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STATUTORY INSTRUMENTS

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**2009 No. 2025 (L. 21)**

**MAGISTRATES' COURTS,  
ENGLAND AND WALES**

**The Family Proceedings Courts (Miscellaneous  
Amendments) (No.2) Rules 2009**

*Made* - - - - - *21st July 2009*  
*Laid before Parliament* *22nd July 2009*  
*Coming into force* - - - *1st September 2009*

The Lord Chief Justice, with the concurrence of the Lord Chancellor, after having consulted the rule committee appointed under section 144(A1) of the Magistrates' Courts Act 1980(1), makes the following Rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980:

**Citation and commencement**

1. These Rules may be cited as the Family Proceedings Courts (Miscellaneous Amendments) (No.2) Rules 2009 and come into force on the 1<sup>st</sup> September 2009.

**Amendment to the Family Proceedings Courts (Children Act 1989) Rules 1991**

2. The Family Proceedings Courts (Children Act 1989) Rules 1991(2), are amended in accordance with rules 3 to 8.

3. In rule 2.5(c), after "4(3)(b)," insert "4ZA(6)(b),".

4. In rule 4, after "4(1)(c)", wherever it occurs, insert ",4ZA(1)(c) or 4A(1)(b)".

5. In rule 9, after "4(1)(c)", insert ",4ZA(1)(c) or 4A(1)(b)".

6. In rule 21A, in the definition of "the birth father", after "section 28 of the 1990 Act" insert "or by sections 35 to 40 of the Human Fertilisation and Embryology Act 2008(3)".

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(1) 1980 c.43. Section 144 was amended by section 125(3) of and paragraph 25 of Schedule 18 to the Courts and Legal Services Act 1990 (c.41), section 78(2) of and paragraphs 26 and 29 of Schedule 11 to the Access to Justice Act 1999 (c.22), section 109(1) and (3) of and paragraph 245 of Schedule 8 and Schedule 10 to the Courts Act 2003 (c.39), and section 15(1) of and paragraphs 99 and 102 of Schedule 4 to the Constitutional Reform Act 2005 (c.4).  
(2) S.I. 1991/1395. Relevant amending instruments are S.I. 1992/2068, 1994/2166 and 3156, 2001/615 and 818, 2003/2840, 2004/3376, 2005/2930, 2007/2188, 2008/2858 and 2009/637.  
(3) 2008 c.22.

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7. In Schedule 1, for Forms C13A, C19 and C28, substitute the forms set out in Schedule 1 to these Rules.

8. In Schedule 2, in the second entry—

(a) in column (i), after “4(3),” insert “4ZA(1)(c), 4ZA(6),”; and

(b) in column (iv), for “the father of the child if he”, substitute “the father or parent (being a woman who is a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008) of the child if that person”.

**Amendment to the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991**

9. In Schedule 1 to the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991(4), for Form FL401 substitute the form set out in Schedule 2 to these Rules.

*Lord Judge, C.J.*

I concur

21st July 2009

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

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SCHEDULE 1

Rule 7

**Supplement for an application for a Special Guardianship Order Section 14A Children Act 1989**

Name of court	
Case no.	
Date issued	

Full name(s) of the child(ren)	Child(ren's) number(s)

**1. Your relationship to the child(ren)**

State whether

- you are a guardian
- you are a person in whose favour a residence order is in force (Section 14A (5)(b))
- you are a person with whom the child has lived for 3 out of the last 5 years
- you are a person who:
  - if a residence order is in force, has the consent of every person in whose favour the order was made
  - if the child is in the care of the local authority, the consent of that authority
  - in any other case, has the consent of every person with parental responsibility
- you are a local authority foster parent or relative with whom the child has lived for a period of at least one year immediately preceding the application (Section 14A(5)(d) and (e))
- you are applying to the court for permission to make this application; or
- the court gave permission for you to apply for a special guardianship order. In this case please state the name of the court and the date of the order.

**2. Notification to the Local Authority**

Please state below the name of the local authority (if the child is looked after by a local authority, give details of that authority otherwise give the details of the local authority where you normally live). Give the date on which you notified them of your intention to make an application to the court for a special guardianship order (Section 14A(7)). If you notified the local authority less than three months before making this application please state whether an application to adopt the child named above has been made; the name of the court in which the application is proceeding and, where known, the court case number.

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**3. The reason(s) for the application:**

State briefly your reasons for applying. Please only provide brief details, including details of any request you have made or will be making to the local authority for special guardianship support services. You may be asked to provide a full statement later.

**4. Your plans for the child(ren)**

Include

- details of any existing arrangements or arrangements you intend to make to allow the child(ren) contact with a parent, relative or other person (Section 14B(1)(a))
- details of any existing residence, contact, prohibited steps or specific issues order which you would like the court to vary or discharge (Section 14B(1)(b))
- any condition you will invite the court to impose pursuant to Section 14E(5) of the Children Act 1989

Signed \_\_\_\_\_  
(Applicant)

Date \_\_\_\_\_

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## Application for a warrant of assistance

Form C19

*Section 102 Children Act 1989  
Section 79 Childcare Act 2006*

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The court

To be completed by the court

Date issued

Case number

The full name(s) of the child(ren) (if known)

Child(ren)'s number(s)

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### 1 About you (the applicant)

- State
- your title, full name, address, telephone number and relationship to the child(ren) (if any)
  - your solicitor's name, address, reference, telephone, FAX and DX numbers
  - whether you are:

- a person authorised by the local authority
- a person authorised by the Welsh Ministers
- a person authorised by the Secretary of State
- a supervisor acting under a supervision order
- Her Majesty's Chief Inspector of Education, Children's Services and Skills

### 2 Description of the child(ren) (if applicable)

*If a child's identity is not known, state details which will identify the child.  
You may enclose a recent photograph of the child, which should be dated.*

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**3 The grounds for the application**

I am attempting to exercise powers under an enactment within Section 102(6) Children Act 1989 or under section 77(1) or (2) of the Childcare Act 2006 at the following premises (*give full address*):

and

I have been prevented from exercising those powers by

I am likely to be prevented from exercising those powers by

- |  |  |                          |   |  |
|--|--|--------------------------|---|--|
| PERSON<br>AUTHORISED<br>BY THE<br>LOCAL<br>AUTHORITY   | s62(6)<br>Children<br>Act 1989                             | <input type="checkbox"/> | {   | [being, or likely to be, refused entry to accommodation provided by a voluntary organisation]  |
|  |  | <input type="checkbox"/> | {   | [being, or likely to be, refused access to a child in accommodation provided by a voluntary organisation]  |
|  | s64(4)<br>Children<br>Act 1989                             | <input type="checkbox"/> | {   | [being, or likely to be, refused entry to a children's home]   |
|  |  | <input type="checkbox"/> | {   | [being, or likely to be, refused access to a child in a children's home]   |
|  | s67(3)<br>Children<br>Act 1989                             | <input type="checkbox"/> | {   | [being, or likely to be, refused entry to a private foster home]   |
| <input type="checkbox"/>   |  | {                        | [being, or likely to be, refused access to a child in a private foster home]                              |  |
| s86(5)<br>Children<br>Act 1989   | <input type="checkbox"/>                                   | {                        | [being, or likely to be, refused entry to a residential care, nursing or mental nursing home]             |  |
|  | <input type="checkbox"/>                                   | {                        | [being, or likely to be, refused access to a child in a residential care, nursing or mental nursing home] |  |
| s87(5)<br>Children<br>Act 1989   | <input type="checkbox"/>                                   | {                        | [being, or likely to be, refused entry to an independent school]  |  |
|  | <input type="checkbox"/>                                   | {                        | [being, or likely to be, refused access to a child in an independent school]                              |  |
| PERSON<br>AUTHORISED<br>BY THE<br>WELSH<br>MINISTERS   | s79U<br>Children<br>Act 1989                               | <input type="checkbox"/> | {   | [being, or likely to be, refused entry to domestic premises where child-minding is carried on]   |
|  |  | <input type="checkbox"/> | {   | [being, or likely to be, refused access to a child on domestic premises where child-minding is carried on]   |
| PERSON<br>AUTHORISED<br>BY THE<br>SECRETARY<br>OF STATE                                      | s80(8)<br>Children<br>Act 1989                             | <input type="checkbox"/> | {   | [being, or likely to be, refused entry to any of the premises specified by Section 80(1) Children Act 1989]  |
|  |  | <input type="checkbox"/> | {   | [being, or likely to be, refused access to a child in any of the premises specified by Section 80(1) Children Act 1989]  |
| SUPERVISOR<br>UNDER THE<br>SUPERVISION<br>ORDER  | Paragraph<br>8(1)(b)<br>Schedule 3<br>Children<br>Act 1989 | <input type="checkbox"/> | {   | [being, or likely to be, refused entry to accommodation where a supervised child is living]  |
|  |  | <input type="checkbox"/> | {   | [being, or likely to be, refused contact with a supervised child by a responsible person]  |
| HER MAJESTY'S<br>CHIEF<br>INSPECTOR OF<br>EDUCATION,<br>CHILDREN'S<br>SERVICES AND<br>SKILLS | Section 77(1)<br>Childcare<br>Act 2006                     | <input type="checkbox"/> | {   | [being, or likely to be, refused entry to premises on which I have reasonable cause to believe early years provision or later years provision is being provided in breach of section 33(1), 34(1), 52(1) or 53(1) of the Childcare Act 2006] |
|  |  | <input type="checkbox"/> | {   | [being, or likely to be, refused entry for a purpose in section 77(2)(a) or (b) to premises on which early years provision or later years provision is being provided]   |

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**4 The respondent(s)**

*For each respondent state the title, full name, address, telephone number and relationship (if any) to each child.*

**5 The reason(s) for the application**

*If you are relying on a report or other documentary evidence, state the date(s) and author(s) and enclose a copy.*

**6 The direction(s) sought**

- State*
- *whether you wish to accompany the constable, if the warrant is granted*
  - *whether you wish the constable to be accompanied by a registered medical practitioner, registered nurse or registered midwife, if he so wishes.*

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Signed  
(Applicant)

Date

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In the

Case Number:

Child's Number:

**Warrant** To assist a person to gain access to a child or entry to premises

Section 102(1) Children Act 1989  
Section 79 Childcare Act 2006

**To all Police Constables**

The Court authorises you to assist

to exercise powers under an enactment as specified on the reverse of this warrant.

**You may use reasonable force if necessary.**

[You may assist this person to gain access to the child

Name

Gender

Date of birth

described as (please give a brief description of the child)

[You may assist this person to gain entry to the premises at

(address)

**The Court directs**

[that you should not be accompanied by the person who applied for the warrant]

[that you may, if you wish, be accompanied by

a registered medical practitioner

or a registered nurse

or a registered midwife]

This warrant has been issued with[out] notice.

Ordered by [Mr] [Mrs] Justice  
[His] [Her] Honour Judge  
District Judge [of the Family Division] [Magistrates' Court]  
Justice[s] of the Peace

on at [am] [pm]



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The Court is satisfied that the applicant

- has been prevented from exercising those powers by
- is likely to be prevented from exercising those powers by

- PERSON AUTHORISED BY THE LOCAL AUTHORITY
- s62(6) Children Act 1989* { [being, or likely to be, refused entry to accommodation provided by a voluntary organisation]  
[being, or likely to be, refused access to a child in accommodation provided by a voluntary organisation]
  - s64(4) Children Act 1989* { [being, or likely to be, refused entry to a children's home]  
[being, or likely to be, refused access to a child in a children's home]
  - s67(3) Children Act 1989* { [being, or likely to be, refused entry to a private foster home]  
[being, or likely to be, refused access to a child in a private foster home]
  - s86(5) Children Act 1989* { [being, or likely to be, refused entry to a residential care, nursing or mental nursing home]  
[being, or likely to be, refused access to a child in a residential care, nursing or mental nursing home]
  - s87(5) Children Act 1989* { [being, or likely to be, refused entry to an independent school]  
[being, or likely to be, refused access to a child in an independent school]

- PERSON AUTHORISED BY THE SECRETARY OF STATE
- s80(8) Children Act 1989* { [being, or likely to be, refused entry to any of the premises specified by Section 80(1) Children Act 1989]  
[being, or likely to be, refused access to a child in any of the premises specified by Section 80(1) Children Act 1989]

- SUPERVISOR UNDER THE SUPERVISION ORDER
- Paragraph 8(1)(b) Schedule 3 Children Act 1989* { [being, or likely to be, refused entry to accommodation where a supervised child is living]
  - Paragraph 8(2)(b) Schedule 3 Children Act 1989* { [being, or likely to be, refused contact with a supervised child by a responsible person]
-

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PERSON AUTHORISED BY THE WELSH MINISTERS	s79(1) <i>Children Act 1989</i>	<input type="checkbox"/>	[being, or likely to be, refused entry to domestic premises where child-minding is carried on] [being, or likely to be, refused access to a child on domestic premises where child-minding is carried on]
		<input type="checkbox"/>	[being, or likely to be, refused entry to premises on which day care for children under the age of 8 is provided] [being, or likely to be, refused access to a child in premises on which day care for children under the age of 8 is provided]
HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S SERVICES AND SKILLS	Section 77(1) <i>Childcare Act 2006</i>	<input type="checkbox"/>	[being, or likely to be, refused entry to premises on which the applicant has reasonable cause to believe early years provision or later years provision is being provided in breach of section 33(1), 34(1), 52(1) or 53(1) of the Childcare Act 2006]
		Section 77(2) <i>Childcare Act 2006</i>	<input type="checkbox"/>

SCHEDULE 2

Rule 9

**Application for:  
a non-molestation order  
an occupation order**

*Family Law Act 1996 (Part IV)*

**The court**

**To be completed by the court**

Date issued

Case number

*Please read the accompanying notes as you complete this form.*

**1 About you (the applicant)**

State your title (Mr, Mrs etc), full name, address, telephone number and date of birth (if under 18):

State your solicitor's name, address, reference, telephone, FAX and DX numbers:

**2 About the respondent**

State the respondent's name, address and date of birth (if known):

**3 The Order(s) for which you are applying**

This application is for:

- a non-molestation order
- an occupation order
- Tick this box if you wish the court to hear your application without notice being given to the respondent. The reasons relied on for an application being heard without notice must be stated in the statement in support.

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**4 Your relationship to the respondent  
(the person to be served with this  
application)**

Your relationship to the respondent is:

(Please tick only one of the following)

- 1  Married
- 2  Civil Partners
- 3  Were married
- 4  Former civil partners
- 5  Cohabiting
- 6  Were cohabiting
- 7  Both of you live or have lived in the same household
- 8  Relative  
State how related:
- 9  Agreed to marry.  
Give the date the agreement was made.  
If the agreement has ended, state when.
- 10  Agreed to form a civil partnership.  
Give the date the agreement was made.  
If the agreement has ended, state when.
- 11  Both of you are parents of, or have parental responsibility for, a child
- 12  One of you is a parent of a child and the other has parental responsibility for that child

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- 13  One of you is the natural parent or grandparent of a child adopted, placed or freed for adoption, and the other is:
- (i) the adoptive parent
  - or (ii) a person who has applied for an adoption order for the child
  - or (iii) a person with whom the child has been placed for adoption
  - or (iv) the child who has been adopted, placed or freed for adoption.
- State whether (i), (ii), (iii) or (iv):
- 14  Both of you are the parties to the same family proceedings (see also Section 11 below).

## 5 Application for a non-molestation order

If you wish to apply for a non-molestation order, state briefly in this section the order you want.

Give full details in support of your application in your supporting evidence.

## 6 Application for an occupation order

*If you do not wish to apply for an occupation order, please go to section 9 of this form.*

- (A) State the address of the dwelling-house to which your application relates:
- (B) State whether it is occupied by you or the respondent now or in the past, or whether it was intended to be occupied by you or the respondent:
- (C) State whether you are entitled to occupy the dwelling-house:  Yes  No

If yes, explain why:

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(D) State whether the respondent is entitled to occupy the dwelling-house:  Yes  No

If yes, explain why:

**On the basis of your answers to (C) and (D) above, tick one of the boxes 1 to 6 below to show the category into which you fit**

1  a spouse or civil partner who has home rights in the dwelling-house, or a person who is entitled to occupy it by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation.

If you tick box 1, state whether there is a dispute or pending proceedings between you and the respondent about your right to occupy the dwelling-house.

2  a former spouse or former civil partner with no existing right to occupy, where the respondent spouse or civil partner is so entitled.

3  a cohabitant or former cohabitant with no existing right to occupy, where the respondent cohabitant or former cohabitant is so entitled.

4  a spouse or former spouse who is not entitled to occupy, where the respondent spouse or former spouse is also not entitled.

5  a civil partner or former civil partner who is not entitled to occupy, where the respondent civil partner or former civil partner is also not entitled.

6  a cohabitant or former cohabitant who is not entitled to occupy, where the respondent cohabitant or former cohabitant is also not entitled.

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### Home Rights

If you do have home rights please:

State whether the title to the land is registered or unregistered (if known):

If registered, state the Land Registry title number (if known):

**If you wish to apply for an occupation order, state briefly here the order you want. Give full details in support of your application in your supporting evidence:**

### 7 Application for additional order(s) about the dwelling-house

If you want to apply for any of the orders listed in the notes to this section, state what order you would like the court to make:

### 8 Mortgage and rent

Is the dwelling-house subject to a mortgage?

Yes  No

If yes, please provide the name and address of the mortgagee:

Is the dwelling-house rented?

Yes  No

If yes, please provide the name and address of the landlord:

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**9 At the court**

Will you need an interpreter at court?

Yes  No

If yes, specify the language:

If you require an interpreter, you must notify the court immediately so that one can be arranged.

If you have a disability for which you require special assistance or special facilities, please state what your needs are. The court staff will get in touch with you about your requirements.

**10 Other information**

State the name and date of birth of any child living with or staying with, or likely to live with or stay with, you or the respondent:

State the name of any other person living in the same household as you and the respondent, and say why they live there:

**11 Other Proceedings and Orders**

If there are any other current family proceedings or orders in force involving you and the respondent, state the type of proceedings or orders, the court and the case number. This includes any application for an occupation order or non-molestation order against you by the respondent.

**This application is to be served upon the respondent**

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Signed:

Date:



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## Application for non-molestation order or occupation order

### Notes for guidance

#### Section 1

**If you do not wish your address to be made known to the respondent, leave the space on the form blank and complete Confidential Address Form C8.** The court can give you this form.

**If you are under 18, someone over 18 must help you make this application.** That person, who might be one of your parents, is called a 'next friend'.

**If you are under 16, you need permission to make this application.** You must apply to the High Court for permission, using this form. If the High Court gives you permission to make this application, it will then either hear the application itself or transfer it to a county court.

#### Section 3

An urgent order made by the court before the notice of the application is served on the respondent is called an ex-parte order. In deciding whether to make an ex-parte order the court will consider all the circumstances of the case, including:

- 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
- whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately
- 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.

If the court makes an ex-parte order, it must give the respondent an opportunity to make representations about the order as soon as just and convenient at a full hearing.

'Harm' in relation to a person who has reached the age of 18 means ill-treatment or the impairment of health, and in relation to a child means ill-treatment or the impairment of health and development.

'Ill-treatment' includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse. The court will require evidence of any harm which you allege in support of your application.

#### Section 4

For you to be able to apply for an order you must be related to the respondent in one of the ways listed in this section of the form. If you are not related in one of these ways you should seek legal advice.

**Cohabitants** are two persons who, although not married to each other, nor civil partners of each other, are living together as husband and wife or civil partners. People who have cohabited, but have then married or formed a civil partnership will not fall within this category but will fall within the category of married people or people who are civil partners of each other.

**Those who live or have lived in the same household** do not include people who share the same household because one of them is the other's employee, tenant, lodger or boarder.

**You will only be able to apply as a relative of the respondent if you are:**

(A) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson, granddaughter of the respondent or of the respondent's spouse, former spouse, civil partner or former civil partner.

(B) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or by civil partnership) of the respondent or of the respondent's spouse, former spouse, civil partner or former civil partner.

This includes, in relation to a person who is living or has lived with another person as husband and wife or as civil partners, any person who would fall within (A) or (B) if the parties were married to, or civil partners of, each other (for example, your cohabitee's father or brother).

**Agreements to marry:** You will fall within this category only if you make this application within three years of the termination of the agreement. The court will require the following evidence of the agreement:

evidence in writing

**or** the gift of an engagement ring in contemplation of marriage

**or** evidence that a ceremony has been entered into in the presence of one or more other persons assembled for the purpose of witnessing it.

**Agreements to form a civil partnership:** You will fall within this category only if you make this application within three years of the termination of the agreement. The court will require the following evidence of the agreement:

evidence in writing

**or** a gift from one party to the agreement to the other as a token of the agreement

**or** evidence that a ceremony has been entered into in the presence of one or more other persons assembled for the purpose of witnessing it.

**Parents and parental responsibility:**

You will fall within this category if

both you and the respondent are either the parents of the child or have parental responsibility for that child

**or** if one of you is the parent and the other has parental responsibility.

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## Section 4 continued

Under the Children Act 1989, parental responsibility is held automatically by a child's mother, and by the child's father if he and the mother were married to each other at the time of the child's birth or have married subsequently. Where, a child's father and mother are not married to each other at the time of the child's birth, the father may also acquire parental responsibility for that child, if he registers the birth after 1st December 2003, in accordance with section 4(1)(a) of the Children Act 1989. Where neither of these circumstances apply, the father, in accordance with the provisions of the Children Act 1989, can acquire parental responsibility.

**From 30 December 2005**, where a person who is not the child's parent ("the step-parent") is married to, or a civil partner of, a parent who has parental responsibility for that child, he or she may also acquire parental responsibility for the child in accordance with the provisions of the Children Act 1989.

**From 1st September 2009**, specific provision has been made in relation to parental responsibility in certain cases involving assisted reproduction. Parental responsibility is held automatically by a woman if—

- she and the child's mother were in a civil partnership with each other at the time of treatment unless that woman did not consent to the treatment; or
- she is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and subsequently enters into a civil partnership with the mother.

A woman who is a parent of the child by virtue of section 43 of the 2008 Act but who does not subsequently enter into a civil partnership with the mother may acquire parental responsibility in accordance with the provisions of section 4ZA of the Children Act 1989

## Section 5

A non-molestation order can forbid the respondent from molesting you or a relevant child. Molestation can include, for example, violence, threats, pestering and other forms of harassment. The court can forbid particular acts of the respondent, molestation in general, or both.

## Section 6

**If you wish to apply for an occupation order but you are uncertain about your answer to any question in this part of the application form, you should seek legal advice.**

**(A)** A dwelling-house includes any building or part of a building which is occupied as a dwelling; any caravan, houseboat or structure which is occupied as a dwelling; and any yard, garden, garage or outhouse belonging to it and occupied with it.

**(C) & (D)** The following questions give examples to help you to decide if you or the respondent, or both of you, are entitled to occupy the dwelling-house:

- (a) Are you the sole legal owner of the dwelling-house?
- (b) Are you and the respondent joint legal owners of the dwelling-house?
- (c) Is the respondent the sole legal owner of the dwelling-house?
- (d) Do you rent the dwelling-house as a sole tenant?
- (e) Do you and the respondent rent the dwelling-house as joint tenants?
- (f) Does the respondent rent the dwelling-house as a sole tenant?

If you answer

- **Yes to (a), (b), (d) or (e)** you are likely to be entitled to occupy the dwelling-house
- **Yes to (c) or (f)** you may not be entitled (unless, for example, you are a spouse or civil partner and have home rights – see notes under 'Home Rights' below)
- **Yes to (b), (c), (e) or (f)**, the respondent is likely to be entitled to occupy the dwelling-house
- **Yes to (a) or (d)** the respondent may not be entitled (unless, for example, he or she is a spouse or civil partner and has home rights).

**Box 1** For example, if you are sole owner, joint owner or if you rent the property. If you are not a spouse, former spouse, civil partner, former civil partner, cohabitant or former cohabitant of the respondent, you will only be able to apply for an occupation order if you fall within this category.

If you answer yes to this question, it will not be possible for a magistrates' court to deal with the application, unless the court decides that it is unnecessary for it to decide this question in order to deal with the application or make the order. If the court decides that it cannot deal with the application, it will transfer the application to a county court.

**Box 2** For example, if the respondent is or was married to you, or if you and the respondent are or were civil partners, and he or she is sole owner or rents the property.

**Box 3** For example, if the respondent is or was cohabiting with you and is sole owner or rents the property.

### Home Rights

Where one spouse or civil partner "**(A)**" is entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse or civil partner "**(B)**" is not so entitled, then **B** (who is not entitled) has home rights.

The rights are

- (a) if **B** is in occupation, not to be evicted or excluded from the dwelling-house except with the leave of the court; and
- (b) if **B** is not in occupation, the right, with the leave of the court, to enter into and occupy the dwelling-house.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## Section 6 (continued)

**Note:** Home Rights do not exist if the dwelling-house has never been, and was never intended to be, the matrimonial or civil partnership home of the two spouses or civil partners. If the marriage or civil partnership has come to an end, home rights will also have ceased, unless a court order has been made during the marriage or civil partnership for the rights to continue after the end of that relationship.

### Occupation Orders

The possible orders are:

**If you have ticked box 1 above**, an order under section 33 of the Act may:

- enforce the applicant's entitlement to remain in occupation as against the respondent
- require the respondent to permit the applicant to enter and remain in the dwelling-house or part of it
- regulate the occupation of the dwelling-house by either or both parties
- if the respondent is also entitled to occupy, the order may prohibit, suspend or restrict the exercise by him, of that right
- restrict or terminate any home rights of the respondent
- require the respondent to leave the dwelling-house or part of it
- exclude the respondent from a defined area around the dwelling-house
- declare that the applicant is entitled to occupy the dwelling-house or has home rights in it
- provide that the home rights of the applicant are not brought to an end by the death of the other spouse or civil partner or termination of the marriage or civil partnership.

**If you have ticked box 2 or box 3 above**, an order under section 35 or 36 of the Act may:

- give the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for a specified period
- prohibit the respondent from evicting or excluding the applicant during that period
- give the applicant the right to enter and occupy the dwelling-house for a specified period
- require the respondent to permit the exercise of that right
- regulate the occupation of the dwelling-house by either or both of the parties
- prohibit, suspend or restrict the exercise by the respondent of his right to occupy
- require the respondent to leave the dwelling-house or part of it
- exclude the respondent from a defined area around the dwelling-house.

**If you have ticked box 4 or box 5 above**, an order under section 37 or 38 of the Act may:

- require the respondent to permit the applicant to enter and remain in the dwelling-house or part of it
- regulate the occupation of the dwelling-house by either or both of the parties
- require the respondent to leave the dwelling-house or part of it
- exclude the respondent from a defined area around the dwelling-house.

**You should provide any evidence which you have on the following matters in your evidence in support of this application. If necessary, further statements may be submitted after the application has been issued.**

**If you have ticked box 1, box 4 or box 5 above**, the court will need any available evidence of the following:

- the housing needs and resources of you, the respondent and any relevant child
- the financial needs of you and the respondent
- the likely effect of any order, or any decision not to make an order, on the health, safety and well-being of you, the respondent and any relevant child
- the conduct of you and the respondent in relation to each other and otherwise.

**If you have ticked box 2 above**, the court will need any available evidence of:

- the housing needs and resources of you, the respondent and any relevant child
- the financial resources of you and the respondent
- the likely effect of any order, or of any decision not to make an order on the health, safety and well-being of you, the respondent and any relevant child
- the conduct of you and the respondent in relation to each other and otherwise
- the length of time that has elapsed since you and the respondent ceased to live together
- where you and the respondent were married, the length of time that has elapsed since the marriage was dissolved or annulled
- where you and the respondent were civil partners, the length of time that has elapsed since the dissolution or annulment of the civil partnership

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

**Section 6 (continued)**

- the existence of any pending proceedings between you and the respondent:
  - under section 23A of the Matrimonial Causes Act 1973 (property adjustment orders in connection with divorce proceedings etc.)
- or under Part 2 of Schedule 5 to the Civil Partnership Act 2004 (property adjustment on or after dissolution, nullity or separation)
- or under Schedule 1 para 1(2)(d) or (e) of the Children Act 1989 (orders for financial relief against parents)
- or relating to the legal or beneficial ownership of the dwelling-house.

**If you have ticked box 3 above**, the court will need any available evidence of:

- the housing needs and resources of you, the respondent and any relevant child
- the financial resources of you and the respondent
- the likely effect of any order, or of any decision not to make an order, on the health, safety and well-being of you, the respondent and any relevant child
- the conduct of you and the respondent in relation to each other and otherwise
- the nature of your and the respondent's relationship
- the length of time during which you have lived together as husband and wife or civil partners
- whether you and the respondent have had any children, or have both had parental responsibility for any children
- the length of time that has elapsed since you and the respondent ceased to live together
- the existence of any pending proceedings between you and the respondent under Schedule 1 para 1(2)(d) or (e) of the Children Act 1989 or relating to the legal or beneficial ownership of the dwelling-house.

**Section 7**

Under section 40 of the Act the court may make the following additional orders when making an occupation order:

- impose on either party obligations as to the repair and maintenance of the dwelling-house
- impose on either party obligations as to the payment of rent, mortgage or other outgoings affecting it
- order a party occupying the dwelling-house to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy it
- grant either party possession or use of furniture or other contents

- order either party to take reasonable care of any furniture or other contents
- order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.

**Section 8**

If the dwelling-house is rented or subject to a mortgage, the landlord or mortgagee must be served with notice of the proceedings in Form FL416. He or she will then be able to make representations to the court regarding the rent or mortgage.

**Section 10**

A person living in the same household may, for example, be a member of the family or a tenant or employee of you or the respondent.

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Family Proceedings Courts (Children Act 1989) Rules 1991 and the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991.

The amendments, with the exception of rule 7, are consequential on the coming into force of certain provisions of the Human Fertilisation and Embryology Act 2008 (c.22) (the “2008 Act”). Rules 6 and 8(b) are consequential on sections 35 to 43 of the 2008 Act which set out when a man is the father or a woman (not being the mother) is a parent of a child in cases of assisted reproduction.

Rules 3 to 5 and 8(a), are consequential upon changes made to section 2 of and the insertion of section 4ZA into the Children Act 1989 (c.41) (“the 1989 Act”) by the 2008 Act. The amended section 2 provides that a woman who is a parent by virtue of section 42 of the 2008 Act has parental responsibility for the child. It further provides for when a woman who is a parent by virtue of section 43 of the 2008 Act has or may acquire parental responsibility. Rules 3 to 5 and 8(a) ensure that the procedure in relation to applications under section 4ZA (acquisition of parental responsibility by second female parent) mirror that in relation to applications under section 4 (acquisition of parental responsibility by father). The opportunity is also taken to include references where applicable to section 4A (acquisition of parental responsibility by step-parent).

Rule 9 substitutes Form FL401 (application for a non-molestation order/an occupation order) in Schedule 1 to the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991. Section 4 of the notes to the form has been updated to reflect the amendments to section 2 of the 1989 Act in relation to parental responsibility.

Rule 7 substitutes various forms in Schedule 1 to the Family Proceedings Courts (Children Act 1989) Rules 1991 in the light of amendments made to those forms.

Form C13A (supplement for an application for a special guardianship order) is amended in consequence of the new section 14A(5)(e) of the 1989 Act inserted by section 38 of the Children and Young Persons Act 2008 (c.23). This permits a relative with whom the child has lived for at least one year immediately preceding the application to apply for a special guardianship order without the leave of the court.

Form C19 (warrant of assistance) is amended to remove the reference to section 33 of the Adoption Act 1976 (c.36) which is no longer needed. The opportunity is taken to insert references to the 1989 Act in section 3 of the form where appropriate.

Form C28 (warrant to assist a person to gain access to a child or entry to premises) is amended in consequence of section 79 (power of constable to assist in exercise of powers of entry) of the Childcare Act 2006 (c.21). The form now refers to section 79 and, in relation to the exercise of powers in England, to section 77 of the Childcare Act 2006. The form also makes provision for a warrant under section 102 of the 1989 Act and, in relation to the exercise of powers in Wales, under section 79U of that Act. References to section 76(2) of the 1989 Act and section 33 of the Adoption Act 1976 have been removed as they are no longer needed.