
STATUTORY INSTRUMENTS

1991 No. 1677

The Children (Allocation of Proceedings) Order 1991

TRANSFER OF PROCEEDINGS

Disapplication of enactments about transfer

5. Sections 38 and 39 of the Matrimonial and Family Proceedings Act 1984(1) shall not apply to proceedings under the Act or under the Adoption Act 1976.

Transfer from one magistrates' court to another

6. A magistrates' court (the "transferring court") shall transfer proceedings under the Act or under the Adoption Act 1976 to another magistrates' court (the "receiving court") where—

- (a) having regard to the principle set out in section 1(2), the transferring court considers that the transfer is in the interests of the child—
 - (i) because it is likely significantly to accelerate the determination of the proceedings,
 - (ii) because it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in the receiving court, or
 - (iii) for some other reason, and
- (b) the receiving court, by its justices' clerk (as defined by rule 1(2) of the Family Proceedings Courts (Children Act 1989) Rules 1991(2)), consents to the transfer.

Transfer from magistrates' court to county court by magistrates' court

7.—(1) Subject to paragraphs (2), (3) and (4) and to articles 15 to 18, a magistrates' court may, upon application by a party or of its own motion, transfer to a county court proceedings of any of the kinds mentioned in article 3(1) where it considers it in the interests of the child to do so having regard, first, to the principle set out in section 1(2) and, secondly, to the following questions:

- (a) whether the proceedings are exceptionally grave, important or complex, in particular—
 - (i) because of complicated or conflicting evidence about the risks involved to the child's physical or moral well-being or about other matters relating to the welfare of the child;
 - (ii) because of the number of parties;
 - (iii) because of a conflict with the law of another jurisdiction;
 - (iv) because of some novel and difficult point of law; or
 - (v) because of some question of general public interest;
- (b) whether it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in another court; and

(1) 1984 c. 42.
(2) S.I.1991/1395.

(c) whether transfer is likely significantly to accelerate the determination of the proceedings, where—

- (i) no other method of doing so, including transfer to another magistrates' court, is appropriate, and
- (ii) delay would seriously prejudice the interests of the child who is the subject of the proceedings.

(2) Notwithstanding paragraph (1), proceedings of the kind mentioned in subparagraph (g) to (j), (1), (m), (p) or (q) of article 3(1) shall not be transferred from a magistrates' court.

(3) Notwithstanding paragraph (1), proceedings of the kind mentioned in subparagraph (a) or (n) of article 3(1) shall only be transferred from a magistrates' court to a county court in order to be heard together with other family proceedings which arise out of the same circumstances as gave rise to the proceedings to be transferred and which are pending in another court.

(4) Notwithstanding paragraphs (1) and (3), proceedings of the kind mentioned in article 3(1) (a) shall not be transferred from a magistrates' court which is not a family proceedings court within the meaning of section 92(1).

8. Subject to articles 15 to 18, a magistrates' court may transfer to a county court proceedings under the Act or under the Adoption Act 1976, being proceedings to which article 7 does not apply, where, having regard to the principle set out in section 1(2), it considers that in the interests of the child the proceedings can be dealt with more appropriately in that county court.

Transfer from magistrates' court following refusal of magistrates' court to transfer

9.—(1) Where a magistrates' court refuses to transfer proceedings under article 7, a party to those proceedings may apply to the care centre listed in column (ii) of Schedule 2 to this Order against the entry in column (i) for the petty sessions area or London commission area in which the magistrates' court is situated for an order under paragraph (2).

(2) Upon hearing an application under paragraph (1) the court may transfer the proceedings to itself where, having regard to the principle set out in section 1(2) and the questions set out in article 7(1)(a) to (c), it considers it in the interests of the child to do so.

(3) Upon hearing an application under paragraph (1) the court may transfer the proceedings to the High Court where, having regard to the principle set out in section 1(2), it considers—

- (a) that the proceedings are appropriate for determination in the High Court, and
- (b) that such determination would be in the interests of the child.

Transfer from one county court to another

10. Subject to articles 15 to 17, a county court (the “transferring court”) shall transfer proceedings under the Act or under the Adoption Act 1976 to another county court (the “receiving court”) where—

- (a) the transferring court, having regard to the principle set out in section 1(2), considers the transfer to be in the interests of the child, and
- (b) the receiving court is—
 - (i) of the same class or classes, within the meaning of article 2, as the transferring court, or
 - (ii) to be presided over by a judge or district judge who is specified by directions under section 9 of the Courts and Legal Services Act 1990(3) for the same purposes as the judge or district judge presiding over the transferring court.

Transfer from county court to magistrates' court by county court

11. A county court may transfer to a magistrates' court before trial proceedings which were transferred under article 7(1) where the county court, having regard to the principle set out in section 1(2) and the interests of the child, considers that the criterion cited by the magistrates' court as the reason for transfer—

- (a) in the case of the criterion in article 7(1)(a), does not apply,
- (b) in the case of the criterion in article 7(1)(b), no longer applies, because the proceedings with which the transferred proceedings were to be heard have been determined,
- (c) in the case of the criterion in article 7(1)(c), no longer applies.

Transfer from county court to High Court by county court

12. A county court may transfer proceedings under the Act or the Adoption Act 1976 to the High Court where, having regard to the principle set out in section 1(2), it considers—

- (a) that the proceedings are appropriate for determination in the High Court, and
- (b) that such determination would be in the interests of the child.

Transfer from High Court to county court

13. Subject to articles 15, 16 and 18, the High Court may transfer to a county court proceedings under the Act or the Adoption Act 1976 where, having regard to the principle set out in section 1(2), it considers that the proceedings are appropriate for determination in such a court and that such determination would be in the interests of the child.