



/guide



## Your questions answered

### **HOW TO:** **APPLY FOR AND OBTAIN AN** **OCCUPATION ORDER**

[Watch the supporting 'Obtain an Occupation Order' video \(LINK TO BE UPDATED\)](#)

**T**his Stowe talks: How to guide explains how to apply for and obtain an occupation order.

#### What is an occupation order?

An occupation order is an order made by the court to regulate the occupation of a family home.

They can enforce the right of someone to remain in a property, exclude someone from a property, give permission for someone to enter and remain in a property, regulate the occupation of a property, e.g. the living arrangements, prohibit, suspend or restrict the exercise of someone's occupation in a property, and exclude someone from a defined area in the property.

They do not change the ownership of the property, they simply confirm who can remain living in it. The court can also make an order on who pays the mortgage or rent, repair and maintain the property.

The most suitable order will depend on the individual circumstances of each case, and therefore it is always advisable to seek legal advice.

#### Who can apply for an occupation order?

You can apply for occupation order if you fit the following criteria:

- You are or have previously been married to each other
- You are or have previously been civil partners of each other
- You are or have previously been cohabitants
- You live or have lived in the same household (excluding if you live together merely because you are a tenant, lodger or boarder)
- You are relatives
- You have agreed to marry one another (even if the engagement has been called off)

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- You have or have had an intimate personal relationship for a significant period of time
- You have entered into a civil partnership agreement
- In relation to a child, you are the parent of the child or have or have had parental responsibility for the child

These categories are known as associated persons. It is important to apply under the correct one, as there are different sections under the family law act you need to apply under.

Each section may have slightly different criteria, which the court will want a person to consider and address in their supporting statements.

## Why would you need an occupation order?

Occupation orders are not made lightly by the court, and usually only in very serious circumstances. For example, cases of domestic abuse, or where one party has already left the home and lives elsewhere. It is unlikely an occupation order will be made to oust someone out of their home simply because you have separated and do not wish to live with them anymore.

## How do you apply for an occupation order?

To apply for an occupation order, you must complete a [Form FL401: Application for a non molestation order/an application for an occupation order](#) and send this to the court.

It is also necessary to file a supporting statement detailing the background and reasons why you wish the court to make an order. You would not be required to provide evidence at this stage. This will usually follow after the first hearing.

There is currently no fee payable to the court to issue an application.

## What criteria needs to be met?

When making an application for an occupation order, the court's duty is to consider the balance of harm test. This looks at the harm which will be suffered by the applicant or child if the order is not made - against any harm suffered by the respondent if the order is made.

If this test fails, the court has the discretion to make an order anyway.

In deciding whether to grant an occupation order, the court will consider the housing needs and housing/financial resources of the parties and any children, the likely effect of an order, including the health, safety or well-being of any children, and the behaviour of the parties.

Each case is viewed individually, and the criteria will be different. Therefore, it is important to get legal advice from the outset.

## Do you have to go to court?

In the case of occupation orders, the court may deal with them on paper without your attendance, or they may require you to attend court, especially if they have further questions to ask.

Usually occupation orders are made on notice, which means the court will issue you the application, and you and the respondent will be given a time and date to attend a hearing at the court. If there are allegations of domestic abuse, the court can provide screens so you do not need to see the respondent.

In serious circumstances, you can ask for the occupation order to be made without the respondent knowing. However, these orders are very difficult to obtain, as the respondent does not have the opportunity to give their version of events.

An occupation order can be made at the first hearing. However, if it is disputed by the respondent, the court may make an order against them and then schedule a further hearing, while they wait for information and evidence before making a final decision.

Once the order is granted, it must be personally served on the respondent to ensure it is enforceable.

## How long does an occupation order last?

The duration of the occupation order depends on which section you apply under as an "associated persons". They can be made for a specified period, until a specified event, for example until the financial matters of your divorce are resolved, or until a further order is made extending the order.

Depending on the circumstances, some orders can only be made for a period not exceeding 6 months, but can be extended on one or more occasions for a maximum of six months each time.

## What if someone breaches the order?

If someone breaches the occupation order, an application can be made for a warrant to arrest the respondent and bring that person back before the court to consider the breach.

It is also possible to have a power of arrest attached to the order or certain sections of the order. The court can action this if the respondent has used or threatened violence.

If there is a power of arrest attached to the order, the police can arrest the respondent, and they will be brought back before a judge in the family court to decide what happens next.

If someone is found in breach of an occupation order, this is contempt of court and can be punished by a fine or imprisonment.

## The importance of legal advice

Obtaining an occupation order can be difficult and complex. This is because it requires a thorough understanding of the legal process. Additionally, the process can be time-consuming, as it could involve multiple court appearances and hearings.

It is important to speak to a family lawyer, because there are different categories of "associated people" and while this video outlines general criteria, the court has wide discretion, and it is therefore vital to ensure you apply under the right section.

When making an application, your supporting statement and the evidence you provide are key to the success of your application. It is therefore important to seek the assistance of a family lawyer who is an expert in this area and can give you the best possible chance of obtaining the protective order.

Court hearings can be a daunting task for anyone, especially for domestic abuse victims, where the incidents you have suffered are discussed, and your abuser is potentially also present in the hearing room.

## Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit [www.stowfamilylaw.co.uk](http://www.stowfamilylaw.co.uk)

This can feel like you are in a very vulnerable position, and it is therefore a good idea to instruct a family lawyer, as they or a barrister can be present at the court hearing to represent you and put your case forward on your behalf.

It is also a great comfort to have another person who is supportive of you present with you in the court building, where you may be uncomfortable being in the vicinity of your perpetrator.

## Useful links

Government portal to make an online application for a non-molestation / occupation order: <https://www.gov.uk/injunction-domestic-violence>

FL401: Non-molestation / occupation order application form [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1140663/FL401\\_0223\\_save.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1140663/FL401_0223_save.pdf)

FL401T: Template supporting statement [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1185378/FL401T\\_0721.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1185378/FL401T_0721.pdf)

C8: Apply to keep your details private in the family court [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/993551/c8-eng.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993551/c8-eng.pdf)

N117: Form that sets out Undertakings made to the court <https://www.gov.uk/government/publications/form-n117-general-form-of-undertaking>