

2005 No. 2797 (L. 24)

FAMILY PROCEEDINGS, ENGLAND AND WALES

**The Children (Allocation of Proceedings) (Amendment No. 2)
Order 2005**

Made - - - - - *10th October 2005*

Laid before Parliament *12th October 2005*

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 92(9) and (10) of, and Part I of Schedule 11 to, the Children Act 1989(a).

Commencement, citation and interpretation

1. This Order may be cited as the Children (Allocation of Proceedings) (Amendment No. 2) Order 2005 and shall come into force—

- (a) for the purposes of articles 5(a), 8(c)(iii), 13(b)(i) and (c), 14(a), 16(a) and this article on 5th December 2005; and
- (b) for all other purposes on 30th December 2005.

Savings and transitional provisions

2. The Children (Allocation of Proceedings) Order 1991 shall continue to apply as if the amendments in this Order had not been made to an application under the following sections of the Adoption Act 1976(b)—

- (a) section 12 (adoption order);
- (b) section 18 (freeing for adoption);
- (c) section 20 (revocation of a section 18 order);
- (d) section 21 (variation of a section 18 order so as to substitute one adoption agency for another);
- (e) section 27(1) or (2) (restriction on removal of child where adoption pending or application made under section 18);
- (f) section 29 (return of child taken away in breach of section 27);
- (g) section 53 (annulment etc. of overseas adoptions); and

(a) 1989 c.41, paragraphs 1 and 2 of Part 1 of Schedule 11 are amended by paragraphs 54 and 75 of Schedule 3 to the Adoption and Children Act 2002.

(b) 1976 c.36, section 20 was amended by section 88 of, and Schedule 10, paragraph 8(1) and (2) to, the Children Act 1989 (c.41) and by section 139(2) of, and paragraph 7(2) of Schedule 4 to, the Adoption and Children Act 2002 (c.38). Sections 12, 18 and 55 were amended, and sections 21 and 29(1) and (2) were substituted, by section 88 of, and Schedule 10, paragraph 3, 6, 9, 15 and 22 to, the Children Act 1989. Section 53 was amended by sections 6(1) and (2), 15(2) and 17 of, and Schedule 3 to, the Adoption (Intercountry Aspects) Act 1999 (c.18). The whole Act is repealed by section 139(3) of, and Schedule 5 to, the Adoption and Children Act 2002 (c.38) from a date to be appointed.

- (h) section 55 (adoption of children abroad).

Amendments to the Children (Allocation of Proceedings) Order 1991

3. The Children (Allocation of Proceedings) Order 1991(a) is amended in accordance with the following articles.

4. In article 1(2)—

- (a) in sub-paragraph (b) of the definition of “child”, after “Schedule 1,” insert “or are for adoption under the Adoption and Children Act 2002,”; and
- (b) after the definition of “child” insert—
- ““Convention adoption order” means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (regulations giving effect to the Convention), is made as a Convention adoption order;”.

5. In article 2—

- (a) for paragraph (a) substitute—
- “(a) designated county courts, being those courts designated for the time being—
- (i) as divorce county courts by an order under section 33 of the Matrimonial and Family Proceedings Act 1984(b);
- (ii) as civil partnership proceedings county courts by an order under section 36A of the Matrimonial and Family Proceedings Act 1984; or
- (iii) as both divorce county courts and civil partnership proceedings county courts by such orders;”;
- (b) in paragraph (c), after “Order” insert—
- “; (d) adoption centres, being those courts set out in Schedule 3 to this Order;
- (e) intercountry adoption centres, being those courts set out in Schedule 4 to this Order”.

6. For article 3(1)(r), substitute—

“(r) section 23 of the Adoption and Children Act 2002 (varying placement orders)(c);”.

7. After article 3, insert—

“Proceedings to be commenced in the High Court or a county court

3A. Proceedings for a Convention adoption order or an adoption order where section 83 of the Adoption and Children Act 2002 (restriction on bringing children in) applies shall be commenced in the High Court or in a county court.

Application where proceedings pending

3B.—(1) Where an application has been made for an adoption order and has not been disposed of, an application for—

- (a) leave to apply for a residence order under section 29(4)(b) of the Adoption and Children Act 2002;
- (b) leave to apply for a special guardianship order under section 29(5)(b) of the Adoption and Children Act 2002;

(a) S.I. 1991/1677, relevant amending instruments are S.I. 1993/624, 1994/2164, 1994/3138, 1997/1897, 1998/2166, 2001/775, 2003/331 and 2005/520.

(b) 1984 c.42, section 33 is amended by section 15(1) of, and paragraphs 171 and 172 of Schedule 4 to, the Constitutional Reform Act 2004 (c.4) from a date to be appointed.

(c) 2002 c.38.

- (c) a residence order under section 8 where section 28(1)(a) or 29(4)(b) of the Adoption and Children Act 2002 applies (leave obtained to make application for a residence order);
- (d) an order under section 14A where section 28(1)(b) or 29(5)(b) of the Adoption and Children Act 2002 applies (leave obtained to make application for a special guardianship order);
- (e) leave to remove the child under section 37(a) of the Adoption and Children Act 2002; or
- (f) leave to oppose the making of an adoption order under section 47(3) or (5) of the Adoption and Children Act 2002

shall be commenced in the court in which the adoption proceedings are pending.

(2) Where an application has been made for a placement order and has not been disposed of, an application for leave to remove a child from accommodation provided by the local authority under section 30(2)(b) of the Adoption and Children Act 2002 shall be commenced in the court in which the proceedings for the placement order are pending.

(3) Where an application has been made for leave under section 42(6) of the Adoption and Children Act 2002 and has not been disposed of, an application for leave to remove a child under section 38(3)(a) or 40(2)(a) of that Act shall be commenced in the court in which the proceedings under section 42(6) of that Act are pending.

Application where order already in force

3C.—(1) Where a special guardianship order is in force in respect of a child, an application for leave to change child’s name or remove child from United Kingdom under section 14C(3) shall be commenced in the court which made the special guardianship order.

(2) Where a placement order is in force in respect of a child, an application for—

- (a) leave to apply to revoke the placement order under section 24(2)(a) of the Adoption and Children Act 2002;
- (b) leave to place child for adoption under section 24(5) of that Act;
- (c) leave to apply for a contact order under section 26(3)(f) of that Act;
- (d) leave to apply to change child’s name or remove child from United Kingdom under section 28(2)(b) of that Act; or
- (e) a contact order under section 26 of that Act

shall be commenced in the court which made the placement order.”

8. In article 4—

- (a) in paragraph (1), omit “, or under the Adoption Act 1976”;
- (b) after paragraph (1), insert—

“(1A) Proceedings under the Adoption and Children Act 2002, save for proceedings under section 23 of that Act, to vary or revoke an order shall be commenced in the court which made the order.”;
- (c) in paragraph (2)—
 - (i) after “section 8” insert “, 14A or 14D”;
 - (ii) after “section 10(1)(b)” insert “, 14A(6)(b) or 14D(2) respectively”; and
 - (iii) for “divorce” substitute “designated”; and
- (d) in paragraph (4), after “paragraph (1)” insert “or (1A)”.

9. In articles 5, 6(2)(b), 8 and 12(2)(b), for “Adoption Act 1976” substitute “Adoption and Children Act 2002”.

10. In articles 6 to 13, after “section 1(2)”, wherever it appears, insert “and, where applicable, section 1(3) of the Adoption and Children Act 2002”.

11. In article 10—

- (a) in paragraph (1), for “to 17” substitute “and 16”; and
- (b) in paragraph (2)(b), for “Adoption Act 1976” substitute “Adoption and Children Act 2002”.

12. In article 13—

- (a) in paragraph (1), for “, 16 and” substitute “to”; and
- (b) in paragraph (2)(b), for “Adoption Act 1976” substitute “Adoption and Children Act 2002”.

13. Article 14 shall stand as article 14(1), and—

- (a) for “articles 18, 19 and 20” substitute “articles 3B(c) and (d), 18 and 19”;
- (b) omit—

- (i) “matrimonial”; and
 - (ii) “or under the Adoption Act 1976”;

- (c) for “divorce” substitute “designated”; and

- (d) after paragraph (1) add—

“(2) Subject to paragraph (3), an application under the Adoption and Children Act 2002 which is to be made to a county court shall be commenced in an adoption centre.

(3) An application for a Convention adoption order or an adoption order where section 83 of the Adoption and Children Act 2002 applies which is to be made to a county court shall be commenced in an intercountry adoption centre.”.

14. In articles 15 and 16—

- (a) for “divorce”, wherever it appears, substitute “designated”; and
- (b) after “section 8” wherever it appears, insert “or 14A”.

15. For article 17, substitute—

“Application under the Adoption and Children Act 2002

17.—(1) Subject to paragraph (2), where proceedings under the Adoption and Children Act 2002, save for proceedings under section 23 of that Act, are to be transferred from the High Court or a magistrates’ court to a county court, they shall be transferred to an adoption centre.

(2) Where proceedings for a Convention adoption order or an adoption order where section 83 of the Adoption and Children Act 2002 applies are to be transferred from the High Court to a county court, they shall be transferred to an intercountry adoption centre.”.

16. In article 19—

- (a) for “divorce” substitute “designated”; and
- (b) at the end add, “and an adoption centre and intercountry adoption centre”.

17. Omit articles 20 and 22.

18. After Schedule 2, add the Schedules in the Schedule to this Order.

10th October 2005

Falconer of Thoroton, C.

SCHEDULE

Article 18

“SCHEDULE 3

Article 2

Adoption Centres

Aberystwyth County Court
Birmingham County Court
Blackburn County Court
Bolton County Court
Bournemouth County Court
Bow County Court
Bradford County Court
Brentford County Court
Brighton County Court
Bristol County Court
Bromley County Court
Cambridge County Court
Canterbury County Court
Cardiff County Court
Carlisle County Court
Chelmsford County Court
Chester County Court
Coventry County Court
Croydon County Court
Derby County Court
Exeter County Court
Guildford County Court
Ipswich County Court
Kingston Upon Hull County Court
Lancaster County Court
Leeds County Court
Leicester County Court
Lincoln County Court
Liverpool County Court

Llangefni County Court
Luton County Court
Macclesfield County Court
Manchester County Court
Medway County Court
Middlesbrough County Court at Teesside Combined Court
Milton Keynes County Court
Newcastle upon Tyne County Court
Newport (Gwent) County Court
Northampton County Court
Norwich County Court
Nottingham County Court
Oxford County Court
Peterborough County Court
Plymouth County Court
Pontypridd County Court
Portsmouth County Court
Reading County Court
Rhyl County Court
Romford County Court
Sheffield County Court
Southampton County Court
Stockport County Court
Stoke On Trent County Court
Sunderland County Court
Swansea County Court
Swindon County Court
Taunton County Court
Teesside County Court
Telford County Court
Truro County Court
Warrington County Court
Watford County Court
Wolverhampton County Court
Worcester County Court

York County Court

SCHEDULE 3

Article 2

Intercountry Adoption Centres

Birmingham County Court

Bournemouth County Court

Bristol County Court

Cardiff County Court

Chester County Court

Exeter County Court

Leeds County Court

Liverpool County Court

Manchester County Court

Newcastle upon Tyne County Court

Nottingham County Court

Portsmouth County Court”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Children (Allocation of Proceedings) Order 1991 (S.I. 1991/1677) to make provision for proceedings under the Adoption and Children Act 2002 (c.38). Amendments are also made as a consequence of the implementation of the Civil Partnership Act 2004 (c.33) and the amendment of the Children Act 1989 (c. 41) by section 115 (special guardianship) of the 2002 Act.

In respect of proceedings under the 2002 Act, the amending Order—

- (a) inserts two new classes of county court, namely adoption centres and an intercountry adoption centres (article 5 and the Schedule);
- (b) provides that an application under section 23 of the 2002 Act (varying placement orders) must be made to a magistrates' court (article 6);
- (c) provides that proceedings for a Convention adoption order or an adoption order where section 83 of the 2002 Act applies must be commenced in the High Court or a county court (article 7);
- (d) provides for applications for the leave of the court in certain circumstances to be made to a particular court (article 7);
- (e) provides that proceedings under the 2002 Act, save for proceedings under section 23 of that Act, to vary or revoke an order must be made to the court which made the order (article 8);
- (f) requires a court to consider the delay principle contained in section 1(3) of the 2002 Act whenever it is considering whether to transfer proceedings under the 2002 Act to another court (article 10);
- (g) provides that an application under the 2002 Act to be made to a county court shall be commenced in an adoption centre or, if the application is for a Convention adoption order, in an intercountry adoption centre (article 13(d));
- (h) requires proceedings transferred from a magistrates' court or the High Court to the county court to be transferred to an adoption centre, or if the proceedings are for a Convention adoption order or an adoption order where section 83 applies, to an intercountry adoption centre (article 15);
- (i) requires the principal registry of the Family Division of the High Court to be treated as an adoption centre and an intercountry adoption centre (article 16);
- (j) substitutes a reference to the 2002 Act for all references to the Adoption Act 1976 and amends a number of definitions;

In respect of special guardianship, the amending Order—

- (a) provides for an application under section 14A or 14D of the 1989 Act, which would have the effect of varying or discharging an order made by the county court of its own motion, to be made to a designated county court (article 8);
- (b) provides that an application for the leave of the court, under section 14C(3), to change the child's surname, or remove him from the United Kingdom, is to be made to the court which made the special guardianship order (article 7);
- (c) provides that an application leave to apply for a residence order or a special guardianship order under section 29(4)(b) and (29(5)(b) respectively and any subsequent application for an order to be made to the court in which the adoption proceedings are pending (article 7);
- (d) provides for the transfer, in certain circumstances, of an application for a special guardianship order under section 14A of the Children Act 1989 (article 14).

In respect of Civil Partnership Act 2004, the amending Order makes provision for a new class of county court known as a civil partnership proceedings county court which will have a similar status to divorce county courts. This Order provides (by using the new term “designated county court”) that proceedings which previously had to be begun in, or transferred to, a divorce county court (other than proceedings where a cause is pending) can now be begun in, or transferred to, either a divorce county court or a civil partnership proceedings county court.

The amendments made in respect of the Civil Partnership Act 2004 take effect on 5th December, all other amendments take effect on 30th December 2005 but are subject to the transitional provisions contained in article 2.

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Order 2005**

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