

How can it help me? - Part 4 of the Family Law Act 1996

This leaflet tells you how the new Family Law Act can help you. It explains who can apply for an order, describes what you need to do and tells you what will happen once the court receives your application.

This leaflet deals only with applications that are made at a county court.

How can the Family Law Act help me?

This new Act, which became law in October 1997, protects victims of domestic violence with two different types of orders:

- A Non-Molestation Order - which prevents another person from harming you or a child.
- An Occupation Order - which will indicate who can live in the family home and can direct another person to leave the home.

How do I know if I can apply?

You can apply for an order against another person if you are related in one of the ways listed below:

Married: a man or a woman to whom you are or have been married.

Cohabitants: a man and a woman who are not married, but who are, or have lived together as husband and wife.

Two people who live or have lived in the same household: but not if one is the employee, tenant, lodger or boarder of the other.

Certain relations: (e.g. parent, brother, sister, aunt) - you should ask at the court office for a full list of all relatives who may apply.

Two people who have agreed to marry each other: but you must apply within three years of the agreement to marry ending.

You and the other person are the parents of a child or have parental responsibility for a child: this also applies if you or the other person have been responsible for the child in the past.

The natural parent or grandparent of a child who has been adopted or is freed for adoption: you may only apply if the other person is the child, the adoptive parent or any adult who has applied to adopt the child or with whom the child has been placed for adoption.

If you are under 18 you must make the application at the High Court and someone over 18 must help you make the application. That person, who might be a parent or relative, is called a "Next Friend".

If you are under 16 you will need permission from a High Court judge to make the application.

If you want to apply for a Non-molestation order or an Occupation order, you should carefully read this leaflet and the notes for completing the application form. Make sure you have all the information and forms it says you will need.

If you need help deciding whether you can apply for an order, you should ask for help from a solicitor or Citizens Advice Bureau.

Where may I apply for an order?

- You can make your application at any county court with divorce or family jurisdiction or at the Principal Registry of the Family Division. A list of all these is included at the back of this leaflet.
- You may also apply at any Magistrates Court with family jurisdiction. If you decide to use the Magistrates Court, you should contact the court of your choice. They will be able to help you with any local procedures and court opening times.
- The addresses and telephone numbers of all county courts and magistrates courts are listed in the telephone directory under Courts.

When are these courts open?

- The county courts are open Monday to Friday between 10am and 4pm.
- The Principal Registry of the Family Division is open Monday to Friday between 10am and 4.30pm.

How much will it cost?

You may have to pay a fee. The court staff will tell you if you have to pay a fee and how much it is. They will also advise you how to apply for fee exemption or fee remission.

You will not have to pay a fee if you are receiving:

- Income Support; or
- Working Families Tax Credit; or
- advice from a solicitor under the Legal Aid and Assistance Scheme ("the Green Form Scheme").

If you receive another state benefit or can show that paying a fee would cause undue hardship because of the exceptional circumstances of your case, you may not have to pay a fee. The Court Manager will decide this.

What information do I need?

- Your own name and address and date of birth (if you are under 18 you will need the same information for your “next friend”).
- The name and address (and date of birth - if you know it) of the person you are seeking the order against.
- If you are applying for a Non-molestation order involving a child, the full name and date of birth of the child (or any children).
- If there are already family proceedings involving you and the other person, the name of the court and the case numbers, if known, and the type of case (for example, an application for residence of a child).
- If you are applying for an Occupation order, in which you are asking the court to consider changing a rental or mortgage agreement, a copy of the agreement may help the court.
- If you are applying on the basis that you and the other person agreed to marry, you must apply within three years of the end of the relationship.

This information should be confirmed in writing otherwise you will need to produce an engagement ring, or some similar object of your intended marriage, or the evidence of someone who attended a gathering to celebrate your intended marriage (for example, someone who was a guest at your engagement party).

What forms will I need?

- You will need three copies of the application form (FL401) and a copy of the notes for guidance which accompany the application form.
- If you are applying for an “Occupation order” which may involve a change in the occupier of a rented or mortgaged house, you will need another copy of the application form (FL401) for the landlord or mortgage company.
- You will also need a blank form N285, on which to explain why you need the order and the events that have made you apply to the court.
- If you think you may not have to pay a fee you will need form EX160 (application for a fee exemption or remission). You must fill in one of these forms for each fee to be paid.

All of these forms are free. You can get them at the county courts listed on this leaflet.

Will I be able to fill in the forms myself?

- You must read the application form carefully before you begin to fill it in.
- The form asks different types of questions: some will need you to write in the answer (for example, the full name and address of the person you need an order against - this person is known as the “Respondent”), while others will just ask you to tick a box. The guidance notes which come with the application explain each part of the form.
- Once you have completed the application form you will need to fill in the form N285. This form is sometimes called an “affidavit” or statement. On this you should explain what has happened between you and the respondent and list the orders you would like the court to make (for example, “I would like the court to make an order for John Smith to leave the family home”).
- If you do need help filling in these forms, but do not know a friend or relative who can help, you should go to see a solicitor or the Citizens Advice Bureau.
- If a solicitor is helping you under the “Green Form Scheme”, he or she will help you fill in the forms.

What should I do when I have filled in the forms?

You should take all of the forms to the court. You must also take:

- the court fee; or
- Form EX160, if you are asking the court not to charge you a fee; and
- evidence that you are receiving Income Support or Family Credit, if you are applying for exemption from paying a fee.

At the court you should ask to swear the statement that you have completed. This means you will be asked to sign the form in front of a member of the court staff and confirm on oath that the information it contains is true. The member of staff will then witness the form.

You must not sign the statement until the person witnessing tells you to. You must not post it to the court unless it has been sworn and witnessed by a person approved to do so.

What will happen when I hand the forms to the court?

- The court will check the forms and give you a “Notice of Proceedings” (FL402). This will tell you the date of your appointment before the judge and will act as a receipt for your fee.
- If you are being helped by a solicitor, the forms will be sent to him or her to serve on the respondent.
- If a solicitor is not helping you, you can ask the court to serve the documents for you. The court may ask you to complete a form for this. A fee is charged for service by the court bailiff. The court will then arrange for a copy of your application and sworn statement to be served on the respondent by the bailiff.

What will happen if the bailiff cannot serve the application on the respondent?

- If the address you gave for the respondent is wrong, the respondent has moved or the bailiff has not been able to locate the respondent, the court will tell you what has happened.
- If the address is wrong or the respondent has moved, you must find out the new address. You should write and let the court know. The court will then arrange a new appointment date before the judge and pass the papers back to the bailiff. You will also be told the new date.
- If the bailiff has not been able to serve the papers on the respondent in time for the appointment, the court will let you know the new appointment date and the bailiff will continue to attempt service.
- If you are unable to find the respondent's address or it appears that he or she is avoiding service, you may ask the court to serve the papers in some other way (for example, at the respondent's place of employment).

What should I do if I serve the documents myself?

- You must serve the documents on the respondent personally, unless the court has allowed you to serve the forms in some other way.
- You should fill in a "Statement of Service" (FL415) and return it to the court before the date of your appointment. The example below shows what a completed form should look like.
- If you have applied for a change in the occupier of a rented or mortgaged house, the court will serve a copy of the documents on the landlord or mortgage company for you.

Statement of Service		Case number 9720/5001
Family Law Act 1996		Applicant C Walker Ref.
The court at which your case is being heard Anytown		Respondent R Walker Ref.
You must	give details of service of the application on each of the other parties give details of service of the mortgage or landlord of the dwelling-house (if appropriate) file this form with the court on or before the first Directions Appointment or Hearing of the Proceedings	
You should	if the person's solicitor was served, give his or her name and address	
You must indicate	the manner, date, time and place of service or where service was effected by post, the date, time and place of posting	
Name and address of person served	Means of identification of person, and how, when and where served	Prescribed forms served
Ms R Walker 34 High Street Anytown	Personally served at 6.00pm on 1st October at 34 High Street Anytown by the Applicant	9L401 Application 9L402 Notice of Proceedings
I have served the [application][Notice of Proceedings] as stated above. I am the [applicant][petitioner for the application][other] (state)		
Signed: C Walker		Date: 1st October 1997
FL415 Statement of Service		

What will happen at the hearing?

The respondent and you, and any legal advisers present will discuss your application with the judge. The appointment will usually be in private (this is normally called “in chambers”). Once the judge understands both parties’ points of view, he or she can decide any of the following:

- that he or she needs further information about you, the respondent or any children that are involved. You will be told what extra information to provide.
- that he or she needs further information, but is prepared to make a short term (“interim”) order until all of the extra information has been provided. You will be given a new appointment, an interim order, and be told what extra information to provide.
- that he or she is prepared to make an order for a certain period of time, after which the court will reconsider the case. You will be given a new appointment date and a copy of the court order.
- that he or she is prepared to make an order. The order will continue until you or the respondent ask the judge to reconsider the case. You will be given a copy of the order.

Form FL404 (Order Form) is used by all courts to tell the parties in the case, what decision the judge has reached.

What should I do if I need an urgent order?

- If you think there are exceptional reasons, you may ask the court to consider your application immediately and without the respondent being served with any documents (“ex-parte”).
- If an ex-parte order is made by the judge, you will be given a further appointment to attend at the court. The respondent will be entitled to be present at this appointment so that the judge can then listen to both of you before deciding whether to make another order.

What can I do if the Respondent does not obey the order?

- If a judge is concerned that the respondent may not obey a court order, he or she can include a “Power of Arrest”. This allows the police to arrest the respondent if they believe that he or she has disobeyed the court order.
- If the respondent has failed to obey the court order (“breached the order”), but the order does not include a “Power of Arrest”, you may apply to the judge for a warrant of arrest.
- This warrant will be passed to the court bailiff who will arrest the respondent at the first opportunity.

Note: If the court order is breached and does not contain a “power of arrest”, you should consider applying for this to be added to the order, at the same time as applying for the warrant of arrest.

- If the respondent has failed to obey an order which does not include a power of arrest, but it is not appropriate to apply for a warrant of arrest, you may apply to the court to commit that person to prison.
- Further information on the enforcement of court orders can be obtained from a solicitor or Citizens Advice Bureau.

List of Part 4 County Courts

Aberystwyth	Coventry	Luton	Southend-on-Sea
Accrington	Crewe	Macclesfield	Southport
Aldershot & Farnham	Croydon	Maidstone	South Shields
Altrincham	Darlington	Manchester	Stafford
Barnet	Dartford	Mansfield	Staines
Barnsley	Derby	Medway	Stockport
Barnstaple	Dewsbury	Merthyr Tydfil	Stoke on Trent
Barrow-in-Furness	Doncaster	Milton Keynes	Sunderland
Basingstoke	Dudley	Morpeth	Swansea
Bath	Durham	Neath & Port Talbot	Swindon
Bedford	Eastbourne	Nelson	Tameside
Birkenhead	Edmonton	Newcastle-upon-Tyne	Taunton
Birmingham	Epsom	Newport (Gwent)	Teesside
Bishop Auckland	Exeter	Newport (Isle of Wight)	Telford
Blackburn	Gateshead	Northampton	Thanet
Blackpool	Gloucester	North Shields	Torquay and Newton Abbot
Blackwood	Great Grimsby	Norwich	Trowbridge
Bodmin	Guildford	Nottingham	Truro
Bolton	Halifax	Oldham	Tunbridge Wells
Boston	Harlow	Oxford	Uxbridge
Bournemouth	Harrogate	Penrith	Wakefield
Bow	Hartlepool	Peterborough	Walsall
Bradford	Hastings	Plymouth	Wandsworth
Brentford	Haverfordwest	Pontefract	Warrington
Bridgend	Hereford	Pontypridd	Watford
Brighton	Hertford	Portsmouth	Welshpool & Newtown
Bristol	Hitchin	Preston	West Bromwich
Bromley	Horsham	Rawtenstall	Weston-Super-Mare
Burnley	Huddersfield	Reading	Weymouth
Burton-on-Trent	Ilford	Reigate	Whitehaven
Bury	Ipswich	Rhyl	Wigan
Bury St Edmunds	Keighley	Rochdale	Willesden
Caernarfon	Kendal	Romford	Winchester
Camborne & Redruth	King's Lynn	Rotherham	Wolverhampton
Cambridge	Kingston-upon-Hull	Runcorn	Woolwich
Canterbury	Kingston-upon-Thames	St Helens	Worcester
Cardiff	Lambeth	Salford	Workington
Carlisle	Lancaster	Salisbury	Worthing
Carmarthen	Leeds	Scarborough	Wrexham
Chelmsford	Leicester	Scunthorpe	Yeovil
Chester	Leigh	Sheffield	York
Chesterfield	Lincoln	Shoreditch	Principal Registry
Chichester	Liverpool	Shrewsbury	First Avenue House
Chorley	Llanelli	Skipton	42-49 High Holborn
Colchester	Llangefni	Slough	London WC1V 6NP
Consett	Lowestoft	Southampton	