

PART 4 OF THE FAMILY LAW ACT 1996

This Practice Direction supplements FPR Part 10

Scope of this Practice Direction

- 1.1** Paragraphs 4.1 to 7.1 of this Practice Direction do not apply to proceedings heard in a magistrates' court. Attention is drawn to rules made under section 144 of the Magistrates' Courts Act 1980.

Applications for an occupation order or non-molestation order made by a child under the age of sixteen

- 2.1** If an application for an occupation order or non-molestation order is made by a child under the age of sixteen attention is drawn to section 43 of the 1996 Act. This provides that leave of the court is required for an application made by a child under the age of sixteen. Article 6(b) of the Allocation and Transfer of Proceedings Order 2008 (S.I 2008/2836) provides that such an application must be started in a county court. The application should be made in accordance with Part 18.

Privacy

- 3.1** If at a hearing which has been held in private –
- (a) a non-molestation order is made or an occupation order is made to which a power of arrest is attached; and
 - (b) the person to whom it is addressed was not given notice of the hearing and was not present at the hearing,
the terms of the order and the name of the person to whom it is addressed shall be announced in open court at the earliest opportunity.
- 3.2** This announcement may be either on the same day when the court proceeds to hear cases in open court or where there is no further business in open court on that day at the next listed sitting of the court.
- 3.3** When a person arrested under a power of arrest attached to an occupation order cannot conveniently be brought before the relevant judicial authority sitting in a place normally used as a courtroom within 24 hours after the arrest, that person may be brought before the relevant judicial authority at any convenient place. As the liberty of the subject is involved, the press and public should be permitted to be present, unless security needs make this impracticable.

Warrant of arrest on an application under section 47(8) of the 1996 Act

- 4.1** In accordance with section 47(9) of the 1996 Act, a warrant of arrest on an application under section 47(8) shall not be issued unless –
- (a) the application is substantiated on oath; and

- (b) the court has reasonable grounds for believing that the respondent has failed to comply with the order.

Attendance of arresting officer

- 5.1** Attention is drawn to section 47(7) of the 1996 Act. This provides that a person arrested under a power of arrest attached to an occupation order must be brought before a judge within the period of 24 hours beginning at the time of arrest.
- 5.2** When the arrested person is brought before the judge the attendance of the arresting officer will not be necessary, unless the arrest itself is in issue. A written statement from the arresting officer as to the circumstances of the arrest should normally be sufficient.
- 5.3** In those cases where the arresting officer was also a witness to the events leading to the arrest and his or her evidence regarding those events is required, arrangements should be made for the arresting officer to attend at a subsequent hearing to give evidence.

Application for Bail

- 6.1** An application for bail by a person arrested under –
 - (a) a power of arrest attached to an occupation order under section 47(2) or (3) of the 1996 Act; or
 - (b) a warrant of arrest issued on an application under section 47(8) or the 1996 Act, may be made orally or in writing.
- 6.2** The court will require the following information, which an application in writing should therefore contain –
 - (a) the full name of the person making the application;
 - (b) the address of the place where the person making the application is detained at the time when the application is made;
 - (c) the address where the person making the application would reside if granted bail;
 - (d) the amount of the recognizance in which the person making the application would agree to be bound; and
 - (e) the grounds on which the application is made and, where a previous application has been refused, full particulars of any change in circumstances which has occurred since that refusal.
- 6.3** An application made in writing must be signed –
 - (a) by the person making the application or by a person duly authorised by that person in that behalf; or
 - (b) where the person making the application is a child or is for any reason incapable of acting, by a children’s guardian or litigation friend acting on that person’s behalf.
- 6.4** A copy of the application must be served on the person who obtained the injunction.
- 6.5** A copy of the bail notice must be given to a respondent who is remanded on bail.

Remand for Medical Examination and Report

- 7.1** Section 48(4) of the 1996 Act provides that the judge has power to make an order under section 35 of the Mental Health Act 1983 (remand to hospital for report on accused's mental condition) in certain circumstances. If the judge does so attention is drawn to section 35(8) of that Act, which provides that a person remanded to hospital under that section may obtain at his or her own expense an independent report on his or her mental condition from a registered medical practitioner or approved clinician of his or her choice and apply to the court on the basis of it for the remand to be terminated under section 35(7).

