

2011 No. 1434 (L. 11)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Domestic Violence Protection Order Proceedings) Rules 2011

<i>Made</i> - - - -	<i>6th June 2011</i>
<i>Laid before Parliament</i>	<i>9th June 2011</i>
<i>Coming into force</i> - -	<i>30th June 2011</i>

The Lord Chief Justice makes the following Rules under sections 144(1) and 145(1)(a) of the Magistrates' Courts Act 1980(a) and section 2(2)(a) of the Civil Evidence Act 1995(b).

In accordance with section 144 of the Magistrates' Courts Act 1980 he has consulted with the rule committee appointed under that section and makes these Rules with the concurrence of the Lord Chancellor.

Citation and Commencement

1. These Rules may be cited as the Magistrates' Courts (Domestic Violence Protection Order Proceedings) Rules 2011 and shall come into force on 30 June 2011.

Application and Interpretation

2. In these rules—

“the 1995 Act” means the Civil Evidence Act 1995;

“the 1999 Rules” means the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999(c);

“the 2010 Act” means the Crime and Security Act 2010(d);

“DVPO” means a Domestic Violence Protection Order made in accordance with section 28 (conditions for and contents of a domestic violence protection order) of the 2010 Act; and

“DVPO proceedings” means proceedings under any of sections 26 (breach of domestic violence protection notice) 27 (application for a domestic violence protection order) and 29 (breach of domestic violence protection order) of the 2010 Act.

(a) 1980 c. 43. Section 144(1) was amended by section 15 of, and paragraphs 99 and 102 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and section 109 of, and paragraph 245 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39).

(b) 1995 c.38.

(c) S.I. 1999/681; to which there have been amendments which are not relevant to these Rules.

(d) 2010 c.17.

3. These Rules shall apply to DVPO proceedings in magistrates' courts.

Disapplication of section 2(1) the 1995 Act

4. Section 2(1) (notice of proposal to adduce hearsay evidence) of the 1995 Act does not apply to DVPO proceedings.

Exclusion of the 1999 Rules

5.—(1) Rule 2 (application and interpretation) of the 1999 Rules is amended as follows.

(2) After rule 2(3) insert—

“(4) These rules shall not apply to Domestic Violence Protection Order proceedings as defined in “DVPO proceedings” under rule 2 (application and interpretation) of the Magistrates’ Courts (Domestic Violence Protection Order Proceedings) Rules 2011.”.

Application for a DVPO in the magistrates’ court

6. In an application for a DVPO, the application, in accordance with section 27(2) of the 2010 Act, must be made by complaint and, accordingly, when an application for a DVPO is made, the applicant shall be deemed to be a complainant, the respondent to be a defendant and any notice given under section 27(5) of the 2010 Act to be a summons, but nothing in this rule shall be construed as enabling a warrant of arrest to be issued for failure to appear in answer to any such notice.

Lord Judge, C.J.

I concur

Signed by authority of the Lord Chancellor

6th June 2011

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

These rules make provision in respect of proceedings in the magistrates’ court for applications for Domestic Violence Protection Orders (DVPOs) under the Crime and Security Act 2010 (c.17) (the 2010 Act).

Rule 4 disapplies section 2(1) of the Civil Evidence Act 1995 (c.38) (the 1995 Act), which requires parties proposing to adduce hearsay evidence in civil proceedings to give notice of the proposal.

Rule 5 amends rule 2 of the Magistrates’ Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 (SI 1999/681) (the 1999 Rules) to exclude the 1999 rules in respect of applications for DVPOs. The 1999 Rules make further provision concerning hearsay evidence, including the contents of hearsay notices (rule 3), the procedure to call witnesses for cross-examination on hearsay evidence (rule 4), credibility and the use of previous inconsistent statements (rule 5) and the service of documents (rule 6).

The provisions under the 1995 Act and 1999 Rules have been respectively disapplied or excluded because they are either incompatible with the procedures prescribed for applying for DVPOs under the 2010 Act or else cease to have effect in consequence of the disapplication or exclusion of other of these provisions.

Section 27 of the 2010 Act provides that an application for a DVPO must be made by complaint to the magistrates' court. Rule 6 prescribes the procedure to be followed in such circumstances.

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STATUTORY INSTRUMENTS

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