**EXPLANATORY MEMORANDUM TO**

**THE FAMILY COURT WARRANTS (SPECIFICATION OF ORDERS) ORDER 2014**

**2014 No. 832**

**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 enables civilian enforcement officers to execute warrants of arrest, commitment, detention or distress made by a justice of the peace to enforce any order 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 two matters set out below.

3.2 The first matter is that in making these Regulations, reliance is placed on section 13 of the Interpretation Act 1978. There are two reasons for this.

3.3 The first reason is that it is considered that the provision made by these Regulations will be necessary for the purpose 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 these Regulations, the family court will not be able to be brought practically into operation.

3.4 The second reason for placing reliance on section 13 of the Interpretation Act 1978 is that there is a concern that if the approach were taken to commence the provisions in the Crime and Courts Act 2013 which amend the powers to make these Regulations, the ability to make provision under the current powers conferred by those provisions as unamended would be lost. This could be avoided by the inclusion in any commencement order of some complex savings provisions, but it is considered expedient to avoid this additional complexity by anticipatory exercise of the relevant powers.

3.5 The second matter drawn to the attention of the Committee is that these Regulations form only part of a package of statutory instruments which will be needed for the purposes of the family court. The instruments will be made and laid at various dates in 2014 with the intention that all of these associated statutory instruments will come into

force on the same date. A separate Explanatory Memorandum will be published for each instrument.

3.6 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 and explanatory memorandum should be read in conjunction with section 17 of the Crime and Courts Act 2013[1].

4.2 Section 17 and Schedules 10 and 11 of the Crime and Courts Act 2013 establish a single family court for England and Wales and transfer jurisdiction for what were family proceedings in magistrates' courts to 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 this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

***The family court***

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. The High Court should retain exclusive jurisdiction in a limited number of areas, such as the exercise of its inherent jurisdiction. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was enacted by Parliament in the Crime and Courts Act 2013.

7.2 The general policy objective is to create a new family court which is flexible, which allows for efficient use of judicial and court resources, and which is easier for users to navigate. It should reduce delay and, where possible, enable increased judicial continuity and leadership in dealing with cases. It should be able to deal with all relevant family matters, and in practice should be the only court able to deal with the majority of family matters. As part of improvements to efficiency, there should be a reduced need to transfer cases between courts and appeals should be heard at the most appropriate level.

[1] http://www.legislation.gov.uk/ukpga/2013/22/section/17

7.3 A package of secondary legislation is now being brought forward to implement the single family court in April 2014. These regulations form one part of that package.

***The current situation***

7.4 Currently civilian enforcement officers can execute warrants of arrest, commitment, detention or distress made by a justice of the peace made under the specified provisions in S.I.2000/3278. These provisions do not extend to the family court and provision is therefore necessary to enable civilian enforcement officers to execute the above warrants in the family court.

***The proposed legislation***

7.5 The policy intention is to enable civilian enforcement officers to execute warrants of arrest, commitment, detention or distress made by a justice of the peace sitting in the family court to enforce any order of the family court. Orders of the family court are therefore specified for the purposes of section 125A(3) of the Magistrates' Courts Act 1980.

***Consolidation***

7.6 This is the first instrument made under section 125A(3) of the Magistrates' Courts Act 1980 that specifies a description of court order and so no question of consolidation arises.

## 8. Consultation outcome

8.1 No consultation was required for this instrument. However, colleagues in Her Majesty's Courts and Tribunals Service have been consulted on the content of the instrument.

## 9. Guidance

9.1 Training for justices' clerks, assistant justices' clerks, the judiciary, magistracy and court staff will be provided prior to the implementation of the new family court.

## 10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that it is expected that there may be some transitional costs to HMCTS as a result of this measure.

10.3 The Impact Assessment covering this instrument is attached to this memorandum and has already been published at www.legislation.gov.uk.

## 11. Regulating small business

11.1 The legislation does not apply to small businesses.

## 12. Monitoring & review

12.1 The execution of warrants in the family court will be monitored. The functioning of the new family court will be reviewed within five years of implementation.

## 13. Contact

Liz Eaton at the Ministry of Justice, Tel: 020 3334 5619 or email: liz.eaton@justice.gsi.gov.uk can answer any queries regarding this instrument.