



Family Law Act 1996

1996 CHAPTER 27

PART IV

FAMILY HOMES AND DOMESTIC VIOLENCE

Further provisions relating to occupation and non-molestation orders

43 Leave of court required for applications by children under sixteen

- (1) A child under the age of sixteen may not apply for an occupation order or a non-molestation order except with the leave of the court.
- (2) The court may grant leave for the purposes of subsection (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

44 Evidence of agreement to marry

- (1) Subject to subsection (2), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry.
- (2) Subsection (1) does not apply if the court is satisfied that the agreement to marry was evidenced by—
 - (a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or
 - (b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

45 Ex parte orders

- (1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has

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not been given such notice of the proceedings as would otherwise be required by rules of court.

- (2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including—
- (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
 - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
 - (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—
 - (i) where the court is a magistrates' court, in effecting service of proceedings; or
 - (ii) in any other case, in effecting substituted service.
- (3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.
- (4) If, at a full hearing, the court makes an occupation order (“the full order”), then—
- (a) for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant section is to apply as if the period for which the full order will have effect began on the date on which the initial order first had effect; and
 - (b) the provisions of section 36(10) or 38(6) as to the extension of orders are to apply as if the full order and the initial order were a single order.
- (5) In this section—
- “full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court;
 - “initial order” means an occupation order made by virtue of subsection (1); and
 - “relevant section” means section 33(10), 35(10), 36(10), 37(5) or 38(6).

46 Undertakings

- (1) In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.
- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) The court shall not accept an undertaking under subsection (1) in any case where apart from this section a power of arrest would be attached to the order.
- (4) An undertaking given to a court under subsection (1) is enforceable as if it were an order of the court.
- (5) This section has effect without prejudice to the powers of the High Court and the county court apart from this section.

47 Arrest for breach of order

(1) In this section “a relevant order” means an occupation order or a non-molestation order.

(2) If—

- (a) the court makes a relevant order; and
- (b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,

it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.

(3) Subsection (2) does not apply in any case where the relevant order is made by virtue of section 45(1), but in such a case the court may attach a power of arrest to one or more provisions of the order if it appears to it—

- (a) that the respondent has used or threatened violence against the applicant or a relevant child; and
- (b) that there is a risk of significant harm to the applicant or child, attributable to conduct of the respondent, if the power of arrest is not attached to those provisions immediately.

(4) If, by virtue of subsection (3), the court attaches a power of arrest to any provisions of a relevant order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order.

(5) Any period specified for the purposes of subsection (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the relevant order.

(6) If, by virtue of subsection (2) or (3), a power of arrest is attached to certain provisions of an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.

(7) If a power of arrest is attached under subsection (2) or (3) to certain provisions of the order and the respondent is arrested under subsection (6)—

- (a) he must be brought before the relevant judicial authority within the period of 24 hours beginning at the time of his arrest; and
- (b) if the matter is not then disposed of forthwith, the relevant judicial authority before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.

(8) If the court has made a relevant order but—

- (a) has not attached a power of arrest under subsection (2) or (3) to any provisions of the order, or
- (b) has attached that power only to certain provisions of the order,

then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent.

(9) The relevant judicial authority shall not issue a warrant on an application under subsection (8) unless—

- (a) the application is substantiated on oath; and

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- (b) the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.
- (10) If a person is brought before a court by virtue of a warrant issued under subsection (9) and the court does not dispose of the matter forthwith, the court may remand him.
- (11) Schedule 5 (which makes provision corresponding to that applying in magistrates' courts in civil cases under sections 128 and 129 of the Magistrates' Courts Act 1980) has effect in relation to the powers of the High Court and a county court to remand a person by virtue of this section.
- (12) If a person remanded under this section is granted bail (whether in the High Court or a county court under Schedule 5 or in a magistrates' court under section 128 or 129 of the Magistrates' Courts Act 1980), he may be required by the relevant judicial authority to comply, before release on bail or later, with such requirements as appear to that authority to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

48 Remand for medical examination and report

- (1) If the relevant judicial authority has reason to consider that a medical report will be required, any power to remand a person under section 47(7)(b) or (10) may be exercised for the purpose of enabling a medical examination and report to be made.
- (2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judicial authority remands the accused in custody.
- (3) If the relevant judicial authority so remands the accused, the adjournment must not be for more than 3 weeks at a time.
- (4) If there is reason to suspect that a person who has been arrested—
 - (a) under section 47(6), or
 - (b) under a warrant issued on an application made under section 47(8),is suffering from mental illness or severe mental impairment, the relevant judicial authority has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of the Act of 1983 in the case of an accused person within the meaning of that section.

49 Variation and discharge of orders

- (1) An occupation order or non-molestation order may be varied or discharged by the court on an application by—
 - (a) the respondent, or
 - (b) the person on whose application the order was made.
- (2) In the case of a non-molestation order made by virtue of section 42(2)(b), the order may be varied or discharged by the court even though no such application has been made.
- (3) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse, an order under section 33 against the other spouse may also be varied or discharged by the court on an application by any person deriving title under the other spouse or under the trustees and affected by the charge.

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- (4) If, by virtue of section 47(3), a power of arrest has been attached to certain provisions of an occupation order or non-molestation order, the court may vary or discharge the order under subsection (1) in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).