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DRAFT STATUTORY INSTRUMENTS

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**2009 No. [ ] (L.[ ])**

**FAMILY PROCEEDINGS**

**SUPREME COURT OF ENGLAND AND WALES**

**COUNTY COURTS, ENGLAND AND WALES**

**MAGISTRATES' COURTS, ENGLAND AND WALES**

**The Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2009**

*Made* - - - -

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*Coming into force* - -

*6th April 2009*

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 56(1) and (3) of the Access to Justice Act 1999(a).

In accordance with section 56(4) of that Act he has consulted as required.

In accordance with section 56(6) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. This Order may be cited as the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2009 and shall come into force on 6th April 2009.

**Amendment of the Maintenance Orders Act 1958**

2. In section 4(7) of the Maintenance Orders Act 1958(b) (Variation of orders registered in magistrates' courts) for "the High Court" substitute "a county court".

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(a) 1999 c.22. Section 56(4) was amended by the Constitutional Reform Act 2005 (c.4), section 15(1) and Schedule 4, Part 1, paragraphs 279 and 280(1) and (2).  
(b) 1958 c.39. Section 4(7) was amended by the Administration of Justice Act 1977 (c.38), section 32, Schedule 5, Part IV.

### **Amendment of the Domestic Proceedings and Magistrates' Courts Act 1978**

- 3.—(1) The Domestic Proceedings and Magistrates' Courts Act 1978(a) is amended as follows.
- (2) In section 19 (b) (Interim orders)—
- (a) in subsection (1)(a) omit “and”;
  - (b) for subsection (1)(b) substitute—
    - “(b) the High Court on ordering the application to be reheard by a magistrates' court after the refusal of an order under section 27 of this Act, and
    - (c) a county court on ordering the application to be reheard by a magistrates' court on an appeal under section 29 of this Act.”;
  - (c) in subsection (3) for “the High Court” substitute “a county court ”;
  - (d) in subsection (6) after “the High Court” insert “or a county court ” ;
  - (e) in subsection (9) after “the High Court”, in both places where it occurs, insert “or a county court ”.
- (3) In section 29 (c) (Appeals) for “the High Court” wherever it occurs substitute “a county court ”.

### **Amendment of the Magistrates' Courts' Act 1980**

- 4.—(1) The Magistrates' Courts Act 1980(d) is amended as follows.
- (2) In section 111 (Statement of case by magistrates' court), after subsection (6) insert—
- “(7) This section does not apply in relation to family proceedings within the meaning of section 111A of this Act”.
- (3) After section 111 insert—

#### **“111A Appeals on ground of error of law etc in family proceedings**

- (1) This section applies in relation to family proceedings in a magistrates' court.
  - (2) Any person who was a party to any proceeding before the court, or is aggrieved by the order, determination or other proceeding of the court, may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by appealing to a county court.
  - (3) But a person may not appeal under subsection (2) in respect of a decision if—
    - (a) the person has a right of appeal to a county court against the decision otherwise than under this section, or
    - (b) the decision is final by virtue of any enactment passed after 31<sup>st</sup> December 1879.
  - (4) A notice of appeal under subsection (2) shall be filed within 21 days after the day on which the decision of the magistrates' court was given.
  - (5) In this section “family proceedings” means —
    - (a) proceedings which, by virtue of section 65 of this Act, are or may be treated as family proceedings for the purposes of this Act; and
    - (b) proceedings under the Child Support Act 1991.”.
- (4) In section 112 (Effect of decision of High Court on case stated by magistrates' court)—
- (a) for the heading substitute “Effect of decisions made on case stated or on appeal”;

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(a) 1978 c.22.

(b) Section 19 was amended by the Children Act 1989 (c.41), section 108(5), Schedule 13, paragraph 37 and section 108(7), Schedule 15; by the Matrimonial and Family Proceedings Act 1984 (c.42), section 46(1), Schedule 1, paragraph 24 and by S.I. 1993/623.

(c) Section 29 was amended by the Matrimonial and Family Proceedings Act 1984 (c.42), section 46(1), Schedule 1, paragraph 26 and by the Children Act 1989 (c.41), section 108(5), Schedule 13, paragraph 42 and section 108(7), Schedule 15.

(d) 1980 c. 43.

(b) renumber the existing text as subsection (1);

(c) after subsection (1), insert —

“(2) Any order, determination or other proceeding of a magistrates’ court varied by a county court on an appeal under section 111A, and any judgment or order of a county court on such an appeal, may be enforced as if it were a decision of the magistrates’ court from which the appeal was brought.”.

#### **Amendment of the Civil Jurisdiction and Judgments Act 1982**

5. In section 6(3)(a) of the Civil Jurisdiction and Judgments Act 1982(a) (Appeals under Article 37, second paragraph and Article 41), for “to the High Court by way of case stated in accordance with section 111” substitute “to a county court in accordance with section 111A”.

#### **Amendment of the Family Law Act 1986**

6. In section 60(5) of the Family Law Act 1986(b) (Supplementary provisions as to declarations) for “the High Court” substitute “a county court”.

#### **Amendment of the Children Act 1989**

7.—(1) The Children Act 1989(c) is amended as follows.

(2) Subject to paragraph (3), in section 94(d) (Appeals), for “the High Court” wherever it occurs substitute “a county court”.

(3) In section 94(8)(a) for “the High Court” substitute “the county court”.

#### **Amendment of the Family Law Act 1996**

8. In section 61 of the Family Law Act 1996(e) (Appeals) for “the High Court” wherever it occurs substitute “a county court”.

#### **Amendment of the Crime and Disorder Act 1998**

9.—(1) The Crime and Disorder Act 1998(f) is amended as follows.

(2) In section 10 (Appeals against parenting orders) for “the High Court” wherever it occurs substitute “a county court”.

(3) In section 13 (Appeals against child safety orders) for “the High Court” wherever it occurs substitute “a county court”.

#### **Amendment of the Civil Jurisdiction and Judgments Order 2001**

10. In paragraph 4(3)(a) of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001 (Appeals under Article 44 and Annex IV (section 6)) (g), for “to the High Court by way of case stated in accordance with section 111” substitute “to a county court in accordance with section 111A”.

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(a) 1982 c.27. Section 6(3) was amended by the Civil Jurisdiction and Judgments Act 1991 (c.12), section 3, Schedule 2, paragraph 3.

(b) 1986 c.55. Subsection (5) was inserted by the Child Support, Pensions and Social Security Act 2000 (c.19), section 83(1) and (4).

(c) 1989 c.41.

(d) Section 94 was amended by the Courts and Legal Services Act 1990 (c.41), section 116, Schedule 16, Part 1, paragraph 23 and by the Adoption and Children Act 2002 (c.38), section 100.

(e) 1996 c.27. Section 61 was amended by the Constitutional Reform Act 2005 (c.4), section 15(1), Schedule 4, Part 1, paragraphs 252 and 254.

(f) 1998 c. 37.

(g) S.I. 2001/3929 to which there are amendments not relevant to this Order.

## **Amendment of the Allocation and Transfer of Proceedings Order 2008**

- 11.**—(1) The Allocation and Transfer of Proceedings Order 2008(a) is amended as follows.
- (2) In article 3 (Principal Registry of the Family Division)—
- (a) renumber the existing text as paragraph (1); and
  - (b) after paragraph (1) insert—
    - “(2) The principal registry of the Family Division of the High Court is treated as if it were a county court for the purposes of appeals from decisions of a magistrates’ court under—
      - (a) section 94 of the 1989 Act; and
      - (b) section 61 of the 1996 Act.”.

### **Transitional provisions**

**12.** The amendment made by article 2 does not apply in relation to an appeal under section 4(7) of the Maintenance Orders Act 1958 if the notice of motion is lodged before 6<sup>th</sup> April 2009.

**13.** The amendments made by article 3 do not apply in relation to an appeal under section 29(1) of the Domestic Proceedings and Magistrates’ Courts Act 1978 if the notice of motion is lodged before 6<sup>th</sup> April 2009.

**14.**—(1) The amendments made by articles 4(2) and (4), 5 and 10 do not apply in relation to an application under section 111(1) of the Magistrates’ Courts Act 1980 made before 6<sup>th</sup> April 2009.

(2) A person may not appeal under section 111A of that Act in respect of any proceeding if the person has made an application under section 111 of that Act in respect of the proceeding before 6<sup>th</sup> April 2009.

**15.** The amendment made by article 6 does not apply in relation to an appeal under section 60(5) of the Family Law Act 1986 if the notice of motion is lodged before 6<sup>th</sup> April 2009.

**16.** The amendments made by article 7 do not apply in relation to an appeal under section 94(1) of the Children Act 1989 if the notice of appeal is filed before 6<sup>th</sup> April 2009.

**17.** The amendments made by article 8 do not apply in relation to an appeal under section 61(1) of the Family Law Act 1996 if the notice of appeal is filed before 6<sup>th</sup> April 2009.

**18.** The amendments made by article 9 do not apply in relation to an appeal under section 10(1)(a) or 13(1) of the Crime and Disorder Act 1998 if the notice of motion is lodged before 6<sup>th</sup> April 2009.

Signed by authority of the Lord Chancellor

Date

*Name*  
Parliamentary Under Secretary of State,  
Ministry of Justice

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(a) S.I. 2008/2836.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

The effect of this Order is that, from 6<sup>th</sup> April 2009, appeals against decisions of magistrates' courts in family proceedings shall lie to a county court instead of to the High Court.

Articles 2 and 3 and 6 to 9 amend the statutory provisions giving rights of appeal from decisions of magistrates' courts. The amendments provide for the appeals to lie to a county court instead of to the High Court and make consequential changes.

Article 4(2) provides that an application to have a case stated for the opinion of the High Court under section 111 of the Magistrates' Courts Act 1980 may not be made in relation to family proceedings. Family proceedings are defined as—

- (a) proceedings which, by virtue of section 65 of the 1980 Act, are or may be treated as family proceedings for the purposes of that Act; and
- (b) proceedings under the Child Support Act 1991.

A new section 111A is inserted into the 1980 Act by article 4(3). The new section provides that in family proceedings a person may appeal to a county court on the ground that a decision is wrong in law or is in excess of jurisdiction. This appeal to a county court replaces the procedure for making an application to have a case stated as it is not appropriate for a county court to hear such an application.

Articles 4(4), 5 and 10 amend section 112 of the 1980 Act, section 6(3) of the Civil Jurisdiction and Judgments Act 1982 and paragraph 4(3) of Schedule 1 to the Civil Jurisdiction and Judgments Order SI (2001/3929). These amendments are consequential on the new section 111A of the 1980 Act.

Article 11 makes an amendment to article 3 of the Allocation and Transfer of Proceedings Order 2008 (S.I. 2008/2836) so that the principal registry of the Family Division of the High Court is treated as a county court for the purposes of appeals from decisions of a magistrates' court under section 94 of the Children Act 1989 and section 61 of the Family Law Act 1996. This amendment is consequential on the changes to the appeals from decisions of the magistrates' court in family proceedings.

By virtue of articles 12 to 18 of the Order—

- (a) any appeal in which the appeal notice is filed or notice of motion is lodged before 6<sup>th</sup> April 2009 will lie to the same court as it would have lain before 6<sup>th</sup> April 2009; and
- (b) any application made before 6<sup>th</sup> April 2009 to have a case stated for the opinion of the High Court under section 111(1) of the 1980 Act will not be affected by the amendments made by the Order.

A person will not be able to appeal to a county court on the ground that a decision is wrong in law or in excess of jurisdiction under the new section 111A of the 1980 Act if the person makes an application to have a case stated under section 111 in respect of the decision before 6<sup>th</sup> April 2009.

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*Draft Order laid before Parliament under section 56(6) of the Access to Justice Act 1999 for approval by resolution of each House of Parliament.*

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