



Courts and Legal Services Act 1990

1990 CHAPTER 41

PART I **E+W+N.I.**

PROCEDURE ETC. IN CIVIL COURTS

Allocation and transfer of business

1 Allocation of business between High Court^[F1], family court] and ^[F2]county court]. **E+W**

- (1) The Lord Chancellor may by order make provision—
- (a) conferring jurisdiction on the High Court in relation to proceedings in which ^[F3]the family court or ^[F4]the county court has] jurisdiction;
 - (b) conferring jurisdiction on ^[F5]the family court or ^[F6]the county court] in relation to proceedings in which the High Court has jurisdiction;
 - (c) allocating proceedings to the High Court ^[F7]or to the family court] or to ^[F6]the county court] ;
 - (d) specifying proceedings which may be commenced only in the High Court;
 - ^[F8](da) specifying proceedings which may be commenced only in the family court,]
 - (e) specifying proceedings which may be commenced only in ^[F9]the] county court;
 - (f) specifying proceedings which may be taken only in the High Court;
 - ^[F10](fa) specifying proceedings which may be taken only in the family court;]
 - (g) specifying proceedings which may be taken only in ^[F11]the] county court.

^[F12](1A) An order under subsection (1)(a) or (b) may be made only with the concurrence of the Lord Chief Justice.]

- (2) Without prejudice to the generality of section 120(2), any such order may differentiate between categories of proceedings by reference to such criteria as the Lord Chancellor sees fit to specify in the order.
- (3) The criteria so specified may, in particular, relate to—

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- (a) the value of an action (as defined by the order);
- (b) the nature of the proceedings;
- (c) the parties to the proceedings;
- [^{F13}(ca) any relationship between the proceedings and any other proceedings;]
- (d) the degree of complexity likely to be involved in any aspect of the proceedings; and
- (e) the importance of any question likely to be raised by, or in the course of, the proceedings.

^{F14}(4)

^{F14}(5)

^{F14}(6)

(7) Any such order may—

- (a) amend or repeal any provision falling within subsection (8) and relating to—
 - (i) the jurisdiction, practice or procedure of the [^{F15}Senior Courts] ; or
 - (ii) the jurisdiction, practice or procedure of [^{F16}the county court], [^{F17}or
 - (iii) the jurisdiction, practice or procedure of the family court,]
 so far as the Lord Chancellor considers it to be necessary, or expedient, in consequence of any provision made by the order; or
- (b) make such incidental or transitional provision as the Lord Chancellor considers necessary, or expedient, in consequence of any provision made by the order.

(8) A provision falls within this subsection if it is made by any enactment other than this Act or made under any enactment.

(9) Before making any such order the Lord Chancellor shall consult the Lord Chief Justice, the Master of the Rolls, [^{F18}the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court] and the Senior Presiding Judge (appointed under section 72).

(10) No such order shall be made so as to confer jurisdiction on [^{F19}the family court or][^{F20}the county court] to hear any application for judicial review.

(11) For the purposes of this section the commencement of proceedings may include the making of any application in anticipation of any proceedings or in the course of any proceedings.

(12) ^{F21}

[^{F22}(13) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

Textual Amendments

F1 Words in s. 1 in title inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 10 para. 76\(6\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

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- F2** Words in s. 1 title substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 32\(7\)](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F3** Words in s. 1(1)(a) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 76\(2\)\(a\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F4** Words in s. 1(1)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 32\(2\)](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F5** Words in s. 1(1)(b) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 76\(2\)\(b\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F6** Words in s. 1(1)(b)(c) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 32\(3\)](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F7** Words in s. 1(1)(c) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 76\(2\)\(c\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F8** S. 1(1)(da) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 76\(2\)\(d\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F9** Word in s. 1(1)(e) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 32\(4\)](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F10** S. 1(1)(fa) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 76\(2\)\(e\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F11** Word in s. 1(1)(g) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 32\(4\)](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F12** S. 1(1A) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(1), 148, [Sch. 4 para. 212\(2\)](#); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11
- F13** S. 1(3)(ca) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 76\(3\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F14** S. 1(4)-(6) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 32\(5\)](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F15** Words in s. 1 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148, [Sch. 11 para. 4](#); S.I. 2009/1604, art. 2(d)
- F16** Words in s. 1(7)(a)(ii) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 32\(6\)](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F17** S. 1(7)(a)(iii) and word inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 76\(4\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F18** Words in s. 1(9) repealed (1.10.2005) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(1), 148, [Sch. 4 para. 212\(3\)](#); S.I. 2005/2505, art. 2(c)
- F19** Words in s. 1(10) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 76\(5\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

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- F20** Words in s. 1(10) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 32\(6\)](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F21** S. 1(12) repealed (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1)(3), 110, [Sch. 8 para. 348](#), [Sch. 10](#); [S.I. 2005/910, art. 3\(y\)\(aa\)\(bb\)](#)
- F22** S. 1(13) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(1), 148, [Sch. 4 para. 212\(4\)](#); [S.I. 2006/1014, art. 2\(a\)](#), [Sch. 1 para. 11](#)

2 **Transfer of proceedings between courts.** E+W

- (1) The following section shall be substituted for section 40 of the ^{M1}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—
- (a) order the transfer of the proceedings to a county 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, 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.
- (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.

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- (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 ^{M2}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.
- (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—

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- (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) ^{F23}

Textual Amendments

F23 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.

Changes to legislation:

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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](#)