

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (AMENDMENT) RULES 2019
2019 No. 1367

1. Introduction

- 1.1 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 instrument makes several technical amendments to the Magistrates' Courts Rules to take account of modern methods of communication, more closely aligning court procedure with the Criminal Procedure Rules and making comprehensive provision for the way orders and summonses are served on defendants.
- 2.2 Additionally, the amendments will ensure that the necessary procedural framework is in place to underpin the making of Stalking Protection Orders (SPO) under the Stalking Protection Act 2019 ("the 2019 Act").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made under section 144 of the Magistrates' Court Act 1980 (the 1980 Act, which confers power on the Lord Chief Justice, with the approval of the Lord Chancellor, to make rules for regulating and prescribing the procedure and practice to be followed in magistrates' courts, except in criminal matters.
- 6.2 The amendments made by this instrument, while of general application for civil procedure in magistrates' courts, will also assist in implementing the 2019 Act by

correcting some procedural deficiencies to provide clarity to the Courts and Police and others.

7. Policy background

- 7.1 The 2019 Act makes provision for police officers to apply to magistrates' courts for a civil order known as a Stalking Protection Order (SPO), and for magistrates' courts to have power to make a final or interim SPO and to vary, renew or discharge a SPO. Applications are made by way of complaint to the magistrates' court and breach of the SPO or notification requirements set out in the 2019 Act are criminal offences. Some amendment to the Magistrates' Court Rules 1981 ("the 1981 Rules") is necessary to ensure that all the necessary procedural aspects are included for the 2019 Act to operate, the provision required being in relation to service of SPOs, for which existing provision in the 1981 Rules is inadequate without amendment.
- 7.2 The amendments being made do, however, go beyond the changes needed for the operation of the 2019 Act. Generally, when provision in Magistrates' Courts Rules has been required to support applications for new forms of civil order such as SPOs, the approach in recent years has been to make "bespoke" rules covering the necessary aspects but leaving the main 1981 Rules alone. This has resulted in a number of disparate sets of rules making them unwieldy and often difficult to access.
- 7.3 The opportunity has been taken in this instance to make more general amendments, which make the provision in relation to service of orders necessary to ensure that applications for SPOs are able to proceed appropriately, but do so as part of wider provision which updates and modernises the general provision for such matters in the 1981 Rules. It is hoped that these general amendments will reduce the number of bespoke rules needed in the future.
- 7.4 Methods of communication have changed since the 1981 Rules were made, principally as a result of a rise in electronic communications. The rules currently do not make best use of technology and lead to unnecessary expense and delay. In particular, requiring a manual signature before the issue of process to ensure appearance creates delay and complexity at the outset of proceedings.
- 7.5 An anomaly in relation to the words "business day" is eliminated so that its meaning is harmonised with other rules.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The 1981 Rules have not been consolidated; the changes will help standardise procedures.

10. Consultation outcome

- 10.1 No formal consultation was undertaken on the rules but former members of the Magistrates' Courts Rule Committee were consulted, and provided comments on a technical basis which were taken into account in the development of the rules.

- 10.2 Stalking Protection Orders were the subject of a public consultation in 2015/16. The consultation, response and IA can all be found here:
<https://www.gov.uk/government/consultations/introducing-a-stalking-protection-order>

11. Guidance

- 11.1 No specific guidance is being prepared. Judiciary and staff in magistrates' courts will be provided with notice of the various procedural changes. The Home Office will in due course be providing statutory guidance on Stalking Protection Orders to the police, under section 12 of the 2019 Act.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is confined to the Police and HMCTS.
- 12.3 For the reasons above an Impact Assessment has not been prepared for this instrument. As explained in paragraph 10.2 above, an Impact Assessment on Stalking Protection Orders was published in 2016.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation will be via a general review of the Magistrates' Courts Rules which HMCTS plans to carry out.

15. Contact

- 15.1 David Hamilton at the Ministry of Justice Telephone: 07956418231 or email: david.hamilton5@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Parkin Deputy Director for Civil Justice and Law, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chris Philp MP, Parliamentary Under-Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.