

**EXPLANATORY MEMORANDUM TO
THE CRIME AND COURTS ACT 2013 (FAMILY COURT: CONSEQUENTIAL
PROVISION) (No.2) ORDER 2014**

2014 No. 879

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1. This instrument makes amendments to secondary legislation that are needed in consequence of the provisions in the Crime and Courts Act 2013 (“the 2013 Act”) establishing a family court for England and Wales. It mainly replaces references in secondary legislation to magistrates’ court and county court with references to the family court, as these courts will no longer be able to hear family proceedings when the new family court is commenced. The purpose of the instrument is to reflect in existing secondary legislation the creation of the family court.

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

- 3.1 The Committee’s attention is drawn to the fact that in making these Rules, reliance is placed on section 13 of the Interpretation Act 1978. This is because it is considered that the provision made by this Order will be a part of both of bringing into force, and of giving full effect to, section 31A of the Matrimonial and Family Proceedings Act 1984, as inserted by section 17(3) of the Crime and Courts Act 2013 when that section comes fully into force. In essence, without the provision made by this Order, the family court will not be able to be brought practically into operation in the way that it is intended it should be.
- 3.2 The second matter drawn to the attention of the Committee is that this Order forms only part of a package of statutory instruments which will be needed for the purposes of the family court. The intention is that all of these associated statutory instruments will come into force on the same date.
- 3.3 Despite the links outlined above, there is no intention to lay any negative statutory instrument which includes any provision which is dependent on the approval by Parliament of an affirmative statutory instrument, until that approval has been given.

4. Legislative Context

- 4.1. This Order makes amendments to secondary legislation required because the 2013 Act provides for the setting up of a national family court for England and Wales, so references to courts dealing with family proceedings need to be changed. County courts and magistrates' courts will cease to have jurisdiction to deal with family proceedings, which will instead be dealt with in the family court and the High Court.
- 4.2. This Order is one of a large group of instruments required to set up the new family court for England and Wales, which will be laid before Parliament before the family court comes into force. But separate Explanatory Memorandums are being published for each instrument as they cover quite different aspects of the new family court.

5. Territorial Extent and Application

- 5.1. This instrument applies to England and Wales

6. European Convention on Human Rights

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

7. Policy background

- **What is being done and why**

- 7.1. In its response to the Family Justice Review, published in February 2012, the Government accepted the recommendations that a single family court should be created to deal with family proceedings, replacing the current three tiers of court structure. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was made in the 2013 Act. The 2013 Act makes a large number of changes to primary legislation required to enable the family court to be set up. A first consequential Order under section 59 of the 2013 Act was made on 12 March. It made further amendments to primary legislation as a consequence of the creation of the family court. This Order makes consequential changes required to secondary legislation.
- 7.2. Currently family proceedings and proceedings for the variation or enforcement of orders made in family proceedings can be heard in a magistrates' court, a county court or the High Court.
- 7.3. When the new family court is commenced, the new court will be able to deal with all family proceedings, except for a limited number of matters, which will be exclusively reserved to the High Court. Family proceedings courts will cease to exist and magistrates' courts and the new single county court will not be able to deal with family proceedings.

- 7.4. The amendments to secondary legislation set out in this Order mainly amend references to courts to reflect this change.
- 7.5. The amendments made by this Order can be grouped into the categories set out in the following paragraphs.
- 7.6. Firstly, a large number of the instruments being amended by this Order currently refer to matters which are dealt with in magistrates' courts. These instruments are amended by this Order to refer instead to the family court, reflecting the fact that the matters in question will in future be dealt with in the family court. Within this category are the amendments made by articles 14, 22, 24, 25, 27, 74, 75-77, 79, 80, 86, 121, 122, 123-125 and 133, together with some of the revocations provided for in the Schedule. For instance, amendments made by article 24 amend the prescribed forms for a Parental Responsibility Agreement to reflect the creation of the family court. The amendment made by article 27 changes references to a court officer of the family court to reflect the fact that this court, not the county court or magistrates' courts, will be notified of certain matters relating to maintenance assessments and calculations under child support legislation. The amendment made by article 74 is required as a consequence of amendments to section 150(1) of the Magistrates' Courts Act 1980 by the Crime and Courts Act 2013, the effect of which is that family maintenance orders will not be made in the magistrates' courts. The amendments made by articles 75-77 are required (i) to add the family court to those courts in respect of which permission to appeal to the Court of Appeal is required where the decision being appealed was itself made on appeal and (ii) to remove a reference to maintenance orders in the county court. The amendment made by article 79 removes a reference to section 93 of the Magistrates' Courts Act 1980. Section 93 relates to the enforcement of maintenance orders and has been revoked by the Crime and Courts Act as such enforcement will not take place in magistrates' courts.
- 7.7. In addition, this first category includes amendments made by articles 28-44, 45-58, 59-73, 82-85, 104-117, 118, 119-120, 126-132 and 134-144. The instruments amended by those articles make procedural provision in respect of the registration and/or enforcement of maintenance orders or decisions made outside of England and Wales. Currently, the bulk of this work is carried out in magistrates' courts and elements of the work, such as some initial registration stages, are carried out by "designated officers" in magistrates' courts. When the family court comes into force, these matters will be dealt with in the family court and those initial stages will be dealt with by court officers in the family court.
- 7.8. Some of the instruments dealing with registration and/or enforcement of maintenance apply also in Northern Ireland. In Northern Ireland, such cases will continue to be dealt with by magistrates' courts, so the amendments made by this Order reflect that fact.
- 7.9. The amendments made by article 143 to the International Recovery of Maintenance (Hague Convention 2007 etc) Regulations 2012 ("the 2012 Regulations") reflect the fact that in respect of arrears of certain maintenance decisions (to which the EU Maintenance Regulation applies) it is possible to apply to a magistrates' court for a "driving disqualification order". These proceedings will remain in magistrates' courts when the

family court comes into force. The current provisions in the 2012 Regulations link to procedures set out in certain provisions of the Magistrates' Courts Act 1980 which are repealed by the 2013 Act. In light of this, article 143 of this Order inserts largely mirroring provisions into the 2012 Regulations.

- 7.10. Included within this category of amendments are amendments to the Reciprocal Enforcement of Maintenance Orders (United States of America) (Scotland) Order 2007, which is a Scottish Statutory Instrument. The Scottish Government has agreed to this instrument being amended by this Order.
- 7.11. The second main category into which amendments made by this Order can be grouped is a category of instruments which currently apply to, or in respect of proceedings in, magistrates' courts or county courts, and which will continue to do so after the family court comes into force. Instruments in this category are, therefore, amended by this Order to remove references to matters which will in future be dealt with in the family court. The amendments made by articles 2, 3-13, 15-21, 23, 26, 78, 81, 87-90, 91 and 92, together with some provisions in the revocations Schedule, are within this category. For instance, amendments made by article 3-13 are required as magistrates' courts will not make attachment of earnings orders to secure payment of family maintenance orders. Amendments made by articles 15-21 are required to reflect the fact that magistrates' courts will not deal with family proceedings and as a consequence the Magistrates' Courts Rules will not govern the procedure for such proceedings. The amendments made by articles 87-90 amend the current Justices' Clerks Rules so that they remain for magistrates' courts and the Youth Courts but no longer refer to family proceedings as new rules have been made prescribing the functions of the family court that may be carried out by a justices' clerk or an assistant to a justices' clerk.
- 7.12. A final category is where amendments made by this Order will mean that an instrument will make provision for both magistrates' courts and the family court. The amendments made by articles 93-103 of this Order to the Justices of the Peace (Training and Development Committee) Rules 2007 are in this category.

- ***Consolidation***

- 7.13. There are no current plans to consolidate any of the secondary legislation amended by this Order.

8. Consultation outcome

- 8.1. The setting up of a single family court was a recommendation of the independently chaired Family Justice Review. The Review Panel's public consultation found there was overwhelming support for the single Family Court – 309 (75%) out of 412 respondents agreed a single Family Court should be established, including members of the public and family justice professionals.

8.2. The Government has not carried out a separate consultation on the changes required to secondary legislation as the amendments made by this Order do not alter the substance of the secondary legislation. They are necessary to ensure that all existing law will continue to operate as intended when the new family court commences.

9. Guidance

9.1. This Order and all the other instruments related to the setting up of the family court will be published on the www.legislation.gov.uk.

9.2. Training for court staff, the judiciary, magistrates and their legal advisers will be provided in the run up to implementation.

10. Impact

10.1. There may be a secondary impact on legal professionals, who are small businesses, who will need to familiarise themselves with the legislative changes. The impact on charities or voluntary bodies who support individuals when going to court and assist in other legal matters is that they may also need to familiarise themselves with the legislative changes.

10.2. The impact on the public sector is that the Ministry of Justice would face certain costs associated with judicial training and changes to the family court computer systems. Her Majesty's Courts and Tribunals Service may also face certain costs associated with handling in the family court the registration and enforcement of maintenance orders which are currently handled in magistrates' courts.

10.3. An Impact Assessment is annexed and has been published on www.legislation.gov.uk.

11. Regulating small business

11.1. The legislation does not apply directly to small businesses.

12. Monitoring & review

12.1. The implementation of the new family court will be reviewed within five years of implementation as stated in the published Impact Assessment.

13. Contact

Wendi Mitchell at the Ministry of Justice Tel: 0203 334 5647 or email: wendi.mitchell1@justice.gsi.gov.uk can answer any queries regarding the instrument.