

# Annex E

## Statutory Instruments

2009 No. 2937 (L. 28)

MAGISTRATES' COURTS, ENGLAND AND WALES

### The Magistrates' Courts (Drinking Banning Orders) Rules 2009

*Made*

2nd November 2009

*Laid before Parliament*

4th November 2009

*Coming into force*

30th November 2009

The Lord Chief Justice makes the following Rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980(1) and section 13(6) of the Violent Crime Reduction Act 2006(2).

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

#### **Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Magistrates' Courts (Drinking Banning Orders) Rules 2009 and shall come into force on 30th November 2009.

(2) In these Rules—

“the 2006 Act” means the Violent Crime Reduction Act 2006;

any reference to a “form” includes a form to like effect; and

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales.

#### **Forms**

2.—(1) An application for a drinking banning order under section 3 of the 2006 Act (orders on an application to magistrates' court) shall be in the form set out in Schedule 1.

(2) An application for an interim drinking banning order under section 9 of the 2006 Act (interim orders) shall be in the form set out in Schedule 2.

#### **Interim Orders**

3.—(1) An application for an interim order under section 9 of the 2006 Act may, with leave of the justices' clerk, be made without notice being given to the individual against whom the interim order is to be made.

(2) The justices' clerk shall only grant leave under paragraph (1) of this rule if he is satisfied that—

(a) it is necessary for the application to be made without notice being given to the individual in question; and

(b) it is not necessary for the application to be heard in the presence of the individual.

(3) If an application made under paragraph (1) is granted then the interim order and the application for a drinking banning order under section 3 of the 2006 Act (together with a summons giving a date for the individual to attend court) shall be served on the individual in person as soon as practicable after the making of the interim order.

(4) An interim order which is made at the hearing of an application without notice shall not take effect until it has been served on the individual.

(5) If such an interim order made without notice is not served on the individual within seven days of being made then it shall cease to have effect.

(6) An interim order shall specify the period for which it has effect and that period shall not be more than four weeks.

(7) An interim order may be renewed on one or more occasions for a period of not more than four weeks from the end of the period when it would otherwise cease to have effect.

(8) An interim order shall cease to have effect on the determination of an application under section 3 of the 2006 Act.

(9) Where the court refuses to make an interim order without notice being given to the individual it may direct that the application be made on notice.

(10) If an interim order is made without notice being given to the individual and the individual subsequently applies to the court for the order to be discharged or varied his application shall not be dismissed without the opportunity for him to make oral representations to the court.

#### **Application for variation or discharge**

4.—(1) This rule applies to the making of an application for the variation or discharge of an order made under section 3 or, subject to rule 3(10), section 9 of the 2006 Act.

(2) An application to which this rule applies shall be made by way of complaint to the magistrates' court which made the order or to any magistrates' court acting for the local justice area in which the subject of the order normally resides and shall specify the reason why the applicant for variation or discharge believes the court should vary or discharge the order, as the case may be.

(3) Subject to rule 3(10), where the court considers that there are no grounds upon which it might conclude that the order should be varied or discharged it may determine the application without hearing representations from the applicant for variation or discharge or from any other person.

(4) Where the court considers that there are grounds upon which it might conclude that the order should be varied or discharged then, unless the application is withdrawn, a summons shall be issued to the subject of the order or the relevant authority on whose application the order was made, as appropriate, giving not less than fourteen days' notice in writing of the date, time and place appointed for the hearing.

(5) The designated officer shall send with the summons under paragraph (4) a copy of the application for variation or discharge of the drinking banning order.

#### **Service**

5.—(1) Subject to rule 3(3), any summons, copy of an order or application required to be sent under these Rules to an individual who is the subject of that summons, order or application shall be either given to that individual in person or sent by post to the last known address of that individual, and if so given or sent, shall be deemed to have been received by that individual unless proved otherwise.

(2) Any summons, copy of an order or application required to be sent under these Rules to an individual who is the subject of that summons, order or application shall also be sent by the designated officer to the authority which made the application and to any relevant authority whom the applicant is required by section 3 of the 2006 Act to have consulted before making the application and, where appropriate, shall invite them to make observations and advise them of their right to be heard at the hearing.

#### **Approved Courses: Declarations**

6.—(1) An application for a declaration under section 13(6) of the 2006 Act shall be made—

- (a) to the court which made the order under section 3 of that Act; or
- (b) where the court which made the order is not a relevant local court, to either the court which made the order or a relevant local court.

(2) An application under sub-paragraph (1) shall be made within—

- (a) 14 working days beginning on the day on which the notice under section 13(4) of the 2006 Act is given in respect of the subject of the drinking banning order making the application; or, where a notice under section 13(4) has not been given; or
- (b) 28 working days beginning on the day on which the subject of a drinking banning order makes a request under section 13(5) of the 2006 Act.

## Guidance on Drinking Banning Orders on Application

### **Certification**

7. A justices' clerk may certify a copy of an original drinking banning order or interim drinking banning order for the purposes of section 11(6) of the 2006 Act (certification to evidence breach of drinking banning order).

I concur

*Judge C.J.*

2nd November 2009

*Bridget Prentice*  
Parliamentary Under Secretary of State  
Ministry of Justice

