

2024 No. 254 (L. 5)

MAGISTRATES' COURTS, ENGLAND AND WALES

The Magistrates' Courts (Amendment) Rules 2024

Made - - - - 27th February 2024

Laid before Parliament 4th March 2024

Coming into force - - 8th April 2024

The Lady Chief Justice, with the concurrence of the Lord Chancellor, makes the following rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980(a) and section 2(2)(a) of the Civil Evidence Act 1995(b).

Citation and commencement

- 1.—(1) These Rules may be cited as the Magistrates' Courts (Amendment) Rules 2024.
(2) These Rules come into force on 8th April 2024.

Amendments to the Magistrates' Courts Rules 1981

- 2.—(1) The Magistrates' Courts Rules 1981(c) are amended as follows.
(2) In rule 2 (interpretation), in paragraph (1) after the definition of “court computer system” insert—
 ““domestic abuse protection notice” has the same meaning as in section 22 of the Domestic Abuse Act 2021(d) (power to give a domestic abuse protection notice);
 “domestic abuse protection order” has the same meaning as in section 27 of the Domestic Abuse Act 2021(e) (meaning of “domestic abuse protection order”);”
(3) After rule 2 (interpretation) insert(f)—

“Duties of justices' legal advisers

- 3.—(1) This rule applies in relation to a magistrates' court, including a youth court, that comprises a lay justice or lay justices.

(a) 1980 c. 43; section 144 was amended by section 109(1) and (3) and paragraphs 245(1), (2), (5) of Schedule 8 and Schedule 10 to the Courts Act 2003, section 15(1) and paragraphs 99, 102(1), (2), (3)(a), (3)(b), (4) and (6) of Schedule 4 to the Constitutional Reform Act 2005, section 208(1) and paragraphs 42, 43(b) of Schedule 21 to the Legal Services Act 2007, article 3(2) and paragraphs 1(1), (2) to (6) of Schedule 2 to S.I. 2012/2398, section 17(6) and paragraphs 39, 52 and 99 of Schedule 10 to the Crime and Courts Act 2013 and section 3 and paragraphs 5 and 10 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.
(b) 1995 c. 38.
(c) S.I. 1981/552; relevant amending instruments are S.I. 1997/706, 2000/3361, 2003/1236, 2014/600, 2014/879, 2019/1367, 2020/100 and 2021/626.
(d) 2021 c. 17; section 22 comes into force on a date to be appointed.
(e) 2021 c. 17; section 27 comes into force on a date to be appointed.
(f) Rule 3 of S.I. 1981/552 which previously followed rule 2 was revoked by S.I. 2014/879, articles 15 and 17.

- (2) A justices' legal adviser—
- (a) must provide the court with any legal advice that it needs to carry out its functions, whether the court asks for that advice or not, including advice about—
 - (i) questions of law,
 - (ii) questions of mixed law and fact,
 - (iii) matters of practice and procedure,
 - (iv) relevant judicial decisions that bind the court,
 - (v) the process to be followed to reach a decision,
 - (vi) the process to be followed when determining a matter,
 - (vii) the range of orders available to the court and the matters to be taken into account, and
 - (viii) any other matter relevant to the case before the court;
 - (b) must allow the parties, if present, an opportunity to make representations to the court about that advice;
 - (c) before a hearing begins must draw the court's attention to, as appropriate—
 - (i) the substance of any application about to be made, including the test (if any) which must be applied and the burden and standard of proof,
 - (ii) what the parties say is agreed,
 - (iii) what the parties say is in dispute, and
 - (iv) what the parties say about how each expects to present the case, especially where that may affect its duration and timetabling;
 - (d) must assist the court by making a note of the substance of any oral evidence or representations, to help the court recall that information;
 - (e) may ask questions of a party or witness on the court's behalf to clarify representations and evidence and to obtain information sufficient to allow the court to make such decisions as are required;
 - (f) must assist the court with the formulation and recording of reasons for its orders and, if necessary, other decisions; and
 - (g) may make announcements on the court's behalf, other than an announcement of an order or finding of fact.
- (3) To provide the legal advice required by paragraph (2)(a) a justices' legal adviser must—
- (a) if necessary, attend the members of the court outside the courtroom; and
 - (b) in that event, inform the parties, if present, of any such advice given there.
- (4) A justices' legal adviser must assist a party who has no legal representative—
- (a) to understand what the court requires and why;
 - (b) to provide information required by the court to prepare for a hearing or to carry out its other functions; and
 - (c) if necessary, to make representations to the court or to give evidence.
- (5) In performing the functions for which these Rules provide a justices' legal adviser—
- (a) must avoid the appearance of advocacy for a party;
 - (b) must adhere to the same principles that apply to courts of independence, impartiality, integrity, propriety, competence, diligence and ensuring fair treatment; and
 - (c) may consult with other justices' legal advisers.”.
- (4) In rule 3C (special measures for witnesses)—
- (a) for the heading to the rule substitute “Measures to help a witness to give evidence”; and

- (b) at the end of paragraph (2)(d) insert “including any special measure that the court can direct by reason of section 49 of the Domestic Abuse Act 2021”.

(5) After rule 3C (special measures for witnesses) insert—

“Forms and electronic arrangements for use in case management and for other purposes

3D.—(1) This rule applies where an enactment, a rule or the court requires a person to—

- (a) make an application or a complaint, or give a notice;
- (b) supply information for the purposes of case management by the court; or
- (c) supply information needed for other purposes by the court.

(2) Unless the court otherwise directs, such a person must—

- (a) use such electronic arrangements as the designated officer may make for that purpose, in accordance with those arrangements; or
- (b) if no such arrangements have been made use the appropriate form issued by the Lord Chief Justice, in accordance with any relevant rule and any instructions in the form itself.”.

(6) After rule 16 (record of adjudication) insert(a)—

“DOMESTIC ABUSE PROTECTION ORDERS

Application for order after giving domestic abuse protection notice

17.—(1) On an application for a domestic abuse protection order made as a result of a person being given a domestic abuse protection notice—

- (a) the court must treat the application as a complaint and the applicant as a complainant;
- (b) the person given the notice must be treated as a defendant; and
- (c) the domestic abuse protection notice must be treated as a summons.

(2) The application must include a statement of the time and date when the domestic abuse protection notice was given to the defendant.

Notice of proposed terms of order

18. On an application for a domestic abuse protection order the applicant must—

- (a) serve a notice that specifies the requirements (including any prohibitions or restrictions) which the applicant proposes as necessary to protect the person for whose protection the order is made from domestic abuse or the risk of domestic abuse, including different kinds of abusive behaviour; and
- (b) serve that notice on the defendant and on the designated officer—
 - (i) as soon as reasonably practicable, and
 - (ii) in any event, no later than the beginning of the hearing.

Service of order

19. Unless the court otherwise directs—

- (a) a domestic abuse protection order must be served on the defendant; and
- (b) service must be effected—

(a) Rules 17 to 20 of S.I. 1981/552 which previously followed rule 16, and former rule 22 of that instrument, were revoked by S.I. 2021/626, rule 2(12)(c) and (d). Former rule 21 of S.I. 1981/552 was revoked by S.I. 1997/707, rule 11.

- (i) by a constable or by an employee of a police authority, and
- (ii) by handing a copy of the order to the defendant in person.

Representations after application without notice

- 20.**—(1) This rule applies where the court makes a domestic abuse protection order—
- (a) otherwise than as a result of a person being given a domestic abuse protection notice; and
 - (b) without notice to the defendant.
- (2) The court must arrange a hearing at which the defendant may make representations to the court.
- (3) Notice of the hearing—
- (a) must be given to the applicant for the order; and
 - (b) must be served on the defendant with the order.
- (4) If the defendant makes representations at the hearing—
- (a) the court must treat such representations as a complaint;
 - (b) the court may exercise its powers to vary or discharge the domestic abuse protection order; and
 - (c) rule 21 (application to vary or discharge order) does not apply.

Application to vary or discharge order

- 21.**—(1) This rule applies on an application under section 44 of the Domestic Abuse Act 2021^(a) (variation and discharge of orders) to vary or discharge a domestic abuse protection order.
- (2) A person who applies under this rule must—
- (a) apply as soon as practicable after becoming aware of the grounds for doing so, explaining—
 - (i) why the order should be varied or discharged, and
 - (ii) what, if any, material circumstances have changed since the court made the order or last determined an application to vary or discharge it;
 - (b) where the application is a second or subsequent application by the applicant in respect of the same order—
 - (i) give details of each previous application, and
 - (ii) if the applicant wants the court to decide the application at a hearing, explain why; and
 - (c) serve the application on—
 - (i) the designated officer, and
 - (ii) at least one relevant chief officer of police within the meaning of section 44 of the Domestic Abuse Act 2021, unless the person applying under this rule is such a chief officer.
- (3) Unless the court otherwise directs—
- (a) a relevant chief officer of police who applies under this rule must in addition to serving the application under paragraph (2)(c)(i) serve it on—
 - (i) the person against whom the domestic abuse protection order was made,

^(a) 2021 c. 17; section 44 comes into force on a date to be appointed.

- (ii) the person for whose protection the domestic abuse protection order was made, and
- (iii) if the person for whose protection the domestic abuse protection order was made is under 18, a parent or guardian of that person who is not the person against whom that order was made; and
- (b) a relevant chief officer of police on whom an application under this rule is served must serve the application on each person listed in paragraph (3)(a) who is not the applicant.
- (4) An application under this rule must be served as if it were a summons.
- (5) The designated officer must give notice of any hearing to—
 - (a) the applicant; and
 - (b) each relevant chief officer of police on whom the application is served.
- (6) Unless the court otherwise directs, a relevant chief officer of police must serve notice of any hearing on each person on whom that officer serves the application.

Notice to responsible person of requirement for supervision or monitoring

22.—(1) This rule applies where a domestic abuse protection order imposes on the defendant—

- (a) a requirement to do something that specifies a person to be responsible for supervising compliance with that requirement, under section 36 of the Domestic Abuse Act 2021(a) (further provision about requirements that may be imposed by orders); or
- (b) an electronic monitoring requirement, under section 37 of that Act(b) (further provision about electronic monitoring requirements).
- (2) The designated officer must—
 - (a) notify the person to be responsible for the supervision or monitoring that the order has been made and provide that person with—
 - (i) the defendant’s name, address and, if available, telephone number,
 - (ii) details of the requirement to be supervised or monitored,
 - (iii) the duration of the order, and
 - (iv) if applicable, details of the place at which the defendant’s presence must be monitored and the period or periods during which the defendant’s presence at that place must be monitored;
 - (b) inform the defendant of the responsible person’s identity and the means by which that person may be contacted; and
 - (c) notify the responsible person of any subsequent variation or discharge of the requirement.

Exclusion of requirement for notice of hearsay evidence

23. Section 2(1) of the Civil Evidence Act 1995(c) (notice of proposal to adduce hearsay evidence) does not apply on an application for a domestic abuse protection order under section 28 of the Domestic Abuse Act 2021(d) (domestic abuse protection orders on application).”.

(a) 2021 c. 17; section 36 comes into force on a date to be appointed.
 (b) 2021 c. 17; section 37 comes into force on a date to be appointed.
 (c) 1995 c. 38.
 (d) 2021 c. 17; section 28 comes into force on a date to be appointed.

(7) In the cross-heading before rule 34 for “Appeal to magistrates’ court” substitute “Appeal or application to magistrates’ court”.

(8) For rule 34 (appeal to be by complaint) substitute—

“Appeal or application to be by complaint

34. Where under any enactment an appeal or application lies to a magistrates’ court against or in respect of the decision, order, act or omission of a local authority or other authority, or other body or person, the appeal or application shall be by way of complaint for an order.”.

(9) In rule 66 (register of convictions, etc.)—

(a) for the heading to the rule substitute “Register in civil proceedings”;

(b) for paragraph (3) substitute—

“(3) Where an entry in the register appears to be incorrect the designated officer must correct it if—

(a) the parties agree on the terms of the correction; or

(b) the court or a justices’ legal adviser so directs.”; and

(c) omit—

(i) paragraphs (3A) to (7) inclusive, and

(ii) paragraphs (9) to (10B) inclusive.

(10) For rule 67 (proof of service, handwriting, etc) substitute—

“Proof of service

67.—(1) The service of any process or other document required or authorised to be served may be proved in any proceedings before a magistrates’ court by a document purporting to be a certificate signed by the person by whom the service was effected.

(2) References in paragraph (1) to the service of any process shall, in their application to a witness summons, be construed as including references to the payment or tender to the witness of costs and expenses.

(3) Any process or other document produced by the court computer system on a given day shall be sufficient evidence that the process or other document was sent to the person to whom it is addressed within 2 days of it being produced, unless the contrary is proved.”.

(11) After rule 81 (case stated, content of case) insert—

“Duty of justices’ legal adviser

81A.—(1) This rule applies in relation to a magistrates’ court, including a youth court, which—

(a) comprises a lay justice or lay justices; and

(b) agrees to state a case.

(2) A justices’ legal adviser must assist the court by—

(a) preparing and amending the draft case; and

(b) completing the case stated.”.

(12) After rule 83 (application to vary order for sureties or dispense with them) insert(a)—

(a) Rules 84 to 86 of S.I. 1981/552, which previously followed rule 83, were revoked by S.I. 2021/626, rule 2(12)(l).

“Notice of bail requirement

84.—(1) This rule applies where the court remands a defendant on bail with requirements under section 128(1)(c) of the Act of 1980(a) (remand in custody or on bail) and sections 29 and 30 of the Domestic Abuse Act 2021(b) (applications where domestic abuse protection notice has been given; remand under section 29(8) of person arrested for breach of notice).

(2) Unless the court otherwise directs, the designated officer must serve the defendant with a notice of the requirements.

(3) Where the court imposes a requirement with which the defendant must comply before release from custody then forthwith upon compliance the designated officer must send notice to the custodian to release the defendant.

Sureties for bail

85.—(1) This rule applies where the court remands a person on bail under section 128(1)(c) of the Act of 1980 by taking a recognizance with sureties.

(2) Unless the court otherwise directs—

(a) the recognizance must specify—

(i) the amount that the surety will be required to pay if the purpose for which the recognizance is entered is not fulfilled, and

(ii) the date upon which the recognizance will expire;

(b) the surety must enter into the recognizance in the presence of—

(i) the designated officer,

(ii) the defendant’s custodian, where the defendant is in custody, or

(iii) someone acting with the authority of either; and

(c) the person before whom the surety enters into the recognizance must at once serve a copy on—

(i) the surety, and

(ii) as appropriate, the designated officer and the defendant’s custodian.

(3) The custodian must release the defendant when each requirement ordered by the court has been met.

Forfeiture of sureties

86.—(1) This rule applies where the court imposes as a condition of bail a requirement that a surety enter into a recognizance and after the defendant is released on bail the defendant fails to surrender to custody as required.

(2) The designated officer must serve notice of the hearing at which the court will consider the forfeiture of the recognizance on—

(a) the surety; and

(b) each party to the proceedings.

(3) The court must not forfeit the recognizance less than 5 business days after service of notice under paragraph (2).”.

(13) In rule 99 (service of summons), for paragraph (7) substitute—

“(7) Unless the court otherwise directs or other legislation otherwise requires, a summons shall be prepared and served by the applicant or by another person on the applicant’s behalf.

(a) 1980 c. 43; there have been amendments to section 128 but none is relevant.

(b) 2021 c. 17; section 28 comes into force on a date to be appointed.

(8) This rule does not apply in relation to—

- (a) a domestic abuse protection notice (which by rule 17(c) must be treated as a summons); or
- (b) a judgment summons (for which rule 58 requires service on the judgment debtor personally).”.

(14) In rule 115 (service of orders), for paragraph (6) substitute—

“(6) This rule does not apply to—

- (a) a domestic abuse protection order (for which rule 19 requires service on the defendant personally); or
- (b) a liability order.”.

Amendments to the Magistrates’ Courts (Hearsay Evidence in Civil Proceedings) Rules 1999

3. In the Magistrates’ Courts (Hearsay Evidence in Civil Proceedings) Rules 1999(a), in rule 2 (application and interpretation) after paragraph (4) insert—

“(5) These rules shall not apply on an application for a domestic abuse protection order under section 28 of the Domestic Abuse Act 2021 (domestic abuse protection orders on application).”

Carr of Walton-on-the-Hill, C.J.
Lady Chief Justice

I agree.

Signed by authority of the Lord Chancellor

27th February 2024

Bellamy
Parliamentary Under Secretary of State
Ministry of Justice

(a) S.I. 1999/681; rule 2 was amended by S.I. 2011/1434.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Magistrates' Courts Rules 1981, S.I. 1981/552, as follows:

- (a) rule 2 is amended to include definitions relevant to new rules 17 to 23.
- (b) new rules 3 and 81A are added to provide for the duties of justices' legal advisers.
- (c) new rule 3D is added to provide for the making of applications, the giving of notices or the supply of information either by means of forms issued by the Chief Justice or by means of electronic arrangements.
- (d) new rules 17 to 23 and 84 to 86 are added, and rules 3C, 99 and 115 are amended, to accommodate the provision for domestic abuse protection orders made by the Domestic Abuse Act 2021, the principal sections of which Act supplemented by these Rules are:
 - (i) section 28, under which a chief officer of police may apply to a magistrates' court by complaint for a domestic abuse protection order, and must do so if a person is given a domestic abuse protection notice by police under section 22. (Under section 29 the hearing of an application made as a result of giving a domestic abuse protection notice must begin not later than 48 hours after that giving, disregarding any day which is a Sunday, Christmas Day, Good Friday or a bank holiday. If in the meantime the defendant to whom the notice was given is arrested for its breach then that defendant must be brought before the magistrates' court within 24 hours of that arrest, disregarding the same days and the court may then remand the defendant on bail or in custody.)
 - (ii) section 34, under which a magistrates' court may make an order on application by a chief officer of police even though the defendant has not been given a domestic abuse protection notice or had any other notice of the application. (Under section 34(3), in deciding whether to make an order without notice the court must have regard to all the circumstances, including: any risk that, if the order is not made immediately, the defendant will cause significant harm to the person for whose protection the order would be made; whether there is reason to believe that the defendant is aware of the proceedings but is deliberately evading service; and whether the delay involved in effecting substituted service will cause serious prejudice to the person for whose protection the order would be made. Under section 34(4), if the court makes an order it must then give the defendant an opportunity to make representations about it as soon as just and convenient, and at a hearing of which notice has been given to all the parties.)
 - (iii) sections 44 and 45, under which the person for whose protection an order is made, the defendant against whom the order is made or the relevant chief officer of police (as defined by the Act) all can apply to the court to vary or discharge the order.
 - (iv) section 49, which allows the court to direct the same special measures for witnesses under the Youth Justice and Criminal Evidence Act 1999 as can be directed under that Act in criminal proceedings.
 - (v) sections 27, 30, 32, 33, 35, 36, 37, 38, 39, 41, 42 and 43 which define a domestic abuse protection order, prescribe the conditions for making such an order, describe the requirements that may be imposed, and make other provisions about an order's terms and effect.
- (e) rule 34 is amended to accommodate, in particular, provision for applications in respect of rights of way added to the Wildlife and Countryside Act 1981 by the Deregulation Act 2015.
- (f) rule 66 is amended to provide for correction of the court register and to omit requirements superseded by Criminal Procedure Rules.
- (g) rule 67 is amended to omit obsolete procedural requirements about the service of documents.

These Rules also amend the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, S.I. 1999/681, to disapply rules about hearsay evidence on an application for a domestic abuse protection order.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

These Rules come into force on 8th April 2024.

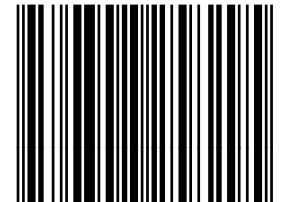
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