

SCHEDULE

Rule 44

“PART 37
 APPLICATIONS AND PROCEEDINGS IN
 RELATION TO CONTEMPT OF COURT

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CHAPTER 1

Scope and interpretation

Scope

37.1.—(1) This Part sets out the procedure in respect of—

- (a) committal for breach of a judgment, order or undertaking to do or abstain from doing an act;
- (b) contempt in the face of the court;
- (c) committal for interference with the due administration of justice;
- (d) committal for making a false statement of truth;
- (e) sequestration to enforce a judgment, order or undertaking; and
- (f) the penal, contempt and disciplinary provisions of the County Courts Act 1984.

(2) So far as applicable, and with the necessary modifications, this Part applies in relation to an order requiring a person—

- (a) guilty of contempt of court; or
- (b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court,

to pay a fine or to give security for good behaviour, as it applies in relation to an order of committal.

(3) Unless otherwise stated, this Part applies to procedure in the High Court and family court.

Saving for other powers

37.2.—(1) This Part is concerned only with procedure and does not itself confer upon the court the power to make an order for—

- (a) committal;
- (b) sequestration; or
- (c) the imposition of a fine in respect of contempt of court.

(2) Nothing in this Part affects the power of the court to make an order requiring a person—

- (a) guilty of contempt of court; or
- (b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court,

to pay a fine or to give security for good behaviour.

(3) Nothing in this Part affects any statutory or inherent power of the court to make a committal order of its own initiative against a person guilty of contempt of court.

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Interpretation

37.3. In this Part—

- (a) “applicant” means a person making—
 - (i) an application for permission to make a committal application;
 - (ii) a committal application; or
 - (iii) an application for a writ of sequestration;
- (b) “committal application” means any application for an order committing a person to prison;
- (c) “judge of High Court judge level” means a person in sub-paragraphs (i) to (x) of paragraph (b) in the definition of “judge” in rule 2.3;
- (d) “respondent” means a person—
 - (i) against whom a committal application is made or is intended to be made; or
 - (ii) against whose property it is sought to issue a writ of sequestration;
- (e) “undertaking” means an undertaking to the court; and
- (f) references to a writ of sequestration are, in relation to the family court, to be read as references to a warrant containing provision corresponding to that which may be contained in a writ of sequestration.

(See section 31E of the Matrimonial and Family Proceedings Act 1984⁽¹⁾ (Family court has High Court and county court powers), in particular subsections (1) and (2) of that section.)

CHAPTER 2

Committal for breach of a judgment, order or undertaking to do or abstain from doing an act

Enforcement of judgment, order or undertaking to do or abstain from doing an act

37.4.—(1) If a person—

- (a) required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
- (b) disobeys a judgment or order not to do an act,

then, subject to the Debtors Acts 1869⁽²⁾ and 1878⁽³⁾ and to the provisions of these Rules, the judgment or order may be enforced under the court’s powers by an order for committal.

(2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order, then references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order or agreement.

(3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation.

(4) So far as applicable, and with the necessary modifications, this Chapter applies to undertakings given by a party as it applies to judgments or orders.

(Specific provision in relation to judgment summonses is contained in Chapter 2 of Part 33.)

(1) 1984 c.42. Section 31E is inserted by the Crime and Courts Act 2013 (c.22), section 17(6), Schedule 10 paragraph 1.
(2) 1869 c. 62
(3) 1878 c. 54

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Requirement for service of a copy of the judgment or order and time for service

37.5.—(1) Unless the court dispenses with service under rule 37.8, a judgment or order may not be enforced under rule 37.4 unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to do an act—

- (a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;
- (b) where the time for doing the act has been varied by a subsequent order, a copy of that subsequent order has also been served; and
- (c) where the judgment or order was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 37.6 or 37.7, or in accordance with an order for alternative service made under rule 37.8(2)(b).

Method of service – copies of judgments or orders

37.6. Subject to rules 37.7 and 37.8, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.

Method of service – copies of undertakings

37.7.—(1) Subject to paragraph (2) and rule 37.8, a copy of any document recording an undertaking will be delivered by the court to the person who gave the undertaking—

- (a) by handing to that person a copy of the document before that person leaves the court building;
- (b) by posting a copy to that person at the residence or place of business of that person where this is known; or
- (c) by posting a copy to that person's solicitor.

(2) If delivery cannot be effected in accordance with paragraph (1), the court officer will deliver a copy of the document to the party for whose benefit the undertaking was given and that party must serve it personally on the person who gave the undertaking as soon as practicable.

(3) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation.

Dispensation with personal service

37.8.—(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 37.5 to 37.7 if it is satisfied that the person has had notice of it—

- (a) by being present when the judgment or order was given or made; or
- (b) by being notified of its terms by telephone, email or otherwise.

(2) In the case of any judgment or order the court may—

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- (a) dispense with service under rules 37.5 to 37.7 if the court thinks it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

Requirement for a penal notice on judgments and orders

37.9.—(1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced under rule 37.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Chapter, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

(2) An undertaking to do or not do an act which is contained in a judgment or order may be enforced under rule 37.4 notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

(3) In the case of—

- (a) a section 8 order (within the meaning of section 8(2) of the Children Act 1989)⁽⁴⁾;
- (b) an order under section 14A, 14B(2)(b), 14C(3)(b) or 14D of the Children Act 1989⁽⁵⁾ enforceable by committal order,

the court may, on the application of the person entitled to enforce the order, direct that the court officer issue a copy of the order, endorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with this rule, and no copy of the order shall be issued with any such notice endorsed or incorporated save in accordance with such a direction.

How to make the committal application

37.10.—(1) A committal application is made by an application notice using the Part 18 procedure in the proceedings in which the judgment or order was made or the undertaking was given.

(2) Where the committal application is made against a person who is not an existing party to the proceedings, it is made against that person by an application notice using the Part 18 procedure.

(3) The application notice must—

- (a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
- (b) be supported by one or more affidavits containing all the evidence relied upon.

(4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.

(5) The court may—

- (a) dispense with service under paragraph (4) if it considers it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

Committal for breach of a solicitor's undertaking

37.11.—(1) This rule applies where an order for committal is sought in respect of a breach by a solicitor of an undertaking given by the solicitor to the court in connection with family proceedings.

(4) 1989 c. 41.

(5) Sections 14A to 14D were inserted by the Adoption and Children Act 2002 (c. 38), section 115(1).

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(2) The applicant must obtain permission from the court before making a committal application under this rule.

(3) The application for permission must be made by filing an application notice using the Part 18 procedure.

(4) The application for permission must be supported by an affidavit setting out—

- (a) the name, description and address of the respondent;
- (b) the grounds on which the committal order is sought.

(5) The application for permission may be made without notice.

(6) Rules 18.10 and 18.11 do not apply.

(7) Unless the applicant makes the committal application within 14 days after permission has been granted under this rule, the permission will lapse.

CHAPTER 3

Contempt in the face of the court

Contempt in the face of the court

37.12. Where—

- (a) contempt has occurred in the face of the court; and
- (b) that court has power to commit for contempt,

the court may deal with the matter of its own initiative and give such directions as it thinks fit for the disposal of the matter.

CHAPTER 4

Committal for interference with the due administration of justice

Scope

37.13.—(1) This Chapter regulates committal applications in relation to interference with the due administration of justice in connection with family proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court.

(2) A committal application under this Chapter may not be made without the permission of the court.

(The procedure for applying for permission to make a committal application is set out in rule 37.15.)

(Rules 37.16(3) and (4) make provision for cases in which both this Chapter and Chapter 5 (Committal for making a false statement of truth) may be relevant.)

Court to which application for permission under this Chapter is to be made

37.14.—(1) Where the contempt of court is committed in connection with any family proceedings, the application for permission may be made only to a single judge of the Family Division.

(2) Where the contempt of court is committed otherwise than in connection with any proceedings, Part 81 of the CPR applies.

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Application for permission

37.15.—(1) The application for permission to make a committal application must be made using the Part 18 procedure, and the application notice must include or be accompanied by—

- (a) a detailed statement of the applicant’s grounds for making the committal application; and
- (b) an affidavit setting out the facts and exhibiting all documents relied upon.

(2) The application notice and the documents referred to in paragraph (1) must be served personally on the respondent unless the court otherwise directs.

(3) Within 14 days of service on the respondent of the application notice, the respondent—

- (a) must file and serve an acknowledgment of service; and
- (b) may file and serve evidence.

(4) The court will consider the application for permission at an oral hearing, unless it considers that such a hearing is not appropriate.

(5) If the respondent intends to appear at the permission hearing referred to in paragraph (4), the respondent must give 7 days’ notice in writing of such intention to the court and any other party and at the same time provide a written summary of the submissions which the respondent proposes to make.

(6) Where permission to proceed is given, the court may give such directions as it thinks fit, and may—

- (a) transfer the proceedings to another court; or
- (b) direct that the application be listed for hearing before a single judge or a Divisional Court.

CHAPTER 5

Committal for making a false statement of truth (Rule 17.6)

Scope and interaction with other Chapters of this Part

37.16.—(1) This Chapter contains rules about committal applications in relation to making, or causing to be made, a false statement in a document verified by a statement of truth, without an honest belief in its truth.

(2) Where the committal application relates only to a false statement of truth, this Chapter applies.

(3) Where the committal application relates to both—

- (a) a false statement of truth; and
- (b) breach of a judgment, order or undertaking to do or abstain from doing an act,

then Chapter 2 (Committal for breach of a judgment, order or undertaking to do or abstain from doing an act) applies, but subject to paragraph (4).

(4) To the extent that a committal application referred to in paragraph (3) relates to a false statement of truth—

- (a) the applicant must obtain the permission of the court in accordance with rule 37.17; or
- (b) the court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

Committal application in relation to a false statement of truth

37.17.—(1) A committal application in relation a false statement of truth in connection with family proceedings in the High Court may be made only—

- (a) with the permission of the court dealing with the proceedings in which the false statement was made; or
- (b) by the Attorney General.

(2) A committal application in relation to a false statement of truth in connection with proceedings in the family court may be made only—

- (a) with the permission of a single judge of the Family Division; or
- (b) by the Attorney General.

(3) Where permission is required under paragraph (1)(a) or (2)(a), rule 37.15 applies.

(Under rule 37.15(6)(b), the court granting permission may direct that the application be listed before a single judge or a Divisional Court.)

(4) The court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

(5) Where the committal application is made by the Attorney General, the application may be made to a single judge or a Divisional Court.

CHAPTER 6

Writ of sequestration to enforce a judgment, order or undertaking

Scope

37.18. This Chapter contains rules about applications for a writ of sequestration to enforce a judgment, order or undertaking.

Writ of sequestration to enforce a judgment, order or undertaking

37.19.—(1) If—

- (a) a person required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
- (b) a person disobeys judgment or order not to do an act,

then, subject to the provisions of these Rules and if the court permits, the judgment or order may be enforced by a writ of sequestration against the property of that person.

(2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order, references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order.

(3) If the person referred to in paragraph (1) is a company or other corporation, the writ of sequestration may in addition be issued against the property of any director or other officer of that company or corporation.

(4) So far as applicable, and with the necessary modifications, the Chapter applies to undertakings given by a party as it applies to judgments or orders.

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Requirement for service of a copy of the judgment or order and time for service

37.20.—(1) Unless the court dispenses with service under rule 37.23, a judgment or order may not be enforced by writ of sequestration unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to act—

- (a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;
- (b) where the time for doing the act has been varied by a subsequent order, a copy of that subsequent order has also been served; and
- (c) where the judgment or order was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 37.21 or 37.22, or in accordance with an order for alternative service made under rule 37.23(2)(b).

Method of service – copies of judgments or orders

37.21. Subject to rules 37.22 and 37.23, copies of judgments or order and any orders or agreements fixing or varying the time for doing an act must be served personally.

Method of service – copies of undertakings

37.22.—(1) Subject to paragraph (2) and rule 37.23, a copy of any document recording an undertaking will be delivered by the court to the person who gave the undertaking—

- (a) by handing to that person a copy of the document before that person leaves the court building;
- (b) by posting a copy to that person at the residence or place of business of that person where this is known; or
- (c) by posting a copy to that person's solicitor.

(2) If delivery cannot be effected in accordance with paragraph (1), the court officer will deliver a copy of the document to the party for whose benefit the undertaking was given, and that party must serve it personally on the person who gave the undertaking as soon as practicable.

(3) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation.

Dispensation with personal service

37.23.—(1) In the case of a judgment or order requiring a person to do or not do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 37.20 to 37.22 if it is satisfied that the person has had notice of it—

- (a) by being present when the judgment or order was given or made; or
- (b) by being notified of its terms by telephone, email or otherwise.

- (2) In the case of any judgment or order the court may—
 - (a) dispense with service under rules 37.20 to 37.22 if the court thinks it just to do so; or
 - (b) make an order in respect of service by an alternative method or at an alternative place.

Requirement for a penal notice on judgments and orders

37.24.—(1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced by a writ of sequestration unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Chapter, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

(2) An undertaking to do or not do an act which is contained in a judgment or order may be enforced by a writ of sequestration notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

How to make an application for permission to issue a writ of sequestration

- 37.25.**—(1) An application for permission to issue a writ of sequestration must be made—
- (a) in the High Court, to a single judge of the Family Division; or
 - (b) in the family court, to a judge of High Court judge level.

(2) An application for permission to issue a writ of sequestration must be made by filing an application notice using the Part 18 procedure.

- (3) The application notice must—
- (a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
 - (b) be supported by one or more affidavits containing all the evidence relied upon.

(4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.

- (5) The court may—
- (a) dispense with service under paragraph (4) if it considers it just to do so; or
 - (b) make an order in respect of service by an alternative method or at an alternative place.

Form of writ of sequestration

37.26. A writ of sequestration must be in Form No. 67 as set out in Practice Direction 5A (or, in the family court, in a form containing corresponding provision).

CHAPTER 7

General rules about committal applications, orders for committal and writs of sequestration

The hearing

37.27.—(1) Unless the court hearing the committal application or application for sequestration otherwise permits, the applicant may not rely on—

- (a) any grounds other than—
 - (i) those set out in the application notice; or

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- (ii) in relation to committal application under Chapter 4, the statement of grounds required by rule 37.15(1)(a) (where not included in the application notice);
 - (b) any evidence unless it has been served in accordance with the relevant Chapter of this Part or the Practice Direction supplementing this Part.
- (2) At the hearing, the respondent is entitled—
- (a) to give oral evidence, whether or not the respondent has filed or served written evidence, and, if doing so, may be cross-examined; and
 - (b) with the permission of the court, to call a witness to give evidence whether or not the witness has made an affidavit or witness statement.
- (3) The court may require or permit any party or other person (other than the respondent) to give oral evidence at the hearing.
- (4) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.
- (5) The general rule is that a committal application, application for sequestration or application for discharge from custody will be heard, and judgment given, in public, but a hearing, or any part of it, may be in private (but with the matters in paragraph (6) always stated in public) if—
- (a) publicity would defeat the object of the hearing;
 - (b) it involves matters relating to national security;
 - (c) it involves confidential information (including information relating to personal financial matters) and publication would damage that confidentiality;
 - (d) a private hearing is necessary to protect the interests of any child or protected party;
 - (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing; or
 - (f) the court considers this to be necessary, in the interests of justice.
- (6) If the court hearing an application in private decides to make a committal order against the respondent, it will in public state—
- (a) the name of the respondent;
 - (b) in general terms, the nature of the contempt of court in respect of which the committal order is being made; and
 - (c) the length of the period of the committal order.
- (7) Where a committal order is made in the absence of the respondent, the court may on its own initiative fix a date and time when the respondent is to be brought before the court.

Power to suspend execution of a committal order

37.28.—(1) The court making the committal order may also order that execution of the order will be suspended for such period or on such terms and conditions as the court may specify.

(2) Unless the court otherwise directs, the applicant must serve on the respondent a copy of any order made under paragraph (1).

Warrant of committal

37.29.—(1) If a committal order is made, the order will be for the issue of a warrant of committal.

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- (2) Unless the court orders otherwise—
 - (a) a copy of the committal order must be served on the respondent either before or at the time of the execution of the warrant of committal; or
 - (b) where the warrant of committal has been signed by the judge, the committal order may be served on the respondent at any time within 36 hours after the execution of the warrant.
- (3) Without further order of the court, a warrant of committal must not be enforced more than 2 years after the date on which the warrant is issued.

Discharge of a person in custody

37.30.—(1) A person committed to prison for contempt of court may apply to the court to be discharged.

- (2) The application must—
 - (a) be in writing and attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer);
 - (b) show that the person committed to prison for contempt has purged, or wishes to purge, the contempt; and
 - (c) be served on the person (if any) at whose instance the warrant of committal was issued at least one day before the application is made.
- (3) Paragraph (2) does not apply to—
 - (a) a warrant of committal to which CCR Order 27 rule 8, or CCR Order rule 4 or 14, relates;
 - (b) an application made by the Official Solicitor acting with official authority for the discharge of a person in custody..
- (4) If the committal order is made in the family court and—
 - (a) does not direct that any application for discharge must be made to a judge; or
 - (b) was made by a district judge under section 118 of the County Courts Act 1984;the application for discharge may be made to a district judge.
- (5) If the committal order is made in the High Court, the application for discharge may be made to a single judge of the Family Division.

Discharge of a person in custody where a writ of sequestration has been issued

37.31. Where—

- (a) a writ of sequestration has been issued to enforce a judgment or order;
- (b) the property is in the custody or power of the respondent;
- (c) the respondent has been committed for failing to deliver up any property or deposit it in court or elsewhere; and
- (d) the commissioners appointed by the writ of sequestration take possession of the property as if it belonged to the respondent;

then, without prejudice to rule 37.30(1) (discharge of a person in custody), the court may discharge the respondent and give such directions for dealing with the property taken by the commissioners as it thinks fit.

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CHAPTER 8

Penal and disciplinary provisions under the County Courts Act 1984

Scope

37.32.—(1) This Chapter applies to the family court only and contains rules in relation to the penal, contempt and disciplinary provisions of the County Courts Act 1984 as they apply to the family court.

(2) In this Chapter, “the Act” means the County Courts Act 1984.

Offences under sections 14, 92 or 118 of the Act

37.33.—(1) This rule applies where it is alleged that any person has committed an offence—

- (a) under section 14 of the Act, by assaulting an officer of the court acting in the execution of the officer’s duties;
- (b) under section 92 of the Act, by rescuing or attempting to rescue any goods seized in execution; or
- (c) under section 118 of the Act, by wilfully insulting a judge, juror, witness or any officer of the court or by wilfully interrupting the proceedings of the family court or otherwise misbehaving in court,

and the alleged offender has not been taken into custody and brought before the court.

(2) The court will issue a summons, which must be served on the alleged offender personally not less than 7 days before the day of the hearing stated in the summons.

(3) Rule 37.29 (warrant of committal) applies, with the necessary modifications, where an order is made under section 14, 92 or 118 of the Act committing a person to prison.

Offences under section 124 of the Act

37.34. Where a complaint is made against an officer of the court under section 124 of the Act for having lost the opportunity of levying execution, the court will issue a summons, which must be served on the alleged offender personally not less than 7 days before the date of the hearing stated in the summons.

Notice to give evidence before or after a fine is imposed under section 55 of the Act

37.35.—(1) Before or after imposing a fine on any person under section 55 of the Act for disobeying a witness summons or refusing to be sworn or give evidence, the court may direct that notice be given to that person in accordance with paragraph (2).

(2) The notice must state that if the recipient of the notice can demonstrate any reason why a fine should not be or should not have been imposed, that person may give evidence—

- (a) by witness statement, affidavit or otherwise; and
- (b) on a day named in the notice.

Non-payment of fines

37.36.—(1) If a fine is not paid in accordance with the order imposing it, the court officer will, as soon as reasonably possible, report the matter to a judge.

(2) Where by an order imposing a fine—

- (a) the amount of the fine is directed to be paid by instalments; and

(b) default is made in the payment of any instalment,
the same proceedings may be taken as if default had been made in respect of the whole of the fine.

Repayment of fine

37.37. If a person pays a fine and later gives evidence to satisfy the court that, if the evidence had been given earlier, no fine or a smaller fine would have been imposed, the court may order the whole or part of the fine to be repaid.

Section 118 of the Act and the tipstaff

37.38. For the purposes of section 118 of the Act in its application to the hearing of family proceedings at the Royal Courts of Justice or the principal registry, the tipstaff is deemed to be an officer of the court.”