



# Matrimonial and Family Proceedings Act 1984

## 1984 CHAPTER 42

### PART V

#### FAMILY BUSINESS: DISTRIBUTION AND TRANSFER

##### *Preliminary*

### 32 What is family business.

In this Part of this Act—

“family business” means business of any description which in the High Court is for the time being assigned to the Family Division and to no other Division by or under section 61 of (and Schedule 1 to) the <sup>M1</sup>Supreme Court Act 1981;

“family proceedings” means proceedings which are family business;

[<sup>F1</sup>“civil partnership cause” means an action for the dissolution or annulment of a civil partnership or for the legal separation of civil partners;]

“matrimonial cause” means an action for divorce, nullity or marriage, [<sup>F2</sup>or judicial separation];

and “the 1973 Act” means the <sup>M2</sup>Matrimonial Causes Act 1973.

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#### Textual Amendments

**F1** Words in s. 32 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 91**; S.I. 2005/3175, art. 2(2)

**F2** Words substituted by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1), 69(5), **Sch. 1 para. 27**

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#### Marginal Citations

**M1** 1981 c. 54.

**M2** 1973 c. 18.

*Status: Point in time view as at 03/04/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Matrimonial and Family Proceedings Act 1984, Part V. (See end of Document for details)*

*Jurisdiction of county courts in matrimonial causes and matters*

**33 Jurisdiction of county courts in matrimonial causes.**

- (1) The Lord Chancellor may [<sup>F3</sup>, with the concurrence of the Lord Chief Justice,] by order designate any county court as a divorce county court and any court so designated shall have jurisdiction to hear and determine any matrimonial cause, except that it shall have jurisdiction to try such a cause only if it is also designated in the order as a court of trial.

In this Part of this Act “divorce county court” means a county court so designated.

- (2) The jurisdiction conferred by this section on a divorce county court shall be exercisable throughout England and Wales, but rules of court may provide for a matrimonial cause pending in one such court to be heard and determined in another or partly in that and partly in another.
- (3) Every matrimonial cause shall be commenced in a divorce county court and shall be heard and determined in that or another such court unless or except to the extent it is transferred to the High Court under section 39 below or section 41 of the <sup>M3</sup>County Courts Act 1984 (transfer to High Court by order of High Court).
- (4) The Lord Chancellor may [<sup>F4</sup>, with the concurrence of the Lord Chief Justice,] by order designate a divorce county court as a court for the exercise of jurisdiction in matrimonial matters arising under Part III of this Act.
- (5) The power to make an order under subsection (1) or (4) above shall be exercisable by statutory instrument.
- [<sup>F5</sup>(6) 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**

- F3** Words in s. 33(1) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 4 para. 172\(2\)](#); [S.I. 2006/1014, art. 2\(a\), Sch. 1 para. 11\(r\)](#)
- F4** Words in s. 33(4) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 4 para. 172\(2\)](#); [S.I. 2006/1014, art. 2\(a\), Sch. 1 para. 11\(r\)](#)
- F5** S. 33(6) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 4 para. 172\(3\)](#); [S.I. 2006/1014, art. 2\(a\), Sch. 1 para. 11\(r\)](#)

**Marginal Citations**

- M3** 1984 c. 28.

**34 Jurisdiction of divorce county courts as respects financial relief and protection of children.**

- (1) Subject to subsections (2) and (3) below, a divorce county court shall have the following jurisdiction, namely—
- (a) jurisdiction to exercise any power exercisable under Part II or Part III of the 1973 Act in connection with any petition, decree or order pending in or made by such a court and to exercise any power under section 27 or 35 of that Act;

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*Changes to legislation: There are currently no known outstanding effects for the Matrimonial and Family Proceedings Act 1984, Part V. (See end of Document for details)*

- (b) if designated by an order under section 33(4) above, jurisdiction to exercise any power under Part III of this Act.
- (2) Any proceedings for the exercise of a power which a divorce county court has jurisdiction to exercise by virtue of subsection (1)(a) or (b) above shall be commenced in such divorce county court as may be prescribed by rules of court.
- (3) A divorce county court shall not by virtue of subsection (1)(a) above have jurisdiction to exercise any power under section 32, 33, 36 or 38 of the 1973 Act; but nothing in this section shall prejudice the exercise by a county court of any jurisdiction conferred on county courts by any of those sections.
- (4) Nothing in this section shall affect the jurisdiction of a magistrates' court under section 35 of the 1973 Act.

### **35 Consideration of agreements or arrangements.**

Any provision to be made by rules of court for the purposes of section 7 of the 1973 Act with respect to any power exercisable by the court on an application made before the presentation of a petition shall confer jurisdiction to exercise the power on divorce county courts.

### **36 Assignment of Circuit judges to matrimonial proceedings.**

[<sup>F6</sup>(1)] The jurisdiction conferred by the preceding provisions of this Part of this Act on divorce county courts, so far as it is exercisable by judges of such courts, shall be exercised by such Circuit judges as the [<sup>F7</sup>Lord Chief Justice may, after consulting the Lord Chancellor, direct] .

[<sup>F8</sup>(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 his functions under this section.]

#### **Textual Amendments**

- F6** S. 36(1): s. 36 renumbered as s. 36(1) (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 4 para. 173\(2\)](#); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(r)
- F7** Words in s. 36(1) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 4 para. 173\(3\)](#); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(r)
- F8** S. 36(2) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 4 para. 173\(4\)](#); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(r)

*[<sup>F9</sup>Jurisdiction of county courts in civil partnership causes and matters*

#### **Textual Amendments**

- F9** Ss. 36A-36D and cross-heading inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10) (b), [Sch. 27 para. 92](#); S.I. 2005/3175, art. 2(2)

*Status: Point in time view as at 03/04/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Matrimonial and Family Proceedings Act 1984, Part V. (See end of Document for details)*

### 36A Jurisdiction of county courts in civil partnership causes

- (1) The Lord Chancellor may [<sup>F10</sup>, with the concurrence of the Lord Chief Justice,] by order—
    - (a) designate any county court as a civil partnership proceedings county court, and
    - (b) designate, as a court of trial, any county court designated as a civil partnership proceedings county court.
  - (2) In this Part of this Act “civil partnership proceedings county court” means a county court designated under subsection (1)(a) above.
  - (3) A civil partnership proceedings county court shall have jurisdiction to hear and determine any civil partnership cause, subject to subsection (4) below.
  - (4) A civil partnership proceedings county court shall have jurisdiction to try a civil partnership cause only if it is designated under subsection (1)(b) above as a court of trial.
  - (5) The jurisdiction conferred by this section on a civil partnership proceedings county court shall be exercisable throughout England and Wales, but rules of court may provide for a civil partnership cause pending in one such court to be heard and determined—
    - (a) partly in that court and partly in another such court, or
    - (b) in another such court.
  - (6) Every civil partnership cause shall be commenced in a civil partnership proceedings county court.
  - (7) Every civil partnership cause shall be heard and determined in a civil partnership proceedings county court unless, or except to the extent, it is transferred to the High Court under—
    - (a) section 39 below, or
    - (b) section 41 of the County Court Act 1984 (transfer to High Court by order of High Court).
  - (8) The Lord Chancellor may [<sup>F11</sup>, with the concurrence of the Lord Chief Justice,] by order designate a civil partnership proceedings county court as a court for the exercise of jurisdiction in civil partnership matters under Schedule 7 to the Civil Partnership Act 2004.
  - (9) The power to make an order under subsection (1) or (8) above shall be exercisable by statutory instrument.
- [ The Lord Chief Justice may nominate a judicial office holder (as defined in <sup>F12</sup>(10) section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

#### Textual Amendments

**F10** Words in s. 36A(1) inserted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), art. 1, **Sch. 1 para. 6(2)**

**F11** Words in s. 36A(8) inserted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), art. 1, **Sch. 1 para. 6(2)**

*Status: Point in time view as at 03/04/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Matrimonial and Family Proceedings Act 1984, Part V. (See end of Document for details)*

**F12** S. 36A(10) inserted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), art. 1, [Sch. 1 para. 6\(3\)](#)

### **36B Jurisdiction of civil partnership proceedings county courts as respects financial relief and protection of children**

- (1) Subject to subsection (2) below, a civil partnership proceedings county court shall have the following jurisdiction—
- (a) a jurisdiction to exercise any power exercisable under—
    - (i) section 63 of the Civil Partnership Act 2004 (restrictions on making of orders affecting children), or
    - (ii) Schedule 5 to that Act (financial relief in the courts), other than Part 12 (arrear and repayments) and paragraph 73 (alteration of maintenance agreements by court after death of one party),in connection with any application or order pending in, or made by, a civil partnership proceedings county court;
  - (b) a jurisdiction to exercise any power exercisable under—
    - (i) Part 9 of that Schedule (failure to maintain: financial provision (and interim orders)), or
    - (ii) paragraphs 69 to 71 of that Schedule (alteration of maintenance agreements by court during lives of parties);
  - (c) if designated under section 36A(8) above, jurisdiction to exercise any power under Schedule 7 to that Act.
- (2) Any proceedings for the exercise of a power which a civil partnership proceedings county court has jurisdiction to exercise by virtue of subsection (1) above shall be commenced in such civil partnership proceedings county court as may be prescribed by rules of court.
- (3) Nothing in this section shall affect the jurisdiction of a magistrates' court under paragraphs 69 to 71 of Schedule 5 to the Civil Partnership Act 2004.

### **36C Consideration of agreements or arrangements**

Where rules of court make provision for the purposes of section 43 of the Civil Partnership Act 2004 with respect to any power exercisable by the court on an application made under that section before an application is made for a dissolution or separation order, the rules shall confer jurisdiction to exercise the power on civil partnership proceedings county courts.

### **36D Assignment of circuit judges to civil partnership proceedings**

[ The jurisdiction conferred by the preceding provisions of this Part of this Act on <sup>F13</sup>(1) civil partnership proceedings county courts, so far as it exercisable by judges of such courts, shall be exercised by such Circuit judges as the [<sup>F14</sup>Lord Chief Justice may, after consulting the Lord Chancellor, direct] .

[ The Lord Chief Justice may nominate a judicial office holder (as defined in <sup>F15</sup>(2) section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]]

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*Changes to legislation: There are currently no known outstanding effects for the Matrimonial and Family Proceedings Act 1984, Part V. (See end of Document for details)*

#### Textual Amendments

- F13** S. 36D(1): s. 36D renumbered as s. 36D(1) (3.4.2006) by The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I. 2006/1016), art. 1, **Sch. 1 para. 7(2)**
- F14** Words in s. 36D(1) substituted (3.4.2006) by The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I. 2006/1016), art. 1, **Sch. 1 para. 7(3)**
- F15** S. 36D(2) inserted (3.4.2006) by The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I. 2006/1016), art. 1, **Sch. 1 para. 7(4)**

### *Distribution and transfer of family business and proceedings*

#### **37 Directions as to distribution and transfer of family business and proceedings.**

The President of the Family Division may, with the concurrence of the Lord Chancellor, give directions with respect to the distribution and transfer between the High Court and county courts of family business and family proceedings.

#### **38 Transfer of family proceedings from High Court to county court.**

- (1) At any stage in any family proceedings in the High Court the High Court may, if the proceedings are transferable under this section, either of its own motion or on the application of any party to the proceedings, order the transfer of the whole or any part of the proceedings to a county court.
- (2) The following family proceedings are transferable to a county court under this section, namely—
  - (a) all family proceedings commenced in the High Court which are within the jurisdiction of a county court [<sup>F16</sup>, divorce county court or civil partnership proceedings county court] ;
  - (b) wardship proceedings, except applications for an order that a minor be made, or cease to be, a ward of court [<sup>F17</sup> or any other proceedings which relate to the exercise of the inherent jurisdiction of the High Court with respect to minors]; and
  - (c) all family proceedings transferred from a county court to the High Court under section 39 below or section 41 of the <sup>M4</sup>County Courts Act 1984 (transfer to High Court by order of High Court); [<sup>F18</sup> and
  - (d) all matrimonial causes and matters transferred from a county court otherwise than as mentioned in paragraph (e) above.]
- [<sup>F19</sup>(3) Proceedings transferred under this section shall be transferred to such county court as the High Court directs, subject to subsections (3A) and (3B) below.
- (3A) Where a matrimonial cause or matter within the jurisdiction of a divorce county court only is transferred under this section, it shall be transferred to such divorce county court as the High Court directs.
- (3B) Where a civil partnership cause or matter within the jurisdiction of a civil partnership proceedings county court only is transferred under this section, it shall be transferred to such civil partnership proceedings county court as the High Court directs.]

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- (4) The transfer shall not affect any right of appeal from the order directing the transfer, or the right to enforce in the High Court any judgment signed, or order made, in that Court before the transfer.
- (5) Where proceedings are transferred to a county court under this section, the county court—
  - (a) if it has no jurisdiction apart from this paragraph, shall have jurisdiction to hear and determine those proceedings;
  - (b) shall have jurisdiction to award any relief which could have been awarded by the High Court.

#### Textual Amendments

- F16** Words in s. 38(2)(a) substituted (5.12.2005) by [The Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005 \(S.I. 2005/3336\)](#), arts. 1, **3**
- F17** Words in s. 38(2)(b) inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, **Sch. 13 para. 51** (with [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), **art. 3(2)**
- F18** By [Matrimonial Proceedings \(Transfers\) Act 1988 \(c. 18, SIF 49:3\)](#), **s. 1(1)** it is provided that s. 38 shall have effect as if the word “and” and subsection (d) were added at the end of the list in subsection (2) of the proceedings transferable under that section.
- F19** S. 38(3)-(3B) substituted for s. 38(3) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), **Sch. 27 para. 93**; [S.I. 2005/3175](#), **art. 2(2)**

#### Modifications etc. (not altering text)

- C1** S. 38 restricted by [S.I. 1965/1776](#), Order 90, rule 2B (as inserted by [S.I. 1986/632](#), **rule 27**)
- C2** S. 38 excluded (14.10.1991) by [S.I. 1991/1677](#), **art.5**.
- C3** S. 38: power to exclude conferred (28.7.1997) by [1996 c. 27](#), **s. 57(7)**; [S.I. 1997/1892](#), **art. 2**
- C4** S. 38 excluded (1.10.1997) by [S.I. 1997/1896](#), **art. 6**

#### Marginal Citations

- M4** [1984 c. 28](#).

### 39 Transfer of family proceedings to High Court from county court.

- (1) At any stage in any family proceedings in a county court, the county court may, if the proceedings are transferable under this section, either of its own motion or on the application of any party to the proceedings, order the transfer of the whole or any part of the proceedings to the High Court.
- (2) The following family proceedings are transferable to the High Court under this section, namely—
  - (a) all family proceedings commenced in a county court [ <sup>F20</sup>, divorce county court or civil partnership proceedings county court ] ; and
  - (b) all family proceedings transferred from the High Court to a county court [ <sup>F20</sup>, divorce county court or civil partnership proceedings county court ] under section 38 above.

#### Textual Amendments

- F20** Words in s. 39(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), **Sch. 27 para. 94**; [S.I. 2005/3175](#), **art. 2(2)**

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**Modifications etc. (not altering text)**

- C5 S. 39 excluded by S.I. 1991/1677, art.5.  
 C6 S. 39: power to exclude conferred (28.7.1997) by 1996 c. 27, s. 57(7), S.I. 1997/1892, art. 2  
 C7 S. 39 excluded (1.10.1997) by S.I. 1997/1896, art. 6

*Rules of court and fees*

**40 Family proceedings rules.**

- (1) Subject to subsection (2) below, the power to make rules of court for the purposes of family proceedings in the High Court or county courts shall be exercisable [<sup>F21</sup>by a committee known as the Family Proceedings Rule Committee, which is to consist of the following persons—]
- (a) the President of the Family Division,
  - (b) one puisne judge attached to that Division,
  - [<sup>F22</sup>(c) one district judge of the principal registry of that Division,
  - (d) two Circuit judges,
  - (e) one district judge appointed under the County Courts Act 1984,
  - (f) two persons who have a Supreme Court qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990), and
  - (g) two persons who have been granted by an authorised body, under Part II of that Act, the right to conduct litigation in relation to all proceedings in the Supreme Court.]
- (2) Subsection (1) above is without prejudice to the powers of the following authorities to make rules in respect of the matters referred to below and rules in respect of those matters shall continue to be made by those authorities and shall not be made by the authority constituted by subsection (1) above.

The rules and rule-making authorities are—

- (a) adoption rules made [<sup>F23</sup>... under section 9(3) of the <sup>M5</sup>Adoption Act 1958, section 12(1) of the <sup>M6</sup>Adoption Act 1968 or section 66(1) of the <sup>M7</sup>Adoption Act 1976;
  - (b) probate rules made [<sup>F24</sup>... under section 127 of the <sup>M8</sup>Supreme Court Act 1981.
- [<sup>F25</sup>(3) The members of the Family Proceedings Rule Committee, other than those eligible to act by virtue of their office, are appointed under subsection (3ZA) or (3ZB).
- (3ZA) The Lord Chief Justice must appoint the persons referred to in paragraphs (b), (c) (d) and (e) of subsection (1), after consulting the Lord Chancellor.
- (3ZB) The Lord Chancellor must appoint the persons referred to in paragraphs (f) and (g) of subsection (1), after consulting the Lord Chief Justice.
- (3ZC) A person is to be appointed under subsection (3ZA) or (3ZB) for such period as the Lord Chancellor determines after consulting the Lord Chief Justice.]
- [<sup>F26</sup>(3A) Rules made under this section may make different provision for different cases or different areas, including different provision—
- (a) for a specific court, or
  - (b) for specific proceedings, or a specific jurisdiction,



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specified in the rules.]

- (4) Rules made under this section may, <sup>F27</sup> . . .
- (a) modify or exclude the application of any provision of the County Courts Act 1984;
  - <sup>F28</sup>(aa) authorise, for the purposes of the law relating to contempt of court, the publication in such circumstances as may be specified of information relating to family proceedings held in private;]and
  - (b) provide for the enforcement in the High Court of orders made in a divorce county court [<sup>F29</sup> or a civil partnership proceedings county court ] .

<sup>F30</sup>(5) . . . . .

#### Textual Amendments

- F21** Words in s. 40(1) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 4 para. 380\(2\)](#) (with [Sch. 4 para. 361](#)); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(cc)
- F22** S. 40(1)(c)–(g) substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\), s. 125\(3\), Sch. 18 para. 50](#)
- F23** Words in s. 40(2)(a) omitted (3.4.2006) by virtue of [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 1 para. 18\(a\), Sch. 18 Pt. 1](#); S.I. 2006/1014, art. 2(a), Sch. 1 para. 30(a)
- F24** Words in s. 40(2)(b) omitted (3.4.2006) by virtue of [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 1 para. 18\(b\), Sch. 18 Pt. 1](#); S.I. 2006/1014, art. 2(a), Sch. 1 para. 30(a)
- F25** S. 40(3)–(3ZC) substituted for s. 40(3) (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 4 para. 380\(3\)](#) (with [Sch. 4 para. 361](#)); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(cc)
- F26** S. 40(3A) inserted (14.3.1997) by [1997 c. 12, s. 10, Sch. 2 para. 3\(a\)](#); S.I. 1997/841, [art. 2](#)
- F27** Words in s. 40(4) repealed (26.4.1999) by [1997 c. 12, s. 10, Sch. 2 para. 3\(b\)](#); S.I. 1999/1009 art. 3(K)
- F28** S. 40(4)(aa) inserted (12.4.2005) by [Children Act 2004 \(c. 31\), ss. 62\(5\), 67\(7\)\(j\)](#); S.I. 2005/847, art. 2
- F29** Words in s. 40(4)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(b\), Sch. 27 para. 95](#); S.I. 2005/3175, art. 2(2)
- F30** S. 40(5) repealed (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 4 para. 380\(4\), Sch. 18 Pt. 2](#) (with [Sch. 4 para. 361](#)); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 11(cc)30(b)

#### Modifications etc. (not altering text)

- C8** S. 40(2) modified (7.10.2005) by [The Courts Act 2003 \(Commencement No. 11 and Transitional Provision\) Order 2005 \(S.I. 2005/2744\), art. 3](#)

#### Commencement Information

- I1** S. 40 wholly in force at 14.10.1991 see s. 47(1)(e); S.I. 1991/1211, [art. 2\(a\)](#).

#### Marginal Citations

- M5** 1958 c. 5.  
**M6** 1968 c. 53.  
**M7** 1976 c. 36.  
**M8** 1981 c. 54.

### [<sup>F31</sup>40A Process for making rules of court under section 40

- (1) Family proceedings rules must be—
- (a) signed by a majority of the members of the Family Proceedings Rule Committee, and

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- (b) submitted to the Lord Chancellor.
- (2) The Lord Chancellor may allow or disallow rules so made.
- (3) If the Lord Chancellor disallows rules, he must give the Committee written reasons for doing so.
- (4) Rules so made and allowed by the Lord Chancellor—
- (a) come into force on such day as the Lord Chancellor directs, and
  - (b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 applies as if the instrument contained rules made by a Minister of the Crown.
- (5) A statutory instrument containing Family Proceedings rules is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section and section 40B “Family Proceedings rules” means rules of court made under section 40.

#### Textual Amendments

**F31** Ss. 40A, 40B inserted (temp. from 3.4.2006 until the repeal of s. 40 comes into force on 6.4.2011) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 4 para. 381](#) (with [Sch. 4 para. 361](#)); S.I. 2006/1014, art. 2(a), [Sch. 1 para. 11\(cc\)](#)

#### 40B Rules to be made if required by Lord Chancellor

- (1) This section applies if the Lord Chancellor gives the Family Proceedings Rule Committee written notice that he thinks it is expedient for Family Proceedings rules to include provision that would achieve a purpose specified in the notice.
- (2) The Committee must make such Family Proceedings rules as it considers necessary to achieve the specified purpose.
- (3) Those rules must be—
- (a) made within a reasonable period after the Lord Chancellor gives notice to the Committee;
  - (b) made in accordance with section 40A.]

#### Textual Amendments

**F31** Ss. 40A, 40B inserted (temp. from 3.4.2006 until the repeal of s. 40 comes into force on 6.4.2011) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 4 para. 381](#) (with [Sch. 4 para. 361](#)); S.I. 2006/1014, art. 2(a), [Sch. 1 para. 11\(cc\)](#)

#### <sup>F32</sup>41 Fees in family proceedings.

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*Status: Point in time view as at 03/04/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Matrimonial and Family Proceedings Act 1984, Part V. (See end of Document for details)*

### Textual Amendments

- F32** S. 41 repealed (4.1.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 278(b), Sch. 10; S.I. 2004/3123, art. 2(b)(iv)(c)(iv) (with art. 3)

### *County court proceedings in principal registry*

#### **42 County court proceedings in principal registry of Family Division.**

- (1) Sections 33 to 35 [F33 and 36A to 36] above shall not prevent the commencement of any proceedings in the principal registry except where rules of court under section 34(2) [F34 or 36B(2)] above otherwise provide; and the following provisions of this section shall have effect for the purposes of enabling proceedings to be dealt with in that registry as in a divorce county court [F35 or civil partnership proceedings county court].

[F36(1A) Subsection (2) below applies to—

- (a) the jurisdiction in matrimonial causes or matters conferred by sections 33, 34 and 35 above on divorce county courts, and
- (b) the jurisdiction in civil partnership causes or matters conferred by sections 36A, 36B and 36C above on civil partnership proceedings county courts.]

- (2) [F37 A jurisdiction to which this subsection applies] shall be exercised in the principal registry—

- (a) so far as it is exercisable by judges of such courts, at such sittings and in such places as the Lord Chancellor [F38 may, after consulting the Lord Chief Justice, direct] ; and
- (b) so far as it is exercisable by registrars of such courts, by such registrars or by registrars and other officers of the principal registry according as rules of court may provide;

[F39(2A) Rules of court may make provision—

- (a) for treating, for any purposes specified in the rules, matrimonial causes and matters pending in the registry with respect to which the jurisdiction mentioned in subsection (1A)(a) above is exercisable as pending in a divorce county court,
- (b) for treating, for any purposes specified in the rules, civil partnership causes and matters pending in the registry with respect to which the jurisdiction mentioned in subsection (1A)(b) above is exercisable as pending in a civil partnership proceedings county court, and
- (c) for the application of section 74(3) of the Solicitors Act 1974 (costs) with respect to proceedings treated as mentioned in paragraph (a) or (b) above.]

- (3) Where, by virtue of rules under [F40 subsection (2A)] above, a matrimonial cause is pending in the registry as in a divorce county court, any ancillary or related proceedings which could be taken in a divorce county court and which are not of a description excluded by the rules from the operation of this subsection may be taken and dealt with in the registry as in a divorce county court.

[F41(3A) Where, by virtue of rules under subsection (2A) above, a civil partnership cause or matter is pending in the registry as in a civil partnership proceedings county court, any ancillary or related proceedings which could be taken in a civil partnership

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proceedings county court and which are not of a description excluded by the rules from the operation of this subsection may be taken and dealt with in the registry as in a civil partnership proceedings county court.]

- (4) The principal registry shall be treated as a divorce county court—
- (a) for the purposes of any provision to be made by rules of court under section 33(2) above;
  - (b) for the purpose of any provision to be made under section 34(2) above prescribing the county court in which any proceedings are to be commenced; and
  - (c) for the purposes of any transfer of family proceedings under section 38 or 39 above between the High Court and a divorce county court.
- [<sup>F42</sup>(4ZA) The principal registry shall be treated as a civil partnership proceedings county court—
- (a) for the purposes of any provision to be made by rules of court under section 36A(5) above;
  - (b) for the purpose of any provision to be made under section 36B(2) above prescribing the county court in which any proceedings are to be commenced; and
  - (c) for the purpose of any transfer of family proceedings under section 38 or 39 above between the High Court and a civil partnership proceedings county court.]

[<sup>F43</sup>(4A) Where a district judge of the principal registry is exercising jurisdiction in any matrimonial cause or matter [<sup>F44</sup>, or in any civil partnership cause or matter,] which could be exercised by a district judge of a county court, he shall have the same powers in relation to those proceedings as if he were a district judge of a county court and the proceedings were in a county court.]

(5) Rules of court shall make provision for securing, with respect to family proceedings dealt with under this section, that, as nearly as may be, the same consequences shall follow—

    - [<sup>F45</sup>(a) as regards service of process—
      - (i) as if proceedings commenced in the principal registry in a matrimonial cause or matter had been commenced in a divorce county court, and
      - (ii) as if proceedings commenced in that registry in a civil partnership cause or matter had been commenced in a civil partnership proceedings county court; and]
      - [<sup>F45</sup>(b) as regards enforcement of orders—
        - (i) as if orders made in that registry in the exercise of the family jurisdiction conferred by sections 33, 34 and 35 above on divorce county courts were orders made by such a court, and
        - (ii) as if orders made in that registry in the exercise of the family jurisdiction conferred by sections 36A, 36B and 36C above on civil partnership proceedings county courts were orders made by such a court.]

[<sup>F46</sup>(5A) For the purposes of subsection (3A) above, proceedings—

      - (a) are “ancillary” to a civil partnership cause if they are connected with the cause, and

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- (b) are “related” to a civil partnership cause if they are for protecting or otherwise relate to any rights, or the exercise of any rights, of—
- (i) the civil partners as civil partners, or
  - (ii) any children of the family.]
- (6) In this section “the principal registry” means the principal registry of the Family Division of the High Court and, for the purposes of subsection (3) above, proceedings are “ancillary” to a matrimonial cause if they are connected with the cause and are “related” to a matrimonial cause if they are for protecting or otherwise relate to any rights, or the exercise of any rights, of the parties to the marriage as husband and wife or any children of the family.
- [<sup>F47</sup>(7) 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

- F33** Words in s. 42(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(2)(a)**; S.I. 2005/3175, art. 2(2)
- F34** Words in s. 42(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(2)(b)**; S.I. 2005/3175, art. 2(2)
- F35** Words in s. 42(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(2)(c)**; S.I. 2005/3175, art. 2(2)
- F36** S. 42(1A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(3)**; S.I. 2005/3175, art. 2(2)
- F37** Words in s. 42(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(4)**; S.I. 2005/3175, art. 2(2)
- F38** Words in s. 42(2)(a) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 174(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(r)
- F39** S. 42(2A) substituted for words in s. 42(2) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(5)**; S.I. 2005/3175, art. 2(2)
- F40** Words in s. 42(3) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(6)**; S.I. 2005/3175, art. 2(2)
- F41** S. 42(3A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(7)**; S.I. 2005/3175, art. 2(2)
- F42** S. 42(4ZA) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(8)**; S.I. 2005/3175, art. 2(2)
- F43** S. 42(4A) inserted (1.7.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **s. 74(7)**; S.I. 1991/1364, **art. 2**, Sch.
- F44** Words in s. 42(4A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(9)**; S.I. 2005/3175, art. 2(2)
- F45** S. 42(5)(a)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(10)**; S.I. 2005/3175, art. 2(2)
- F46** S. 42(5A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 96(11)**; S.I. 2005/3175, art. 2(2)
- F47** S. 42(7) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 174(3)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(r)

#### Modifications etc. (not altering text)

- C9** S. 42 extended with modifications by S.I. 1977/344, **rule 106** (as substituted by S.I. 1986/634, **rule 21**)

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*Distribution of business: proceedings under s. 17 of Married Women's Property Act 1882*

**43 Distribution of business: proceedings under s. 17 of Married Women's Property Act 1882.**

In section 17 of the <sup>M9</sup>Married Women's Property Act 1882 (which provides for the summary determination of property disputes between spouses and, as extended, former spouses and former engaged couples) for the words after “in a summary way” there shall be substituted the words

“to the High Court or such county court as may be prescribed and the court may, on such an application (which may be heard in private), make such order with respect to the property as it thinks fit.

In this section “prescribed” means prescribed by rules of court and rules made for the purposes of this section may confer jurisdiction on county courts whatever the situation or value of the property in dispute.”.

**Marginal Citations**

**M9** 1882 c. 75.

*Magistrates' courts' domestic jurisdiction*

**44 [<sup>F48</sup>Family proceedings]in magistrates' courts to include applications to alter maintenance agreements.**

In section 65(1) of the <sup>M10</sup>Magistrates' Courts Act 1980 (which defines what proceedings are [<sup>F48</sup>family proceedings]) after paragraph (e) there shall be inserted the following paragraph—

“(ee) section 35 of the Matrimonial Causes Act 1973;”.

**Textual Amendments**

**F48** Words in s. 44 substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 11 para. 10** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

**Marginal Citations**

**M10** 1980 c. 43.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Matrimonial and Family Proceedings Act 1984, Part V.