



Children: Enforcement of child arrangements orders relating to contact

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Child arrangements orders regulating contact with children following parental separation are court orders made under section 8 of the *Children Act 1989*. Obtaining a court order may sometimes be only the first step towards a parent gaining contact with a child following separation of the parents. It may be necessary to make further applications to the court, or for other procedures to be followed to enforce the order or secure compliance with its provisions.

This note outlines the powers of enforcement available to the courts when a parent does not comply with a child arrangements order relating to contact. A separate Library note on the process of applying for a child arrangements order (SN/SP/3100) is available on the [Parliament website](#), along with further Library research on [child care issues](#).

This note applies to England and Wales.

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1 Enforcement powers

The *Children and Adoption Act 2006* introduced new powers for the courts in relation to the enforcement of child arrangement orders regulating contact. The provisions, which amended the framework under the *Children Act 1989* to allow the courts to make enforcement orders, were introduced by the then Labour Government following an acknowledgement that the existing system of enforcing provisions relating to contact, by fines or imprisonment, was far from satisfactory.¹

The current statutory scheme for enforcement orders sits alongside the court's general contempt powers and, in an appropriate case, it remains open to a court to consider imposing a custodial sentence for any breach of a substantive contact order that may be proved in committal or family proceedings.²

Details of the range of orders that the courts may make and how to apply for them are set out below.

1.1 Enforcement orders

Who can apply?

Where the terms of a section 8 child arrangements order regulating contact have not been complied with, the following parties can apply to the court for an enforcement order:³

- a) the person who is, for the purposes of the child arrangements order, the person with whom the child concerned lives or is to live;
- b) the person whose contact with the child concerned is provided for in the child arrangements order;
- c) any individual subject to a condition under a section 8 order made in respect of the children⁴ or an activity condition imposed by the child arrangements order;

¹ Department of Constitutional Affairs and Department for Education and Skills, *Parental Separation: Children's Needs and Parents' Responsibilities*, July 2004 Cm 6273

² *Magistrates' Court Act 1980*, s 63

³ *Children Act 1989* s 11J(4).

⁴ *Ibid*, s 11(7)

d) the child concerned (with leave of the court).

Enforcement orders: unpaid work requirement

If a court is satisfied beyond reasonable doubt that a person has failed, without reasonable excuse, to comply with the provisions of a child arrangements order regulating contact, it may make an enforcement order imposing an unpaid work requirement on that person.⁵ A breach of an activity condition, or of a condition attached to a child arrangements order, also constitutes a breach of a main child arrangements order. In making an enforcement order, the court must take into account the welfare of the child concerned.⁶

In deciding whether to make an enforcement order, the court will have to be satisfied that the making of the order is necessary to secure compliance with the child arrangements order in question and that the order is proportionate to the seriousness of the breach.⁷ Before making an enforcement order, the court will also have to obtain and consider information about the person on whom the order would be imposed, and the likely effect of the order on him including, in particular, any conflict with his religious beliefs, or times at which he is at work or attending an educational establishment.⁸

The court must be satisfied that the enforcement measure is available within the local justice area in which the person subject to the enforcement order resides.⁹ An officer from the Children and Family Court Advisory and Support Service (CAFCASS) or a Welsh family proceedings officer will be appointed to monitor and report on compliance with the order.¹⁰

Warning notices

When making or varying a child arrangements order regulating contact, the courts are required to attach a notice warning of the consequences of failing to comply with the child arrangements order.¹¹ An enforcement order cannot be made unless a warning notice has been attached to the child arrangements order and the person given a copy of, or otherwise informed of, the notice. An enforcement order cannot be made against anyone who was aged under 18 at the time of the breach in question¹² and in certain 'excepted cases'.¹³

Where an enforcement order is made, the court must also attach a notice warning of the consequences of breaching that order.¹⁴ The possible consequences will be the imposing of a further enforcement order, the enhancing of the existing enforcement order, or the use of existing sanctions for contempt.

1.2 Other orders

Compensation for financial loss

The 2006 Act also makes provision for the courts to require a person, who has caused financial loss to another person as a result of breaching a contact order (which would include

⁵ *Children Act 1989*, s 11J(2) and (3) and Sch A1, para 3

⁶ *Ibid*, s 11L(7).

⁷ *Ibid*, s 11L(1).

⁸ *Ibid*, s 11L(4).

⁹ *Ibid*, s 11L(2).

¹⁰ *Ibid*, s 11M

¹¹ *Ibid*, s 11I (inserted by *Children and Adoption Act 2006*, s 3)

¹² *Ibid*, s 11K(2)

¹³ *Ibid*, s 11K(3)

¹⁴ *Ibid*, s 11N

breaching a condition attached to a child arrangements order), to pay compensation up to the amount of the loss.¹⁵ Where a court is satisfied that:

- a) an individual has failed (without reasonable excuse) to comply with a section 8 child arrangements order; and
- b) a person falling within a specified group has suffered financial loss by reason of the breach,

it may make an order requiring the individual in breach to pay the person compensation in respect of his financial loss.¹⁶ The court must take into account the welfare of any child concerned, and the financial circumstances of the person in breach, when making such an order.¹⁷

A person is eligible for compensation if he is:¹⁸

- a) the person who is, for the purposes of the child arrangements order, the person with whom the child concerned lives or is to live;
- b) the person whose contact with the child concerned is provided for in the child arrangements order;
- c) any individual subject to a condition under a section 8 order made in respect of the children¹⁹ or an activity condition imposed by the child arrangements order; or
- d) the child concerned.²⁰

The amount of compensation is to be determined by the court, but may not exceed the amount of the applicant's financial loss.²¹

A court will not be able to make an order for financial compensation where the person in breach did not receive a warning notice and was not otherwise informed of its terms.²² A compensation order cannot be made against anyone who was aged under 18 years at the time of the breach in question²³ and in certain 'excepted cases'.²⁴

Discharge of a residence order

In addition to contempt of court proceedings, it is possible that when a child arrangements order regulating contact is breached, an application may be successfully made to discharge a child arrangements order regulating the child's living arrangements (if one is in force), which may lead to a new child arrangements order concerning residence being made that is in favour of the person to whom contact has been denied. However, in the case of *Re K (Contact: Committal Order)* Lord Justice Hale 'stressed that any decision to change a child's residence in the context of difficulties over contact must be fully justified by affording paramount consideration to the child's welfare, and is not to be imposed as a form of punishment to a parent.'²⁵

¹⁵ *Ibid*, s 11O, inserted by *Children and Adoption Act 2006*, s 3

¹⁶ *Ibid*

¹⁷ *Ibid*, s 11O(14).

¹⁸ *Ibid*, s 11O(6).

¹⁹ *Ibid*, s11(7)

²⁰ A child or a representative requires leave of the court in order to apply for a compensation order

²¹ *Children Act 1989*, s11O(9)

²² *Ibid*, s11P(1)

²³ *Ibid*, s11P(2)

²⁴ *Ibid*, s11P(3)

²⁵ [2003] 1 FLR 277

The change of a child arrangements order concerning residence if contact provisions are disobeyed has become more common.²⁶ However, the Court of Appeal warned that a change of residence was a judicial weapon of last resort and its use was premature where there had not been any breach of a defined child arrangements order regulating contact.²⁷

1.3 Contempt proceedings

The current statutory scheme for enforcement orders sits alongside the court's general contempt powers and, in an appropriate case, it remains open to a court to consider imposing a fine or a custodial sentence for any breach of a child arrangements order relating to contact that may be proved in committal or family proceedings.²⁸

A prerequisite for an application for proceedings for contempt of court is that the alleged contemnor is given notice of the consequences of a breach of the order. For cases where a warning notice was not attached to an enforcement order, this is normally achieved by the attachment of a penal notice to the order. Breach of such an order may then give rise to committal proceedings. The courts have jurisdiction to punish a breach of any order by way of a fine of up to £2,500²⁹ or, committal to prison for up to two years in contempt proceedings.³⁰

In the case of *Re M (Contact Order: Committal)*, the Court of Appeal provided the following guidance on the power to commit a person to prison for contempt:

A judge has power to commit a person for contempt of court of his own motion but this power should be used only as a last resort in an urgent and exceptional case. In a case of civil contempt, the judge should not both initiate the committal and then adjudicate upon the committal; as such, in an exceptional case, where a judge commences committal proceedings of his own motion, he should transfer the proceedings to another judge to hear them. Before pursuing such a course, the judge should pause for thought and reflection, and invite the Official Solicitor to become involved.³¹

²⁶ See for example Baroness Hale in *Re G (Children)* [2006] UKHL 43, at para 42

²⁷ *Re A (Residence Order)* [2009] EWCA Civ 1141

²⁸ *Magistrates' Court Act 1980*, s63

²⁹ *Contempt of Court Act 1981*, s14(2)

³⁰ *Ibid*, s14(1)

³¹ [1999] 1 FLR 810