

CAYMAN ISLANDS



Supplement No. 4 published with Extraordinary
Gazette No. 35 dated 26 April, 2013.

THE CHILDREN LAW (2012 REVISION)
THE CHILDREN (ALLOCATION OF PROCEEDINGS) ORDER, 2013

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ARRANGEMENT OF PARAGRAPHS

1. Citation and commencement
2. Definition
3. Commencement of proceedings where other proceedings in Grand Court
4. Commencement of proceedings generally
5. Application to extend, vary or discharge order
6. Transfer from summary court to Grand Court by summary Court
7. Transfer from Grand Court to summary Court by Grand Court
8. Contravention of any provision of this Order
9. Wardship proceedings
10. Transitional provisions

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THE CHILDREN (ALLOCATION OF PROCEEDINGS) ORDER, 2013

In exercise of the powers conferred by section 85(4) of the Children Law, 2012 (Revision), the Chief Justice makes the following Order-

1. (1) This Order may be cited as the Children (Allocation of Proceedings) Order, 2013. Citation and commencement
 - (2) This Order shall come into force on 29 April, 2013.
2. In this Order, “the Law” means the Children Law (2012 Revision). Definition
3. Applications shall be commenced- Commencement of proceedings where other proceedings in Grand Court
 - (a) in the Grand Court, if there are divorce, judicial separation, nullity or other proceedings which relate to a child before the Grand Court; or
 - (b) if there are no such proceedings as specified in sub-subparagraph (a), subject to paragraph 4, in either the Grand Court or a summary court.
4. (1) Subject to subparagraphs (2) and (3) and to paragraph 5, proceedings under any of the following sections shall be commenced in a summary court- Commencement of proceedings generally
 - (a) section 27 (use of accommodation for restricting liberty);
 - (b) section 33 (care and supervision orders);
 - (c) section 35(6) (parental consent or leave to change name or remove from the Islands a child in care);
 - (d) section 36 (parental contact);
 - (e) section 38 (education supervision orders);
 - (f) section 45 (child assessment orders);
 - (g) section 46 (emergency protection orders);
 - (h) section 48 (duration of emergency protection orders);
 - (i) section 49(7) (application for emergency protection order by designated officer);
 - (j) section 51 (powers to assist discovery of children, etc.);
 - (k) section 53 (recovery orders);
 - (l) section 76 (protection of children in an emergency);

- (m) section 78(6) (appeals against steps taken under section 78(1));
- (n) section 93 (powers of constables to assist);
- (o) paragraph 19 of Schedule 2 (contribution orders); and
- (p) paragraph 7 of Schedule 8 (certain appeals).

(2) Notwithstanding subparagraph (1) and subject to subparagraph (3), proceedings stipulated in sub-subparagraphs (b), (e), (f), (g), (i) or (j) of subparagraph (1) and which arise out of an investigation directed by the Grand Court under section 39(1), shall be commenced in the Grand Court.

(3) Notwithstanding subparagraphs (1) and (2), proceedings stipulated in sub-subparagraphs (a) to (k) or sub-subparagraph (n) of subparagraph (1) shall, in respect of the same child, be continued in the court in which those proceedings were pending.

Application to extend,
vary or discharge order

5. Where it is desired to make an application under the Law-

- (a) to extend, vary or discharge an order made during proceedings;
or
- (b) which may have the effect of extending, varying or discharging an order made during proceedings,

that application shall be made to the court which made the order.

Transfer from summary
court to Grand Court by
summary court

6. (1) Subject to subparagraphs (2), (3) and (4), a summary court may, upon application by a party or of its own motion transfer to the Grand Court any proceedings stipulated in paragraph 3 where it considers it in the best interest of the child to do so having regard to the principle set out in section 3(2) of the Law and to-

- (a) whether the proceedings are exceptionally grave, important or complex due to-
 - (i) the presence of complicated or conflicting evidence about the risks involved to the child's physical or moral well-being or about other matters relating to the welfare of the child;
 - (ii) the number of parties involved;
 - (iii) a conflict with the law of another jurisdiction;
 - (iv) a novel and difficult point of law; or
 - (v) a question of public interest;
- (b) whether it would be appropriate for those proceedings to be heard together with other family proceedings which are pending in the Grand Court; and
- (c) whether the transfer is likely to expedite the determination of the proceedings where-

- (i) no other method of doing so is appropriate; or
- (ii) delay would seriously prejudice the interests of the child who is the subject of the proceedings.

(2) Notwithstanding subparagraph (1), proceedings stipulated in paragraph 4(1)(g) to (j), (l), (m), (o) or (p) shall not be transferred from a summary court.

(3) Notwithstanding subparagraph (1) proceedings stipulated in sub-subparagraphs (a) and (n) of paragraph 3(1) shall only be transferred from a summary court to the Grand Court in order for those proceedings to be heard together with other family proceedings which arose out of the same circumstances that gave rise to the proceedings to be transferred and which are pending in another court.

7. The Grand Court may transfer to a summary Court proceedings which were transferred under paragraph 6(1) where the Grand Court, having regard to the principle set out in section 3(2) of the Law and the interests of the child, considers that the factors cited by the summary Court as the reason for the transfer—

Transfer from Grand Court to summary court by Grand Court

- (a) do not apply in the case of paragraph 6(1)(a);
- (b) no longer apply in the case of paragraph 6(1)(b) given that the proceedings with which the transferred proceedings were to be heard have been determined; or
- (c) no longer apply in the case of paragraph 6(1)(c).

8. Where proceedings are commenced or transferred in contravention of a provision of this Order, the contravention shall not have the effect of making the proceedings invalid and no appeal shall lie against the determination of proceedings on the basis of such contravention alone.

Contravention of any provision of this Order

9. Wardship proceedings shall be commenced, conducted and concluded in the Grand Court in the exercise of its inherent jurisdiction.

Wardship Proceedings

10. Proceedings mentioned under the Law which are commenced in a summary court prior to the coming into force of this Order may, notwithstanding these provisions, remain in that court.

Transitional provisions

Made the 18th day of April, 2013.

HON. ANTHONY SMELLIE, QC
CHIEF JUSTICE