

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (AMENDMENT) RULES 2024

2024 No. 254 (L. 5)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Lord Bellamy KC, Parliamentary Under Secretary of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Alex Davis, Deputy Director for Rape, Serious Sexual Offences and Domestic Abuse Policy at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Sarah Roskrow at the Ministry of Justice Telephone: 07926066264 or email: sarah.roskrow@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument makes amendments to the Magistrates' Courts Rules 1981 ("the 1981 Rules") and the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 ("the 1999 Rules") to ensure that the necessary procedural framework is in place to underpin the operation of Domestic Abuse Protection Notices and Domestic Abuse Protection Orders under part 3 of the Domestic Abuse Act 2021 ("the DA Act") insofar as these concern the magistrates' court processes. In light of the power to remand defendants in these proceedings on bail, the rules on bail have been modernised. In addition, amendments are made to the 1981 Rules which are not directly related to the DA Act provisions: these amendments are to take account of operational changes required as a result of IT system changes, more closely aligning magistrates' courts civil procedure with the Criminal Procedure Rules and clarifying miscellaneous processes, including legal advisers' duties and service of orders; and to accommodate a new right to appeal to a magistrates' court under Schedule 13A of the Wildlife and Countryside Act 1981.

Where does the legislation extend to, and apply?

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

5. Policy Context

What is being done and why?

- 5.1 Part 3 of the DA Act makes provision for Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs). These are new powers, which will be initially piloted in selected areas. DAPOs bring together the strongest elements of current orders into a new, more comprehensive order, which can be tailored to better protect victims of domestic abuse and help address perpetrator behaviour. The intention is for existing provision for Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) to be repealed when DAPNs and DAPOs are rolled out across England and Wales.
- 5.2 DAPNs (like DVPNs which they will replace) are police-issued notices, aimed at providing immediate protection from domestic abuse or threat of domestic abuse. Once a DAPN has been given, police must make a DAPO application by way of complaint to the magistrates' court within 48 hours. Police also have the power to apply for a standalone DAPO in the magistrates' courts without issuing a DAPN first. Breach of any DAPO condition is a criminal offence. Some amendment to the 1981 Rules and the 1999 Rules is necessary to ensure that all the necessary procedural aspects are included for the DA Act to operate, for which existing provision in the 1981 Rules and 1999 Rules is inadequate without amendment.
- 5.3 The amendments being made do, however, go beyond the changes needed for the operation of the DA Act. The opportunity has been taken in this instance to make more general amendments, which make the provision in relation to bail and the service of orders necessary to ensure that applications for DAPOs are able to proceed appropriately and as part of wider provision which updates and modernises the general provision for such matters in the 1981 Rules.
- 5.4 There are also miscellaneous amendments dealing with a variety of issues. The duties of justices' legal advisers in magistrates' courts were formerly prescribed in practice directions which have been withdrawn; the new rule mirrors those practice directions and their replacement in the criminal jurisdiction of magistrates' courts by a new criminal procedure rule. A new rule provides for digital service of documents and acknowledges the power of the Lady Chief Justice to issue forms in civil proceedings in magistrates' courts.
- 5.5 The procedure for proving service of documents within proceedings has been modernised by omitting obsolete procedural requirements. The procedure for rectifying clerical errors in the court's register has been regularised. An amendment clarifies that, in line with other jurisdictions, applicants are responsible for serving summonses; this is to address misinformation circulating on the internet which is leading to futile challenges to civil proceedings.
- 5.6 The Deregulation Act has amended the Wildlife and Countryside Act by replacing the right to apply to an Inspector where an authority has failed to modify a definitive footpath map to a right to apply to a magistrates' court. This renders it necessary to provide for a procedure to effect that which has been done by applying the standard summons and complaint procedure under Part II of the Magistrates' Courts Act 1980.

What was the previous policy, how is this different?

- 5.7 The new DAPO can be applied for or made by the court of its own initiative in family, civil and criminal proceedings. These rules address the power of magistrates' courts acting in their civil jurisdiction to make DAPOs on application by the police,

replacing provision for the DVPO which will be repealed once DAPOs are available nationally. DVPNs and DVPOs follow a similar procedural route, however the requirements that can be imposed as part of a DAPO are greater. DVPOs are limited to 28 days, while a DAPO can last as long as it is necessary to protect the victim from domestic abuse or threat of domestic abuse. Whilst a DVPO can impose restrictions or prohibitions, a DAPO can in addition impose positive requirements, such as attendance on a perpetrator behaviour change programme, and electronic monitoring. A DAPO also carries mandatory notification requirements, under which a perpetrator is required to inform the police of their name and address and subsequent changes to these. Breach of a DVPO is not a criminal offence, breach of a DAPO is.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The bulk of the amendments made by this instrument are to assist in implementing the DA Act. One responds to a change made by the Deregulation Act, moving applications in relation to definitive maps from planning inspectors to magistrates' courts. The remainder track developments in procedure in other jurisdictions, in particular the criminal jurisdiction of magistrates' courts.

Why was this approach taken to change the law?

- 6.2 Where a DAPO is commenced by a DAPN, the case must be heard by a magistrates' court within 48 hours. Without the amendments in the rules, the standard magistrates' court civil procedure would apply, making it necessary for the police to apply to the court for a summons and then serve it, which would not be possible within the short timescale prescribed by the Act. The amendments reflect the processes currently used for DVPNs and DVPOs, which have the same timescale, and which are recognised as procedurally effective.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 No public consultation was undertaken on the rules, but members of the Magistrates' Courts Rule Consultative Sub-Committee and the DAPO Cross-Jurisdictional Working Group were consulted and provided comments on a technical basis which were taken into account in the development of the rules.
- 7.2 DAPNs and DAPOs, as one of the measures in the DA Act, were the subject of a public consultation in 2018. The consultation, response and Impact Assessment can all be found on the GOV.UK website¹.

8. Applicable Guidance

- 8.1 No specific guidance is being prepared on this instrument. Judiciary and staff in magistrates' courts will be provided with notice of the various procedural changes. The Home Office will be providing statutory guidance on DAPNs and DAPOs to the police, under section 50 of the DA Act.

¹ <https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill>

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment (IA) has not been prepared for this instrument because a separate IA has been published for all the provisions of the DA Act, including Part 3 which makes provision for DAPNs and DAPOs. Copies of the IA can be obtained from the Ministry of Justice, 102 Petty France, London, SW1H 9AJ, or from the GOV.UK website².

Impact on businesses, charities and voluntary bodies

- 9.2 Beyond that, and in relation to other amendments made by this instrument, there is no, or no significant, impact on business, charities or voluntary bodies.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 The impact of DAPOs on the wider public sector is set out in the DA Act's IA. This instrument provides for procedural changes that would most impact the police and HMCTS. The IA sets out the impact on each agency including HMCTS, LAA, HMPPS, CPS and the police relating to process changes associated with the DAPO and scope widening. Pages 20-31 of the IA set out the associated monetised and non-monetised costs and benefits of DAPOs and net quantifiable impacts.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring of this legislation will be via a general review of the Magistrates' Courts Rules which HMCTS plans to carry out.
- 10.2 Any rules relating to the operation of DAPNs and DAPOs will be reviewed as part of the piloting of those provisions.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

- 12.1 Lord Bellamy KC, Parliamentary Under Secretary of State at the Ministry of Justice has made the following statement regarding Human Rights:
- “In my view the provisions of the Magistrates' Courts (Amendment) Rules 2024 and the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).

²https://assets.publishing.service.gov.uk/media/6102c683d3bf7f0448719e5d/DA_Act_2021_Impact_Assessment.pdf