EXPLANATORY MEMORANDUM TO

THE SPECIAL MEASURES IN CIVIL PROCEEDINGS (SPECIFIED OFFENCES) REGULATIONS 2022

2022 No. 562

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 Section 64 of the Domestic Abuse Act 2021 ('the 2021 Act') requires rules of court to make provision enabling the court to make a special measures direction in civil proceedings in relation to victims and alleged victims of specified offences. These Regulations set out the list of offences that are 'specified offences' for this purpose.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 being made as part of the implementation of Part 5 of the 2021 Act. Section 64 of the 2021 Act makes provision in respect of special measures for parties or witnesses in civil proceedings, and requires rules of court (which in this case are the Civil Procedure Rules 1998 ('CPR')) to make provision enabling the court to make a special measures direction in relation to a party or witness who is the victim, or alleged victim, of a specified offence.

6.2 Power is conferred on the Lord Chancellor to specify, in regulations, the offences under the laws of England and Wales, Scotland and Northern Ireland which are relevant for this purpose; and it is under that power that this instrument is made.

7. Policy background

What is being done and why?

7.1 Special measures[1] are certain steps or provisions that may assist a person, including those who are vulnerable, to give their evidence in the best possible way, without fear or distress about testifying in the courts. Special measures include, but are not limited to, giving evidence via video link, from behind a screen or through an intermediary.

7.2 Prior to the 2021 Act, there were no specific provisions in the CPR dealing with vulnerable parties or witnesses in civil proceedings. The Civil Justice Council conducted a consultation on the support available to those parties and witnesses in September 2019 and its final report was published in February 2020[2]. Various recommendations were made, including that the overriding objective in Part 1 of the CPR should be amended to ensure all parties are able to participate fully in proceedings and that all witnesses are able to give their best evidence.

7.3 The 2021 Act's requirement for the CPR to make provision about special measures is fulfilled by following the Civil Justice Council recommendations in Part 1 of the CPR and in Practice Direction 1A (Participation of Vulnerable Parties or Witnesses) made under rule 1.1 of the CPR[3].

7.4 The list of offences specified in this instrument is largely based on the list of offences set out by the Lord Chancellor in a non-statutory document published under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 for the purposes of demonstrating eligibility for civil legal aid. The types of offences specified, however, go beyond those relating to domestic abuse between adults, and include child abuse, sexual abuse and other violent offences in order to meet the underlying policy objective of protecting parties or witnesses in civil proceedings who may be vulnerable for reasons other than domestic abuse.

8. European Union Withdrawal and Future Relationship

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 As this instrument does not amend another instrument, no consolidation of legislation is required.

10. Consultation outcome

10.1 No formal consultation was undertaken on the list of specified offences. However, the Ministry of Justice has undertaken detailed engagement with other government departments such as the Ministry of Defence, the Home Office and the devolved administrations when considering other offences for inclusion in the existing list, so that it is as comprehensive as possible.

---

[1] 'Special measures' are defined in section 64(4) of the 2021 Act. The types of special measures described in new Practice Direction 1A of the CPR are broadly analogous to those available in criminal proceedings, under the provisions of Part 2 of the Youth Justice and Criminal Evidence Act 1999.

[2] https://www.judiciary.uk/wp-content/uploads/2020/02/VulnerableWitnessesandPartiesFINALFeb2020-1-1.pdf

[3] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part01/practice-direction-1a-participation-of-vulnerable-parties-or-witnesses.

11. Guidance

11.1 There are no plans to issue specific guidance for this instrument, but the judiciary and Her Majesty's Courts and Tribunals Service staff in the civil courts will be provided with operational guidance on any procedural changes. In addition, Her Majesty's Courts and Tribunals Service will provide information for victims about how they can access special measures in civil proceedings.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

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 Ministry of Justice and Her Majesty's Courts and Tribunals Service plan to monitor the implementation of the provision in section 64 of the 2021 Act to check their effective operation once they come into force.

15. Contact

15.1 Tajinder Bhamra at the Ministry of Justice email: tajinder.bhamra1@justice.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 James Cartlidge, Parliamentary Under-Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.