Draft Order laid before Parliament under section 56(6) of the Access to Justice Act 1999 for approval by resolution of each House of Parliament

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. (L.)

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014

Made - - - -

Coming into force - - in accordance with rule 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 56(1) and (3) of the Access to Justice Act 1999(**a**).

In accordance with section 56(4) of that Act he has consulted as required.

In accordance with section 56(6) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014 and comes into force on the date on which section 17(3) of the Crime and Courts Act 2013(**b**) is brought fully into force.

(2) In this Order—

"the 1984 Act" means the Matrimonial and Family Proceedings Act 1984(**c**);

"the 2007 Act" means the Tribunals, Courts and Enforcement Act 2007(**d**);

(**a**) 1999 c.22. Subsection (1) was amended by paragraphs 52(1)(b) and (2) of Part 3 of Schedule 9 and paragraphs 78 and 81 of Part 2 of Schedule 10 to the Crime and Courts Act 2013 (c.22). Section 56(4) was amended by section 15(1) and paragraphs 279 and 280(1) and (2) of Part 1 of Schedule 4 to the Constitutional Reform Act 2005 (c.4).
(**b**) 2013 c.22.
(**c**) 1984 c.42.
(**d**) 2007 c.15.

"the 2011 Order" means the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2011(**a**);

"authorised court officer" has the meaning assigned to it by rule 44.1 of the Civil Procedure Rules 1998(**b**) as applied to family proceedings by rule 28.2(1) of the Family Procedure Rules 2010(**c**); and

"justice of the peace" means a justice of the peace who is not a District Judge (Magistrates' Courts).

Appeals to the family court

2.—(1) Paragraph (3) applies to an appeal—

(a) under section 31K(1) of the 1984 Act(**d**) (appeals from the family court in cases where no other right of appeal exists); or

(b) under section 13(2A) of the Administration of Justice Act 1960(**e**) (appeals in cases of contempt of court) from a decision or order of the family court.

(2) Paragraph (3) does not apply if the person, or any of the persons, who made the decision or order was when making the decision or order deployed in the family court otherwise than as the holder of an office referred to in paragraph (3).

(3) The appeal lies to the family court (instead of to the Court of Appeal) if it is from a decision or order made by—

(a) the Senior District Judge of the Family Division;

(b) a district judge of the Principal Registry of the Family Division;

(c) the Chief Taxing Master;

(d) a Taxing Master of the Senior Courts;

(e) a person appointed to act as a deputy for any person holding an office referred to in paragraph (b) or (d), or to act as a temporary additional officer in any such office;

(f) a district judge;

(g) a deputy district judge appointed under section 102 of the Senior Courts Act 1981(**f**) or section 8 of the County Courts Act 1984(**g**);

(h) a Chamber President, or a Deputy Chamber President, of a chamber of the Upper Tribunal or of a chamber of the First-tier Tribunal;

(i) a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to the 2007 Act;

(j) a transferred-in judge of the Upper Tribunal (see section 31(2) of the 2007 Act);

(**a**) S.I. 2011/1044.

(**b**) S.I. 1998/3132. Part 44 was substituted by the Civil Procedure (Amendment) Rules 2013 (S.I. 2013/262).

(**c**) S.I. 2010/2955. Rule 28.2(1) was amended by paragraphs 2 and 3(a) of the Family Procedure (Amendment) Rules 2013 (S.I. 2013/530) and by paragraph 72(a) of the Family Procedure (Amendment No. 3) Rules 2013 (S.I.2013/3204).

(**d**) Section 31K was inserted by paragraph 1 of Part 1 of Schedule 10 to the Crime and Courts Act 2013 (c.22).

(**e**) 1960 c.65. Section 13(2A) was inserted by paragraphs 15(1) and (2) of Part 2 of Schedule 10 to the Crime and Courts Act 2013.

(**f**) 1981 c.54. Amendments were made by paragraph 3 (1) to (5) of Schedule 11 to the Tribunals, Courts and Enforcement Act 2007 (c.15). Subsections (1) and (1B) were amended and subsections 5(ZA) to (5ZE) were inserted by Part 4, paragraphs 36(1) to (4) of Schedule 13 to the Crime and Courts Act 2013. Subsection (5) was substituted by paragraph 15(3) of Schedule 8 to the Judicial Pensions and Retirement Act 1993 (c.8).Subsection (6) was repealed by the Courts and legal Services Act 1990 (c. 41), Schedule 20.

(**g**) 1984 c.28. Amendments were made by paragraphs 5, 7(1) to (5) of Schedule 11 to the Tribunals, Courts and Enforcement Act 2007. Subsections (1), (1ZB), (1A) and (4) were amended and subsections (3A) to (3E) were inserted by paragraphs 37(1) to (6) of Part 4 of Schedule 13 to the Crime and Courts Act 2013. Subsections (1), (1B) to (1D) are to be amended or repealed at a date to be appointed by paragraphs (1) and (6) of Part 1 of Schedule 9 to the Crime and Courts Act 2013. Subsection (1A) was inserted by paragraph 17(1) of Schedule 6 to the Judicial Pensions and Retirement Act 1993 and subsection (2) was repealed by Schedule 9 to that Act. Subsection (3) was amended by paragraph 42 of Schedule 18 to the Courts and Legal Services Act 1990.

(k) a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3(**a**) to, or section 31(2) of, the 2007 Act) ;

(l) a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the 2007 Act(**b**);

(m) a transferred-in judge of the First-tier Tribunal (see section 31(2) of the 2007 Act);

(n) a member of a panel of Employment Judges established for England and Wales or for Scotland(**c**);

(o) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951(**d**) (assistants to the Judge Advocate General);

(p) a District Judge (Magistrates' Courts);

(q) two or three justices of the peace;

(r) a single justice of the peace;

(s) a justices' clerk or an assistant to a justices' clerk; or

(t) an authorised court officer.

(4) Paragraph (3) has effect subject to any requirement to obtain permission to appeal.

The 2011 Order

3.—(1) The 2011 Order is amended in accordance with paragraphs (2) and (3) below.

(2) In article 1—

(a) in paragraph (2) omit the definition of "costs judge"; and

(b) in paragraphs (2) and (3) omit "or a county court".

(3) In article 2(1)—

(a) after paragraph (a), insert—

"(aa) the Senior District Judge of the Family Division;";

(b) for paragraph (c) substitute—

"(c) the Chief Taxing Master;";

(c) after paragraph (c), insert—

"(cc) a Taxing Master of the Senior Courts; or"; and

(d) in paragraph (d) for "sub-paragraphs (a) to (c)" substitute "sub-paragraph (a),(b) or (cc)".

(4) Articles 2(2) and 3 of the 2011 Order are revoked.

Signed by the authority of the Lord Chancellor

Name

Date

Minister of State
Ministry of Justice

(**a**) Paragraph 7 of Schedule 3 was amended by paragraphs 42 and 46 (1) and (6) to (8) of Part 4 of Schedule 13 to the Crime and Courts Act 2013.

(**b**) Paragraph 1(1) of Schedule 2 was amended by paragraphs 42, 45(1) and (2) of Part 4 of Schedule 13 to the Crime and Courts Act 2013.

(**c**) See regulation 8 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (S.I. 2013/1237).

(**d**) 1951 c. 46. Section 30(1)(b) was amended by paragraph 5 of Part 2 of Schedule 6 to the Armed Forces Act 2001(c.19).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the routes of appeal from decisions of certain types of judges or other office holders sitting in the family court. The effect of the Order is that such appeals will be dealt with in the family court, in accordance with distribution of business rules made by the Lord Chief Justice under section 31D of the Matrimonial and Family Proceedings Act 1984 (c.42), instead of the Court of Appeal as provided by section 31K of the Matrimonial and Family Proceedings Act 1984 or (in so far as appeals against decisions of the family court relating to contempt of court are concerned) section 13(2A) of the Administration of Justice Act 1960 (c.65).

Article 3 revokes or amends provisions of the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2011 (S.I. 2011/1044) in consequence of the establishment of the family court and brings the use of terminology in the 2011 Order in line with this Order.

An impact assessment for this Order is annexed to the Explanatory Memorandum, which is available alongside this Order at www.legislation.gov.uk.

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