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STATUTORY INSTRUMENTS

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**2008 No. 2836**

**The Allocation and Transfer of Proceedings Order 2008**

**PART 3**

**TRANSFER OF PROCEEDINGS**

**SECTION 2**

**TRANSFER OF PROCEEDINGS TO SPECIFIED LEVEL OF COURT**

**Transfer of proceedings from magistrates' court to county court**

**15.**—(1) Subject to paragraphs (2) and (3), a magistrates' court may transfer the whole or any part of proceedings to a county court only if the magistrates' court considers that—

- (a) the transfer will significantly accelerate the determination of the proceedings;
- (b) there is a real possibility of difficulty in resolving conflicts in the evidence of witnesses;
- (c) there is a real possibility of a conflict in the evidence of two or more experts;
- (d) there is a novel or difficult point of law;
- (e) there are proceedings concerning the child in another jurisdiction or there are international law issues;
- (f) there is a real possibility that enforcement proceedings may be necessary and the method of enforcement or the likely penalty is beyond the powers of a magistrates' court;
- (g) there is a real possibility that a guardian ad litem will be appointed under rule 9.5 of the Family Proceedings Rules 1991<sup>(1)</sup>;
- (h) there is a real possibility that a party to proceedings is a person lacking capacity within the meaning of the Mental Capacity Act 2005<sup>(2)</sup> to conduct the proceedings; or
- (i) there is another good reason for the proceedings to be transferred.

(2) Proceedings under any of the provisions mentioned in articles 5(1)(a) to (c) or 5(2)(i) to (l) may not be transferred from a magistrates' court.

(3) Proceedings under section 25 of the 1989 Act (use of accommodation for restricting liberty) may not be transferred from a magistrates' court which is not a family proceedings court within the meaning of section 67 of the Magistrates' Courts Act 1980<sup>(3)</sup>.

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<sup>(1)</sup> S.I. 1991/1247; relevant amending instruments are S.I. 2001/821, S.I. 2005/559 and S.I. 2005/2922.

<sup>(2)</sup> 2005 c. 9.

<sup>(3)</sup> 1980 c. 43.