
STATUTORY INSTRUMENTS

1997 No. 1894

The Family Proceedings Courts (Matrimonial Proceedings etc) (Amendment) Rules 1997

Citation, commencement and interpretation

15. For rules 20 and 21, there shall be substituted the following—

“Enforcement of orders made on applications under Part IV of the Family Law Act 1996

20.—(1) Where a power of arrest is attached to one or more of the provisions (“the relevant provisions”) of an order made under Part IV of the Family Law Act 1996—

- (a) the relevant provisions shall be set out in Form FL406 and the form shall not include any provisions of the order to which the power of arrest was not attached; and
- (b) a copy of the form shall 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.

The copy of the form delivered under sub-paragraph (b) shall be accompanied by 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).

(2) Where an order is made varying or discharging the relevant provisions, the justices’ clerk shall—

- (a) immediately inform the officer who received a copy of the form under paragraph (1) 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.

(3) An application for the issue of a warrant for the arrest of the respondent shall be made in Form FL407 and the warrant shall be issued in Form FL408 and delivered by the justices’ clerk 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.

(4) 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 and, where such an order is made, the arrested person may be released and
 - (i) be dealt with within 14 days of the day on which he was arrested; and
 - (ii) be given not less than 2 business days’ notice of the adjourned hearing.

Nothing in this paragraph shall prevent the issue of a notice under paragraph (8) if the arrested person is not dealt with within the period mentioned in sub-paragraph (b) (i) above.

(5) Paragraphs (6) to (13) shall apply for the enforcement of orders made on applications under Part IV of the Family Law Act 1996 by committal order.

(6) Subject to paragraphs (11) and (12), an order shall not be enforced by committal order unless

- (a) a copy of the order in Form FL404 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 he 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.

(7) At the time when the order is drawn up, the justices' clerk shall—

- (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 (6).

(8) If the respondent fails to obey the order, the justices' clerk shall, at the request of the applicant, issue a notice in Form FL418 warning the respondent that an application will be made for him to be committed and, subject to paragraph (12), the notice shall be served on him personally.

(9) The request for issue of the notice under paragraph (8) shall be treated as a complaint and shall—

- (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;
- (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 (12), a copy of the statement shall be served with the notice.

(10) If an order in Form FL419 (a committal order) is made, it shall include provision for the issue of a warrant of committal in Form FL420 and, unless the court otherwise orders—

- (a) a copy of the order shall 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.

(11) 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—

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

(12) The court may dispense with service of a copy of the order under paragraph (6) or a notice under paragraph (8) if the court thinks it just to do so.

(13) Where service of a notice to show cause is dispensed with under paragraph (12) 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.

(14) Paragraphs (6) to (10), (12) and (13) shall apply to the enforcement of undertakings with the necessary modifications and as if

(a) for paragraph (6) there were substituted the following—

“(6) A copy of Form FL422 recording the undertaking shall be delivered by the justices’ clerk to the party giving the undertaking

- (a) by handing a copy of the document to him before he leaves the court building; or
- (b) where his place of residence is known, by posting a copy to him at his place of residence; or
- (c) through his solicitor,

and, where delivery cannot be effected in this way, the justices’ clerk shall deliver a copy of the document to the party for whose benefit the undertaking is given and that party shall cause it to be served personally as soon as is practicable.”;

(b) in paragraph (12), the words from “a copy” to “paragraph (6) or” were omitted.

(15) Where a person in custody under a warrant or order, desires to apply to the court for his discharge, he shall make his application in writing attested by the governor of the prison showing that he has purged or is desirous of purging his contempt and the justices’ clerk shall, 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.

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

(17) Where execution of an order of committal is suspended by an order under paragraph (16), 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 him of the making and terms of the order under that paragraph.

(18) 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.

(19) Where the court makes a hospital order in Form FL413 or a guardianship order in Form FL414 under the Mental Health Act 1983(1), the justices’ clerk shall—

- (a) send to the hospital any information which will be of assistance in dealing with the patient;
- (b) inform the applicant when the respondent is being transferred to hospital.

(20) 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 justices’ clerk shall 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 justices’ clerk shall give notice in writing to the hospital where that person is detained of any further remand.

(21) An order for the remand of the respondent shall be in Form FL409 and an order discharging the respondent from custody shall be in Form FL421.

(22) In paragraph (4) “arrest” means arrest under a power of arrest attached to an order or under a warrant of arrest.

Applications under Part IV of the Family Law Act 1996: bail

21.—(1) An application for bail made by a person arrested under a power of arrest or a warrant of arrest may be made either orally or in writing.

(2) Where an application is made in writing, it shall contain the following particulars—

- (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 he were to be granted bail;
- (d) the amount of the recognizance in which he 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 shall be signed by the person making the application or by a person duly authorised by him in that behalf or, where the person making the application is a minor or is for any reason incapable of acting, by a guardian ad litem acting on his behalf and a copy shall be served by the person making the application on the applicant for the Part IV order.

(4) The following forms shall be used:

- (a) the recognizance of the person making the application shall be in Form FL410 and that of a surety in Form FL411;
- (b) a bail notice in Form FL412 shall be given to the respondent where he is remanded on bail.”.