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STATUTORY INSTRUMENTS

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**1997 No. 1896 (L. 32)**

**FAMILY LAW**

**The Family Law Act 1996 (Part IV)  
(Allocation of Proceedings) Order 1997**

<i>Made</i>	- - - -	<i>28th July 1997</i>
<i>Laid before Parliament</i>		<i>31st July 1997</i>
<i>Coming into force</i>	- -	<i>1st October 1997</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 57 of the Family Law Act 1996(1), hereby makes the following Order:—

1.—(1) This Order may be cited as the Family Law Act 1996 (Part IV) (Allocation of Proceedings) Order 1997 and shall come into force on 1st October 1997.

(2) In this Order, unless the context otherwise requires—

“county court” means a county court of one of the classes specified in article 2;

“family proceedings” has the meaning assigned by section 63 and includes proceedings which are family business within the meaning of section 32 of the Matrimonial and Family Proceedings Act 1984(2);

“family proceedings court” has the meaning assigned by article 3;

“the Act” means the Family Law Act 1996 and a section, Part or Schedule referred to by number alone means the section, Part or Schedule so numbered in that Act.

**Classes of county court**

2. The classes of county court specified for the purposes of this Order are—

(a) divorce county courts, being those courts designated for the time being as divorce county courts by an order under section 33 of the Matrimonial and Family Proceedings Act 1984(3);

(b) family hearing centres, being those courts set out in Schedule 1 to the Children (Allocation of Proceedings) Order 1991(4); and

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(1) 1996 c. 27.

(2) 1984 c. 42; section 32 was amended by the Family Law Act 1996 (c. 27), Schedule 8 paragraph 32(5).

(3) 1984 c. 42.

(4) S.I.1991/1677; the relevant amending instruments are S.I.1994/3138 and 1995/1649.

(c) care centres, being those courts set out in column (ii) of Schedule 2 to that Order<sup>(5)</sup>.

### **Classes of magistrates' court**

3. The classes of magistrates' court specified for the purposes of this Order are family proceedings courts, being those courts constituted in accordance with section 67 of the Magistrates' Courts Act 1980<sup>(6)</sup>.

## **COMMENCEMENT OF PROCEEDINGS**

### **Commencement of proceedings**

4.—(1) Subject to section 59, paragraph 1 of Schedule 7 and the provisions of this article, proceedings under Part IV may be commenced in a county court or in a family proceedings court.

(2) An application—

- (a) under Part IV brought by an applicant who is under the age of eighteen; and
- (b) for the grant of leave under section 43 (Leave of court required for applications by children under sixteen),

shall be commenced in the High Court.

(3) Where family proceedings are pending in a county court or a family proceedings court, an application under Part IV may be made in those proceedings.

### **Application to extend, vary or discharge order**

5.—(1) Proceedings under Part IV—

- (a) to extend, vary or discharge an order, or
- (b) the determination of which may have the effect of varying or discharging an order,

shall be made to the court which made the order.

(2) A court may transfer proceedings made in accordance with paragraph (1) to any other court in accordance with the provisions of articles 6 to 14.

## **TRANSFER OF PROCEEDINGS**

### **Disapplication of enactments about transfer**

6. Sections 38 and 39 of the Matrimonial and Family Proceedings Act 1984<sup>(7)</sup> shall not apply to proceedings under Part IV.

### **Transfer from one family proceedings court to another**

7. A family proceedings court (“the transferring court”) shall (on application or of its own motion) transfer proceedings under Part IV to another family proceedings court (“the receiving court”) where—

- (a) the transferring court considers that it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in the receiving court; and

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(5) S.I.1991/1677; the relevant amending instruments are S.I. 1994/2164, 3138 and 1995/1649.

(6) 1980 c. 43; section 67 was amended by the Children Act 1989 (c. 41), section 92(11), Schedule 11 paragraph 8.

(7) 1984 c. 42; there are amendments to section 38 which are not relevant to this instrument.

- (b) the receiving court, by its justices' clerk (as defined by rule 1(2) of the Family Proceedings Courts (Children Act 1989) Rules 1991(8)), consents to the transfer.

#### **Transfer from family proceedings court to county court**

**8.**—(1) A family proceedings court may, on application or of its own motion, transfer proceedings under Part IV to a county court where it considers that—

- (a) it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in that court; or
- (b) the proceedings involve—
  - (i) a conflict with the law of another jurisdiction;
  - (ii) some novel and difficult point of law;
  - (iii) some question of general public interest; or
- (c) the proceedings are exceptionally complex.

(2) A family proceedings court must transfer proceedings under Part IV to a county court where—

- (a) a child under the age of eighteen is the respondent to the application or wishes to become a party to the proceedings; or
- (b) a party to the proceedings is a person who, by reason of mental disorder within the meaning of the Mental Health Act 1983(9), is incapable of managing and administering his property and affairs.

(3) Except where transfer is ordered under paragraph (1)(a), the proceedings shall be transferred to the nearest county court.

#### **Transfer from family proceedings court to High Court**

**9.** A family proceedings court may, on application or of its own motion, transfer proceedings under Part IV to the High Court where it considers that it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in that Court.

#### **Transfer from one county court to another**

**10.** A county court may, on application or of its own motion, transfer proceedings under Part IV to another county court where—

- (a) it considers that it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in that court;
- (b) the proceedings involve the determination of a question of a kind mentioned in section 59(1) and the property in question is situated in the district of another county court; or
- (c) it seems necessary or expedient so to do.

#### **Transfer from county court to family proceedings court**

**11.** A county court may, on application or of its own motion, transfer proceedings under Part IV to a family proceedings court where—

- (a) it considers that it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in that court; or

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(8) S.I. 1991/1395.

(9) 1980 c. 20.

- (b) it considers that the criterion
  - (i) in article 8(1)(a) no longer applies because the proceedings with which the transferred proceedings were to be heard have been determined;
  - (ii) in article 8(1)(b) or (c) does not apply.

#### **Transfer from county court to High Court**

**12.** A county court may, on application or of its own motion, transfer proceedings under Part IV to the High Court where it considers that the proceedings are appropriate for determination in the High Court.

#### **Transfer from High Court to family proceedings court**

**13.** The High Court may, on application or of its own motion, transfer proceedings under Part IV to a family proceedings court where it considers that it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in that court.

#### **Transfer from High Court to county court**

**14.** The High Court may, on application or of its own motion, transfer proceedings under Part IV to a county court where it considers that—

- (a) it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in that court;
- (b) the proceedings are appropriate for determination in a county court; or
- (c) it is appropriate for an application made by a child under the age of eighteen to be heard in a county court.

#### **Disposal following arrest**

**15.** Where a person is brought before—

- (a) a relevant judicial authority in accordance with section 47(7)(a), or
- (b) a court by virtue of a warrant issued under section 47(9),

and the matter is not disposed of forthwith, the matter may be transferred to be disposed of by the relevant judicial authority or court which issued the warrant or, as the case may be, which attached the power of arrest under section 47(2) or (3), if different.

### MISCELLANEOUS

#### **Principal Registry of the Family Division**

**16.—(1)** The principal registry of the Family Division of the High Court shall be treated, for the purposes of this Order, as if it were a divorce county court, a family hearing centre and a care centre.

(2) Without prejudice to article 10, the principal registry may transfer an order made in proceedings which are pending in the principal registry to the High Court for enforcement.

#### **Lambeth, Shoreditch and Woolwich County Courts**

**17.** Proceedings under Part IV may be commenced in, transferred to and tried in Lambeth, Shoreditch or Woolwich County Court.

**Contravention of provisions of this Order**

**18.** Where proceedings are commenced or transferred in contravention of a provision of this Order, the contravention shall not have the effect of making the proceedings invalid.

Dated 28th July 1997

*Irvine of Lairg, C.*

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

This Order provides for the allocation of proceedings under Part IV of the Family Law Act 1996 (Family Homes and Domestic Violence) between the High Court, the county courts and the magistrates' courts.

Article 4(2) prescribes those proceedings which must be commenced in the High Court and article 5 prescribes the courts in which are to be brought applications to vary, extend or discharge orders.

Articles 6 to 15 regulate transfer between different courts and categories of courts.

Article 16 provides for the Principal Registry of the Family Division to be treated as a county court and article 17 provides for proceedings to be taken in Lambeth, Shoreditch and Woolwich County Courts. Article 18 makes provision in relation to proceedings which are commenced or transferred in contravention of this Order.