

# APPLICATIONS UNDER PART 4 OF THE FAMILY LAW ACT 1996

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### 10.1 Scope and interpretation of this Part

The rules in this Part apply to proceedings under Part 4 of the 1996 Act.

### 10.2 Applications for an occupation order or a non-molestation order

- (1) An application for an occupation order or a non-molestation order must be supported by a witness statement.
- (2) Subject to paragraph (3), an application for an occupation order or a non-molestation order may be made without notice.
- (3) An application for an occupation order or a non-molestation order may, in a magistrates' court, be made with the permission of the court without notice in which case the applicant must file the application at the time when the application is made or as directed by the court.
- (4) Where an application is made without notice, the witness statement in support of the application must state the reasons why notice has not been given.

(Section 45 of the 1996 Act sets out the criteria for making an order without notice.)

### 10.3 Service of the application

- (1) In an application made on notice, the applicant must serve –
  - (a) a copy of the application together with any statement in support; and
  - (b) notice of any hearing or directions appointment set by the court, on the respondent personally –
    - (i) not less than 2 days before the hearing; or
    - (ii) within such period as the court may direct.
- (2) Where the applicant is acting in person, the applicant may request the court officer to serve the application on the respondent.
- (3) In an application for an occupation order under section 33, 35 or 36 of the 1996 Act<sup>1</sup>, the applicant must serve on the mortgagee and any landlord of the dwelling-house in question –
  - (a) a copy of the application; and
  - (b) notice of the right to make representations in writing or orally at any hearing.
- (4) The applicant must file a certificate of service after serving the application.

(Rule 6.23 makes provision for the different methods of serving a document and rule 6.35 provides for the court to authorise service by an alternative method.)

### 10.4 Transfer of pending proceedings to another court

Subject to any enactment, where an application for an occupation order or a non-molestation order is pending, the court may transfer the proceedings to another court of its own initiative or on the application of either party.

### 10.5 Privacy

In the High Court and a county court, any hearing relating to an application for an occupation order or a non-molestation order will be in private unless the court directs otherwise.

### 10.6 Service of an order

- (1) The applicant must, as soon as reasonably practicable, serve on the respondent personally –
    - (a) a copy of the order; and
    - (b) where the order is made without notice –
      - (i) a copy of the application together with any statement supporting it; and
      - (ii) in a magistrates' court, a copy of the record of the reasons for a decision.
- (Rule 27.2(8) makes provision for the court officer to supply a copy of the reasons for the court's decision to the persons referred to in rule 27.2(9).)
- (2) The court must serve the documents listed in paragraph (1) if –
    - (a) an applicant, acting in person, so requests; or
    - (b) the court made the order of its own initiative.

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<sup>1</sup> Section 33 was amended by section 82 of and paragraphs 4(1), (2), (3), (7), (4)(a) and (b), (5) and 6(a) to (e) of Schedule 9 to the Civil Partnership Act 2004. Section 35 was amended by section 82 of and paragraphs 6(1) to 6(10) of Schedule 9 to that Act. Section 36 was amended by sections 2(2) and 58(1) of and paragraphs 34(1) to (3) of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c.28) and section 82 of and paragraph 7 of Schedule 9 to the Civil Partnership Act 2004.

- (3) In an application for an occupation order under section 33, 35 or 36 of the 1996 Act, the applicant must serve a copy of any order made on the mortgagee and any landlord of the dwelling-house in question.

### **10.7 Representations made by a mortgagee or landlord**

The court may direct that a hearing be held in order to consider any representations made by a mortgagee or a landlord.

### **10.8 Applications to vary, extend or discharge an order**

Rules 10.5 to 10.7 apply to applications to vary, extend or discharge an order.

### **10.9 Orders containing provisions to which a power of arrest is attached**

Where the court makes an occupation order containing one or more provisions to which a power of arrest is attached ('relevant provisions') –

- (a) each relevant provision must be set out in a separate paragraph in the order; and
- (b) a paragraph containing a relevant provision must not include a provision of the order to which the power of arrest is not attached.

### **10.10 Service of an order on the officer for the time being in charge of a police station**

- (1) Where the court makes –
  - (a) an occupation order to which a power of arrest is attached; or
  - (b) a non-molestation order,  
a copy of the order must be delivered to the officer for the time being in charge of –
    - (i) the police station for the applicant's address; or
    - (ii) such other police station as the court may specify.
- (2) A copy of the order delivered under paragraph (1) must be accompanied by a statement showing that the respondent has been served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise).
- (3) The documentation referred to in paragraphs (1) and (2) must be delivered by –
  - (a) the applicant; or
  - (b) the court officer, where the order was served following a request under rule 10.6(2).
- (4) Paragraph (5) applies where an order is made varying or discharging –
  - (a) a provision of an occupation order to which a power of arrest is attached; or
  - (b) a provision of a non-molestation order.
- (5) The court officer must –
  - (a) immediately inform –
    - (i) the officer who received a copy of the order under paragraph (1); and
    - (ii) if the applicant's address has changed, the officer for the time being in charge of the police station for the new address; and
  - (b) deliver a copy of the order referred to in paragraph (4)(a) or (b) and the order referred to in paragraph (1) to any officer so informed.

### **10.11 Proceedings following arrest in a county court or the High Court**

- (1) This rule applies where a person is arrested pursuant to –

- (a) a power of arrest attached to a provision of an occupation order; or
  - (b) a warrant of arrest issued on an application under section 47(8) of the 1996 Act<sup>1</sup>.
- (2) The court before which a person is brought following arrest may –
- (a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the order; or
  - (b) adjourn the proceedings.
- (3) Where the proceedings are adjourned and the arrested person is released –
- (a) unless the court directs otherwise, the matter must be dealt with within 14 days beginning with the date of arrest; and
  - (b) the arrested person must be given not less than 2 days' notice of the hearing.
- (4) An application notice seeking the committal for contempt of court of the arrested person may be issued if the arrested person is not dealt with within the period mentioned in paragraph (3)(a).

(The powers of a county court and the High Court to remand in custody or on bail are contained in section 47 of and Schedule 5 to the Family Law Act 1996<sup>2</sup>.)

(For proceedings following arrest in a magistrates' court see rules made under section 144 of the Magistrates' Courts Act 1980.)

#### **10.12 Enforcement of an order in a county court**

Rule 1 of Order 29 of the CCR (enforcement of judgment to do or abstain from doing any act) has effect as if, for paragraph (3), there were substituted the following –

'(3) At the time when the order is drawn up, the court officer will –

- (a) where the order made is (or includes) a non-molestation order; or
- (b) where the order made is an occupation order and the court so directs,

issue a copy of the order, indorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with paragraph (2).'

(For enforcement of an order generally in a county court or the High Court see Part 33. For enforcement of an order in a magistrates' court see rules made under section 144 of the Magistrates' Courts Act 1980.)

#### **10.13 Enforcement of an undertaking in a county court**

- (1) This rule applies to applications for the enforcement of undertakings by committal order in a county court.
- (2) Rule 1A of Order 29 of the CCR (undertaking given by party) applies with the necessary modifications, where an application is made in a county court to commit a person for breach of an undertaking.

(For enforcement of an undertaking in a magistrates' court see rules made under section 144 of the Magistrates' Courts Act 1980.)

<sup>1</sup> Section 47(8) was amended by section 58(1) to and paragraphs 38(1) and (5) of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004.

<sup>2</sup> Section 47 was amended by section 58(1) and (2) of and paragraphs 38(1) to (5) of Schedule 10 to and Schedule 11 to the Domestic Violence, Crime and Victims Act 2004.

#### **10.14 Power to adjourn the hearing for consideration of the penalty**

The High Court or a county court may adjourn the hearing for consideration of the penalty to be imposed for any contempt of court found proved and such a hearing may be restored if the respondent does not comply with any conditions specified by the court.

(Rules made under section 144 of the Magistrates' Courts Act 1980 contain an equivalent power for magistrates' courts.)

#### **10.15 Hospital orders or guardianship orders under the Mental Health Act 1983**

- (1) Where the High Court or a county court makes a hospital order under the Mental Health Act 1983 the court officer must –
  - (a) send to the hospital any information which will be of assistance in dealing with the patient; and
  - (b) inform the applicant when the respondent is being transferred to hospital.
- (2) Where the High Court or a county court makes a guardianship order under the Mental Health Act 1983, the court officer must send any information which will be of assistance in dealing with the patient to –
  - (a) the patient's guardian; and
  - (b) where the guardian is a person other than the local services authority, the local services authority.

(Section 51 of the 1996 Act<sup>1</sup> provides a magistrates' court with a power to make a hospital order or a guardianship order under the Mental Health Act 1983 and attention is drawn to rules made under section 144 of the Magistrates' Courts Act 1980.)

#### **10.16 Transfer directions under section 48 of the Mental Health Act 1983**

- (1) Where a transfer direction given by the Secretary of State under section 48 of the Mental Health Act 1983 is in force in respect of a person remanded in custody by the High Court or a county court, the court officer must notify –
  - (a) the governor of the prison to which that person was remanded; and
  - (b) the hospital where that person is detained, of any committal hearing which that person is required to attend.
- (2) The court officer must also give notice in writing of any further remand to the hospital where that person is detained.

(Rules made under section 144 of the Magistrates' Courts Act 1980 make provision for magistrates' courts.)

#### **10.17 Recognizances**

- (1) Where, in accordance with paragraph 2(1)(b)(ii) of Schedule 5 to the 1996 Act, the High Court or a county court fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by –
  - (a) a district judge;
  - (b) a police officer of the rank of inspector or above or in charge of a police station; or
  - (c) the governor or keeper of a prison where the arrested person is in custody.

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<sup>1</sup> Section 51 was amended by section 1(4) of and paragraph 20(1) and (3) of Schedule 1 to the Mental Health Act 2007 (c.12).

- (2) The person having custody of an applicant for bail must release that applicant if satisfied that the required recognizances have been taken.

(A magistrates' court has a similar power to require a recognizance under Part 6 of the Magistrates' Courts Act 1980. Section 119 of that Act<sup>1</sup> provides a magistrates' court with a power to postpone the taking of a recognizance and rules made under section 144 of the Magistrates' Courts Act 1980 set out the people who may subsequently take the recognizance.)

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<sup>1</sup> Section 119 was amended by section 77 of and paragraph 55 of Schedule 14 to the Criminal Justice Act 1982 (c.48).