

## EXPLANATORY MEMORANDUM TO

### THE MAGISTRATES' COURTS (AMENDMENT NO. 2) RULES 2021

2021 No. 626 (L. 10)

#### 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 amends the Magistrates' Courts Rules 1981 (S.I. 1981/552) (MCR) allowing for the provision of live-link hearings, provides clarity over the rules for custody of court documents as well as those for the provision of documents from the Court files. Additionally, it abolishes some old and now unnecessary rules.
- 2.2 The codification of court procedure for the use of live links is intended to support Covid-19 necessitated changes in court procedures to assist with the recovery plans. The amended rules on the provision of court documents to non-parties now align with the anticipated Criminal Procedure Rules and take account of current data protection legislation. Changes in nomenclature anticipate the bringing into force of the Financial Services Act 2021. Finally, the opportunity has been taken to excise those Rules which are now redundant since criminal proceedings in magistrates' courts have been regulated by the Criminal Procedure Rules.

#### 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)*

- 3.2 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 the 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 concurrence 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.

## 7. Policy background

### *What is being done and why?*

- 7.1 **Live Link**-Currently in civil proceedings conducted under the Magistrates' Courts Act 1980, there is no regulation of video or audio hearings ("live link"). However, magistrates' courts have an inherent power to proceed by live link and Rule 3A MCR requires a court actively to manage the case by giving directions, including with regard to the use of technology. The new rules prescribe the circumstances in which a court may make directions for a live-link hearing. They require a court only to make a live link direction if satisfied that it is in the interests of justice. Rule 3B clarifies the status of persons taking part, in particular, any member of the judiciary who takes part, enabling wholly video or audio hearings. The new rules are intended to facilitate hearings during the pandemic and to promote the post pandemic recovery in the magistrates court through efficient use of court resources.
- 7.2 **Provision of Documents**- Recent litigation in the Supreme Court (Cape Intermediate Holdings Ltd Vs Dring [UKSC 38, [2019]3WLR 429), and the judgment of the Chief Magistrate in National Crime Agency v XY (Martin Bentham, applicant) exposed a gap in the rules in relation to the provision of court documents where there are no specific rules. Within the magistrates' courts' civil jurisdiction there is presently a lack of detailed procedure rules for this purpose, leading to uncertainty for courts and court users (including journalists). The Criminal Procedure Rule Committee recommended aligning the MCR with anticipated corresponding amendments to the Criminal Procedure Rules.
- 7.3 The resulting amendments will now provide clarity of procedure to party and non-party applicants for court documents, and promote efficiency within the application process in that fewer applications will require a judicial determination.
- 7.4 New Rule 66A establishes the principles upon which the remaining rules on disclosure operate (the "Open Justice principle"). New Rule 66B sets out the procedure for a request for information about a case and establishes what can and cannot be disclosed and the nature of that disclosure. Similar provisions exist at 66C in relation to requests by a party/person directly affected by a case. New Rule 66D deals with the procedure for dealing with a request for information of which a party may be unaware and which the applicant may wish to keep confidential (for example a freezing order or Mental Health Act warrant). The Rule prescribes that such applications must be referred to a judicial office holder for determination. New Rule 66E deals with the publication of information about hearings, i.e. court lists, and makes a number of consequential amendments.
- 7.5 **Custody of Documents**-Magistrates' courts have implicit powers to retain and store, or to delegate the storage of, documents used in non-criminal proceedings, but hitherto there have been no relevant procedure rules. The Law Commission report on search warrants,<sup>1</sup> recommended the making of more extensive Criminal Procedure Rules to govern the delegation of document storage to, for example, the applicant for

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<sup>1</sup> Law Commission report number 396, published on 7<sup>th</sup> October, 2020. The report can be found at: <https://www.lawcom.gov.uk/project/search-warrants/>.

a search warrant, and that in turn has prompted the adoption of a simple corresponding rule for civil proceedings, which will be Rule 4A of the MCR .

7.6 **Consequential Amendments-** Various amendments necessitated by Schedule 12 to the Financial Services Act 2021 (c. 22), are being made to amend (i) the Magistrates' Courts (Freezing and Forfeiture of Terrorist Money in Bank and Building Society Accounts) Rules 2017, (ii) the Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017 and (iii) the Magistrates' Courts (Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, Part 5B) Rules 2019 to substitute for superseded references to banks and building societies references instead to relevant financial institutions. Additional amendments are due to earlier legislative changes included in the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 to replace clerk with justices' legal adviser.

7.7 **Removal of redundant rules-** The MCR originally regulated criminal proceedings in magistrates' courts, but that function was removed following the enactment of the Criminal Procedure Rules in 2005. The relevant MCR rules however were not repealed at that time. These amendments remove all redundant criminal rules, rendering a more accessible procedural code for magistrates' courts civil proceedings.

## 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)

## 9. **Consolidation**

9.1 The MCR have not been consolidated; the changes will help standardise procedures.

## 10. **Consultation outcome**

10.1 No formal consultation was undertaken on the MCR but a sub-group of the Criminal Procedure Rule Committee and the Secretary to the Justices' Legal Advisers and Court Officers' Service (formerly the Justices' Clerks' Society) was consulted, and provided comments on a technical basis which were taken into account in the development of the rules.

## 11. **Guidance**

11.1 Given the technical nature of the changes HMCTS will issue internal guidance on the provision of court documents to applicants.

## 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 either positive, in enabling applicants to appear in court by live link, or neutral.

12.3 For the reasons set out above an Impact Assessment has not been prepared for this instrument. As explained in paragraph 10.2 above, an Impact Assessment on the Debt Respite Scheme was published in 2020.

**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 Lord Wolfson QC, Parliamentary Under-Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.