
STATUTORY INSTRUMENTS

2011 No. 1329

**The Magistrates' Courts (Enforcement or
Variation of Orders Made in Family Proceedings
and Miscellaneous Provisions) Rules 2011**

PART 11

THE 1996 ACT

Applications under Part 4 of the 1996 Act: enforcement and bail

80.—(1) In respect of—

- (a) an application for enforcement of an order made on an application under Part 4 of the 1996 Act⁽¹⁾ in the magistrates' court; and
- (b) an application for bail made to a magistrates' court by a person arrested under a power of arrest attached to an occupation order made under section 47 of the 1996 Act,

the FPR shall apply, with the modifications in paragraph (2).

(2) The modifications are that after rule 10.17 there is inserted—

“Enforcement of orders made in a magistrates' court

10.18.—(1) Where a power of arrest is attached to one or more of the provisions (“the relevant provisions”) of an occupation order, the relevant provisions must be set out in a separate form, which must not include any provisions of the order to which the power of arrest was not attached.

(2) Where the court makes a non-molestation order or paragraph (1) applies, the following documents must be delivered to the officer for the time being in charge of any police station for the applicant's address or of such other police station as the court may specify—

- (a) a copy of the non-molestation order or the form referred to in paragraph (1); and
- (b) 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 documents referred to in paragraphs (2)(a) and (b) must be delivered by—

(1) Part 4 was amended by sections 133 and 135 of and paragraph 34 of Schedule 11 to and Schedule 13 to the Land Registration Act 2002 (c.9), section 139(1) of and paragraphs 85 to 88 of Schedule 3 to the Adoption and Children Act 2002, sections 1 to 4 and 58 of and paragraphs 34 to 41 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c.28), section 82 of and paragraphs 1 to 14 of Part 1 of Schedule 9 to the Civil Partnership Act 2004, section 15(1) of and paragraphs 252 to 254 of Part 1 of Schedule 4 to the Constitutional Reform Act 2005, section 1(4) of and paragraph 20 of Part 2 of Schedule 1 to the Mental Health Act 2007 (c.12), section 3(1) of and paragraph 3 of Part 1 of Schedule 2 to the Forced Marriage (Civil Protection) Act 2007 (c.20), section 56 of and paragraph 37 of Part 1 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c.22) and by S.I. 1994/74 and 2009/871.

- (a) the applicant, if the applicant is responsible for serving the order on the respondent in accordance with rule 10.6(1); or
- (b) the court officer, if the court is responsible for serving the order on the respondent in accordance with rule 10.6(2).

(4) Where an order is made varying or discharging the relevant provisions of the occupation order or, as the case may be, any provisions of the non-molestation order, the court officer must—

- (a) immediately inform the officer who received a copy of any order or form under paragraph (2) and, 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 to any officer so informed.

(5) Any warrant for the arrest of the respondent issued on an application under section 47(8) of the 1996 Act must be delivered by the court officer to the officer for the time being in charge of any police station for the respondent's address or of such other police station as the court may specify.

(6) The court before which a person is brought following that person's 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 and, where such an order is made, the arrested person may be released and—
 - (i) unless the court directs otherwise, be dealt with within 14 days of the day on which the arrested person was arrested; and
 - (ii) be given not less than 2 business days' notice of the adjourned hearing.

Nothing in this paragraph prevents the issue of a notice under paragraph (10) if the arrested person is not dealt with within the period mentioned in sub-paragraph (b)(i) above.

(7) Paragraphs (8) to (15) apply for the enforcement of orders made on applications under Part 4 of the 1996 Act by committal order.

(8) Subject to paragraphs (13) and (14), an order must not be enforced by committal order unless—

- (a) a copy of the occupation order or non-molestation order has been served personally on the respondent; and
- (b) where the order requires the respondent to do an act, the copy has been so served before the expiration of the time within which the respondent was required to do the act and was accompanied by a copy of any order, made between the date of the order and the date of service, fixing that time.

(9) At the time when the order is drawn up, the court officer must—

- (a) where the order made is (or includes) a non-molestation order; and
- (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 (8).

(10) If the respondent fails to obey the order, the court officer must, at the request of the applicant, issue a notice warning the respondent that an application will be made for the respondent to be committed and, subject to paragraph (14), the notice must be served on the respondent personally.

(11) The request for issue of the notice under paragraph (10) must be treated as a complaint and must—

- (a) identify the provisions of the order or undertaking which it is alleged have been disobeyed or broken;
- (b) list the ways in which it is alleged that the order or undertaking has been disobeyed or broken; and
- (c) be supported by a statement which is signed and is declared to be true and which states the grounds on which the application is made,

and, unless service is dispensed with under paragraph (14), a copy of the statement must be served with the notice.

(12) If a committal order is made, it must include provision for the issue of a warrant of committal and, unless the court otherwise orders—

- (a) a copy of the order must be served personally on the person to be committed either before or at the time of the execution of the warrant; or
- (b) the order for the issue of the warrant may be served on the person to be committed at any time within 36 hours after the execution of the warrant.

(13) An order requiring a person to abstain from doing an act may be enforced by committal order notwithstanding that a copy of the order has not been served personally if the court is satisfied that, pending such service, the respondent had notice thereof either by being—

- (a) present when the order was made;
- (b) notified of the terms of the order whether by telephone or otherwise.

(14) The court may dispense with service of a copy of the order under paragraph (8) or a notice under paragraph (10) if the court thinks it just to do so.

(15) Where service of a notice to show cause is dispensed with under paragraph (14) and a committal order is made, the court may of its own motion fix a date and time when the person to be committed is to be brought before the court.

(16) Paragraphs (8) to (12), (14) and (15) apply to the enforcement of undertakings with the necessary modifications and as if—

- (a) for paragraph (8) there were substituted the following—

“(8) A copy of a form recording the undertaking must be delivered by the court officer to the party giving the undertaking—

- (a) by handing a copy of the document to that person before that person leaves the court building; or
- (b) where that person’s place of residence is known, by posting a copy to that person’s place of residence; or
- (c) through that person’s solicitor,

and, where delivery cannot be effected in this way, the court officer must deliver a copy of the document to the party for whose benefit the undertaking is given and that party must serve it personally as soon as is practicable.”;

- (b) in paragraph (14), the words from “a copy” to “paragraph (8) or” were omitted.

(17) Where a person in custody under a warrant or order desires to apply to the court for discharge, that person must make an application in writing attested by the governor of the prison showing that that person has purged or is desirous of purging his or her contempt and the court officer must, not less than one day before the application is heard, serve notice of it on the party (if any) at whose instance the warrant or order was issued.

(18) The court by which an order of committal is made may by order direct that the execution of the order of committal be suspended for such period or on such terms or conditions as it may specify.

(19) Where execution of an order of committal is suspended by an order under paragraph (18), the applicant for the order of committal must, unless the court otherwise directs, serve on the person against whom it was made a notice informing that person of the making and terms of the order under that paragraph.

(20) The court may adjourn consideration of the penalty to be imposed for contempts found proved and such consideration may be restored if the respondent does not comply with any conditions specified by the court.

(21) Where the court makes a hospital order or a guardianship order under the Mental Health Act 1983(2), 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.

(22) Where a transfer direction given by the Secretary of State under section 48 of the Mental Health Act 1983(3) 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 he is detained,

of any committal hearing which that person is required to attend and the court officer must give notice in writing to the hospital where that person is detained of any further remand.

(23) In paragraph (6) “arrest” means arrest under a power of arrest attached to an occupation order under section 47(2) or (3) of the 1996 Act or under a warrant of arrest issued on an application under section 47(8) of the 1996 Act.

Applications under Part 4 of the 1996 Act: bail

10.19.—(1) An application for bail made by a person arrested under a power of arrest attached to an occupation order or a warrant of arrest issued on an application under section 47(8) of the 1996 Act may be made either orally or in writing.

(2) Where an application is made in writing, it must 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 that person were to be granted bail;
- (d) the amount of the recognizance in which that person 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.

(3) An application made in writing must be signed by the person making the application or by a person duly authorised by that person or, where the person making the application is a minor or is for any reason incapable of acting, by a litigation friend or children’s guardian acting on that person’s behalf, and a copy must be served by the person making the application on the applicant for the order under Part 4 of the 1996 Act.

(2) 1983 c.20.

(3) Section 48 was amended by sections 74 and 75 of and Schedules 7 and 8 to the Criminal Justice and Court Services Act 2000 (c.43), the Statute Law (Repeals) Act 2004 (c.14), section 62 of the Nationality, Immigration and Asylum Act 2002 (c.41) and sections 1(4), 5(1) and (3) and paragraphs 1 and 11 of Part 1 of Schedule 1 to the Mental Health Act 2007.

(4) A bail notice must be given to the respondent where the respondent is remanded on bail.

Powers of a single justice

10.20. Where the proceedings are treated by the court as family proceedings by virtue of section 65 of the 1980 Act, a single justice of the peace cannot perform the functions conferred on the court by rule 10.18(9)(b), (12) to (15) and (18) to (20).

Powers of a justices' clerk

10.21. A justices' clerk cannot perform the functions conferred on the court by rules 10.18(6), 10.18(9)(b), (12) to (15) and (18) to (20).”.