EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (KNIFE CRIME PREVENTION ORDERS) RULES 2020

2020 No. 210 (L. 8)

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 This instrument provides the necessary magistrates' court procedure rules for administering Knife Crime Prevention Orders (KCPO). They set out the application process, rules about review, variation, discharge and appeal as well as the procedure to make them on an interim basis without notice.

2.2 KCPOS are civil orders in the Magistrates' Courts that are available to the Police either on conviction or as a standalone application. They are designed to remove those involved in violent crime from that lifestyle and to protect others from harm.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

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

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument is made under section 144 of the Magistrates' Court Act 1980 (the 1980 Act), which confers power on the Lord Chief Justice, with the approval of the Lord Chancellor, to make rules for regulating and prescribing the procedure and practice to be followed in magistrates' courts, except in criminal matters.

6.2 This instrument, by establishing the KCPO procedure implements ss 14-33 of the Offensive Weapons Act 2019 which introduced KCPOs.

6.3 The Offensive Weapons Act 2019 is an important part of the Governments Action to address serious violence. This Act includes provisions to help tackle knife crime, acid and other corrosive attacks as well as the misuse of firearms.

7. Policy background

What is being done and why?

7.1 The policy for KCPOs lies with the Home Office. Ministry of Justice involvement has been limited to assisting with the drafting of the necessary orders and securing the necessary ministerial and judicial approvals.

7.2 Knife Crime Prevention Orders are new preventative civil orders that the police will be able to use as part of their work to encourage young people and others to steer away from knife and other forms of serious violence.

7.3 A KCPO may be sought against a named defendant, by a complaint made to the court by the police. This complaint must set out the grounds for making it and the facts to be brought in evidence and how the KCPO will protect the public from knife crime.

7.4 The order can be made if the court is satisfied on the balance of probabilities that the defendant prior to the making the order carried a bladed article on two separate occasions without lawful excuse in either a public place, a school or hospital.

7.5 In certain circumstances the court may be invited to make a KCPO on an interim basis. Interim orders can be made without notice if the police satisfy the court that that is necessary.

7.6 As these orders require a multi-agency approach the Police are expected to work with relevant stakeholders to support those who have been issued with a KCPO to steer away from crime.

7.7 KCPOs will help divert those who may be carrying knives, and those at the greatest risk of being drawn into serious violence away from this involvement. Their post-conviction applicability will assist in preventing those already involved in knife crime from committing further such offences.

7.8 KCPOs are preventative (as opposed to punitive). They help prevent knife crime by using positive requirements to help steer the individual away from serious violence, by addressing the issues in their lives that may increase the chances of offending (or reoffending). A KCPO may include certain conditions such a curfew or geographical restriction. Additionally, an order may contain measures to prohibit certain activities or associations.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the Magistrates' Courts Rules.

10. Consultation outcome

10.1 No formal consultation was undertaken on the rules but former members of the Magistrates' Courts Rule Committee were consulted, and provided comments on a technical basis which were taken into account in the development of the rules.

11. Guidance

11.1 Draft guidance in relation to the operation of, and application for, Knife Crime Prevention Orders (KCPOs) was published on the .gov website on 15 August 2019. A public consultation on the guidance ran from 11:30am on 15 August 2019 to 11:45pm on 25 September 2019.The public consultation received numerous responses from a variety of organisations and individuals. The Home Office response to the consultation will be published shortly, alongside the revised KCPO Framework Guidance. The Home Office also intends to publish an additional guidance document, the KCPO Practitioner's Guidance, which provides operational guidance to those specifically handling the issuing of KCPOs.

12. Impact

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

12.2 The impact on the public sector is confined to the Police and is limited to KCPO cases and HMCTS.

12.3 For the reasons above an Impact Assessment has not been prepared.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be via a general review of the Magistrates' Courts Rules which HMCTS plans to carry out.

14.2 The Home office will lay a report before Parliament on the effectiveness of the Orders (but not the rules) before rolling KCPOs out nationally.

15. Contact

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

15.2 David Parkin, Deputy Director for Civil Justice and Law, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp, Parliamentary Undersecretary of State at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.