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## EXPLANATORY NOTE

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

The effect of this Order is that, from 6<sup>th</sup> April 2009, appeals against decisions of magistrates' courts in family proceedings shall lie to a county court instead of to the High Court.

Articles 2 and 3 and 6 to 9 amend the statutory provisions giving rights of appeal from decisions of magistrates' courts. The amendments provide for the appeals to lie to a county court instead of to the High Court and make consequential changes.

Article 4(2) provides that an application to have a case stated for the opinion of the High Court under section 111 of the Magistrates' Courts Act 1980 may not be made in relation to family proceedings. Family proceedings are defined as—

- (a) proceedings which, by virtue of section 65 of the 1980 Act, are or may be treated as family proceedings for the purposes of that Act; and
- (b) proceedings under the Child Support Act 1991.

A new section 111A is inserted into the 1980 Act by article 4(3). The new section provides that in family proceedings a person may appeal to a county court on the ground that a decision is wrong in law or is in excess of jurisdiction. This appeal to a county court replaces the procedure for making an application to have a case stated as it is not appropriate for a county court to hear such an application.

Articles 4(4), 5 and 10 amend section 112 of the 1980 Act, section 6(3) of the Civil Jurisdiction and Judgments Act 1982 and paragraph 4(3) of Schedule 1 to the Civil Jurisdiction and Judgments Order SI (2001/3929). These amendments are consequential on the new section 111A of the 1980 Act.

Article 11 makes an amendment to article 3 of the Allocation and Transfer of Proceedings Order 2008 (S.I. 2008/2836) so that the principal registry of the Family Division of the High Court is treated as a county court for the purposes of appeals from decisions of a magistrates' court under section 94 of the Children Act 1989 and section 61 of the Family Law Act 1996. This amendment is consequential on the changes to the appeals from decisions of the magistrates' court in family proceedings.

By virtue of articles 12 to 18 of the Order—

- (a) any appeal in which the appeal notice is filed or notice of motion is lodged before 6<sup>th</sup> April 2009 will lie to the same court as it would have lain before 6<sup>th</sup> April 2009; and
- (b) any application made before 6<sup>th</sup> April 2009 to have a case stated for the opinion of the High Court under section 111(1) of the 1980 Act will not be affected by the amendments made by the Order.

A person will not be able to appeal to a county court on the ground that a decision is wrong in law or in excess of jurisdiction under the new section 111A of the 1980 Act if the person makes an application to have a case stated under section 111 in respect of the decision before 6<sup>th</sup> April 2009.