STATUTORY INSTRUMENTS

2010 No. 2955

The Family Procedure Rules 2010

PART 11

APPLICATIONS UNDER PART 4A OF THE FAMILY LAW ACT 1996

Scope and interpretation

11.1.—(1) The rules in this Part apply to proceedings in the High Court or a county court under Part 4A of the 1996 Act.

(2) In this Part—

"a forced marriage protection order" means an order under section 63A of the 1996 Act(**1**); and

"the person who is the subject of the proceedings" means the person who will be protected by the forced marriage protection order applied for or being considered by the court of its own initiative, if that order is made, or who is being protected by such an order.

Applications

11.2.—(1) An application for a forced marriage protection order may be made without notice.

(2) Where an application is made without notice, it must be supported by a sworn statement explaining why notice has not been given.

(3) An application for a forced marriage protection order made by an organisation must state—

(a) the name and address of the person submitting the application; and

(b) the position which that person holds in the organisation.

Permission to apply

11.3.—(1) Where the permission of the court is required to apply for a forced marriage protection order, the person seeking permission must file—

(a) a Part 18 application notice setting out—

(i) the reasons for the application, for the making of which permission is sought ("the proposed application");

(ii) the applicant's connection with the person to be protected;

(iii) the applicant's knowledge of the circumstances of the person to be protected; and

(iv) the applicant's knowledge of the wishes and feelings of the person to be protected;

and

(b) a draft of the proposed application, together with sufficient copies for one to be served on each respondent and (if different) the person to be protected.

(**1**) Section 63A was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007 (c.20).

(2) As soon as practicable after receiving an application under paragraph (1), the court must—

(a) grant the application; or

(b) direct that a date be fixed for the hearing of the application and fix the date.

(3) The court officer must inform the following persons of the court's action under paragraph (2)—

(a) the applicant;

(b) the respondent;

(c) (if different) the person to be protected; and

(d) any other person directed by the court.

(4) Where permission is granted to apply for a forced marriage protection order, the application must proceed in accordance with rule 11.2.

Service of applications on notice

11.4.—(1) Subject to paragraphs (3) and (4A), where an application is made on notice, the applicant must serve a copy of the application, together with the notice of proceedings, personally on—

(a) the respondent;

(b) the person who is the subject of the proceedings (if that person is neither the applicant nor a respondent); and

(c) any other person directed by the court,

not less than 2 days before the date on which the application will be heard.

(2) The court may abridge the period specified in paragraph (1).

(3) Service of the application must be effected by the court if the applicant so requests (this does not affect the court's power to order substituted service).

(4) Where the application is served on the person who is the subject of the proceedings, it must be accompanied by a notice informing that person—

(a) how to apply to become a party to the proceedings; and

(b) of that person's right to make representations in writing or orally at any hearing.

(5) Where the person who is the subject of proceedings is not the applicant and is—

(a) a child;

(b) a person, not being a party, who lacks or may lack capacity within the meaning of the 2005 Act; or

(c) a protected party,

the court will give the directions about the persons who are to be served with the application.

(6) Where an application is served by the applicant, the applicant must file a certificate of service stating the date and time of personal service.

Transfer of proceedings

11.5. Subject to any enactment, where proceedings to which this Part applies are pending, the court may transfer the proceedings to another court of its own initiative or on the application of a party or (if not a party) the person who is the subject of the proceedings.

Parties

11.6.—(1) In proceedings under this Part, a person may file a Part 18 application notice for that person or another person to—

(a) be joined as a party; or

(b) cease to be a party.

(2) As soon as practicable after receiving an application under paragraph (1), the court must do one of the following—

(a) in the case only of an application under paragraph (1)(a), grant the application;

(b) order that the application be considered at a hearing, and fix a date for the hearing; or

(c) invite written representations as to whether the application should be granted, to be filed within a specified period, and upon expiry of that period act under sub-paragraph (a) or (b) as it sees fit.

(3) The court officer must inform the following persons of the court's action under paragraph (2)—

(a) the applicant under paragraph (1);

(b) (if different) the applicant for the forced marriage protection order and the respondent to that application;

(c) (if different) the person who is the subject of the proceedings; and

(d) any other person directed by the court.

(4) The court may at any time direct—

(a) that a person who would not otherwise be a respondent under these rules be joined as a party to the proceedings; or

(b) that a party to the proceedings cease to be a party,

and such a direction may be made by the court of its own initiative as well as upon an application under paragraph (1).

(5) Where the court directs the addition or removal of a party, it may give consequential directions about—

(a) service on a new party of a copy of the application for the forced marriage protection order and other relevant documents; and

(b) the management of the proceedings.

Hearings and service of orders

11.7.—(1) Any hearing relating to an application for a forced marriage protection order must be in private unless the court otherwise directs.

(2) The court may direct the withholding of any submissions made, or any evidence adduced, for or at any hearing in proceedings to which this Part applies—

(a) in order to protect the person who is the subject of the proceedings or any other person; or

(b) for any other good reason.

(3) The applicant must, as soon as reasonably practical, serve personally—

(a) a copy of the order;

(b) a copy of the record of the hearing; and

(c) where the order is made without notice, a copy of the application together with any statement supporting it,

on the respondent, the person who is the subject of the proceedings (if neither the applicant nor a respondent), and any other person named in the order.

(4) The court must serve the documents listed in paragraph (3) if—

(a) an applicant, acting in person, so requests; or

(b) the court made the order of its own initiative.

Orders made by the court of its own initiative

11.8.—(1) Where the court makes a forced marriage protection order of its own initiative under section 63C of the 1996 Act(**2**), it must set out in the order—

(a) a summary of its reasons for making the order; and

(b) the names of the persons who are to be served with the order.

(2) The court may order service of the order on—

(a) any of the parties to the current proceedings;

(b) (if different) the person who is the subject of the proceedings; and

(c) any other person whom the court considers should be served.

(3) The court must give directions as to how the order is to be served.

Representations in respect of orders

11.9. Where the court makes an order (whether under rule 11.7 or 11.8), it may direct that a hearing (or further hearing) be held in order to consider any representations made by any of the persons named in, or directed to be served with, the order.

Applications to vary, extend or discharge an order

11.10. Rules 11.7 and 11.9 apply to applications to vary, extend or discharge a forced marriage protection order.

Orders containing provisions to which a power of arrest is attached

11.11. Where the court makes a forced marriage protection order containing one or more provisions to which a power of arrest is attached ("relevant provision")—

(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.

Service where order contains a power of arrest

11.12.—(1) This rule applies where the court makes a forced marriage protection order consisting of or including a relevant provision (which has the meaning given in rule 11.11).

(2) The following documents must be delivered to the officer for the time being in charge of any police station for the address of the person being protected by the order or of such other police station as the court may specify—

(a) the power of arrest form; and

(**2**) Section 63C was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007.

(b) a statement showing that the respondents and any persons directed by the court to be served with the order have been so served or informed of its terms (whether by being present when the order was made or by telephone or otherwise).

(3) The documents referred to in paragraph (2) must be delivered by—

(a) the applicant, if the applicant is responsible for serving the order in accordance with rule 11.7(3); or

(b) the court officer, if the court is responsible for serving the order in accordance with rule 11.7(4) or a direction given under rule 11.8(3).

(4) Where an order is made varying, extending or discharging any of the relevant provisions, the court officer must—

(a) immediately inform the officer who received a copy of the power of arrest form under paragraph (2) and, if the address of the person who is the subject of the proceedings 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, together with a copy of the order referred to in paragraph (1), to any officer so informed.

Application for issue of warrant for arrest

11.13.—(1) An application under section 63J(2) of the 1996 Act(**3**) for the issue of a warrant for the arrest of a person must be supported by a sworn statement.

(2) An application for the issue of a warrant for arrest made by a person who is neither the person who is the subject of the proceedings nor (if different) the person who applied for the order, shall be treated, in the first instance, as an application for permission to apply for the warrant to be issued, and the court shall either—

(a) grant the application; or

(b) direct that a date be fixed for the hearing of the application and fix a date.

(3) The court officer must inform the following persons of the court's action under paragraph (2)—

(a) the person applying for the issue of the warrant;

(b) the person being protected by the order; and

(c) any other person directed by the court.

Proceedings following arrest

11.14.—(1) This rule applies where a person is arrested pursuant to—

(a) a power of arrest attached to a provision of a forced marriage protection order; or

(b) a warrant of arrest issued on an application under section 63J(2) of the 1996 Act.

(2) The court before whom a person is brought following his 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, the arrested person may be released and—

(a) unless the court directs otherwise, be dealt with within 14 days of the day on which the person was arrested; and

(**3**) Section 63J(2) was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007.

(b) be given not less than 2 days' notice of the adjourned 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 1996 Act(**4**).)

Enforcement of orders

11.15.—(1) The following provisions apply, with the necessary modifications, to the enforcement of orders made under this Part—

(a) RSC Order 52, rule 7 (power to suspend execution of committal order);

(b) in a case where an application for an order of committal is made to the High Court, RSC Order 52, rule 2 (application to Divisional Court);

(c) CCR Order 29, rule 1 (enforcement of judgment to do or abstain from doing any act);

(d) CCR Order 29, rule 1A (undertaking given by party);

(e) CCR Order 29, rule 3 (discharge of person in custody).

(2) 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, where the order made is (or includes) a forced marriage protection order, 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)."

Power to adjourn the hearing for consideration of the penalty

11.16. The court may adjourn the hearing for consideration of the penalty to be imposed for any contempt of court found proved and such hearing may be restored if the contemnor does not comply with any conditions specified by the court.

Hospital orders or guardianship orders under the Mental Health Act 1983

11.17.—(1) Where the 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 persons directed by the court to be informed about when the patient is being transferred to hospital.

(2) Where the 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.

(**4**) Section 47 was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007.

Transfer directions under section 48 of the Mental Health Act 1983

11.18.—(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 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.

Recognizances

11.19.—(1) Where, in accordance with paragraph 2(1)(b)(ii) of Schedule 5 to the 1996 Act, the 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 the custody of that governor or keeper.

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