



PRESIDENT OF THE  
FAMILY DIVISION

**PRACTICE DIRECTION - ALLOCATION AND TRANSFER OF PROCEEDINGS**

**Issued on 3 November 2008**

1.1 This Practice Direction is given by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under paragraph 2(2) of part 1 of Schedule 2 to the Constitutional Reform Act 2005 and is agreed by the Lord Chancellor.

1.2 The objective of this Practice Direction is to ensure that the criteria for the transfer of proceedings are applied in such a way that proceedings are heard at the appropriate level of court, that the capacity of magistrates' courts is properly utilised and that proceedings are only dealt with in the High Court if the relevant criteria are met.

1.3 This Practice Direction will come into effect on 25 November 2008. Where practicable, it applies to proceedings started before but not concluded by 25 November. The Practice Directions of 5 June 1992 (distribution of business) and 22 February 1993 (applications under the Children Act 1989 by children) are revoked except that they will continue to apply to any proceedings to which it is not practicable to apply this Practice Direction.

1.4 A reference to an article is a reference to the article so numbered in the Allocation and Transfer of Proceedings Order 2008.

**Part 1**

2 This Part of this Practice Direction applies to all family proceedings (whether or not the Allocation and Transfer of Proceedings Order 2008 applies to such proceedings).  
Timing and continuing review of decision on appropriate venue

3.1 The issue as to which court is the most appropriate hearing venue must be addressed by the court speedily as soon as there is sufficient information to determine whether the case meets the criteria for hearing in that court. This information may come to light before, during or after the first hearing. It must then be kept under effective review at all times; it should not be assumed that proceedings will necessarily remain in the court in which they were started or to which they have been transferred. For example proceedings that have been transferred to a county court because one or more of the criteria in article 15 applies should be transferred back to the magistrates' court if the reason for transfer falls away. Conversely, an unforeseen late complication may require a transfer from a magistrates' court to a county court.

3.2 Where a court is determining where the proceedings ought to be heard it will consider all relevant information including that given by the applicant either in the application form or otherwise, for example in any request for proceedings to be transferred to another magistrates' court or to a county court under rule 6 of the

Family Proceedings Courts (Children Act 1989) Rules 1991.  
Timeliness

4.1 Article 13 and paragraph 12.1 require the court to have regard to delay. Therefore the listing availability of the court in which the proceedings have been started and in neighbouring magistrates' courts and county courts must always be ascertained before deciding where proceedings should be heard.

4.2 If a magistrates' court is considering transferring proceedings to a county court or a county court is considering transferring proceedings to the High Court but that decision is finely balanced, the proceedings should not be transferred if the transfer would lead to delay. Conversely, if the High Court is considering transferring proceedings to a county court or a county court is considering transferring proceedings to a magistrates' court but that decision is finely balanced, the proceedings should be transferred if retaining them would lead to delay.

4.3 Transferring proceedings may mean that there will be a short delay in the proceedings being heard since the papers may need to be sent to the court to which they are being transferred. The court will determine whether the delay is significant, taking into account the circumstances of the case and with reference to the interests of the child.

4.4 While there is no express reference in the Allocation and Transfer of Proceedings Order 2008 or in Part 3 of this Practice Direction to the length of the hearing or to judicial continuity such issues may be relevant.  
Transfer of proceedings to or from the High Court

5.1 A court will take into account the following factors (which are not exhaustive) when considering whether the criteria in articles 7 or 18 or paragraph 11.2 or 12.3 apply, such that the proceedings ought to be heard in the High Court-

- (1) there is alleged to be a risk that a child concerned in the proceedings will suffer serious physical or emotional harm in the light of-
  - (a) the death of another child in the family, a parent or any other material person; or
  - (b) the fact that a parent or other material person may have committed a grave crime, for example, murder, manslaughter or rape, in particular where the essential factual framework is in dispute or there are issues over the causation of injuries or a material conflict of expert evidence;
- (2) the application concerns medical treatment for a child which involves a risk to the child's physical or emotional health which goes beyond the normal risks of routine medical treatment;
- (3) an adoption order is sought in relation to a child who has been adopted abroad in a country whose adoption orders are not recognised in England and Wales;
- (4) an adoption order is sought in relation to a child who has been brought into the United Kingdom in circumstances where section 83 of the Adoption and Children Act 2002 applies and
  - (a) the person bringing the child, or causing the child to be brought-
    - (i) has not complied with any requirement imposed by regulations made under section 83(4); or
    - (ii) has not met any condition required to be met by regulations made under section 83(5) within the required time; or
  - (b) there are complicating features in relation to the application;
- (5) it is likely that the proceedings will set a significant new precedent or alter existing principles of common law;

- (6) where periodical payments, a lump sum or transfer of property are an issue-
  - (a) the capital value of the assets involved and the extent to which they are available for, or susceptible to, distribution or adjustment;
  - (b) any substantial allegations of fraud or deception or non-disclosure;
  - (c) any substantial contested allegations of conduct.

5.2 The following proceedings are likely to fall within the criteria for hearing in the High Court unless the nature of the issues of fact or law raised in the proceedings may make them more suitable to be dealt with in a county court-

- (1) proceedings involving a contested issue of domicile;
- (2) applications to restrain a respondent from taking or continuing with foreign proceedings;
- (3) suits in which the Queen's Proctor intervenes or shows cause and elects trial in the High Court;
- (4) proceedings in which an application is opposed on the grounds of want of jurisdiction;
- (5) proceedings in which there is a complex foreign element or where the court has invited submissions to be made under Article 11 (7) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;
- (6) proceedings in which there is an application to remove a child permanently or temporarily from the jurisdiction to a non-Hague Convention country.
- (7) interlocutory applications involving-
  - (a) search orders; or
  - (b) directions as to dealing with assets out of the jurisdiction.

5.3 Proceedings will not normally be suitable to be dealt with in the High Court merely because of any of the following-

- (1) intractable problems with regard to contact;
- (2) sexual abuse;
- (3) injury to a child which is neither life-threatening nor permanently disabling;
- (4) routine neglect, even if it spans many years and there is copious documentation;
- (5) temporary or permanent removal to a Hague Convention country;
- (6) standard human rights issues;
- (7) uncertainty as to immigration status;
- (8) the celebrity of the parties;
- (9) the anticipated length of the hearing;
- (10) the quantity of evidence;
- (11) the number of experts;
- (12) the possible availability of a speedier hearing.

5.4 A substantial reason for starting proceedings in the High Court will only exist where the nature of the proceedings or the issues raised are such that they ought to be heard in the High Court. Where proceedings have been started in the High Court under article 7(c) or paragraph 11.2(4) and the High Court considers that there is no substantial reason for them to have been started there, the High Court will transfer the proceedings to a county court or a magistrates' court and may make any orders about costs which it considers appropriate.

## **Part 2**

6 This Part of this Practice Direction applies to family proceedings to which the Allocation and Transfer of Proceedings Order 2008 applies.

Transfer of proceedings from one magistrates' court to another or from one county court to another

7 Where a magistrates' court is considering transferring proceedings to another

magistrates' court or a county court is considering transferring proceedings to another county court, the court will take into account the following factors (which are not exhaustive) when considering whether it would be more convenient for the parties for the proceedings to be dealt with by the other court-

- (1) the fact that a party is ill or suffers a disability which could make it inconvenient to attend at a particular court;
- (2) the fact that the child lives in the area of the other court;
- (3) the need to avoid delay.

#### Transfer of proceedings from a magistrates' court to a county court

8.1 Where a magistrates' court is considering whether one or more of the criteria in article 15(1) (except article 15(1)(g) and (h)) apply such that the proceedings ought to be heard in the county court, the magistrates' court will first consider whether another magistrates' court would have suitable experience to deal with the issues which have given rise to consideration of article 15. If so, the magistrates' court will then consider whether the proceedings could be dealt with more quickly or within the same time if they were transferred to the other magistrates' court rather than a county court. If so, the magistrates' court will transfer the proceedings to the other magistrates' court rather than a county court.

8.2 A magistrates' court may only transfer proceedings to a county court under article 15(1)(a) if it considers that the transfer will significantly accelerate the determination of the proceedings. Before considering a transfer on this ground, the magistrates' court must obtain information about the hearing dates available in other magistrates' courts and in the relevant county court. The fact that a hearing could be arranged in a county court at an earlier date than in any appropriate magistrates' court does not by itself justify the transfer of proceedings under article 15(1)(a); the question of whether the determination of the proceedings would be significantly accelerated must be considered in the light of all the circumstances.

#### Transfer of proceedings from a county court to a magistrates' court

9.1 A county court must transfer to a magistrates' court under article 16(1) proceedings that have previously been transferred under article 15(1) where the county court considers that none of the criteria in article 15(1) apply. In particular, proceedings transferred to a county court by a magistrates' court for resolution of a single issue, for example, use of the inherent powers of the High Court in respect of medical testing of a child or disclosure of information by HM Revenue and Customs, should be transferred back to the magistrates' court once the issue has been resolved.

9.2 Subject to articles 5(3), 6, 8 and 13 and paragraphs 4 and 12.1, straightforward proceedings for-

- (1) a residence order;
- (2) a contact order;
- (3) a prohibited steps order;
- (4) a specific issue order;
- (5) a special guardianship order; or
- (6) an order under Part 4 of the Family Law Act 1996

which are started in a county court should be transferred to a magistrates' court if the county court considers that none of the criteria in article 15(1)(b) to (i) apply to those proceedings.

### **Part 3**

10 This Part of this Practice Direction applies to any family proceedings to which the

Allocation and Transfer of Proceedings Order 2008 does not apply.  
Starting proceedings

11.1 Subject to paragraph 11.2, family proceedings must be started in a county court.

11.2 Family proceedings may be started in the High Court only if-

- (1) the proceedings are exceptionally complex;
- (2) the outcome of the proceedings is important to the public in general;
- (3) an enactment or rule requires the proceedings to be started in the High Court; or
- (4) there is another substantial reason for starting the proceedings in the High Court.

Transferring proceedings

12.1 When making any decision about the transfer of proceedings the court must have regard to the need to avoid delay in the proceedings.

12.2 A county court will take into account the following factors (which are not exhaustive) when considering whether to transfer proceedings to another county court-

- (1) whether the transfer will significantly accelerate the determination of the proceedings;
- (2) whether it is more convenient for the parties for the proceedings to be dealt with by another county court; and
- (3) whether there is another good reason for the proceedings to be transferred.

12.3 A county court will take into account the following factors (which are not exhaustive) when considering whether to transfer proceedings to the High Court-

- (1) whether the proceedings are exceptionally complex;
- (2) whether the outcome of the proceedings is important to the public in general;
- (3) whether an enactment or rule requires the proceedings to be dealt with in the High Court; and
- (4) whether there is another substantial reason for the proceedings to be transferred.

12.4 The High Court will also take into account the factors in paragraph 12.3 when considering whether to transfer proceedings to a county court.

**Mark Potter**

**The Right Honourable  
Sir Mark Potter  
The President of the Family Division**

**By authority of the Lord Chancellor  
Bridget Prentice MP  
Parliamentary Under Secretary of State, Ministry of Justice**