EMERGENCY REMEDIES IN THE FAMILY COURTS

PREPARING, MAKING AND ENFORCING EMERGENCY FAMILY AND CHILD LAW APPLICATIONS

Her Honour Nasreen Pearce BA, LLB *General Editor*

Nigel Fricker QC

Founding Editor

Richard Budworth Barrister, 2–3 Hind Court, London

David Burrows Solicitor Advocate, Bristol

Susan Jackson District Judge, the County Court at Central London and the Family Court at Croydon Nominated Judge of the Court of Protection

Julie O'Malley Barrister, Lamb Building, London

Lisa Phillips Director and Solicitor Advocate, Child Care Law Department, Switalskis Solicitors LLP, Leeds

David Salter MA, LLM, Solicitor Consultant, Mills & Reeve LLP, Leeds, Manchester, Cambridge, Norwich, Birmingham and London Deputy High Court Judge and Recorder Published by Family Law, an imprint of Jordan Publishing, owned by LexisNexis

Jordan Publishing Regus Castlemead Terrace Floor Lower Castle Street Bristol BS1 3AG

Copyright © 2017 Jordan Publishing, owned by LexisNexis

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any way or by any means, including photocopying or recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 085308 3290

Whilst the publishers and the authors have taken every care in preparing the material included in this work, any statements made as to the legal or other implications of particular transactions are made in good faith purely for general guidance and cannot be regarded as a substitute for professional advice. Consequently, no liability can be accepted for loss or expense incurred as a result of relying in particular circumstances on statements made in this work.

Each and every character in the illustrative precedents in this book is an invention. Any apparent likeness to a real person is an unintentional coincidence.

Paragraph

Contents

	Page
Foreword	Prelims-v
Preface	Prelims-vii
Preface to Update 32	Prelims-ix
Scope of the Work and How to Use it	Prelims-xi
Table of Cases	Tables-1
Table of Statutes	Tables-61
Table of Statutory Instruments	Tables-77
Table of International Conventions and EC Legislation	Tables-93
Table of Judicial Practice Directions	Tables-101
Table of CPR/FPR Practice Directions	Tables-105
Table of Abbreviations	Tables-113

GENERAL INTRODUCTION

Introductory: Courts and Legal Background	[1.1]
Interim Remedies: Procedure	[1.10]
Interim Remedies in Particular Courts	[1.15]
Vulnerable Witnesses and Children	[1.29]

DIVISION A APPLICATIONS UNDER THE CHILDREN ACT 1989

Application number		Paragraph
A0	Procedural guides to applications under the Children Act 1989: general	[A.0]
Part One – Pri	vate Law	
A1	Free-standing s 8 proceedings (including application without notice if warranted)	[1.1]
A2	Section 8 order in existing family proceedings (including application without notice if warranted)	[2.1]

Application number		Paragraph
A3	Section 33 and/or s 34 of the Family Law Act 1986	[3.1]
Law and Practice		[3.6]
Part Two – Publ	lic Law	
A4	Child assessment order	[4.1]
A5	Variation and discharge of a child assessment order	[5.1]
A6	Emergency protection order	[6.1]
A7	Extension of emergency protection order and variation of directions about contact under an emergency protection order	[7.1]
A8	Directions about contact under an emergency protection order	[8.1]
A9	Directions about medical or psychiatric examination or other assessment of the child under an emergency protection order	[9.1]
A10	Variation of directions about medical or psychiatric examination or other assessment of the child under an emergency protection order	[10.1]
A11	Warrant for a constable to assist in exercise of powers under an emergency protection order	[11.1]
A12	Variation and discharge of exclusion requirements	[12.1]
A13	Discharge of an emergency protection order	[13.1]
A14	Interim care or supervision order	[14.1]
A15	Directions about medical or psychiatric examination or other assessment of the child under an interim care or supervision order	[15.1]
A16	Variation of directions about medical or psychiatric examination or other assessment of the child under an interim care or supervision order	[16.1]
A17	Refusal of contact with a child in care	[17.1]
A18	Contact with a child in care	[18.1]
A19	Recovery order	[19.1]
A20	Warrant for a constable to assist in exercise of powers of visiting, search and inspection	[20.1]
Law and Practice		[20.9]
Part Three – See	cure Accommodation	
A21	Authority to place a child in secure accommodation	[21.1]
Law and Practice		[21.4]

Application number		Paragraph
Part Four – Prot Family Court	tection from Radicalism and Extremism in the	
A22	Law and practice procedure for radicalisation cases	[22.1]
Law and Practic	e e	[22.3]
DIVISION B WARDSHIP ANI	D THE INHERENT JURISDICTION	
Application number		Paragraph
B1	Application without notice in wardship	[1.1]
B2	Application for search and find order and injunction to restrain undesirable association	[2.1]
B3	Application by local authority under inherent jurisdiction for injunction forbidding undesirable association	[3.1]
B4	Application seeking authority for medical treatment and declaration under the inherent jurisdiction authorising withdrawal of life-sustaining treatment	[4.1]
Law and Practic	e e	[5.0]
DIVISION C ADOPTION		
Application number		Paragraph
C1	Withdrawal of consent	[1.1]
C2	Application for injunction in adoption proceedings	[2.1]
C3	Application for a recovery order	[3.1]
Law and Practice		[4.1]

DIVISION D CHILD ABDUCTION: REGISTRATION AND ENFORCEMENT

Application number		Paragraph
D1	Enforcement in Scotland and Northern Ireland of English and Welsh orders	[1.1]
D2	Enforcement in England and Wales of Scottish orders	[2.1]
D3	Enforcement in England and Wales of orders made in Convention countries	[3.1]
D4	Precedents under the UK-Pakistan Protocol	[4.0]
Law and Practic	e	[4.8]
D5	European material	[5.0]
DIVISION E PERSONAL PRO	DITECTION AND OCCUPATION OF THE FAMILY HO	ME
Application number		Paragraph

Part One – Substantive Applications

	Substantive Appreciations	
E1	Application for non-molestation order and/or occupation order under the Family Law Act 1996, Part IV	[1.1]
E2	Application to vary, extend or discharge a non-molestation order and/or occupation order under the Family Law Act 1996, Part IV	[2.1]
E3	Law and practice: remedies under Family Law Act 1996, Part IV	[3.0]
	- Arrest Committal and Other Means of Enforcement of ace/Breaches of Injunctive Orders and Undertakings	
E4	Request to a Family Court for a warrant of possession to enforce exclusion under an occupation order made under the Family Law Act 1996	[4.1]
E5	Application for warrant of arrest under the Family Law Act 1996, Part IV, s 47(8)	[5.1]
E6	Application to commit for breach of non-molestation undertaking made in Form FL418 under FPR 2010, Part 10	[6.1]
E7	Powers of the Family Court to grant bail	[7.1]
E8	Application to lift suspension of committal and to implement committal	[8.1]
E9	Application by contemnor to purge contempt under FPR 2010, Part 10	[9.1]

Paragraph

Application number		Paragraph
E10	Law and practice: enforcement procedures	[10.1]
E11	Cross-border Protective Measures between European Member States – Brussels I or Brussels IIR or Council Regulation (EC) No 4/2009 and EU Regulation on Mutual Recognition of Protection Measures in Civil Matters (European Civil Protection Regulation (606/2013) of 12 June 2013	[11.0]
E12	Application for a forced marriage protection order under the Family Law Act 1996, Part 4A	[12.1]
Law and Practic	ce	[12.10]
E13	Female genital mutilation protection order	[13.1]
Law and Practice		[13.13]
DIVISION F PROTECTION C	DF FAMILY PROPERTY	

Application number

F1	Application under section 37(2)(a) of the Matrimonial Causes Act 1973	[1.1]
F1A	Applications under section 37(2)(b) and (c) of the Matrimonial Causes Act 1973	[1.8]
Law and Practic	e	[1.13]
F2	Application under section 17 of the Married Women's Property Act 1882 or section 66 of the Civil Partnership Act 2004	[2.1]
Law and Practic	e	[2.13]
F3	Application under section 14 of the Trusts of Land and Appointment of Trustees Act 1996	[3.1]
Law and Practice		[3.16]
F4	Application under Part III of the Matrimonial and Family Proceedings Act 1984	[4.1]
Law and Practic	e	[4.10]
F5	Application under the inherent jurisdiction	[5.1]
Law and Practic	e	[5.10]
F6	Application for a (Mareva) freezing injunction	[6.1]
Law and Practice		[6.7]
F7	Application for an (Anton Piller) search order in pending or proposed matrimonial proceedings	[7.1]
Law and Practic	e	[7.8]

[8.1] [8.10]
[8.10]
[9.1]
[9.10]
[10.1]
[10.6]
[11.1]
[11.3]
[12.1]
[12.6]
[13.1]
[13.3]
Paragraph
[1.1]
[1.9]
Paragraph
[1.1]
[2.0]

Paragraph

DIVISION I APPEALS

	0 1
1. Appeals: introduction	
Law and Practice	
Appeals	[1.1]
Procedure for family proceedings appeals	[1.2]
Emergency remedy: prospects of success on appeal	[1.4]
Procedure for appeals	[1.6]
Applications to set aside and to appeal out of time	[1.16]
Fresh evidence and rehearing the case	[1.20]
Appeals against committal orders and bail pending appeal	[1.35]
Urgent applications	[1.43]
Children Act 1989 appeals	[1.51]
Urgent and out-of-hours applications	[1.53]
Procedure on appeals	[1.55]
2. Appeals to the Court of Appeal	
Step-by-step guide for the preparation of an urgent application to the Court of Appeal for permission to appeal against an occupation order and stay on that order	[2.1]
1 Reasons why a very urgent Court of Appeal hearing is sought	[2.15]
2 Draft grounds of appeal	[2.16]
Appeal to the Court of Appeal against an order transferring residence and granting permission to take the child out of the jurisdiction	[2.17]
Procedural guide: where the judge has granted permission to appeal and a stay on the order pending appeal	[2.18]
Appellant's notice for appeal against order transferring residence and granting permission to take the child permanently out of the jurisdiction	[2.34]
Procedural guide: where the judge has refused permission to appeal, but has granted a short stay on the order to enable the appellant to apply to the Court of Appeal for permission to appeal	[2.35]
Law and Practice	
Procedure for appeals to the Court of Appeal	[2.45]
Normal procedure	[2.56]
Urgent procedure	[2.113]

DIVISION J JUDICIAL REVIEW

Application number		Paragraph
J1	General application for judicial review	[1.1]

APPENDICES

		Page
Appendix 1	Public Funding (Legal Aid) and Emergency Remedies	A1-1
Appendix 2	Principles for Drafting, Filing and Use of Statements and Affidavits	A2-1
Appendix 3	Protocols in Child Abduction Cases	A3-1
Appendix 4	Roles of the Official Solicitor and Cafcass	A4-1
Appendix 5	Official Solicitor, CAFCASS and the National Assembly for Wales: Urgent and Out of Hours Cases in the Family Division of the High Court	A5-1
Appendix 6	Convention Countries	A6-1
Appendix 7	Practice Note Relating to Reporting Restrictions	A7-1
Appendix 8	Practice Guidance	A8-1
Appendix 9	Family Proceedings Fees Order 2008	A9-1
Appendix 10	Radicalisation	A10-1
Index		Index 1