



# Family Law Act 1996

## 1996 CHAPTER 27

### PART IV

#### FAMILY HOMES AND DOMESTIC VIOLENCE

##### *Non-molestation orders*

#### **42 Non-molestation orders.**

- (1) In this Part a “non-molestation order” means an order containing either or both of the following provisions—
  - (a) provision prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent;
  - (b) provision prohibiting the respondent from molesting a relevant child.
- (2) The court may make a non-molestation order—
  - (a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or
  - (b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.
- (3) In subsection (2) “family proceedings” includes proceedings in which the court has made an emergency protection order under section 44 of the <sup>M1</sup>Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act).
- (4) Where an agreement to marry is terminated, no application under subsection (2)(a) may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

[<sup>F1</sup>(4A) A court considering whether to make an occupation order shall also consider whether to exercise the power conferred by subsection (2)(b).

*Status: Point in time view as at 07/02/2023.*

*Changes to legislation: Family Law Act 1996, Cross Heading: Non-molestation orders is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4B) In this Part “the applicant”, in relation to a non-molestation order, includes (where the context permits) the person for whose benefit such an order would be or is made in exercise of the power conferred by subsection (2)(b).]
- [<sup>F2</sup>(4ZA) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.]
- (5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—
- (a) of the applicant <sup>F3</sup>. . . ; and
  - (b) of any relevant child.
- (6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (7) A non-molestation order may be made for a specified period or until further order.
- (8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

#### Textual Amendments

- F1** S. 42(4A)(4B) inserted (1.7.2007) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 36(2)**; S.I. 2007/1845, **art. 2(c)** (with art. 3)
- F2** S. 42(4ZA) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 9**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F3** Words in s. 42(5)(a) repealed (1.7.2007) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1)(2), 60, **Sch. 10 para. 36(3)**, **Sch. 11**; S.I. 2007/1845, **art. 2(c)(d)** (with art. 3)

#### Marginal Citations

- M1** 1989 c. 41.

#### [<sup>F4</sup>42A Offence of breaching non-molestation order

- (1) A person who without reasonable excuse does anything that he is prohibited from doing by a non-molestation order is guilty of an offence.
- (2) In the case of a non-molestation order made by virtue of section 45(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when he was aware of the existence of the order.
- (3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- (5) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

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- (b) on summary conviction, to imprisonment for a term not exceeding [<sup>F5</sup>the general limit in a magistrates' court], or a fine not exceeding the statutory maximum, or both.
- (6) A reference in any enactment to proceedings under this Part, or to an order under this Part, does not include a reference to proceedings for an offence under this section or to an order made in such proceedings.

“Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30).]

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**Textual Amendments**

- F4** S. 42A inserted (1.7.2007) by Domestic Violence, Crime and Victims Act 2004 (c. 28), **ss. 1**, 60 (with transitional provisions in Sch. 12 para. 1); S.I. 2007/1845, **art. 2(a)** (with art. 3)
- F5** Words in s. 42A(5)(b) substituted (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1**

**Status:**

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