



# Matrimonial and Family Proceedings Act 1984

1984 CHAPTER 42

## PART V

FAMILY BUSINESS : DISTRIBUTION AND TRANSFER

### *Preliminary*

#### **32 What is family business**

In this Part of this Act—

" family business " means business of any description which in the High Court is for the time being assigned to the Family Division and to no other Division by or under section 61 of (and Schedule 1 to) the Supreme Court Act 1981;

" family proceedings " means proceedings which are family business;

" matrimonial cause " means an action for divorce, nullity of marriage, judicial separation or jactitation of marriage;

and " the 1973 Act " means the Matrimonial Causes Act 1973.

### *Jurisdiction of county courts in matrimonial causes and matters*

#### **33 Jurisdiction of county courts in matrimonial causes**

- (1) The Lord Chancellor may by order designate any county court as a divorce county court and any court so designated shall have jurisdiction to hear and determine any matrimonial cause, except that it shall have jurisdiction to try such a cause only if it is also designated in the order as a court of trial.

In this Part of this Act " divorce county court " means a county court so designated.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The jurisdiction conferred by this section on a divorce county court shall be exercisable throughout England and Wales, but rules of court may provide for a matrimonial cause pending in one such court to be heard and determined in another or partly in that and partly in another.
- (3) Every matrimonial cause shall be commenced in a divorce county court and shall be heard and determined in that or another such court unless or except to the extent it is transferred to the High Court under section 39 below or section 41 of the County Courts Act 1984 (transfer to High Court by order of High Court).
- (4) The Lord Chancellor may by order designate a divorce county court as a court for the exercise of jurisdiction in matrimonial matters arising under Part III of this Act.
- (5) The power to make an order under subsection (1) or (4) above shall be exercisable by statutory instrument.

#### **34 Jurisdiction of divorce county courts as respects financial relief and protection of children**

- (1) Subject to subsections (2) and (3) below, a divorce county court shall have the following jurisdiction, namely—
  - (a) jurisdiction to exercise any power exercisable under Part II or Part III of the 1973 Act in connection with any petition, decree or order pending in or made by such a court and to exercise any power under section 27 or 35 of that Act;
  - (b) if designated by an order under section 33(4) above, jurisdiction to exercise any power under Part III of this Act.
- (2) Any proceedings for the exercise of a power which a divorce county court has jurisdiction to exercise by virtue of subsection (1)(a) or (b) above shall be commenced in such divorce county court as may be prescribed by rules of court.
- (3) A divorce county court shall not by virtue of subsection (1)(a) above have jurisdiction to exercise any power under section 32, 33, 36 or 38 of the 1973 Act; but nothing in this section shall prejudice the exercise by a county court of any jurisdiction conferred on county courts by any of those sections.
- (4) Nothing in this section shall affect the jurisdiction of a magistrates' court under section 35 of the 1973 Act.

#### **35 Consideration of agreements or arrangements**

Any provision to be made by rules of court for the purposes of section 7 of the 1973 Act with respect to any power exercisable by the court on an application made before the presentation of a petition shall confer jurisdiction to exercise the power on divorce county courts.

#### **36 Assignment of Circuit judges to matrimonial proceedings**

The jurisdiction conferred by the preceding provisions of this Part of this Act on divorce county courts, so far as it is exercisable by judges of such courts, shall be exercised by such Circuit judges as the Lord Chancellor may direct.

*Distribution and transfer of family business and proceedings*

**37 Directions as to distribution and transfer of family business and proceedings**

The President of the Family Division may, with the concurrence of the Lord Chancellor, give directions with respect to the distribution and transfer between the High Court and county courts of family business and family proceedings.

**38 Transfer of family proceedings from High Court to county court**

- (1) At any stage in any family proceedings in the High Court the High Court may, if the proceedings are transferable under this section, either of its own motion or on the application of any party to the proceedings, order the transfer of the whole or any part of the proceedings to a county court.
- (2) The following family proceedings are transferable to a county court under this section, namely—
  - (a) all family proceedings commenced in the High Court which are within the jurisdiction of a county court or divorce county court;
  - (b) wardship proceedings, except applications for an order that a minor be made, or cease to be, a ward of court; and
  - (c) all family proceedings transferred from a county court to the High Court under section 39 below or section 41 of the County Courts Act 1984 (transfer to High Court by order of High Court).
- (3) Proceedings transferred under this section shall be transferred to such county court or, in the case of a matrimonial cause or matter within the jurisdiction of a divorce county court only, such divorce county court as the High Court directs.
- (4) The transfer shall not affect any right of appeal from the order directing the transfer, or the right to enforce in the High Court any judgment signed, or order made, in that Court before the transfer.
- (5) Where proceedings are transferred to a county court under this section, the county court—
  - (a) if it has no jurisdiction apart from this paragraph, shall have jurisdiction to hear and determine those proceedings ;
  - (b) shall have jurisdiction to award any relief which could have been awarded by the High Court.

**39 Transfer of family proceedings to High Court from county court**

- (1) At any stage in any family proceedings in a county court, the county court may, if the proceedings are transferable under this section, either of its own motion or on the application of any party to the proceedings, order the transfer of the whole or any part of the proceedings to the High Court.
- (2) The following family proceedings are transferable to the High Court under this section, namely—
  - (a) all family proceedings commenced in a county court or divorce county court; and
  - (b) all family proceedings transferred from the High Court to a county court or divorce county court under section 38 above.

*Rules of court and fees*

**40 Family proceedings rules**

- (1) Subject to subsection (2) below, the power to make rules of court for the purposes of family proceedings in the High Court or county courts shall be exercisable by the Lord Chancellor together with any four or more of the following persons, namely—
- (a) the President of the Family Division,
  - (b) one puisne judge attached to that Division,
  - (c) one registrar of the principal registry of that Division,
  - (d) two Circuit Judges,
  - (e) one registrar appointed under the County Courts Act 1984,
  - (f) two practising barristers, and
  - (g) two practising solicitors, of whom one shall be a member of the Council of the Law Society and the other a member of the Law Society and also of a local law society.
- (2) Subsection (1) above is without prejudice to the powers of the following authorities to make rules in respect of the matters referred to below and rules in respect of those matters shall continue to be made by those authorities and shall not be made by the authority constituted by subsection (1) above.

The rules and rule-making authorities are—

- (a) adoption rules made by the Lord Chancellor under section 9(3) of the Adoption Act 1958, section 12(1) of the Adoption Act 1968 or section 66(1) of the Adoption Act 1976;
  - (b) probate rules made by the President of the Family Division with the concurrence of the Lord Chancellor under section 127 of the Supreme Court Act 1981.
- (3) The persons to act in pursuance of subsection (1) above with the Lord Chancellor, other than the President of the Family Division, shall be appointed by the Lord Chancellor for such time as he may think fit.
- (4) Rules made under this section may, in relation to county court rules, do anything which, as special rules, they are authorised by section 84 of the Supreme Court Act 1981 to do in relation to Supreme Court Rules and may—
- (a) modify or exclude the application of any provision of the County Courts Act 1984 ; and
  - (b) provide for the enforcement in the High Court of orders made in a divorce county court.
- (5) Rules of court under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and the Statutory Instruments Act 1946 shall apply to a statutory instrument containing such rules as if the rules had been made by a Minister of the Crown.

**41 Fees in family proceedings**

The fees to be taken in any family proceedings in the High Court or any county court shall be such as the Lord Chancellor with the concurrence of the Treasury may prescribe from time to time by order made by statutory instrument.

*County court proceedings in principal registry*

**42 County court proceedings in principal registry of Family Division**

- (1) Sections 33 to 35 above shall not prevent the commencement of any proceedings in the principal registry except where rules of court under section 34(2) above otherwise provide; and the following provisions of this section shall have effect for the purposes of enabling proceedings to be dealt with in that registry as in a divorce county court.
- (2) The jurisdiction in matrimonial causes or matters conferred by sections 33, 34 and 35 above on divorce county courts shall be exercised in the principal registry—
  - (a) so far as it is exercisable by judges of such courts, at such sittings and in such places as the Lord Chancellor may direct; and
  - (b) so far as it is exercisable by registrars of such courts, by such registrars or by registrars and other officers of the principal registry according as rules of court may provide;and rules of court may make provision for treating, for any purposes specified in the rules, matrimonial causes and matters pending in the registry with respect to which that jurisdiction is exercisable as pending in a divorce county court and for the application of section 74(3) of the Solicitors Act 1974 (costs) with respect to proceedings so treated.
- (3) Where, by virtue of rules under subsection (2) above, a matrimonial cause is pending in the registry as in a divorce county court, any ancillary or related proceedings which could be taken in a divorce county court and which are not of a description excluded by the rules from the operation of this subsection may be taken and dealt with in the registry as in a divorce county court.
- (4) The principal registry shall be treated as a divorce county court—
  - (a) for the purposes of any provision to be made by rules of court under section 33(2) above ;
  - (b) for the purpose of any provision to be made under section 34(2) above prescribing the county court in which any proceedings are to be commenced ; and
  - (c) for the purpose of any transfer of family proceedings under section 38 or 39 above between the High Court and a divorce county court.
- (5) Rules of court shall make provision for securing, with respect to family proceedings dealt with under this section, that, as nearly as may be, the same consequences shall follow—
  - (a) as regards service of process, as if proceedings commenced in the principal registry had been commenced in a divorce county court; and
  - (b) as regards enforcement of orders, as if orders made in that registry in the exercise of the family jurisdiction conferred by sections 33, 34 and 35 above on divorce county courts were orders made by such a court.
- (6) In this section " the principal registry " means the principal registry of the Family Division of the High Court and, for the purposes of subsection (3) above, proceedings are " ancillary " to a matrimonial cause if they are connected with the cause and are " related " to a matrimonial cause if they are for protecting or otherwise relate to any rights, or the exercise of any rights, of the parties to the marriage as husband and wife or any children of the family.

*Distribution of business: proceedings under s. 17 of Married Women's Property Act 1882*

**43 Distribution of business: proceedings under s. 17 of Married Women's Property Act 1882**

In section 17 of the Married Women's Property Act 1882 (which provides for the summary determination of property disputes between spouses and, as extended, former spouses and former engaged couples) for the words after " in a summary way " there shall be substituted the words " to the High Court or such county court as may be prescribed and the court may, on such an application (which may be heard in private, make such order with respect to the property as it thinks fit.

In this section " prescribed " means prescribed by rules of court and rules made for the purposes of this section may confer jurisdiction on county courts whatever the situation or value of the property in dispute."

*Magistrates' courts' domestic jurisdiction*

**44 Domestic proceedings in magistrates' courts to include applications to alter maintenance agreements**

In section 65(1) of the Magistrates' Courts Act 1980 (which defines what proceedings are domestic proceedings) after paragraph (e) there shall be inserted the following paragraph—

“(ee) section 35 of the Matrimonial Causes Act 1973 ;”.