EXPLANATORY MEMORANDUM TO

THE MAGESTRATES' COURTS (ADULT PROTECTION AND SUPPORT ORDERS) RULES

2017 No. 1199

1. Introduction

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

2. Purpose of the instrument

2.1 The Rules make provision for applications for Adult Protection and Support Orders under section 127 of the Social Services and Well-being(Wales) Act 2014 (The Act"). These Applications are made in the Magistrates Court.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Social Welfare legislation has been devolved.

4.2 These Rules, however, are not made under the Act, which makes no provision for procedure. Provision governing practice and procedure in magistrates' courts other than in criminal proceedings is made by magistrates' courts rules, which are under section 144 of the Magistrates' Courts Act 1980 made by the Lord Chief Justice with the concurrence of the Lord Chancellor. These Rules are accordingly made under that section.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is 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 The Act introduces a broader statutory framework for the protection of adults at risk and their carers. Adults at risk being defined in section 126 of the Act as those who are at risk of abuse or neglect, have needs for care and support and because of those needs are unable to protect themselves against abuse or neglect, or the risk of it, and simplifies the current safeguarding board arrangements in Wales. Provision in Wales is broader than that in England under the Care Act 2014, as it extends to people in need and their carers, rather than adults in need and their carers.

7.2 As part of this framework, section 127 of the Act empowers an authorised officer to apply to a magistrates' court for an adult protection and support order. When such an order has been made, and is in force, the authorised officer, a constable, if considered necessary, and any other person specified in the order have the power to enter premises where the suspected adult at risk is living to discuss their situation to ascertain if they are at risk. A constable may use reasonable force if this is necessary to gain access to the premises where the adult at risk lives or to ensure that the authorised officer can speak to the adult in private.

7.3 This SI provides procedural provision for the making of applications for adult protection and support orders. It sets out the information which must be included in the application for the order to ensure that the court has, when considering the application, all the information necessary to enable it to be satisfied that the requirements for making an order are fulfilled.

Consolidation

7.4 There are no plans to consolidate the rules now.

8. Consultation outcome

8.1 No formal consultation was undertaken on the rules but former members of the Magistrates' Courts Rules Committee were consulted, and provided comments on a technical basis which were considered in the development of the rules.

9. Guidance

9.1 Guidance to these orders has been produced by the Welsh Government and is online at http://gov.wales/docs/dhss/publications/160909safegarden.pdf.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those businesses, charities or voluntary bodies providing care or accommodation: as the numbers of these orders is limited the overall impact should be minimal.

10.2 The impact on the public sector is limited for the reasons given above.

10.3 No impact assessment was therefore deemed necessary.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses insofar as they may run care homes or provide welfare services.

12. Monitoring & review

12.1 The Act contains provisions to allow the Welsh Ministers to monitor functions of the Act carried by Local Authorities and other bodies, including the Adult Protection and Support Order provisions.

13. Contact

13.1 David Hamilton at the Ministry of Justice Telephone: 07956418231 or email: david.hamilton5@justice.gov.uk can answer any queries regarding the instrument.