



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART I

#### PROCEDURE ETC. IN CIVIL COURTS

##### *Allocation and transfer of business*

## 2 Transfer of proceedings between courts.

- (1) The following section shall be substituted for section 40 of the <sup>M1</sup>County Courts Act 1984 (transfer of proceedings to county court)—

### **“40 Transfer of proceedings to county court.**

- (1) Where the High Court is satisfied that any proceedings before it are required by any provision of a kind mentioned in subsection (8) to be in a county court it shall—
- order the transfer of the proceedings to a county court; or
  - if the court is satisfied that the person bringing the proceedings knew, or ought to have known, of that requirement, order that they be struck out.
- (2) Subject to any such provision, the High Court may order the transfer of any proceedings before it to a county court.
- (3) An order under this section may be made either on the motion of the High Court itself or on the application of any party to the proceedings.
- (4) Proceedings transferred under this section shall be transferred to such county court as the High Court considers appropriate, having taken into account the convenience of the parties and that of any other persons likely to be affected and the state of business in the courts concerned.

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*Changes to legislation: Courts and Legal Services Act 1990, Section 2 is up to date with all changes known to be in force on or before 10 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (5) The transfer of any proceedings under this section shall not affect any right of appeal from the order directing the transfer.
- (6) Where proceedings for the enforcement of any judgment or order of the High Court are transferred under this section—
  - (a) the judgment or order may be enforced as if it were a judgment or order of a county court; and
  - (b) subject to subsection (7), it shall be treated as a judgment or order of that court for all purposes.
- (7) Where proceedings for the enforcement of any judgment or order of the High Court are transferred under this section—
  - (a) the powers of any court to set aside, correct, vary or quash a judgment or order of the High Court, and the enactments relating to appeals from such a judgment or order, shall continue to apply; and
  - (b) the powers of any court to set aside, correct, vary or quash a judgment or order of a county court, and the enactments relating to appeals from such a judgment or order, shall not apply.
- (8) The provisions referred to in subsection (1) are any made—
  - (a) under section 1 of the Courts and Legal Services Act 1990; or
  - (b) by or under any other enactment.
- (9) This section does not apply to family proceedings within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984.”
- (2) In section 41 of the <sup>M2</sup>County Courts Act 1984 (transfer to High Court by order of the High Court), the following subsection shall be added at the end—
  - “(3) The power conferred by subsection (1) shall be exercised subject to any provision made—
    - (a) under section 1 of the Courts and Legal Services Act 1990; or
    - (b) by or under any other enactment.”
- (3) The following section shall be substituted for section 42 of the County Courts Act 1984 (transfer to High Court by order of a county court)—

**“42 Transfer to High Court by order of a county court.**

- (1) Where a county court is satisfied that any proceedings before it are required by any provision of a kind mentioned in subsection (7) to be in the High Court, it shall—
  - (a) order the transfer of the proceedings to the High Court; or
  - (b) if the court is satisfied that the person bringing the proceedings knew, or ought to have known, of that requirement, order that they be struck out.
- (2) Subject to any such provision, a county court may order the transfer of any proceedings before it to the High Court.
- (3) An order under this section may be made either on the motion of the court itself or on the application of any party to the proceedings.

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- (4) The transfer of any proceedings under this section shall not affect any right of appeal from the order directing the transfer.
- (5) Where proceedings for the enforcement of any judgment or order of a county court are transferred under this section—
  - (a) the judgment or order may be enforced as if it were a judgment or order of the High Court; and
  - (b) subject to subsection (6), it shall be treated as a judgment or order of that court for all purposes.
- (6) Where proceedings for the enforcement of any judgment or order of a county court are transferred under this section—
  - (a) the powers of any court to set aside, correct, vary or quash a judgment or order of a county court, and the enactments relating to appeals from such a judgment or order, shall continue to apply; and
  - (b) the powers of any court to set aside, correct, vary or quash a judgment or order of the High Court, and the enactments relating to appeals from such a judgment or order, shall not apply.
- (7) The provisions referred to in subsection (1) are any made—
  - (a) under section 1 of the Courts and Legal Services Act 1990; or
  - (b) by or under any other enactment.
- (8) This section does not apply to family proceedings within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984.”

(4) <sup>F1</sup> .....

**Textual Amendments**

**F1** S. 2(4) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 1 Group. 4}

**Commencement Information**

**I1** S. 2 wholly in force at 1.7.1991 see s. 124(3) and S.I. 1991/1364, art.2, Sch.

**Marginal Citations**

**M1** 1984 c. 28.

**M2** 1984 c. 28.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 58A(2)(fe) inserted by [2021 c. 17 s. 53](#)