

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS WARRANTS (SPECIFICATION OF PROVISIONS)
(AMENDMENT) ORDER 2007

2007 No. 3011

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

2. **Description**

This order makes provision for the execution of Community Order Breach Warrants (COBWs) issued under Schedule 8 of the Criminal Justice Act 2003.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

The power conferred by section 125A(3) of the Magistrates' Courts Act 1980 to provide which warrants may be executed by civilian enforcement officers was formerly vested in both the Lord Chancellor and the Secretary of State. Following the creation of the Ministry of Justice on 9th May 2007 and the transfer of functions effected by the Secretary of State for Justice Order 2007 (SI 2007/2128), this power is now vested solely in the Lord Chancellor. The Secretary of State for Justice Order 2007 was made pursuant to sections 1 and 2 of the Ministers of the Crown Act 1975 and it came into force on 22nd August 2007.

4. **Legislative Background**

Sections 125A – 125D of the Magistrates' Courts Act 1980 (as inserted by sections 92 - 94 and 96 of the Access to Justice Act 1999 and amended by the Secretary of State for Justice Order 2007) make provision for the enforcement of warrants issued under statutory provisions specified by order made by the Lord Chancellor. This order amends the Magistrates' Courts Warrants (Specification of Provisions) Order 2000, which specifies statutory provisions for the purposes of section 125A(3) of the Magistrates' Court Act 1980. It includes warrants made under paragraphs 7 and 8 of Schedule 8 to the Criminal Justice Act 2003 (where the offender has failed to comply with any requirement of a community order).

5. **Territorial Extent and Application**

This instrument applies to England and Wales.

6. **European Convention on Human Rights**

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

7. Policy background

The Justices' Clerks' Society (JCS) raised a question about whether COBWs made under the Criminal Justice Act 2003 can be executed by:

- a 'non-constable' i.e. a Civilian Enforcement Officer (CEO) or an Approved Enforcement Agent (AEA) and
- a police constable *without* having the physical warrant to hand

The Department's interpretation of the law was that the power for CEO/AEA to execute COBWs issued by a Justice of the Peace, and the power for a Police Constable and CEO/AEA to execute warrants without the warrant to hand, derived from the Criminal Procedure Rules at 18.10 and 18.11 respectively. The JCS took the view that the Criminal Procedure Rules needed to be underpinned by a clear statutory authority. Therefore, Ministers decided to amend the law to make it clear, beyond any possibility of misunderstanding.

This Order amends the Magistrates' Courts Warrants (Specification of Provisions) Order 2000 so that warrants for breaches of Community Orders made under the Criminal Justice Act 2003 are included within the provisions specified for the purposes of section 125A of the Magistrates' Courts Act 1980. Section 125A, 125B and 125D explicitly authorise the execution of warrants by a CEO, an AEA and any person entitled to execute it even though it is not in his possession at the time, provided that the warrant is issued under a provision so specified.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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