

STATUTORY INSTRUMENTS

2010 No. 2955

The Family Procedure Rules 2010

PART 10 **E+W**

APPLICATIONS UNDER PART 4 OF THE FAMILY LAW ACT 1996

Scope and interpretation of this Part **E+W**

10.1. The rules in this Part apply to proceedings under Part 4 of the 1996 Act.

Applications for an occupation order or a non-molestation order **E+W**

10.2.—(1) An application for an occupation order or a non-molestation order must be supported by a witness statement.

(2) [^{F1}An] application for an occupation order or a non-molestation order may be made without notice.

^{F2}(3)

(4) Where an application is made without notice, the witness statement in support of the application must state the reasons why notice has not been given. (Section 45 of the 1996 Act sets out the criteria for making an order without notice.)

Textual Amendments

F1 Word in rule 10.2(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **35(a)** (with rule 137); S.I. 2014/954, **art. 2**

F2 Rule 10.2(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **35(b)** (with rule 137); S.I. 2014/954, **art. 2**

Service of the application **E+W**

10.3.—(1) In an application made on notice, the applicant must [^{F3}, subject to any order made under rule 6.35 or 6.36,] serve—

- (a) a copy of the application together with any statement in support; and
- (b) notice of any hearing or directions appointment set by the court,

on the respondent personally—

- (i) not less than 2 days before the hearing; or
- (ii) within such period as the court may direct.

[^{F4}(1A) An application must not be served personally by the applicant himself or herself.]

(2) Where the applicant is acting in person, the applicant may request the court officer to serve the application on the respondent.

Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010, PART 10. (See end of Document for details)

(3) In an application for an occupation order under section 33, 35 or 36 of the 1996 Act ^{M1}, the applicant must serve on the mortgagee and any landlord of the dwelling-house in question—

- (a) a copy of the application; and
- (b) notice of the right to make representations in writing or orally at any hearing.

(4) The applicant must file a certificate of service after serving the application.

(^{F5}...)

Textual Amendments

- F3** Words in rule 10.3(1) inserted (1.10.2021) by The Family Procedure (Amendment No. 2) Rules 2021 (S.I. 2021/875), rules 1, 7(a)
- F4** Rule 10.3(1A) inserted (6.4.2017) by The Family Procedure (Amendment) Rules 2017 (S.I. 2017/413), rules 1, 3(1)
- F5** Words in rule 10.3 omitted (1.10.2021) by virtue of The Family Procedure (Amendment No. 2) Rules 2021 (S.I. 2021/875), rules 1, 7(b)

Marginal Citations

- M1** Section 33 was amended by section 82 of and paragraphs 4(1), (2), (3), (7), (4)(a) and (b), (5) and 6(a) to (e) of Schedule 9 to the Civil Partnership Act 2004. Section 35 was amended by section 82 of and paragraphs 6(1) to 6(10) of Schedule 9 to that Act. Section 36 was amended by sections 2(2) and 58(1) of and paragraphs 34(1) to (3) of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c.28) and section 82 of and paragraph 7 of Schedule 9 to the Civil Partnership Act 2004.

Transfer of pending proceedings to another court E+W

^{F6}10.4.

Textual Amendments

- F6** Rule 10.4 omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, 36 (with rule 137); S.I. 2014/954, art. 2

Privacy E+W

10.5. [^{F7}Any] hearing relating to an application for an occupation order or a non-molestation order will be in private unless the court directs otherwise.

Textual Amendments

- F7** Word in rule 10.5 substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, 37 (with rule 137); S.I. 2014/954, art. 2

Service of an order E+W

10.6.—(1) [^{F8}Subject to any order made under rule 6.35 or 6.36, the applicant] must, as soon as reasonably practicable, serve on the respondent personally—

- (a) a copy of the order; and
- [^{F9}(b) where the order is made without notice—

- (i) a copy of the application together with any statement supporting it; and
- (ii) where the order is made by lay justices, a copy of the written record of the reasons for the court's decision.

(Rule 27.2 makes provision in respect of lay justices giving written reasons in the family court.)]

[^{F10}(1A) The documents listed in paragraph (1) must not be served personally by the applicant himself or herself.]

(2) The court must serve the documents listed in paragraph (1) if—

- (a) an applicant, acting in person, so requests; or
- (b) the court made the order of its own initiative.

(3) In an application for an occupation order under section 33, 35 or 36 of the 1996 Act, the applicant must serve a copy of any order made on the mortgagee and any landlord of the dwelling-house in question.

Textual Amendments

- F8** Words in [rule 10.6\(1\)](#) substituted (1.10.2021) by [The Family Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/875\)](#), [rules 1, 8](#)
- F9** [Rule 10.6\(1\)\(b\)](#) substituted and words (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 14](#) (with [rule 45](#))
- F10** [Rule 10.6\(1A\)](#) inserted (6.4.2017) by [The Family Procedure \(Amendment\) Rules 2017 \(S.I. 2017/413\)](#), [rules 1, 3\(2\)](#)

Representations made by a mortgagee or landlord **E+W**

10.7. The court may direct that a hearing be held in order to consider any representations made by a mortgagee or a landlord.

Applications to vary, extend or discharge an order **E+W**

10.8. Rules 10.5 to 10.7 apply to applications to vary, extend or discharge an order.

Orders containing provisions to which a power of arrest is attached **E+W**

10.9. Where the court makes an occupation order containing one or more provisions to which a power of arrest is attached (“relevant provisions”)—

- (a) each relevant provision must be set out in a separate paragraph in the order; and
- (b) a paragraph containing a relevant provision must not include a provision of the order to which the power of arrest is not attached.

Service of an order on the officer for the time being in charge of a police station **E+W**

10.10.—(1) Where the court makes—

- (a) an occupation order to which a power of arrest is attached; or
- (b) a non-molestation order,

a copy of the order must be delivered to the officer for the time being in charge of—

- (i) the police station for the applicant's address; or
- (ii) such other police station as the court may specify.

- (2) A copy of the order delivered under paragraph (1) must 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).
- (3) The documentation referred to in paragraphs (1) and (2) must be delivered by—
- (a) the applicant; or
 - (b) the court officer, where ^{F11}rule 10.6(2) applies].
- (4) Paragraph (5) applies where an order is made varying or discharging—
- (a) a provision of an occupation order to which a power of arrest is attached; or
 - (b) a provision of a non-molestation order.
- (5) The court officer must—
- (a) immediately inform—
 - (i) the officer who received a copy of the order under paragraph (1); and
 - (ii) 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 referred to in paragraph (4)(a) or (b) and the order referred to in paragraph (1) to any officer so informed.

Textual Amendments

F11 Words in [rule 10.10\(3\)\(b\)](#) substituted (1.10.2021) by [The Family Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/875\)](#), [rules 1, 9](#)

Proceedings following arrest ^{F12}... **E+W**

- 10.11.**—(1) This rule applies where a person is arrested pursuant to—
- (a) a power of arrest attached to a provision of an occupation order; ^{F13}...
 - (b) a warrant of arrest issued on an application under section 47(8) of the 1996 Act ^{M2}[^{F14}; or]
 - (c) [^{F15}a warrant of arrest issued on an application for enforcement of an incoming protection measure.
(The Civil Jurisdiction and Judgments (Protection Measures) Regulations 2014(1) make provision in relation to the powers of the family court and the High Court to enforce incoming protection measures under the Protection Measures Regulation.)]
- (2) The court before which a person is brought following 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.
- (3) Where the proceedings are adjourned and the arrested person is released—
- (a) unless the court directs otherwise, the matter must be dealt with within 14 days beginning with the date of arrest; and
 - (b) the arrested person must be given not less than 2 days' notice of the hearing.
- (4) An application notice seeking the committal for contempt of court of the arrested person may be issued if the arrested person is not dealt with within the period mentioned in paragraph (3)(a).

(The powers of [^{F16}the court] to remand in custody or on bail are contained in section 47 of and Schedule 5 to the Family Law Act 1996 ^{M3}.)

^{F17} ...

Textual Amendments

- F12** Words in rule 10.11 heading omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **38(a)** (with rule 137); S.I. 2014/954, **art. 2**
- F13** Word in rule 10.11(1)(a) omitted (11.1.2015) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **9(a)** (with rule 15)
- F14** Word in rule 10.11(1)(b) substituted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **9(b)** (with rule 15)
- F15** Rule 10.11(1)(c) inserted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **9(c)** (with rule 15)
- F16** Words in rule 10.11 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **38(b)** (with rule 137); S.I. 2014/954, **art. 2**
- F17** Words in rule 10.11 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **38(c)** (with rule 137); S.I. 2014/954, **art. 2**

Marginal Citations

- M2** [Section 47\(8\)](#) was amended by section 58(1) to and paragraphs 38(1) and (5) of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004.
- M3** [Section 47](#) was amended by section 58(1) and (2) of and paragraphs 38(1) to (5) of Schedule 10 to and Schedule 11 to the Domestic Violence, Crime and Victims Act 2004.

[^{F18}Enforcement of an order: requirement for a penal notice **E+W**

10.12. At the time when the order is drawn up, the court officer will—

- (a) where the order made is (or includes) a non-molestation order; or
- (b) where the order made is an occupation order and the court so directs,

issue a copy of the order, endorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with rule 10.6.

(For enforcement of an order by way of committal see Part 37 [^{F19}(rule 37.4(2)(c) requires a contempt application to include confirmation that any order allegedly breached or disobeyed contained a penal notice)].)

Textual Amendments

- F18** Rules 10.12, 10.13 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **15** (with rule 45)
- F19** Words in rule 10.12 substituted (1.10.2020) by [The Family Procedure \(Amendment No. 2\) Rules 2020 \(S.I. 2020/758\)](#), rules 1(1), **3(1)**

Enforcement of an undertaking **E+W**

10.13. ^{F20} ... Part 37 applies ^{F21} ... where an application is made to commit a person for breach of an undertaking.

[^{F22}(Rule 37.4(2) includes requirements for the information to be contained in a contempt application in relation to breach of an undertaking.)].]

Textual Amendments

- F18** Rules 10.12, 10.13 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **15** (with rule 45)
- F20** Words in rule 10.13 omitted (1.10.2020) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2020 \(S.I. 2020/758\)](#), rules 1(1), **3(2)(a)**
- F21** Words in rule 10.13 omitted (1.10.2020) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2020 \(S.I. 2020/758\)](#), rules 1(1), **3(2)(b)**
- F22** Words in rule 10.13 substituted (1.10.2020) by [The Family Procedure \(Amendment No. 2\) Rules 2020 \(S.I. 2020/758\)](#), rules 1(1), **3(2)(c)**

Power to adjourn the hearing for consideration of the penalty **E+W**

10.14. [^{F23}The court] may adjourn the hearing for consideration of the penalty to be imposed for any contempt of court found proved and such a hearing may be restored if the respondent does not comply with any conditions specified by the court.

(^{F24} ...)

Textual Amendments

- F23** Words in rule 10.14 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **39(a)** (with rule 137); S.I. 2014/954, **art. 2**
- F24** Words in rule 10.14 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **39(b)** (with rule 137); S.I. 2014/954, **art. 2**

Hospital orders or guardianship orders under the Mental Health Act 1983 **E+W**

10.15.—(1) Where the [^{F25}court] makes a hospital order under the Mental Health Act 1983 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.

(2) Where the [^{F26}court] makes a guardianship order under the Mental Health Act 1983, the court officer must send any information which will be of assistance in dealing with the patient to—

- (a) the patient's guardian; and
- (b) where the guardian is a person other than the local services authority, the local services authority.

(^{F27} ...)

Textual Amendments

- F25** Word in rule 10.15(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **40(a)** (with rule 137); S.I. 2014/954, **art. 2**
- F26** Word in rule 10.15(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **40(a)** (with rule 137); S.I. 2014/954, **art. 2**

F27 Words in rule 10.15 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **40(b)** (with rule 137); S.I. 2014/954, **art. 2**

Transfer directions under section 48 of the Mental Health Act 1983 **E+W**

10.16.—(1) 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 [^{F28}court], the court officer must notify—

- (a) the governor of the prison to which that person was remanded; and
- (b) the hospital where that person is detained,

of any committal hearing which that person is required to attend.

(2) The court officer must also give notice in writing of any further remand to the hospital where that person is detained.

(^{F29} ...)

Textual Amendments

F28 Word in rule 10.16(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **41(a)** (with rule 137); S.I. 2014/954, **art. 2**

F29 Words in rule 10.16 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **41(b)** (with rule 137); S.I. 2014/954, **art. 2**

Recognizances **E+W**

10.17.—(1) Where, in accordance with paragraph 2(1)(b)(ii) of Schedule 5 to the 1996 Act, the [^{F30}court] fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by—

- (a) a [^{F31}judge of the court];
- (b) a police officer of the rank of inspector or above or in charge of a police station; or
- (c) the governor or keeper of a prison where the arrested person is in custody.

(2) The person having custody of an applicant for bail must release that applicant if satisfied that the required recognizances have been taken.

(^{F32} ...)

Textual Amendments

F30 Word in rule 10.17(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **42(a)(i)** (with rule 137); S.I. 2014/954, **art. 2**

F31 Words in rule 10.17(1)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **42(a)(ii)** (with rule 137); S.I. 2014/954, **art. 2**

F32 Words in rule 10.17 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **42(b)** (with rule 137); S.I. 2014/954, **art. 2**

Changes to legislation:

There are currently no known outstanding effects for the The Family Procedure Rules 2010, PART 10.