

Application for a non-molestation order or occupation order

Notes for Guidance

Section 1

If you do not wish your address to be made known to the respondent, leave the space on the form blank and complete the Confidential Address Form C5. The court can give you this form.

If you are under 18, someone over 18 must help you make this application. That person, who might be one of your parents, is called a 'next friend'.

If you are under 16 you need permission to make this application. You must apply to the High Court for permission, using this form. If the High Court gives you permission to make this application, it will then either hear the application itself or transfer it to a county court.

Section 3

- *An urgent order made by the court before notice of the application is served on the respondent is called an ex-parte order. In deciding whether to make an ex-parte order the court will consider the circumstances of the case, including:*
- *any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately*
- *whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately*
- *whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved.*

If the court makes an ex-parte order, it must specify a date for a full hearing.

'Harm' in relation to a person who has reached the age of 18 means ill-treatment or the impairment of health, and in relation to a child means ill-treatment or the impairment of health and development. 'Ill-treatment' includes sexual abuse and forms of ill-treatment which are not physical. The court will require evidence of any harm which you allege in support of your application. This evidence should be included in the statement accompanying this application.

Section 4

For you to be able to apply for an order you must be related to the respondent in one of the ways listed in this section of the form. If you are not related in one of these ways you should seek legal advice.

Cohabitees are two persons who, although not married to each other nor civil partners of each other, are living together or have lived together as husband and wife or civil partners. People who have cohabited, but have then married or formed a civil partnership will not fall within this category, but will fall within the category of married people or people who are civil partners of each other.

Those who live or have lived in the same household do not include people who share the same household because one of them is the other's employee, tenant, lodger or boarder.

You will only be able to apply as a relative of the respondent if you are:

(A) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of the respondent or of the respondent's spouse or former spouse, civil partner or former civil partner..

(B) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood, or by affinity or by civil partnership) of the respondent or of the respondent's spouse, former spouse, civil partner or former civil partner.

This includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (A) or (B) if the parties were married to, or civil partners of, each other (for example, your cohabitee's father or brother).

Agreements to marry: *You will fall within this category only if you make this application within three years of the termination of the agreement.*

The court will require the following evidence of the agreement:

- evidence in writing or
- the gift of an engagement ring in contemplation of marriage or
- evidence that a ceremony has been entered into in the presence of one or more other persons assembled for the purpose of witnessing it.

Agreements to form a civil partnership:

You will fall within this category only if you make this application within three years of the termination of the agreement. The court will require the following evidence of the agreement:

- evidence in writing or
- a gift from one party to the agreement to the other as a token of the agreement or
- evidence that a ceremony has been entered into in the presence of one or more other persons assembled for the purpose of witnessing it.

Parents and parental responsibility:

You will fall within this category if

- both you and the respondent are either the parents of a child or have parental responsibility for that child or
- if one of you is the parent and the other has parental responsibility.

Under the Children (Northern Ireland) Order

1995, parental responsibility is held automatically by a child's mother, and by the child's father if he and the mother were married to each other at the time of the child's birth or have married subsequently. Where this is not the case, parental responsibility can be acquired by the father in accordance with the provisions of the Children (Northern Ireland) Order 1995.

Section 5

A non-molestation order can forbid the respondent to molest you or a relevant child. Molestation can include, for example, violence, threats, pestering and other forms of harassment. The court can forbid particular acts of the respondent, molestation in general or both.

A non-molestation order may also exclude the respondent from a defined area in which a dwelling house is included, any other defined area and any premises specified in the order.

Section 6

If you wish to apply for an occupation order but you are uncertain about your answer to any of the questions in this part of the application form, you should seek legal advice.

(A) A dwelling house includes any building or part of a building which is occupied as a dwelling; any caravan, houseboat or structure which is occupied as a dwelling; and any yard, garden, garage or outhouse belonging to it and occupied with it.

(C) & (D) The following questions give examples to help you to decide if you or the respondent, or both of you, are entitled to occupy the dwelling house:

- Are you the sole legal owner of the dwelling house?
- Are you and the respondent joint legal owners of the dwelling house?
- Is the respondent the sole legal owner of the dwelling house?
- Do you rent the dwelling house as sole tenant?
- Do you and the respondent rent the dwelling house as joint tenants?
- Does the respondent rent the dwelling house as sole tenant?

If you answer:

- **Yes** to (a), (b), (d) or (e) you are likely to be entitled to occupy the dwelling house.
- **Yes** to (c) or (f) you may not be entitled (unless, for example you are a spouse or civil partner and have home rights — see the notes under 'Home Rights' below).
- **Yes** to (b), (c), (e) or (f) the respondent is likely to be entitled to occupy the dwelling house.
- **Yes** to (a) or (d) the respondent may not be entitled (unless for example he is a spouse or civil partner and has home rights).

Box 1 For example, if you are sole owner, joint owner or if you rent the property. If you are not a spouse, former spouse, civil partner or former civil partner, cohabitee or former cohabitee of the respondent you will only be able to apply for an occupation order if you fall within this category.

If you answer **Yes** to this question, it will not be possible for a magistrates' court to deal with the application, unless the court decides that it is unnecessary for it to decide this question or make an order. If the court decides that it cannot deal with the application it will transfer the application to a county court.

Box 2 For example, if the respondent was married to you or if you and the respondent are or were civil partners and he or she is sole owner or rents the property.

Box 3 For example, if the respondent is or was cohabiting with you and is sole owner or rents the property.

Home Rights

Where one spouse or civil partner "A" is entitled to occupy the dwelling house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation and the other spouse or civil partner "B" is not so entitled, then B (who is not so entitled) has home rights.

These are a right, if B is in occupation, not to be evicted or excluded from the dwelling house except with the leave of the court and, if B is not in occupation, the right with the leave of the court to enter into and occupy the dwelling house. Home rights do not exist if the dwelling house has never been and was never intended to be, the matrimonial or civil partnership home of two spouses or civil partners. If the marriage or civil partnership has come to an end, home rights will also have ceased unless a court order has been made during the marriage or civil partnership for the rights to continue after the end of that relationship.

Occupation Orders The possible orders are:

If you have ticked box 1 above, an order under Article 11 of the Order of 1998 may:

- enforce the applicant's entitlement to remain in occupation as against the respondent
- require the respondent to permit the applicant to enter and remain in the dwelling house or part of it
- require the respondent to permit the applicant to have peaceful use and enjoyment of the dwelling house or part of it
- regulate the occupation of the dwelling house by either or both parties
- if the respondent is also entitled to occupy, prohibit, suspend or restrict the exercise by him of that right
- restrict or terminate any home rights of the respondent
- require the respondent to leave the dwelling house or part of it
- provide for the respondent to remove from the dwelling house or part of it personal effects or furniture or other contents which are specified in the order
- exclude the respondent from a defined area around the dwelling house or any other defined area or premises
- declare that the applicant is entitled to occupy the dwelling house or has matrimonial rights in it
- provide that the home rights of the applicant are not brought to an end by the death of the other spouse or civil partner or termination of the marriage or civil partnership
- restrain the respondent from disposing of any estate he has in the dwelling house

If you have ticked box 2 or box 3 above –

(a) an order under Article 13 or 14 of the Order of 1998 must:

(i) if the applicant is in occupation—

- give the applicant the right not to be evicted or excluded from the dwelling house or any part of it by the respondent for a specified period; and
- prohibit the respondent from evicting or excluding the applicant during that period

(ii) if the applicant is not in occupation—

- give the applicant the right to enter and occupy the dwelling-house for a specified period; and
- require the respondent to permit the exercise of that right

(b) an order under Article 13 or 14 of the Order of 1998 may—

- *require the respondent to permit the applicant to have peaceful use and enjoyment of the dwelling house or part of it*
- *regulate the occupation of the dwelling-house by either or both of the parties*
- *prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling house*
- *require the respondent to leave the dwelling house or part of it*
- *provide for the respondent to remove from the dwelling house or part of it personal effects or any furniture or other contents which are specified in the order*
- *exclude the respondent from a defined area around the dwelling house or any other defined area or premises specified in the order*
- *restrain the respondent from disposing of any estate he has in the dwelling house.*

If you have ticked box 4 or box 5 above, an order under Article 15 or 16 of the Order of 1998 may:

- *require the respondent to permit the applicant to enter and remain in the dwelling house or part of it*
- *require the respondent to permit the applicant to have peaceful use and enjoyment of the dwelling house or part of it*
- *regulate the occupation of the dwelling house by either or both of the parties*
- *require the respondent to leave the dwelling house or part of it*
- *provide for the respondent to remove from the dwelling house or part of it personal effects or any furniture or other contents which are specified in the order.*
- *exclude the respondent from a defined area around the dwelling house, or any other defined area or premises.*

You should provide any evidence which you have on the following matters in your evidence in support of this application. If necessary, further statements may be submitted after the application has been issued.

If you have ticked box 1, 4, 5 or 6 above, the court will need any available evidence of the following:

- *the housing needs and resources of you, the respondent and any relevant child*
- *the financial resources of you and the respondent*
- *the likely effect of any order, or of any decision not to make an order, on the health, safety and well-being of you, the respondent and any relevant child*
- *the conduct of you and the respondent in relation to each other and otherwise*

If you have ticked box 2 above, the court will need any available evidence of:

- *the housing needs and resources of you, the respondent and any relevant child*
- *the financial resources of you and the respondent*
- *the likely effect of any order, or of any decision not to make an order, on the health, safety and well-being of you, the respondent and any relevant child*
- *the conduct of you and the respondent in relation to each other and otherwise*
- *the length of time that has elapsed since you and the respondent ceased to live together*
- *where you and the respondent were married, the length of time that has elapsed since the marriage was dissolved or annulled*
- *where you and the respondent were civil partners, the length of time that has elapsed since the dissolution or annulment of the civil partnership*
- *the existence of any pending proceedings between you and the respondent: under Article 26 of the Matrimonial Causes (Northern Ireland) Order 1978 (property adjustment orders in connection with divorce proceedings etc.) or under Part 2 of Schedule 15 to the Civil Partnership Act 2004 (property adjustment on or after dissolution, nullity or separation) or under para 2(2)(d) or (e) of Schedule 1 to the Children (Northern Ireland) Order 1995 (orders for financial relief against parents) or relating to the legal or beneficial ownership of the dwelling house.*

If you have ticked box 3 above, the court will need any available evidence of:

- *the housing needs and resources of you, the respondent and any relevant child*
- *the financial resources of you and the respondent*
- *the likely effect of any order, or of any decision not to make an order, on the health, safety and well-being of you, the respondent and any relevant child*
- *the conduct of you and the respondent in relation to each other and otherwise*
- *the nature of you and the respondent's relationship*
- *the length of time during which you have lived together as husband and wife or civil partners*
- *whether you and the respondent have had any children, or have both had parental responsibility for any children*
- *the length of time which has elapsed since you and the respondent ceased to live together*
- *the existence of any pending proceedings between you and the respondent under para 2(2)(d) or (e) of Schedule 1 to the Children (Northern Ireland) Order 1995 or relating to the legal or beneficial ownership of the dwelling house.*

Section 7

Under Article 18 of the Order of 1998, the court may make the following additional orders when making an occupation order:

- *impose on either party obligations as to the repair and maintenance of the dwelling house*
- *impose on either party obligations as to the payment of rent, mortgage or other outgoings affecting it*
- *order a party occupying the dwelling house or any part of it to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy it*
- *grant either party possession or use of furniture or other contents*
- *order either party to take reasonable care of any furniture or other contents*
- *order either party to take reasonable steps to keep the dwelling house and any furniture or other contents secure*
- *prohibit either party from damaging or interfering with services in the dwelling house or any premises specified in the order*
- *order either party to repair damage or restore services to the dwelling house*
- *order either party to pay the other party or another person a sum specified in the order where that party has damaged premises, specified in the order or contents of those premises or damaged or interfered with services in those premises.*

Section 8

If the dwelling house is rented or subject to a mortgage, the landlord or mortgagee must be served with notice of the proceedings in Form F3. He or she will then be able to make representations to the court regarding the rent or mortgage

Section 10

A person living in the same household may, for example, be a member of the family or a tenant or employee of you or the respondent.