

# REPORT OF THE FINANCIAL REMEDIES WORKING GROUP

## ANNEX 5

### FAMILY ORDERS PROJECT HOUSE RULES (REVISED APRIL 2014)

- 1) The prescribed body of standard orders shall take effect on a date fixed by the President.
- 2) All orders made by the Family Court shall be in the standard forms for non-children and private children cases. Many specific variants have been devised for (among other cases), child abduction orders, forced marriage orders, public law orders, tipstaff orders, freezing and search orders, and Part IV FLA 1996 orders.
- 3) The body of standard orders have the status of forms within Part 5 of the FPR 2010. Therefore by virtue of rule 5.1(2) and (4) a standard order may be varied by the court or a party if the variation is required by the circumstances of a particular case. The starting point, and the usual finishing point, should however be the layout and wording of the standard order in question.
- 4) Where the order is made in the High Court in respect of a reserved matter the standard forms shall be used also, save that the name of the court shall be changed to The High Court of Justice, Family Division, Principal (or [*place*] District) Registry.
- 5) In a non-children case the order shall express the title of the case as
  - a) The Marriage of XX and YY, or
  - b) The Civil Partnership of XX and YY, or
  - c) The Relationship of XX and YY, or
  - d) The Family of XX and YY,
- 6) An order shall state in its heading the statute(s), or European Regulation(s), or Protocol under which the powers in question are exercised. It shall **not** state either in the heading, or in the body of the order, that the inherent powers of the court are being exercised save in the sole instance where a disclosure order is made against HMRC.
- 7) Where a party was represented by an advocate, that advocate shall be named on the face of the order.
- 8) The order shall not recite the documents which the court read, or the witnesses who were heard, save in a case where an order is made without notice, in which case the details shall be recorded in a recital.

9) Where an order is made without notice the reason for withholding any notice must be recorded in a recital. Where an order is made on short notice the reason for withholding full notice must be recorded in a recital.

10) Parties:

- a) The parties shall be specified in the first paragraph of the order.
- b) The applicant for the relief in question shall be referred to in the order as the “applicant”; and the respondent shall be referred to as the “respondent”. The parties shall not be referred to by their titles in the main suit (i.e. petitioner and respondent) save in respect of orders made in the main suit. If the case involves cross-applications the applicant shall be the applicant first in time.
- c) Children shall be referred to by their first forename and surname.
- d) The children’s guardian shall be referred to as “the guardian”.
- e) Other parties shall be referred to as first respondent, second respondent etc

For the avoidance of doubt this prescription does not mean that any parties may not subsequently be ‘defined’ by more user friendly terms for the body of the order – see 14) below.

11) If a party acts by a litigation friend or a child by a children’s guardian this must also be stated in the first paragraph of the order.

12) An order shall be consecutively numbered from 1 irrespective of whether the paragraph in question concerns a definition, recital, agreement, undertaking or order. Schedules, annexes or appendices should not be used unless their content is of such length that would, if placed in the body of the order, disrupt its natural reading. Examples would be an elaborate and lengthy sequence of tax and other financial indemnities given in a financial remedy case, a schedule of the chattels, or a schedule of dates of contact stretching far into the future.

13) Subparagraphs, to two levels only, are permitted and shall be numbered (a), (b) etc, then (i), (ii) etc (with or without brackets).

14) Every order shall begin with a definition paragraph of terms used in the order. Abbreviations may be used. It will usually be appropriate and convenient, and therefore good practice, to define the parties as “the husband” and “the wife” (in the case of a different-sex marriage), or “the father” and “the mother” (or by such other common language descriptors as is appropriate), and/or to use proper names or initials, rather than to use the traditional practice of composing the entire order utilising the parties’ litigation status.

15) When drafting recitals the archaic and arguably ambiguous (but nonetheless commonplace) use of the preposition “upon” followed by a gerund (e.g. “upon reading”, “upon the applicant undertaking”) should be avoided. Rather, the preferred preposition should be “after”; so, for example, “after hearing John Smith of counsel for the applicant”. Undertakings and agreements should be drafted using the simple present tense, e.g. “the applicant undertakes that …”, “the

applicant and the respondent agree that ....”, rather than in the form of preposition and gerund.

16) Grammatical modality:

- a) The following grammatical modality shall be used for imperative verbs: “The husband shall pay/transfer etc”;
- b) The following grammatical modality shall be used for prohibitory verbs: “The wife must not remove/transfer/molest etc”.

17) For the purposes of capitalisation the following style (generally consistent with the use in the FPR 2010) shall be used uniformly in respect of the judiciary, the courts, and legal representatives:

High Court judge  
circuit judge (but His Honour Judge Alpha)  
district judge (but District Judge Beta)  
court  
Court of Appeal  
High Court  
Family Court  
county court  
magistrates’ court  
counsel  
leading counsel  
solicitor  
petitioner  
respondent  
applicant  
appellant  
intervener  
party/parties

Similarly, only proper nouns should be capitalised so:

affidavit  
statement  
order  
husband  
wife  
rule  
company  
property  
pension

but:

the Act  
the Regulation

18) An obligation to do an act as provided for in an order shall be taken to include causing the act to take place. Thus the phrase “or cause to be paid”, shall not be

included in an order. However, an obligation not to do an act as provided for in order shall, however, continue to specify that the person must not do the act “or to instruct, request or encourage anyone else” to do it.

- 19) An obligation to do an act within a specified period shall, wherever possible, state the actual date and time by which the act must be done. This will not be possible, for example, where the act is to be done within a specified period after something else has happened which may happen before or after the date specified for that act.
- 20) Many of the standard orders have a **penal notice** prominently endorsed on the front. However, not all do. If a draft standard order contains a provision to do or not do an act but does not have a penal notice endorsed on the front then such an order will not be capable of being enforced by committal. If committal is sought a copy of the order must be served endorsed with a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets. The warning must be prominently displayed on the front of the copy of the order. See FPR 2010 rule 37.9(1). Subject to the next paragraph, such a penal notice may be endorsed as of right; the permission of the court is not required. It is not necessary that the penal notice is endorsed at the time of the making of the order.
- 21) Orders under sections 8, 14A, 14B(2)(b), 14C(3)(b) or 14D of the Children Act 1989 may only be endorsed with such a penal notice with the permission of the court. See FPR 2010 rule 37.9(3).
- 22) An undertaking contained in an order may be enforced by committal notwithstanding that no penal notice has been endorsed – see FPR rule 37.9(2). However the court may decline to accept or enforce such an undertaking if the order has not been endorsed with a statement in the terms of PD37A para 2.1. Therefore, the better practice is for such a statement to be endorsed whenever an undertaking is given.
- 23) Dates shall be specified without ordinal possessives and must use the full name of the month and the year in full form e.g. 17 May 2013 and not 17<sup>th</sup> May 2013 or 17/5/13 or May 17<sup>th</sup>, 2013 or “this 17<sup>th</sup> day of May 2013”. Times must be stated using the 24 hour format e.g. 17:00 or 12:00, not 5pm or noon.
- 24) Distances up to 1,000 metres should be specified in metres. Beyond that distance either system, imperial or metric, may be used.
- 25) Monetary sums shall be denoted numerically, save that for sums expressed in millions the abbreviation “m” may be used. Other variants e.g. “M” or “millions” should not be used. Currencies shall be expressed by the usual symbols. Thus, for example, £, €, US\$ and A\$ should be used, not GBP, EUR, USD and AUD.
- 26) The body of orders should always be prepared in Times New Roman Font, 12 point, with single spacing. Justification should be used.
- 27) Although not grammatically pure the plural pronoun “their” may be used in a singular sense instead of “his or hers”.

28) Clear English (or Welsh in the Principality) should be used at all times. Archaic legal language (“the party of the first part”, “hereinabove”, “heretofore” etc) should be avoided.



**In the Family Court  
Sitting at [Place]**

**No:**

**The [name of statute] Act [year]**

**The Marriage/Civil Partnership/Relationship/Family of XX and YY**

*Adapt as necessary*

After hearing *[name the advocate(s) who appeared]*....

After consideration of the documents lodged by the parties

*(In the case of an order made without notice)* After reading the statements and hearing the witnesses specified in para x of the recitals below

**ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN OPEN COURT/PRIVATE**

**The parties**

1. The applicant is XX  
The respondent is YY  
The second respondent is ZZ  
*Specify if any party acts by a litigation friend*

**Definitions**

2.

3.

**Recitals**

4. *(In the case of an order made without notice)*
  - (a) This order was made at a hearing without notice to the respondent. The reason why the order was made without notice to the respondent was *[set out]*
  - (b) The Judge read the following affidavits/witness statements *[set out]* and heard oral testimony from *[name]*.
5. *(In the case of an order made following the giving of short informal notice)*

This order was made at a hearing without full notice having been given to the respondent. The reason why the order was made without full notice having been given to the respondent was *[set out]*

6.

**Agreements**

7.

8.

**Undertakings to the court**

9.

10.

**IT IS ORDERED (BY CONSENT) / DECLARED (IN THE INTERIM) THAT:**

11.

Dated

*[Where undertakings have been given]*

**Statements pursuant to PD 37A para 2.2**

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court

.....  
XX

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court

.....  
YY



**In the Family Court  
Sitting at [place]**

**No:**

**The [name of statute] Act [date]**

**The Children**            **AA (a boy/girl born on dd/mm/yyyy)**  
                                 **BB (a boy/girl born on dd/mm/yyyy)**  
                                 **CC (a boy/girl born on dd/mm/yyyy)**

*Adapt as necessary*

After hearing *[name the advocate(s) who appeared]*....

After consideration of the documents lodged by the parties

*(In the case of an order made without notice)* After reading the statements and hearing the witnesses specified in para x of the recitals below

**ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN OPEN COURT/PRIVATE**

**The parties**

1.     The applicant is XX  
          The respondent is YY  
          The second respondent is ZZ  
          The third respondent is AA (acting by his/her guardian EE)  
          The third respondent is BB (acting by his/her guardian EE)  
          The fourth respondent is CC (acting by his/her guardian EE)  
          *Specify if any adult party acts by a litigation friend*

**Definitions**

2.

3.

**Recitals**

4.     *(In the case of an order made without notice)*
  - (a)    This order was made at a hearing without notice to the respondent. The reason why the order was made without notice to the respondent was *[set out]*
  - (b)    The Judge read the following affidavits/witness statements *[set out]* and heard oral testimony from *[name]*.
5.     *(In the case of an order made following the giving of short informal notice)*



This order was made at a hearing without full notice having been given to the respondent. The reason why the order was made without full notice having been given to the respondent was *[set out]*

6.

**Agreements**

7.

8.

**Undertakings to the court**

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10.

**IT IS ORDERED (BY CONSENT) / DECLARED (IN THE INTERIM) THAT:**

11.

Dated

*[Where undertakings have been given]*

**Statements pursuant to PD 37A para 2.2**

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court

.....

XX

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court

.....

YY

