

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (AMENDMENT) RULES 2022
2022 No. 523 (L. 6)

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 amendments to the Magistrates' Courts Rules 1981, which are made under section 144 of the Magistrates' Courts Act 1980. This amendment will enable the magistrates' courts' inherent common law power to provide for special measures arrangements that facilitate the giving of evidence by a vulnerable witness in civil matters, to be put on a standardised footing.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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.

7. Policy background

What is being done and why?

- 7.1 Special measures are a series of provisions to assist vulnerable witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. In criminal proceedings, the use of special measures is governed primarily by the provisions of Part 2 of the Youth Justice and Criminal Evidence Act 1999, while in civil proceedings, the provision of special measures is dealt with in the exercise of inherent jurisdiction and provision in rules of court or practice directions.
- 7.2 Special measures include, but are not limited to, giving evidence via video link or from behind a screen, or with the assistance of an intermediary.

- 7.3 The Domestic Abuse Act 2021 ('the 2021 Act'), introduced the provision, at section 64, for Rules of Court to enable the court to make a special measures direction in civil proceedings in respect of victims, or alleged victims, of a specified offence. In respect of civil proceedings in the High Court and County Court, provision which gives effect to section 64 of the 2021 Act came into force on 6 April 2022 and is made in Practice Direction 1A (Participation of Vulnerable Parties or Witnesses) supplementing the Civil Procedure Rules.
- 7.4 Civil proceedings, however, affecting such people are also brought in magistrates' courts. Magistrates' courts dealing with civil proceedings possess an implied power (e.g. R v X (1989) 91 Cr App Rep 36) to facilitate the giving of evidence by a witness that corresponds with the power conferred on other courts under section 64 of the 2021 Act.
- 7.5 The amendment to the Magistrates' Court Rules 1981 ('the 1981 Rules'), is intended to provide magistrates' courts with the powers to assist vulnerable parties in a consistent way. These Rules, therefore, will set out unequivocally the procedure which will apply to these cases. Examples of cases where such measures will particularly benefit vulnerable parties include applications for stalking protection orders, restraining orders, and sexual harm prevention orders which are civil in nature.

8. European Union Withdrawal and Future Relationship

- 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 1981 Rules have not been consolidated and no consolidation is immediately planned; the changes will, however, help standardise procedures.

10. Consultation outcome

- 10.1 No formal consultation was undertaken on the Magistrates' Courts Rules but the Criminal Procedure Rule Committee (non-criminal) Consultative Group and the secretary of 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 No specific guidance is being prepared. Judiciary and staff in magistrates' courts will be provided with notice of the various procedural changes and are already familiar with special measures which are common in criminal proceedings.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

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 Her Majesty's Court and Tribunals Service plans to carry out.

15. Contact

15.1 Tajinder Bhamra at the Ministry of Justice email: tajinder.bhamra1@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 James Cartlidge, Parliamentary Under-Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.