing on the changes is underway. We will also publish information and guidance for users by updating court leaflets and the more comprehensive guidance in '*Domestic Violence - A Guide to Civil Remedies and Criminal Sanctions*'. The latter has since 2003 been published in English, Welsh, Bengali, Urdu, Punjabi, Somali and Chinese. However, from April we added translation in Arabic, Gujarati and Polish. A DVD for victims and support agencies on the domestic violence family court process was launched at the Family Justice Council Conference on 26 March 2007 and has been very well received.

8. Impact

8.1. No Regulatory Impact Assessment has been prepared because there is no regulatory impact on any part of the private or voluntary sector.

9. Contact

9.1. Any enquiries about the contents of this memorandum should be addressed to:
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