

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (SEXUAL OFFENCES ACT 2003) (MISCELLANEOUS
AMENDMENTS) RULES 2012

2012 No. 2018

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 Statutory Instrument amends the Magistrates' Courts (Foreign Travel Orders) Rules 2004, the Magistrates' Courts (Notification Orders) Rules 2004, the Magistrates' Courts (Risk of Sexual Harm Orders) Rules 2004 and the Magistrates' Courts (Sexual Offences Prevention Orders) Rules 2004 (the "2004 rules"). The purpose of these amendments is to remove the need for a summons or an order made under the 2004 rules to be in a prescribed form.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 None.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to 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**
 - 7.1 Part 2 of the Sexual Offences Act 2003 (sections 80-92) requires sex offenders convicted of a relevant offence or subject to a Sexual Offences Prevention Order to notify certain details to the police. This process is commonly known as 'registration' and often referred to as creating a 'sex offender' register. The legislation sets out the information offenders need to supply to the police and the time scales within which they are required to provide this information. The details to be notified include information such as the offender's date of birth; name or

change of name; address or change of address and details of proposed travel outside the UK.

- 7.2 An offender who is subject to notification requirements is served with a form at court setting out the information required and the timescale within which they must provide this information to the police. Currently, the forms used in the magistrates' courts are prescribed by the 2004 rules. Forms used in the Crown Court are not prescribed.
- 7.3 The Home Office has laid draft regulations (the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012) before Parliament. The effect of these Regulations is to amend the notification requirements under the Sexual Offences Act 2003.
- 7.4 The prescribed forms in the 2004 rules could be changed to reflect the Home Office amendments. However, following the implementation of Libra (the national information technology case management system for the magistrates' courts) in December 2005 the policy of Her Majesty's Courts and Tribunals Service is to move away from the use of prescribed forms in the magistrates' courts where practical and convenient to do so.
- 7.5 The application forms for a foreign travel order, a risk of sexual harm order, a notification order or an interim notification order are not being de-prescribed. This is to ensure that the court is sent all the relevant information when the police apply for an order.
- 7.6 These Rules do, however, de-prescribe the form of summons and order that the court sends to an offender. The intention is not to reduce the amount of information sent to the offender. The prescribed information in the 2004 Rules (as amended by the Home Office draft regulation) will be included in the forms generated by Libra and sent to the offender. However, it is not necessary for the notification requirements to be set out in a prescribed form. Prescribed forms are not used in the Crown Court and there has not been any complaint that forms issued by the Crown Court do not provide the offender with sufficient information.
- 7.7 De-prescribing the forms in the magistrates' court will harmonise the approach in the Crown Court and magistrates' courts. All forms on Libra are drafted in plain English to ensure that they are understood by defendants.
- 7.8 The Libra system allows for the electronic transfer of Libra generated forms to the police case management systems without the need to print hard copies and post them, thus improving the process and producing savings. In addition, deleting prescribed forms means that when the notification requirements change there will be no need to amend secondary legislation, although it will be necessary to amend the forms of summons or order on Libra.

8. Consultation outcome

8.1 This instrument has been made following proposed changes to the notification requirements in the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 (the “notification requirement regulations”). Further information about notification requirement regulations, including a summary of responses to the consultation can be found at <http://homeoffice.gov.uk/publications/about-us/legislation/sexual-offences-notifications/>

8.2 This instrument is technical and a public consultation is unnecessary. It has however, been prepared in consultation with the Magistrates’ Rules Committee. The Home Office, which leads on the Sexual Offences Act 2003, has also been consulted and is content.

9. Guidance

9.1 Guidance will be issued to court staff in due course about the amendments that these Rules make to the 2004 Rules.

10. Impact

10.1 An impact Assessment has not been prepared for this instrument because there is no impact on the private or voluntary sector.

11. Regulating small business

11.1 This instrument has no impact on small business.

12. Monitoring & review

12.1 The Government will keep under review whether these Rules affect the notification process and whether Libra forms provide sufficient information to ensure that the offender is aware of their notification requirements.

13. Contact

Nilou Raman and Ian Budd at the Ministry Of Justice can answer any queries regarding this instrument.

Nilou Raman: Tel: 0203 334 6287 or e-mail: Nilou.Raman@hmcourts-service.gsi.gov.uk
Ian Budd: Tel: 02033345909 or e-mail: ian.budd@hmcourts-service.gsi.gov.uk