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*Changes to legislation: There are currently no known outstanding effects for the Crime and Courts Act 2013, Paragraph 1. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 10

#### THE FAMILY COURT

#### PART 1

##### ESTABLISHMENT OF THE FAMILY COURT

- 1 In the Matrimonial and Family Proceedings Act 1984 after section 31A (which is inserted by section 17 of this Act) insert—

#### “31B Sittings

- (1) Sittings of the family court may be held, and any other business of the family court may be conducted, at any place in England and Wales.
- (2) Sittings of the family court at any place may be continuous or intermittent or occasional.
- (3) Sittings of the family court may be held simultaneously to take any number of different cases in the same place or different places, and the court may adjourn cases from place to place at any time.
- (4) The places at which the family court sits, and the days and times at which it sits in any place, are to be determined in accordance with directions given by the Lord Chancellor after consulting the Lord Chief Justice.
- (5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under this section.

#### 31C Judges

- (1) A person is a judge of the family court if the person—
  - (a) is the Lord Chief Justice,
  - (b) is the Master of the Rolls,
  - (c) is the President of the Queen's Bench Division,
  - (d) is the President of the Family Division,
  - (e) is the Chancellor of the High Court,
  - (f) is an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court),
  - (g) is the Senior President of Tribunals,
  - (h) is a puisne judge of the High Court,
  - (i) is a deputy judge of the High Court,
  - (j) is a Circuit judge,

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- (k) is the Judge Advocate General,
  - (l) is a Recorder,
  - (m) holds an office listed—
    - (i) in the first column of the table in section 89(3C) of the Senior Courts Act 1981 (senior High Court Masters etc), or
    - (ii) in column 1 of Part 2 of Schedule 2 to that Act (High Court Masters etc),
  - (n) is a district judge (which, by virtue of section 8(1C) of the County Courts Act 1984, here includes a deputy district judge appointed under section 8 of that Act),
  - (o) is a deputy district judge appointed under section 102 of the Senior Courts Act 1981,
  - (p) is a Chamber President, or a Deputy Chamber President, of a chamber of the Upper Tribunal or of a chamber of the First-tier Tribunal,
  - (q) is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007,
  - (r) is a transferred-in judge of the Upper Tribunal (see section 31(2) of that Act),
  - (s) is a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, that Act),
  - (t) is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to that Act,
  - (u) is a transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act),
  - (v) is a member of a panel of Employment Judges established for England and Wales or for Scotland,
  - (w) is a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General),
  - (x) is a District Judge (Magistrates' Courts), or
  - (y) is a justice of the peace who is not a District Judge (Magistrates' Courts),
- but see also section 9 of the Senior Courts Act 1981 (certain ex-judges may act as judges of the family court).
- (2) A decision of the family court, if made by or by persons who include—
- (a) a judge within subsection (1)(a) to (i),
  - (b) a person who has been a judge of the Court of Appeal, or
  - (c) a person who has been a puisne judge of the High Court,
- is (so far as relevant) to be followed by a judge within subsection (1)(j) to (y), and by a justices' clerk or an assistant to a justices' clerk, when carrying out functions of the family court unless doing so with a person within paragraphs (a) to (c) of this subsection.
- (3) A fee-paid, or unsalaried, part-time judge of the family court may not act as a judge of the court in relation to any proceedings in the court in which the judge, or a partner or employer of the judge, or a body of which the judge is a member or officer, or a body of whose governing body the judge is a

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member, is directly or indirectly engaged as legal representative or agent for any party.

- (4) In this section “legal representative” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).

### **31D Composition of the court and distribution of its business**

- (1) Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 (process for making designated rules) about—
- (a) the composition of the family court, and
  - (b) the distribution of business of the family court among judges of the court.
- (2) Rules about the composition of the family court may in particular—
- (a) provide for the court to be constituted differently for the purpose of deciding different matters;
  - (b) make provision about who is to preside where the court is composed of more than one judge.
- (3) Rules about the distribution of business of the family court may in particular—
- (a) prohibit specified judges from conducting specified business;
  - (b) prohibit judges from conducting specified business unless authorised to do so by a specified judicial office holder;
  - (c) prohibit specified judges from conducting business, or specified business, unless authorised to do so by a specified judicial office holder;
  - (d) prohibit specified judges from exercising specified powers of the court.
- (4) In subsection (3)—
- “judge” does not include a judge within section 31C(1)(a) to (i);
  - “specified” means specified in, or of a description specified in, rules under this section.
- (5) Rules under this section—
- (a) may confer powers on the Lord Chief Justice or on a judicial office holder;
  - (b) may be made only after consultation with the Family Procedure Rule Committee.
- (6) Family Procedure Rules are subject to rules under this section.
- (7) The Lord Chief Justice's power under paragraph 2(2)(b) of Schedule 1 to the Constitutional Reform Act 2005 to nominate a judicial office holder to make rules under this section includes power to nominate different judicial office holders to make rules under this section for different purposes.

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- (8) Paragraph 5 of that Schedule (duty to make rules to achieve purpose specified by Lord Chancellor) does not apply in relation to rules under this section.
- (9) In this section “judicial office holder” has the meaning given by section 109(4) of that Act.
- (10) No proceedings in the family court are to be with a jury.

### **31E Family court has High Court and county court powers**

- (1) In any proceedings in the family court, the court may make any order—
  - (a) which could be made by the High Court if the proceedings were in the High Court, or
  - (b) which could be made by the county court if the proceedings were in the county court.
- (2) In its application to a power of the High Court to issue a writ directed to an enforcement officer, subsection (1)(a) gives the family court power to issue a warrant, directed to an officer of the family court, containing provision corresponding to any that might be contained in the writ.
- (3) Subsection (1) is subject to section 38(3) of the County Courts Act 1984.
- (4) Subsection (1) is without prejudice to, and not limited by, any other powers of the family court.
- (5) The Lord Chancellor may by regulations make provision, about or in connection with the effect or execution of warrants issued by the family court for enforcing any order or judgment enforceable by the court, that corresponds to any provision applying in relation to the effect or execution of writs issued by the High Court, or warrants issued by the county court, for the purpose of enforcing any order or judgment enforceable by that court.

### **31F Proceedings and decisions**

- (1) The family court may adjourn a hearing, and may do so at any time including a time before the hearing has begun.
- (2) Any order made by the family court—
  - (a) may be absolute or conditional;
  - (b) may be final or interim;
  - (c) may, subject to rules of court, be made without taking evidence.
- (3) Every judgment and order of the family court is, except as provided by this or any other Act or by rules of court, final and conclusive between the parties.
- (4) Where the family court has power to require the doing of anything other than the payment of money, or to prohibit the doing of anything, an order of the court made in exercising the power may contain provision—
  - (a) as to the manner in which anything is to be done,
  - (b) as to the time within which anything is to be done,
  - (c) as to the time during which anything is not to be done, and
  - (d) generally for giving effect to the order.

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- (5) Where the family court has power to require the payment of money, an order of the court made in exercising the power may allow time for payment or order payment by instalments; and where the court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid.
- (6) The family court has power to vary, suspend, rescind or revive any order made by it, including—
  - (a) power to rescind an order and re-list the application on which it was made,
  - (b) power to replace an order which for any reason appears to be invalid by another which the court has power to make, and
  - (c) power to vary an order with effect from when it was originally made.
- (7) Subject to rules of court, the family court may proceed in the absence of one, some or all of the parties.
- (8) The family court has the same power to enforce an undertaking given by a solicitor in relation to any proceedings in that court as the High Court has to enforce an undertaking given by a solicitor in relation to any proceedings in the High Court.
- (9) In any case not expressly provided for by or in pursuance of this or any other Act, the general principles of practice in the High Court may be adopted and applied to proceedings in the family court.

### **31G Witnesses and evidence**

- (1) Subsection (2) applies where the family court is satisfied that a person in England and Wales is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, in proceedings in the court.
- (2) The court may, if it is satisfied that it is in the interests of justice to do so, issue a summons—
  - (a) requiring the person to attend before the court, at the time and place specified in the summons, to give evidence,
  - (b) requiring the person to attend before the court, at the time and place specified in the summons, to produce the document or thing, or
  - (c) requiring the person to produce the document or thing to the court.
- (3) Subsection (4) applies where without just excuse—
  - (a) a person fails to attend before the court in answer to a summons under subsection (2)(a) or (b),
  - (b) a person fails to produce a document or thing in answer to a summons under subsection (2)(b) or (c), or
  - (c) a person attending before the court, whether or not in answer to a summons under subsection (2), refuses to be sworn or give evidence.
- (4) The court may—

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- (a) commit the person to custody until the expiry of a period not exceeding one month specified by the court or until the person sooner gives evidence or produces the document or thing, or
  - (b) impose on the person a fine not exceeding £2,500, or
  - (c) both.
- (5) A fine imposed under subsection (4) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction of a magistrates' court.
- (6) Where in any proceedings in the family court it appears to the court that any party to the proceedings who is not legally represented is unable to examine or cross-examine a witness effectively, the court is to—
- (a) ascertain from that party the matters about which the witness may be able to depose or on which the witness ought to be cross-examined, and
  - (b) put, or cause to be put, to the witness such questions in the interests of that party as may appear to the court to be proper.
- (7) Subject to the provisions of any Act or instrument made under an Act or rule of law authorising the reception of unsworn evidence, evidence given before the family court is to be given on oath.
- (8) An affidavit to be used in the family court may be sworn before—
- (a) a judge of the court, or
  - (b) an officer of the court appointed by a judge of the court for the purpose,
- as well as before a commissioner for oaths or any other person authorised to take affidavits under the Commissioners for Oaths Acts 1889 and 1891.
- (9) An affidavit sworn before any such judge or officer may be sworn without the payment of any fee.

### **31H Contempt of court: power to limit court's powers**

- (1) The Lord Chancellor may by regulations made after consulting the Lord Chief Justice make provision limiting or removing, in circumstances specified in the regulations, any of the powers exercisable by the family court when dealing with a person for contempt of court.
- (2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under this section.

### **31I Powers of the High Court in respect of family court proceedings**

- (1) If the High Court, at any stage in proceedings in the family court, thinks it desirable that the proceedings, or any part of them, should be transferred to the High Court, it may order the transfer to the High Court of the proceedings or part.
- (2) The power given by subsection (1) is without prejudice to section 29 of the Senior Courts Act 1981, and is to be exercised—

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- (a) in accordance with any directions given as to the distribution or transfer of proceedings, and
- (b) subject to any provision made under section 1 of the Courts and Legal Services Act 1990 or made by or under any other enactment.

### **31J Overview of certain powers of the court under other Acts**

The powers of the family court include its powers under—

- (a) section 33 of the Senior Courts Act 1981 (powers exercisable before commencement of action);
- (b) section 34 of that Act (power to order disclosure or inspection of documents or property of non-party);
- (c) section 37 of that Act (power to grant injunction or appoint receiver);
- (d) section 39 of that Act (power to order documents to be executed or indorsed by nominated person);
- (e) section 70(1) and (2) of that Act (assessors);
- (f) section 57 of the County Courts Act 1984 (evidence of prisoners);
- (g) section 71 of that Act (powers as to payment of costs).

### **31K Appeals**

- (1) Subject to any order made under section 56(1) of the Access to Justice Act 1999 (power to provide for appeals to be made instead to the High Court or county court, or to the family court itself), if any party to any proceedings in the family court is dissatisfied with the decision of the court, that party may appeal from it to the Court of Appeal in such manner and subject to such conditions as may be provided by Family Procedure Rules.
- (2) Subsection (1) does not—
  - (a) confer any right of appeal from any decision where a right of appeal is conferred by some other enactment, or
  - (b) take away any right of appeal from any decision where a right of appeal is so conferred,and has effect subject to any enactment other than this Part; and in this subsection “enactment” means an enactment whenever passed.
- (3) The Lord Chancellor may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts or judges on questions arising in connection with the transfer, or proposed transfer, of proceedings from or to the family court.
- (4) Except to the extent provided for in any order made under subsection (3), no appeal may be made against any decision of a kind mentioned in that subsection.
- (5) At the hearing of any proceedings in the family court in which there is a right of appeal or from which an appeal may be brought with permission, the judge, if requested to do so by any party, is to make a note—
  - (a) of any question of law raised at the hearing,
  - (b) of the facts in evidence in relation to any such question, and

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- (c) of the court's decision on any such question and of the court's determination of the proceedings.
- (6) Where such a note is made, and whether or not an appeal has been made, the court—
  - (a) on the application of any party to the proceedings, and
  - (b) on payment of the fee (if any) prescribed under section 92 of the Courts Act 2003,is to provide that party with a copy of the note signed by the judge, and the copy so signed is to be used at the hearing of any appeal.
- (7) Section 81 of the County Courts Act 1984 (powers of Court of Appeal on appeal from county court) applies to appeals from the family court to the Court of Appeal as it applies to appeals from the county court to the Court of Appeal.
- (8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under subsection (3).

### **31L Enforcement**

- (1) Payment of a fine or penalty imposed by the family court may be enforced upon the order of the court in like manner as a judgment of the court for the payment of money.
- (2) Rules of court may, in relation to cases where under two or more orders made by or registered in the family court the same person is required to make periodical payments to the same recipient, make provision—
  - (a) for recovery of payments under more than one of the orders to be dealt with in the same proceedings;
  - (b) for apportioning, between some or all of the orders, payments made by the person required to make payments under the orders.
- (3) Subsection (4) applies where—
  - (a) periodical payments are required to be made, or a lump sum is required to be paid, to a child under an order made by the family court, or
  - (b) periodical payments are required to be made to a child under an order registered in the family court.
- (4) Any sum required under the order to be paid to the child may be paid to the person who looks after the child, and that person may proceed in that person's own name for—
  - (a) the variation, revival or revocation of the order, or
  - (b) the recovery of any sum required to be paid under the order.
- (5) Where a child has a right under any Act or instrument made under an Act to apply for the revival of an order made by the family court which provided for the making of periodical payments to or for the benefit of the child, the person who looks after the child may proceed in the person's own name for the revival of the order.



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- (6) Where any person by whom periodical payments are required to be paid to a child under an order made by or registered in the family court applies for the variation or revocation of the order, the person who looks after the child may answer the application in the person's own name.
- (7) Nothing in subsections (4) and (5) affects any right of a child to proceed in the child's own name for the variation, revival or revocation of an order or for the recovery of a sum payable under an order.
- (8) In this section—
  - (a) a reference to the person who looks after a child is—
    - (i) in the case of a child who is being looked after by a local authority (within the meaning of section 22 of the Children Act 1989), a reference to that local authority, and
    - (ii) in any other case, a reference to the person who, disregarding any absence of the child at a hospital or boarding school and any other temporary absence, has care of the child;
  - (b) “child” means a person under the age of 18;
  - (c) a reference to an order registered in the family court is a reference to an order registered in the court under the Maintenance Orders (Facilities for Enforcement) Act 1920, Part 2 of the Maintenance Orders Act 1950, Part 1 of the Maintenance Orders Act 1958, the Maintenance Orders (Reciprocal Enforcement) Act 1972 or Part 1 of the Civil Jurisdiction and Judgments Act 1982.

### **31M Records of proceedings**

- (1) The Lord Chancellor may by regulations provide for the keeping of records of and in relation to proceedings of the family court.
- (2) Any entry in a book or other document required to be kept by regulations under subsection (1), or a copy of any such entry or document purporting to be signed and certified as a true copy by a judge of the family court, is at all times without further proof to be admitted in any court or place as evidence of the entry and of the proceeding referred to by it and of the regularity of that proceeding.
- (3) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under this section.

### **31N Summonses and other documents**

- (1) Where any summons or other process issued from the family court is served by an officer of the court, the service may be proved by a certificate in a prescribed form showing the fact and mode of the service.
- (2) Section 133(2) of the County Courts Act 1984 (offence and punishment) applies in relation to any officer of the family court wilfully and corruptly

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giving a false certificate under subsection (1) as it applies in relation to any officer of the county court wilfully and corruptly giving a false certificate under section 133(1) of that Act.

- (3) Sections 135 and 136 of that Act (offences of pretending to have court's authority etc) apply in relation to the family court as they apply in relation to the county court.

### **31O Justices' clerks and assistants: functions**

- (1) The Lord Chancellor may by rules made with the agreement of the Lord Chief Justice and after consulting the Family Procedure Rule Committee—

- (a) make provision enabling functions of the family court, or of a judge of the court, to be carried out by a justices' clerk;
- (b) make provision enabling functions of a justices' clerk given under paragraph (a), or specified in subsection (2), to be carried out by an assistant to a justices' clerk.

- (2) The functions of a justices' clerk include—

- (a) giving advice to lay judges of the family court about matters of law (including procedure and practice) on questions arising in connection with the discharge by them of functions conferred on them or the court, including questions arising when the clerk is not personally attending on them, and
- (b) power, at any time when the clerk thinks that the clerk should do so, to bring to the attention of lay judges of the family court any point of law (including procedure and practice) that is or may be involved in any question so arising;

and in this subsection “lay judge of the family court” means a judge of the court who is within section 31C(1)(y).

- (3) Subsection (2) does not limit—

- (a) the functions of a justices' clerk, or
- (b) the matters on which any judge of the family court may obtain assistance from a justices' clerk.

- (4) A justices' clerk is not subject to the direction of the Lord Chancellor or any other person when carrying out—

- (a) a function of the family court or of a judge of the court, or
- (b) a function specified in subsection (2);

and an assistant to a justices' clerk when carrying out any such function is not subject to the direction of any person other than a justices' clerk.

- (5) No action lies against a person in respect of anything done or not done in carrying out functions of the family court or of a judge of the court—

- (a) in execution of the person's duties as a justices' clerk or an assistant to a justices' clerk, and
- (b) in relation to matters within the person's jurisdiction.

- (6) An action lies against a person in respect of anything done or not done in carrying out functions of the family court or of a judge of the court—

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- (a) in purported execution of the person's duties as a justices' clerk or an assistant to a justices' clerk, and
  - (b) in relation to a matter not within the person's jurisdiction,if, but only if, it is proved that the person acted in bad faith.
- (7) If an action is brought in circumstances in which subsection (5) or (6) provides that no action lies, the court in which the action is brought—
  - (a) may, on the application of the defendant, strike out the proceedings in the action, and
  - (b) if it does so, may if it thinks fit order the person bringing the action to pay costs.
- (8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under this section.

### **31P Orders, regulations and rules under Part 4A**

- (1) Any power of the Lord Chancellor to make an order, regulations or rules under this Part—
  - (a) is exercisable by statutory instrument,
  - (b) includes power to make different provision for different purposes, and
  - (c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (2) The Lord Chancellor may not make the first rules under section 31O (1) unless a draft of the statutory instrument containing the rules (whether alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument that—
  - (a) contains an order, regulations or rules made under this Part by the Lord Chancellor other than regulations under section 31M, and
  - (b) is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,is subject to annulment in pursuance of a resolution of either House of Parliament.”

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#### **Commencement Information**

- II** Sch. 10 para. 1 in force at 22.4.2014 by 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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