EXPLANATORY MEMORANDUM TO

THE CROWN COURT (AMENDMENT) RULES 2024

2024 No. 259

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 Crown Court Rules 1982 ("the 1982 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 Crown Court's processes. The opportunity has also been taken to update miscellaneous rules, for example on service, to provide for access to Crown Court records in civil proceedings and publication of information about court hearings in such proceedings, and to revoke rules which have been replaced by the Criminal Procedure Rules or which refer to repealed legislation.

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provision for Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) to be repealed when DAPNs and DAPOs are rolled out across England and Wales.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 Police forces can apply to magistrates' courts for DAPOs. Crown Courts will have the power to hear appeals made against DAPOs granted by the magistrates' courts. The appeal is by way of a rehearing with the result that Crown Courts may make revised DAPOs on appeal. Some amendment to the 1982 Rules is necessary to ensure that all the necessary procedural aspects are included for Part 3 of the DA Act to operate, for which existing provision in the 1982 Rules is inadequate without amendment.

5.3 The remaining rules aim to bring the rules on service up to date, and remove rules which refer to repealed legislation and rules superseded by Criminal Procedure Rules.

What was the previous policy, how is this different?

5.4 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 procedure in relation to the power of the Crown Court to hear appeals made against DAPOs granted by the magistrates' courts. DAPOs replace 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 DA Act creates the new DAPO, the making of which can be appealed by way of rehearing to the Crown Court. As the Crown Court may impose a revised DAPO on appeal, rules are necessary to facilitate the orders.

Why was this approach taken to change the law?

6.2 The rules are necessary to render any orders made on appeal effective and to protect witnesses in such a rehearing. Without these amendments, the existing rules would not be sufficient to give effect to Part 3 of the DA Act provisions, insofar as they apply to the Crown Court.

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 well as other measures in the DA Act, were the subject of a public consultation in 2018. The consultation, response and Impact Assessment are available from the GOV.UK website[1].

8. Applicable Guidance

8.1 No specific guidance is being prepared. Judiciary and staff in crown 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.

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 website[2].

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 DAPO 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 Crown 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.

[1] https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill
[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1007463/DA_Act_2021_Impact_Assessment.pdf

12. European Convention on Human Rights

12.1 The 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 Crown Court (Amendment) Rules 2024 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").