
STATUTORY INSTRUMENTS

2008 No. 2836

The Allocation and Transfer of Proceedings Order 2008

PART 3

TRANSFER OF PROCEEDINGS

SECTION 1

GENERAL

Disapplication of enactments about transfer

12. The proceedings to which this Order applies are excluded from the operation of sections 38 and 39 of the Matrimonial and Family Proceedings Act 1984 (transfer of family proceedings).

General rules about transfer of proceedings

13.—(1) When making any decision about the transfer of proceedings under articles 14, 15, 17 and 18 the court must have regard to the need to avoid delay in the proceedings.

(2) Articles 16 and 19 do not apply if the transfer of proceedings would cause the determination of the proceedings to be delayed.

(3) The transfer of proceedings under this Part may be made at any stage of the proceedings and whether or not the proceedings have already been transferred.

SECTION 2

TRANSFER OF PROCEEDINGS TO SPECIFIED LEVEL OF COURT

Transfer of proceedings from one magistrates' court to another

14. A magistrates' court (the "transferring court") may transfer proceedings to another magistrates' court (the "receiving court") only if the transferring court considers that—

- (a) the transfer will significantly accelerate the determination of the proceedings;
- (b) it is more convenient for the parties or for the child who is the subject of the proceedings for the proceedings to be dealt with by the receiving court; or
- (c) there is another good reason for the proceedings to be transferred.

Transfer of proceedings from magistrates' court to county court

15.—(1) Subject to paragraphs (2) and (3), a magistrates' court may transfer the whole or any part of proceedings to a county court only if the magistrates' court considers that—

- (a) the transfer will significantly accelerate the determination of the proceedings;
- (b) there is a real possibility of difficulty in resolving conflicts in the evidence of witnesses;
- (c) there is a real possibility of a conflict in the evidence of two or more experts;

- (d) there is a novel or difficult point of law;
- (e) there are proceedings concerning the child in another jurisdiction or there are international law issues;
- (f) there is a real possibility that enforcement proceedings may be necessary and the method of enforcement or the likely penalty is beyond the powers of a magistrates' court;
- (g) there is a real possibility that a guardian ad litem will be appointed under rule 9.5 of the Family Proceedings Rules 1991(1);
- (h) there is a real possibility that a party to proceedings is a person lacking capacity within the meaning of the Mental Capacity Act 2005(2) to conduct the proceedings; or
- (i) there is another good reason for the proceedings to be transferred.

(2) Proceedings under any of the provisions mentioned in articles 5(1)(a) to (c) or 5(2)(i) to (l) may not be transferred from a magistrates' court.

(3) Proceedings under section 25 of the 1989 Act (use of accommodation for restricting liberty) may not be transferred from a magistrates' court which is not a family proceedings court within the meaning of section 67 of the Magistrates' Courts Act 1980(3).

Transfer of proceedings from county court to magistrates' court

16.—(1) A county court must transfer to a magistrates' court proceedings which were transferred under article 15(1) if the county court considers that none of the criteria in article 15(1) applies.

(2) Subject to articles 5(3) and (4), 6 and 8, a county court must transfer to a magistrates' court proceedings which were started in the county court if the county court considers that none of the criteria in article 15(1)(b) to (i) applies.

Transfer of proceedings from one county court to another

17. Subject to articles 16, 20, 21 and 22 a county court (the "transferring court") may transfer proceedings to another county court (the "receiving court") only if the transferring court considers that—

- (a) the transfer will significantly accelerate the determination of the proceedings;
- (b) it is more convenient for the parties or for the child who is the subject of the proceedings for the proceedings to be dealt with by the receiving court;
- (c) the proceedings involve the determination of a question of a kind mentioned in section 59(1) of the 1996 Act and the property in question is situated in the district of the receiving court; or
- (d) there is another good reason for the proceedings to be transferred.

Transfer of proceedings from county court to High Court

18. A county court may transfer proceedings to the High Court only if the county court considers that—

- (a) the proceedings are exceptionally complex;
- (b) the outcome of the proceedings is important to the public in general; or
- (c) there is another substantial reason for the proceedings to be transferred.

(1) S.I. 1991/1247; relevant amending instruments are S.I. 2001/821, S.I. 2005/559 and S.I. 2005/2922.

(2) 2005 c. 9.

(3) 1980 c. 43.

Transfer of proceedings from High Court

19. The High Court must transfer to a county court or a magistrates' court proceedings which were started in, or transferred to, the High Court if the High Court considers that none of the criteria in article 18 applies.

SECTION 3

TRANSFER OF PROCEEDINGS TO A SPECIFIED CLASS OF COUNTY COURT

Transfer of proceedings under the 1989 Act

20.—(1) Where proceedings under Part 1 or 2 of, or Schedule 1 or paragraphs 4 to 7 or 9 of Schedule A1 to, the 1989 Act are to be transferred to a county court, they must be transferred to a family hearing centre.

(2) Where proceedings under Part 3, 4 or 5 of the 1989 Act are to be transferred to a county court, they must be transferred to a care centre.

Transfer of proceedings under the 2002 Act

21.—(1) Subject to paragraph (2), where proceedings under the 2002 Act are to be transferred to a county court, they must be transferred to an adoption centre.

(2) Where proceedings for—

(a) a Convention Adoption Order; or

(b) an adoption order under the 2002 Act where section 83 of that Act applies,

are to be transferred to a county court, they must be transferred to an intercountry adoption centre.

Transfer of proceedings under Part 4A of the 1996 Act

22.—(1) Where proceedings under Part 4A of the 1996 Act are to be transferred to a county court, they must be transferred to a forced marriage county court.

(2) Articles 17 to 19 apply to the transfer of proceedings under Part 4A of the 1996 Act as they apply to the transfer of other proceedings but as if the modification in paragraph (3) were made.

(3) Article 19 is to be read as if “or a magistrates’ court” were omitted.

SECTION 4

TRANSFER OF PROCEEDINGS TO PARTICULAR COURT

Transfer of proceedings when arrested for breach of order under Part 4 of the 1996 Act

23. Where a person is brought before—

(a) the relevant judicial authority in accordance with section 47(7)(a) of the 1996 Act (arrest for breach of order); or

(b) a court by virtue of a warrant issued under section 47(9) of the 1996 Act,

and the matter is not then disposed of immediately, the relevant judicial authority or the court may transfer the matter to the relevant judicial authority or court which attached the power of arrest under section 47(2) or (3) of the 1996 Act or which issued the warrant.

Transfer of proceedings when arrested for breach of order under Part 4A of the 1996 Act

24. Where a person is brought before—

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- (a) the relevant judge in accordance with section 63I(3) of the 1996 Act (arrest for breach of order); or
- (b) a court by virtue of a warrant issued under section 63J(3) of the 1996 Act,

and the matter is not then disposed of immediately, the relevant judge or the court may transfer the matter to the relevant judge or court which attached the power of arrest under section 63H(2) or (4) of the 1996 Act or which issued the warrant.