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# Senior Courts Act 1981

## 1981 CHAPTER 54

### PART II

#### JURISDICTION

##### THE HIGH COURT

##### *General jurisdiction*

#### **19 General jurisdiction of High Court.**

- (1) The High Court shall be a superior court of record.
- (2) Subject to the provisions of this Act, there shall be exercisable by the High Court—
  - (a) all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and
  - (b) all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act (including jurisdiction conferred on a judge of the High Court by any statutory provision).
- (3) Any jurisdiction of the High Court shall be exercised only by a single judge of that court, except in so far as it is—
  - (a) by or by virtue of rules of court or any other statutory provision required to be exercised by a divisional court; or
  - (b) by rules of court made exercisable by a master, registrar or other officer of the court, or by any other person.
- (4) The specific mention elsewhere in this Act of any jurisdiction covered by subsection (2) shall not derogate from the generality of that subsection.

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### *Admiralty jurisdiction*

## **20 Admiralty jurisdiction of High Court.**

- (1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say—
- (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
  - (b) jurisdiction in relation to any of the proceedings mentioned in subsection (3);
  - (c) any other Admiralty jurisdiction which it had immediately before the commencement of this Act; and
  - (d) any jurisdiction connected with ships or aircraft which is vested in the High Court apart from this section and is for the time being by rules of court made or coming into force after the commencement of this Act assigned to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court.
- (2) The questions and claims referred to in subsection (1)(a) are—
- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
  - (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
  - (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
  - (d) any claim for damage received by a ship;
  - (e) any claim for damage done by a ship;
  - (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of—
    - (i) the owners, charterers or persons in possession or control of a ship; or
    - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,
 being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
  - (g) any claim for loss of or damage to goods carried in a ship;
  - (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
  - [<sup>F1</sup>(j) any claim—
    - (i) under the Salvage Convention 1989;
    - (ii) under any contract for or in relation to salvage services; or
    - (iii) in the nature of salvage not falling within (i) or (ii) above;
 or any corresponding claim in connection with an aircraft;]
  - (k) any claim in the nature of towage in respect of a ship or an aircraft;
  - (l) any claim in the nature of pilotage in respect of a ship or an aircraft;
  - (m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
  - (n) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;

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- (o) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
  - (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
  - (q) any claim arising out of an act which is or is claimed to be a general average act;
  - (r) any claim arising out of bottomry;
  - (s) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.
- (3) The proceedings referred to in subsection (1)(b) are—
- (a) any application to the High Court under the <sup>M1</sup>Merchant Shipping Acts 1894 to 1979 other than an application under [<sup>F2</sup>the Merchant Shipping Act 1995];
  - (b) any action to enforce a claim for damage, loss of life or personal injury arising out of—
    - (i) a collision between ships; or
    - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
    - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;
  - (c) any action by shipowners or other persons under the [<sup>F3</sup>Merchant Shipping Act 1995] for the limitation of the amount of their liability in connection with a ship or other property.
- (4) The jurisdiction of the High Court under subsection (2)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.
- (5) Subsection (2)(e) extends to—
- (a) any claim in respect of a liability incurred under the [<sup>F4</sup>Chapter III of Part VI of the Merchant Shipping Act 1995]; and
  - (b) any claim in respect of a liability falling on the [<sup>F5</sup>International Oil Pollution Compensation Fund, or on the International Oil Compensation Fund 1984, under Chapter IV of Part VI of the Merchant Shipping Act 1995,][<sup>F6</sup>or on the International Oil Pollution Compensation Supplementary Fund 2003,].
- [<sup>F7</sup>(6) In subsection (2)(j)—
- (a) the “Salvage Convention 1989” means the International Convention on Salvage, 1989 as it has effect under [<sup>F8</sup>section 224 of the Merchant Shipping Act 1995];
  - (b) the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services;
  - (c) the reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim mentioned in sub-

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paragraph (i) or (ii) of paragraph (j) which is available under section 87 of the Civil Aviation Act 1982.]

- (7) The preceding provisions of this section apply—
- (a) in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;
  - (b) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
  - (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the [F9 Merchant Shipping Act 1995].

#### Textual Amendments

- F1** S. 20(2)(j) substituted (1.1.1995) by virtue of 1994 c. 28, s. 1(6), **Sch. 2 para. 6(2)**; S.I. 1994/2971, art. 2, **Sch.**
- F2** Words in s. 20(3)(a) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(2)(a)(i)** (with s. 312(1))
- F3** Words in s. 20(3)(c) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(2)(a)(ii)** (with s. 312(1))
- F4** Words in s. 20(5)(a) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(2)(b)(i)** (with s. 312(1))
- F5** Words in s. 20(5)(b) substituted (1.1.1996) by virtue of 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(2)(b)(ii)** (with s. 312(1))
- F6** Words after "1992" inserted (coming into force in accordance with with art. 1(2) of the amending S.I.) by virtue of **The Merchant Shipping (Oil Pollution) (Supplementary Fund Protocol) Order 2006** (S.I. 2006/1265), **art. 13**
- F7** S. 20(6) substituted (1.1.1995) by virtue of 1994 c. 28, s. 1(6), **Sch. 2 para. 6(3)**; S.I. 1994/2971, art. 2, **Sch.**
- F8** Words in s. 20(6)(a) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(2)(c)** (with s. 312(1))
- F9** Words in s. 20(7) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(2)(d)** (with s. 312(1))

#### Modifications etc. (not altering text)

- C1** S. 20 extended (Guernsey) (1.12.1993) (with modifications) by S.I. 1993/2664, art. 3, **Sch.**

#### Marginal Citations

- M1** 1894 c. 60.

## 21 Mode of exercise of Admiralty jurisdiction.

- (1) Subject to section 22, an action in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court.
- (2) In the case of any such claim as is mentioned in section 20(2)(a), (c) or (s) or any such question as is mentioned in section 20(2)(b), an action in rem may be brought

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in the High Court against the ship or property in connection with which the claim or question arises.

- (3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the High Court against that ship, aircraft or property.
- (4) In the case of any such claim as is mentioned in section 20(2)(e) to (r), where—
  - (a) the claim arises in connection with a ship; and
  - (b) the person who would be liable on the claim in an action in personam (“the relevant person”) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,  
an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against—
    - (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
    - (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.
- (5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the High Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.
- (6) Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.
- (7) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within England or Wales.
- (8) Where, as regards any such claim as is mentioned in section 20(2)(e) to (r), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship.

**Modifications etc. (not altering text)**

C2 S. 21 extended (Guernsey) (1.12.1993) (with modifications) by S.I. 1993/2664, art. 3, Sch.

## 22 Restrictions on entertainment of actions in personam in collision and other similar cases.

- (1) This section applies to any claim for damage, loss of life or personal injury arising out of—
  - (a) a collision between ships; or
  - (b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or

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- (c) non-compliance, on the part of one or more of two or more ships, with the collision regulations.
- (2) The High Court shall not entertain any action in personam to enforce a claim to which this section applies unless—
- (a) the defendant has his habitual residence or a place of business within England or Wales; or
  - (b) the cause of action arose within inland waters of England or Wales or within the limits of a port of England or Wales; or
  - (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

In this subsection—

“inland waters” includes any part of the sea adjacent to the coast of the United Kingdom certified by the Secretary of State to be waters falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters;

“port” means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under an Act to make charges in respect of ships entering it or using the facilities therein, and “limits of a port” means the limits thereof as fixed by or under the Act in question or, as the case may be, by the relevant charter or custom;

“charges” means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

- (3) The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside England and Wales against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.
- (4) Subsections (2) and (3) shall apply to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the references to the plaintiff and the defendant being for this purpose read as references to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.
- (5) Subsections (2) and (3) shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.
- (6) Subject to the provisions of subsection (3), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in subsection (2)(a) to (c) is satisfied, and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.
- (7) Nothing in this section shall prevent an action which is brought in accordance with the provisions of this section in the High Court being transferred, in accordance with the enactments in that behalf, to some other court.
- (8) For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of the High Court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction.

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**Modifications etc. (not altering text)**

C3 S. 22 extended (Guernsey) (1.12.1993) (with modifications) by S.I. 1993/2664, art. 3, Sch.

**23 High Court not to have jurisdiction in cases within Rhine Convention.**

The High Court shall not have jurisdiction to determine any claim or question certified by the Secretary of State to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions of that Convention; and any proceedings to enforce such a claim which are commenced in the High Court shall be set aside.

**Modifications etc. (not altering text)**

C4 S. 23 extended (Guernsey) (1.12.1993) (with modifications) by S.I. 1993/2664, art. 3, Sch.

**24 Supplementary provisions as to Admiralty jurisdiction.**

- (1) In sections 20 to 23 and this section, unless the context otherwise requires—
- “collision regulations” means [<sup>F10</sup>safety regulations under section 85 of the Merchant Shipping Act 1995];
  - “goods” includes baggage;
  - “master” has the same meaning as in the [<sup>F11</sup>Merchant Shipping Act 1995], and accordingly includes every person (except a pilot) having command or charge of a ship;
  - “the Rhine Navigation Convention” means the Convention of the 7th October 1868 as revised by any subsequent Convention;
  - “ship” includes any description of vessel used in navigation and (except in the definition of “port” in section 22(2) and in subsection (2)(c) of this section) includes, subject to section 2(3) of the <sup>M2</sup>Hovercraft Act 1968, a hovercraft;
  - “towage” and “pilotage”, in relation to an aircraft, mean towage and pilotage while the aircraft is water-borne.
- (2) Nothing in sections 20 to 23 shall—
- (a) be construed as limiting the jurisdiction of the High Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a British ship;
  - (b) affect the provisions of section [<sup>F12</sup>226 of the Merchant Shipping Act 1995] (power of a receiver of wreck to detain a ship in respect of a salvage claim); or
  - (c) authorise proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty’s ships or Her Majesty’s aircraft, or, subject to section 2(3) of the Hovercraft Act 1968, Her Majesty’s hovercraft, or of any cargo or other property belonging to the Crown.
- (3) In this section—
- “Her Majesty’s ships” and “Her Majesty’s aircraft” have the meanings given by section 38(2) of the <sup>M3</sup>Crown Proceedings Act 1947;

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“Her Majesty’s hovercraft” means hovercraft belonging to the Crown in right of Her Majesty’s Government in the United Kingdom or Her Majesty’s Government in Northern Ireland.

#### Textual Amendments

- F10** Words in definition of “collision regulations” in s. 24(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(3)(a)(i)** (with s. 312(1))
- F11** Words in s. 24(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(3)(a)(ii)** (with s. 312(1))
- F12** Words in s. 24(2)(b) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 59(3)(b)** (with s. 312(1))

#### Modifications etc. (not altering text)

- C5** S. 24 extended (Guernsey) (1.12.1993) (with modifications) by S.I. 1993/2664, art. 3, **Sch.**

#### Marginal Citations

- M2** 1968 c. 59.  
**M3** 1947 c. 44.

### *Other particular fields of jurisdiction*

#### 25 Probate jurisdiction of High Court.

- (1) Subject to the provisions of Part V, the High Court shall, in accordance with section 19(2), have the following probate jurisdiction, that is to say all such jurisdiction in relation to probates and letters of administration as it had immediately before the commencement of this Act, and in particular all such contentious and non-contentious jurisdiction as it then had in relation to—
- (a) testamentary causes or matters;
  - (b) the grant, amendment or revocation of probates and letters of administration; and
  - (c) the real and personal estate of deceased persons.
- (2) Subject to the provisions of Part V, the High Court shall, in the exercise of its probate jurisdiction, perform all such duties with respect to the estates of deceased persons as fell to be performed by it immediately before the commencement of this Act.

#### 26 Matrimonial jurisdiction of High Court.

The High Court shall, in accordance with section 19(2), have all such jurisdiction in relation to matrimonial causes and matters as was immediately before the commencement of the<sup>M4</sup> Matrimonial Causes Act 1857 vested in or exercisable by any ecclesiastical court or person in England or Wales in respect of—

- (a) divorce a mensa et thoro (renamed judicial separation by that Act);
- (b) nullity of marriage . . . <sup>F13</sup>; and
- (c) any matrimonial cause or matter except marriage licences.



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#### Textual Amendments

**F13** Words repealed by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), s. 68(1)(2), [Sch. 1 para. 25](#), [Sch. 2](#)

#### Marginal Citations

**M4** [1857 c. 85](#).

## 27 Prize jurisdiction of High Court.

The High Court shall, in accordance with section 19(2), have as a prize court—

- (a) all such jurisdiction as is conferred on it by the Prize Acts 1864 to 1944 (in which references to the High Court of Admiralty are by virtue of paragraph 1 of Schedule 4 to this Act to be construed as references to the High Court); and
- (b) all such other jurisdiction on the high seas and elsewhere as it had as a prize court immediately before the commencement of this Act.

## 28 Appeals from Crown Court and inferior courts.

- (1) Subject to subsection (2), any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to have a case stated by that court for the opinion of the High Court.
- (2) Subsection (1) shall not apply to—
  - (a) a judgment or other decision of the Crown Court relating to trial on indictment; or
  - (b) any decision of that court under <sup>F14</sup> . . . <sup>F15</sup> . . . [<sup>F16</sup><sup>F14</sup> . . . or the Local Government (Miscellaneous Provisions) Act 1982] which, by any provision of any of those Acts, is to be final.
- (3) Subject to the provisions of this Act and to rules of court, the High Court shall, in accordance with section 19(2), have jurisdiction to hear and determine—
  - (a) any application, or any appeal (whether by way of case stated or otherwise), which it has power to hear and determine under or by virtue of this or any other Act; and
  - (b) all such other appeals as it had jurisdiction to hear and determine immediately before the commencement of this Act.

[<sup>F17</sup>(4) In subsection (2)(a) the reference to a decision of the Crown Court relating to trial on indictment does not include a decision relating to an order under section 17 of the Access to Justice Act 1999.]

#### Textual Amendments

**F14** Words in s. 28(2)(b) repealed (1.9.2007) by [Gambling Act 2005 \(c. 19\)](#), ss. 356, 358, [Sch. 17](#); S.I. 2006/3272, [art. 2\(4\)](#) (with [Sch. 4](#))

**F15** Words in s. 28(2)(b) repealed (24.11.2005) by [Licensing Act 2003 \(c. 17\)](#), ss. 199, 201(2), [Sch. 7](#) (with ss. 2(3), 15(2), 195); S.I. 2005/3056, [art. 2\(2\)](#)

**F16** Words substituted by [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30, SIF 81:1\)](#), s. 2, [Sch. 3 para. 27\(6\)](#)

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**F17** S. 28(4) inserted (2.4.2001) by 1999 c. 22, s. 24, **Sch. 4 para. 22** (with **Sch. 14 para. 7(2)**); S.I. 2001/916, **art. 3(a)(ii)** (with **Sch. 2 para. 2**)

**[<sup>F18</sup>28A Proceedings on case stated by magistrates' court or Crown Court.**

- (1) This section applies where a case is stated for the opinion of the High Court—
  - (a) by a magistrates' court under section 111 of the <sup>M5</sup>Magistrates' Courts Act 1980; or
  - (b) by the Crown Court under section 28(1) of this Act.
- (2) The High Court may, if it thinks fit, cause the case to be sent back for amendment and, where it does so, the case shall be amended accordingly.
- (3) The High Court shall hear and determine the question arising on the case (or the case as amended) and shall—
  - (a) reverse, affirm or amend the determination in respect of which the case has been stated; or
  - (b) remit the matter to the magistrates' court, or the Crown Court, with the opinion of the High Court,
 and may make such other order in relation to the matter (including as to costs) as it thinks fit.
- (4) Except as provided by the <sup>M6</sup>Administration of Justice Act 1960 (right of appeal to House of Lords in criminal cases), a decision of the High Court under this section is final.]

**Textual Amendments**

**F18** S. 28A substituted (27.9.1999) by 1999 c. 22, **ss. 61, 108(3)(b)** (with **Sch. 14 para. 7(2)**)

**Marginal Citations**

**M5** 1980 c.43.

**M6** 1960 c.65.

**29 [<sup>F19</sup>Mandatory, prohibiting and quashing orders]**

- <sup>F20</sup>(1) The orders of mandamus, prohibition and certiorari shall be known instead as mandatory, prohibiting and quashing orders respectively.
- (1A) The High Court shall have jurisdiction to make mandatory, prohibiting and quashing orders in those classes of case in which, immediately before 1st May 2004, it had jurisdiction to make orders of mandamus, prohibition and certiorari respectively.]
  - (2) Every such order shall be final, subject to any right of appeal therefrom.
  - (3) In relation to the jurisdiction of the Crown Court, other than its jurisdiction in matters relating to trial on indictment, the High Court shall have all such jurisdiction to make [<sup>F21</sup>mandatory, prohibiting or quashing orders] as the High Court possesses in relation to the jurisdiction of an inferior court.

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- [<sup>F22</sup>(3A) The High Court shall have no jurisdiction to make [<sup>F21</sup>mandatory, prohibiting or quashing orders] in relation to the jurisdiction of a court-martial in matters relating to—
- (a) trial by court-martial for an offence, or
  - (b) appeals from a Standing Civilian Court;
- and in this subsection “court-martial” means a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.]
- (4) The power of the High Court under any enactment to require justices of the peace or a judge or officer of a county court to do any act relating to the duties of their respective offices, or to require a magistrates’ court to state a case for the opinion of the High Court, in any case where the High Court formerly had by virtue of any enactment jurisdiction to make a rule absolute, or an order, for any of those purposes, shall be exercisable by [<sup>F23</sup>mandatory order].
- [<sup>F24</sup>(5) In any statutory provision—
- (a) references to mandamus or to a writ or order of mandamus shall be read as references to a mandatory order;
  - (b) references to prohibition or to a writ or order of prohibition shall be read as references to a prohibiting order;
  - (c) references to certiorari or to a writ or order of certiorari shall be read as references to a quashing order; and
  - (d) references to the issue or award of a writ of mandamus, prohibition or certiorari shall be read as references to the making of the corresponding mandatory, prohibiting or quashing order.]

[<sup>F25</sup>(6) In subsection (3) the reference to the Crown Court’s jurisdiction in matters relating to trial on indictment does not include its jurisdiction relating to orders under section 17 of the Access to Justice Act 1999.]

#### Textual Amendments

- F19** S. 29 sidenote substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(e\)](#)
- F20** S. 29(1)(1A) substituted (1.5.2004) for s. 29(1) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(a\)](#)
- F21** Words in s. 29(3)(3A) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(b\)](#)
- F22** S. 29(3A) inserted (28.2.2002) by 2001 c. 19, s. 23(3); S.I. 2002/439, [art. 2](#) (subject to art. 3)
- F23** Words in s. 29(4) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(c\)](#)
- F24** S. 29(5) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(d\)](#)
- F25** S. 29(6) inserted (2.4.2001) by 1999 c. 22, s. 24, [Sch. 4 para. 23](#) (with Sch. 14 para. 7(2)); S.I. 2001/916, [art. 3\(a\)\(ii\)](#)

### 30 Injunctions to restrain persons from acting in offices in which they are not entitled to act.

- (1) Where a person not entitled to do so acts in an office to which this section applies, the High Court may—

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- (a) grant an injunction restraining him from so acting; and
  - (b) if the case so requires, declare the office to be vacant.
- (2) This section applies to any substantive office of a public nature and permanent character which is held under the Crown or which has been created by any statutory provision or royal charter.

### 31 Application for judicial review.

- (1) An application to the High Court for one or more of the following forms of relief, namely—
- [<sup>F26</sup>(a) a mandatory, prohibiting or quashing order;]
  - (b) a declaration or injunction under subsection (2); or
  - (c) an injunction under section 30 restraining a person not entitled to do so from acting in an office to which that section applies,
- shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.
- (2) A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review, seeking that relief, has been made and the High Court considers that, having regard to—
- (a) the nature of the matters in respect of which relief may be granted by [<sup>F27</sup>mandatory, prohibiting or quashing orders];
  - (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
  - (c) all the circumstances of the case,
- it would be just and convenient for the declaration to be made or the injunction to be granted, as the case may be.
- (3) No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- [<sup>F28</sup>(4) On an application for judicial review the High Court may award to the applicant damages, restitution or the recovery of a sum due if—
- (a) the application includes a claim for such an award arising from any matter to which the application relates; and
  - (b) the court is satisfied that such an award would have been made if the claim had been made in an action begun by the applicant at the time of making the application.]

[<sup>F29</sup>(5) If, on an application for judicial review, the High Court quashes the decision to which the application relates, it may in addition—

    - (a) remit the matter to the court, tribunal or authority which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court, or
    - (b) substitute its own decision for the decision in question.

(5A) But the power conferred by subsection (5)(b) is exercisable only if—

    - (a) the decision in question was made by a court or tribunal,
    - (b) the decision is quashed on the ground that there has been an error of law, and

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- (c) without the error, there would have been only one decision which the court or tribunal could have reached.
- (5B) Unless the High Court otherwise directs, a decision substituted by it under subsection (5)(b) has effect as if it were a decision of the relevant court or tribunal.]
- (6) Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant—
- (a) leave for the making of the application; or
  - (b) any relief sought on the application,
- if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.
- (7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

#### Textual Amendments

- F26** S. 31(1)(a) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 4\(a\)](#)
- F27** Words in s. 31(2)(a) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 4\(b\)](#)
- F28** S. 31(4) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 4\(c\)](#)
- F29** S. 31(5)-(5B) substituted (6.4.2008) for s. 31(5) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), [ss. 141, 148](#); [S.I. 2008/749](#), [art. 2](#)

VALID FROM 03/11/2008

#### <sup>F30</sup> 31A Transfer of judicial review applications to Upper Tribunal

- (1) This section applies where an application is made to the High Court—
- (a) for judicial review, or
  - (b) for permission to apply for judicial review.
- (2) If Conditions 1, 2, 3 and 4 are met, the High Court must by order transfer the application to the Upper Tribunal.
- (3) If Conditions 1, 2 and 4 are met, but Condition 3 is not, the High Court may by order transfer the application to the Upper Tribunal if it appears to the High Court to be just and convenient to do so.
- (4) Condition 1 is that the application does not seek anything other than—
- (a) relief under section 31(1)(a) and (b);
  - (b) permission to apply for relief under section 31(1)(a) and (b);
  - (c) an award under section 31(4);
  - (d) interest;
  - (e) costs.

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- (5) Condition 2 is that the application does not call into question anything done by the Crown Court.
- (6) Condition 3 is that the application falls within a class specified under section 18(6) of the Tribunals, Courts and Enforcement Act 2007.
- (7) Condition 4 is that the application does not call into question any decision made under—
  - (a) the Immigration Acts,
  - (b) the British Nationality Act 1981 (c. 61),
  - (c) any instrument having effect under an enactment within paragraph (a) or (b), or
  - (d) any other provision of law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.]

#### Textual Amendments

**F30** S. 31A inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), **ss. 19, 148**; [S.I. 2008/2696](#), **art. 5(a)** (with [arts. 3, 4](#))

### *Powers*

#### **32 Orders for interim payment.**

- (1) As regards proceedings pending in the High Court, provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to make an order requiring a party to the proceedings to make an interim payment of such amount as may be specified in the order, with provision for the payment to be made to such other party to the proceedings as may be so specified or, if the order so provides, by paying it into court.
- (2) Any rules of court which make provision in accordance with subsection (1) may include provision for enabling a party to any proceedings who, in pursuance of such an order, has made an interim payment to recover the whole or part of the amount of the payment in such circumstances, and from such other party to the proceedings, as may be determined in accordance with the rules.
- (3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.
- (4) Nothing in this section shall be construed as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs.
- (5) In this section “interim payment”, in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the court in the proceedings is given or made in favour of that other party.

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### [<sup>F31</sup>32A Orders for provisional damages for personal injuries.

- (1) This section applies to an action for damages for personal injuries in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration in his physical or mental condition.
- (2) Subject to subsection (4) below, as regards any action for damages to which this section applies in which a judgment is given in the High Court, provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to award the injured person—
  - (a) damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition; and
  - (b) further damages at a future date if he develops the disease or suffers the deterioration.
- (3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.
- (4) Nothing in this section shall be construed—
  - (a) as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs; or
  - (b) as prejudicing any duty of the court under any enactment or rule of law to reduce or limit the total damages which would have been recoverable apart from any such duty.]

#### Textual Amendments

F31 S. 32A inserted by Administration of Justice Act 1982 (c. 53, SIF 37), ss. 6(1), 73(2)

#### Modifications etc. (not altering text)

C6 S. 32A amended by Administration of Justice Act 1982 (c. 53, SIF 37), ss. 6(3), 73(2)

### [<sup>F32</sup>33 Powers of High Court exercisable before commencement of action.

- (1) On the application of any person in accordance with rules of court, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say—
  - (a) the inspection, photographing, preservation, custody and detention of property which appears to the court to be property which may become the subject-matter of subsequent proceedings in the High Court, or as to which any question may arise in any such proceedings; and
  - (b) the taking of samples of any such property as is mentioned in paragraph (a), and the carrying out of any experiment on or with any such property.
- <sup>F33</sup>(2) On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court <sup>F34</sup>. . . the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the court to be likely to be a party to the proceedings and

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to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim—

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order—
  - (i) to the applicant’s legal advisers; or
  - (ii) to the applicant’s legal advisers and any medical or other professional adviser of the applicant; or
  - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.]

**Textual Amendments**

- F32** S. 33 repealed so far as it relates to county courts by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(3), [Sch. 4](#)
- F33** Power to amend conferred on s. 33(2) (27.4.1997) by [1997 c. 12, s. 8\(1\)](#); [S.I.1997/841](#), [art. 3\(a\)](#)
- F34** Words in [s. 33\(2\)](#) omitted (26.4.1999) by virtue of [S.I. 1998/2940](#), [arts. 1, 5\(a\)](#); [S.I. 1998/3132](#)

**Modifications etc. (not altering text)**

- C7** [S.33](#) extended by [SI 1988/593](#), art. 4(2)
- C8** [S.33](#) extended (temp. for a period of 12 months beginning with 22.3.90: [SI 1990/675](#); and for a further period of 12 months beginning with 22.3.1991: [SI 1991/549](#), 779) by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 13(8), [Sch. 4 para. 9\(6\)](#)  
[S. 33](#) extended (*prosp.*) by [2000 c. 11, ss. 23, 128](#), [Sch. 4 para. 13\(6\)\(b\)](#)  
[S. 33](#) extended (17.4.2001) by [S.I. 2001/953](#), [art. 4\(2\)](#)  
[S. 33](#) extended (13.12.2001) by [S.I. 2001/3927](#), [art. 12](#)

**[<sup>F35</sup>34 Power of High Court to order disclosure of documents, inspection of property etc. in proceedings for personal injuries or death.**

<sup>F36</sup>(1) . . . . .

- (2) On the application, in accordance with rules of court, of a party to any proceedings [<sup>F37</sup>to which this section applies], the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the court to be likely to have in his possession, custody or power any documents which are relevant to an issue arising out of the said claim—
  - (a) to disclose whether those documents are in his possession, custody or power; and
  - (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order—
    - (i) to the applicant’s legal advisers; or
    - (ii) to the applicant’s legal advisers and any medical or other professional adviser of the applicant; or
    - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.
- (3) On the application, in accordance with rules of court, of a party to any proceedings [to which this section applies], the High Court shall, in such circumstances as may be



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specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say—

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject-matter of the proceedings or as to which any question arises in the proceedings;
  - (b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.
- (4) The preceding provisions of this section are without prejudice to the exercise by the High Court of any power to make orders which is exercisable apart from those provisions.]

#### Textual Amendments

- F35** S. 34 repealed so far as it relates to county courts by [County Courts Act 1984 \(c. 28, SIF 34\), s. 148\(3\), Sch. 4](#)
- F36** S. 34(1) omitted (26.4.1999) by virtue of [S.I. 1998/2940, arts. 1, 5\(b\)\(i\); S.I. 1998/3132](#)
- F37** By [S.I. 1998/2940, art. 5\(b\)\(ii\)](#) it is provided that in s. 34 in each subsection (2) and (3) the words “to which this subsection applies” are to be omitted

#### [<sup>F38</sup>35 Provisions supplementary to ss. 33 and 34.

- (1) The High Court shall not make an order under section 33 or 34 if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.
- (2) Rules of court may make provision as to the circumstances in which an order under section 33 or 34 can be made; and any rules making such provision may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.
- (3) Without prejudice to the generality of subsection (2), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under section 33(2) or 34 incurred by the person against whom the order is sought shall be awarded to that person unless the court otherwise directs.
- (4) Sections 33(2) and 34 and this section bind the Crown; and section 33(1) binds the Crown so far as it relates to property as to which it appears to the court that it may become the subject-matter of subsequent proceedings involving a claim in respect of personal injuries to a person or in respect of a person’s death.

In this subsection references to the Crown do not include references to Her Majesty in Her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall.

- (5) In sections [<sup>F39</sup>32A,] 33 and 34 and this section—
  - “property” includes any land, chattel or other corporeal property of any description;
  - “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.]

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#### Textual Amendments

- F38** S. 35 repealed so far as it relates to county courts by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(3), [Sch. 4](#)
- F39** “32A,” inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), [ss. 6\(2\)](#), 73(2)

#### [<sup>F40</sup>35A Power of High Court to award interest on debts and damages.

- (1) Subject to rules of court, in proceedings (whenever instituted) before the High Court for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and—
  - (a) in the case of any sum paid before judgment, the date of the payment; and
  - (b) in the case of the sum for which judgment is given, the date of the judgment.
- (2) In relation to a judgment given for damages for personal injuries or death which exceed £200 subsection (1) shall have effect—
  - (a) with the substitution of “shall be included” for “may be included”; and
  - (b) with the addition of “unless the court is satisfied that there are special reasons to the contrary” after “given”, where first occurring.
- (3) Subject to rules of court, where—
  - (a) there are proceedings (whenever instituted) before the High Court for the recovery of a debt; and
  - (b) the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings),
 the defendant shall be liable to pay the plaintiff simple interest at such rate as the court thinks fit or as rules of court may provide on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.
- (4) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.
- (5) Without prejudice to the generality of section 84, rules of court may provide for a rate of interest by reference to the rate specified in section 17 of the Judgments Act 1838 as that section has effect from time to time or by reference to a rate for which any other enactment provides.
- (6) Interest under this section may be calculated at different rates in respect of different periods.
- (7) In this section “plaintiff” means the person seeking the debt or damages and “defendant” means the person from whom the plaintiff seeks the debt or damages and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.
- (8) Nothing in this section affects the damages recoverable for the dishonour of a bill of exchange.]

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### Textual Amendments

**F40** S. 35A inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), s. 15(1), [Sch. 1 Pt. I](#)

## 36 Subpoena issued by High Court to run throughout United Kingdom.

- (1) If in any cause or matter in the High Court it appears to the court that it is proper to compel the personal attendance at any trial of a witness who may not be within the jurisdiction of the court, it shall be lawful for the court, if in the discretion of the court it seems fit so to do, to order that a writ of subpoena ad testificandum or writ of subpoena duces tecum shall issue in special form commanding the witness to attend the trial wherever he shall be within the United Kingdom; and the service of any such writ in any part of the United Kingdom shall be as valid and effectual for all purposes as if it had been served within the jurisdiction of the High Court.
- (2) Every such writ shall have at its foot a statement to the effect that it is issued by the special order of the High Court, and no such writ shall issue without such a special order.
- (3) If any person served with a writ issued under this section does not appear as required by the writ, the High Court, on proof to the satisfaction of the court of the service of the writ and of the default, may transmit a certificate of the default under the seal of the court or under the hand of a judge of the court—
  - (a) if the service was in Scotland, to the Court of Session at Edinburgh; or
  - (b) if the service was in Northern Ireland, to the High Court of Justice in Northern Ireland at Belfast;and the court to which the certificate is sent shall thereupon proceed against and punish the person in default in like manner as if that person had neglected or refused to appear in obedience to process issued out of that court.
- (4) No court shall in any case proceed against or punish any person for having made such default as aforesaid unless it is shown to the court that a reasonable and sufficient sum of money to defray
  - [<sup>F41</sup>(a) the expenses of coming and attending to give evidence and of returning from giving evidence; and
  - (b) any other reasonable expenses which he has asked to be defrayed in connection with his evidence,was tendered to him at the time when the writ was served upon him.]
- (5) Nothing in this section shall affect—
  - (a) the power of the High Court to issue a commission for the examination of witnesses out of the jurisdiction of the court in any case in which, notwithstanding this section, the court thinks fit to issue such a commission; or
  - (b) the admissibility at any trial of any evidence which, if this section had not been enacted, would have been admissible on the ground of a witness being outside the jurisdiction of the court.
- (6) In this section references to attendance at a trial include references to attendance before an examiner or commissioner appointed by the High Court in any cause or matter in that court, including an examiner or commissioner appointed to take evidence outside the jurisdiction of the court.

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### Textual Amendments

**F41** Words in s. 36(4) substituted (*I. 4. 1991*) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(2), **Sch. 17 para. 13**; S.I.1991/608, art. 2, **Sch.**

### Modifications etc. (not altering text)

- C9** S. 36 extended by Medical Act 1983 (c. 54, SIF 83:1), s. 43, **Sch. 4 para. 2(2)**
- C10** S. 36 extended by Dentists Act 1984 (c. 24, SIF 83:1), ss. 33, 50(2), **Sch. 3 para. 3**
- C11** S. 36 extended by Administration of Justice Act 1985 (c. 61, SIF 98:1), s. 30, **Sch. 4 para. 2(2)**
- C12** S. 36 applied by Opticians Act 1989 (c. 44, SIF 83:1), s. 21(2)  
 S. 36 applied (19.6.1997) by 1997 c. 24, ss. 10(8), 24(2), **Sch. 2 para. 1(c)**  
 S. 36 applied by Medical Act 1983 (c. 54), Sch. 4 para. 2(2) (as inserted by The Medical Act 1983 (Amendment) Order 2002 (S.I. 2002/3155), art. 14 (with transitional provisions in art. 16(2), Sch. 2) (the amendment coming into force in accordance with art. 1(2)(3) of the amending S.I.))
- C13** S. 36 applied (prosp.) by Health and Social Care Act 2008 (c. 14), ss. 106, 170
- C14** S. 36(1)–(4) modified by Mental Health Act 1983 (c. 20, SIF 85), s. 104(4), **Sch. 5 para. 43(2)**

## 37 Powers of High Court with respect to injunctions and receivers.

- (1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
- (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.
- (3) The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction.
- (4) The power of the High Court to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power—
  - (a) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 1 of the <sup>M7</sup>Charging Orders Act 1979 for the purpose of enforcing the judgment, order or award in question; and
  - (b) shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.
- (5) Where an order under the said section 1 imposing a charge for the purpose of enforcing a judgment, order or award has been, or has effect as if, registered under section 6 of the <sup>M8</sup>Land Charges Act 1972, subsection (4) of the said section 6 (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made either—
  - (a) in proceedings for enforcing the charge; or
  - (b) by way of equitable execution of the judgment, order or award or, as the case may be, of so much of it as requires payment of moneys secured by the charge.

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#### **Marginal Citations**

**M7** 1979 c. 53.

**M8** 1972 c. 61.

### **38 Relief against forfeiture for non-payment of rent.**

- (1) In any action in the High Court for the forfeiture of a lease for non-payment of rent, the court shall have power to grant relief against forfeiture in a summary manner, and may do so subject to the same terms and conditions as to the payment of rent, costs or otherwise as could have been imposed by it in such an action immediately before the commencement of this Act.
- (2) Where the lessee or a person deriving title under him is granted relief under this section, he shall hold the demised premises in accordance with the terms of the lease without the necessity for a new lease.

### **39 Execution of instrument by person nominated by High Court.**

- (1) Where the High Court has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to indorse any negotiable instrument, then, if that person—
  - (a) neglects or refuses to comply with the judgment or order; or
  - (b) cannot after reasonable inquiry be found,the High Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed, or that the negotiable instrument shall be indorsed, by such person as the court may nominate for that purpose.
- (2) A conveyance, contract, document or instrument executed or indorsed in pursuance of an order under this section shall operate, and be for all purposes available, as if it had been executed or indorsed by the person originally directed to execute or indorse it.

### **40 Attachment of debts.**

- (1) Subject to any order for the time being in force under subsection (4), this section applies to [<sup>F42</sup>any deposit account, and any withdrawable share account, with a deposit-taker]
- (2) In determining whether, for the purposes of the jurisdiction of the High Court to attach debts for the purpose of satisfying judgments or orders for the payment of money, a sum standing to the credit of a person in an account to which this section applies is a sum due or accruing to that person and, as such, attachable in accordance with rules of court, any condition mentioned in subsection (3) which applies to the account shall be disregarded.
- (3) Those conditions are—
  - (a) any condition that notice is required before any money or share is withdrawn;
  - (b) any condition that a personal application must be made before any money or share is withdrawn;

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- (c) any condition that a deposit book or share-account book must be produced before any money or share is withdrawn; or
  - (d) any other prescribed condition.
- (4) The Lord Chancellor may by order make such provision as he thinks fit, by way of amendment of this section or otherwise, for all or any of the following purposes, namely—
- (a) including in, or excluding from, the accounts to which this section applies accounts of any description specified in the order;
  - (b) excluding from the accounts to which this section applies all accounts with any particular [<sup>F43</sup>deposit-taker] so specified or with any [<sup>F43</sup>deposit-taker] of a description so specified.
- (5) Any order under subsection (4) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F44</sup>(6) “Deposit-taker” means a person who may, in the course of his business, lawfully accept deposits in the United Kingdom.]
- [<sup>F45</sup>(7) Subsection (6) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

#### Textual Amendments

- F42** Words substituted for words and paras. (a)(b) in s. 40(1) (1.12.2001) by S.I. 2001/3649, arts. 1, 290(2)
- F43** Words in s. 40(4)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 290(3)
- F44** S. 40(6) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 290(4)
- F45** S. 40(7) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 290(5)

#### [<sup>F46</sup>40A Administrative and clerical expenses of garnishees.

- [ Where an [<sup>F48</sup>interim third party debt order] made in the exercise of the jurisdiction
- <sup>F47</sup>(1) mentioned in subsection (2) of the preceding section is served on [<sup>F49</sup>a deposit-taker, it] may, subject to the provisions of this section, deduct from the relevant debt or debts an amount not exceeding the prescribed sum towards [<sup>F50</sup>its administrative and clerical expenses] in complying with the order; and the right <sup>F51</sup>. . . to make a deduction under this subsection shall be exercisable as from the time the [<sup>F48</sup>interim third party debt order] is served on it.
- (1A) In subsection (1) “the relevant debt or debts”, in relation to an [<sup>F48</sup>interim third party debt order] served on [<sup>F52</sup>a deposit-taker], means the amount, as at the time the order is served on [<sup>F53</sup>it], of the debt or debts of which the whole or a part is expressed to be attached by the order.
- (1B) A deduction may be made under subsection (1) in a case where the amount referred to in subsection (1A) is insufficient to cover both the amount of the deduction and the amount of the judgment debt and costs in respect of which the attachment was made, notwithstanding that the benefit of the attachment to the creditor is reduced as a result of the deduction.]

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- (2) [<sup>F54</sup>An amount may not in pursuance of subsection (1)] be deducted or, as the case may be, retained in a case where, by virtue of [<sup>F55</sup>section 346 of the Insolvency Act <sup>M9</sup>1986] or [<sup>F56</sup>section][<sup>F57</sup>183 of the Insolvency Act 1986] or otherwise, the creditor is not entitled to retain the benefit of the attachment.
- (3) In this section—  
[<sup>F58</sup>“deposit-taker” has the given by section 40(6);] and  
“prescribed” means prescribed by an order made by the Lord Chancellor.
- (4) An order under this section—  
(a) may make different provision for different cases; . . . <sup>F59</sup>  
(b) without prejudice to the generality of paragraph (a) of this subsection, may prescribe sums differing according to the amount due under the judgment or order to be satisfied.  
[<sup>F60</sup>(c) may provide for this section not to apply to [<sup>F61</sup>deposit-takers] of any prescribed description.]
- (5) Any such order shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F46** S. 40A inserted by Administration of Justice Act 1982 (c. 53, SIF 37), s. 55(1), **Sch. 4 Pt. I**
- F47** S. 40A(1)(1A)(1B) substituted for s. 40A(1) by Administration of Justice Act 1985 (c. 61, SIF 37), ss. 52(2), 69(5), **Sch. 9 para. 11(2)**
- F48** Words in s. 40A(1)(1A) substituted (25.3.2002) by The Civil Procedure (Modification of Enactments) Order 2002 (S.I. 2002/439), **art. 6**
- F49** Words in s. 40A(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 291(2)(a)**
- F50** Words in s. 40A(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 291(2)(b)**
- F51** Words in s. 40A(1) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 291(2)(c)**
- F52** Words in s. 40A(1A) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 291(3)(a)**
- F53** Words in s. 40A(1A) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 291(3)(b)**
- F54** Words substituted by Administration of Justice Act 1985 (c. 61, SIF 37), **ss. 52(3) 69(5)**, Sch. 9 para. 11(2)
- F55** Words substituted by virtue of Insolvency Act 1985 (c. 65, SIF 66), **s. 235(1) Sch. 8 para. 35** and Insolvency Act 1986 (c.45, SIF 66), s. 439(2), Sch. 11 para. 9, **Sch. 14**
- F56** Word substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), ss. 21, 23, 30, 31(8), **Sch. 2**
- F57** Words substituted by virtue of Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), ss. 21, 23, 30, 31(8), **Sch. 2** and Insolvency Act 1986 (c. 45, SIF 66), s. 439(2), **Sch. 14**
- F58** Definition of  
“deposit-taker”  
in s. 40A(3) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 291(4)**
- F59** Word repealed by Administration of Justice Act 1985 (c. 61, SIF 37), ss. 52(4), 67(2), 69(5), Sch. 8 Pt. II, **Sch. 9 para. 11(2)**
- F60** Words inserted by Administration of Justice Act 1985 (c. 61, SIF 37), ss. 52(4), 69(5), **Sch. 9 para. 11(2)**
- F61** Words in s. 40A(4)(c) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 291(5)**

#### Marginal Citations

- M9** 1986 c.45(66)

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#### 41 Wards of court.

- (1) Subject to the provisions of this section, no minor shall be made a ward of court except by virtue of an order to that effect made by the High Court.
  - (2) Where an application is made for such an order in respect of a minor, the minor shall become a ward of court on the making of the application, but shall cease to be a ward of court at the end of such period as may be prescribed unless within that period an order has been made in accordance with the application.
- [<sup>F62</sup>(2A) Subsection (2) does not apply with respect to a child who is the subject of a care order (as defined by section 105 of the Children Act 1989).]
- (3) The High Court may, either upon an application in that behalf or without such an application, order that any minor who is for the time being a ward of court shall cease to be a ward of court.

#### Textual Amendments

**F62** S. 41(2A) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5)(6), Sch. 13 para. 45(2), Sch. 14 para. 1(1); S.I. 1991/828, art. 3(2)

#### 42 Restriction of vexatious legal proceedings.

- (1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground—
    - (a) instituted vexatious [<sup>F63</sup>civil] proceedings, whether in the High Court or any inferior court, and whether against the same person or against different persons; or
    - (b) made vexatious applications in any [<sup>F63</sup>civil] proceedings, whether in the High Court or any inferior court, and whether instituted by him or another, [<sup>F64</sup>or
    - (c) instituted vexatious prosecutions (whether against the same person or different persons),]
 the court may, after hearing that person or giving him an opportunity of being heard, [<sup>F65</sup>make a civil proceedings order, a criminal proceedings order or an all proceedings order.]
- [<sup>F66</sup>(1A) In this section—
- “civil proceedings order” means an order that—
- (a) no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made;
  - (b) any civil proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and
  - (c) no application (other than one for leave under this section) shall be made by him, in any civil proceedings instituted in any court by any person, without the leave of the High Court;
- “criminal proceedings order” means an order that—
- (a) no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and
  - (b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and



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“all proceedings order” means an order which has the combined effect of the two other orders.]

- (2) An order under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
- (3) Leave for the institution or continuance of, or for the making of an application in, any [<sup>F67</sup> civil] proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application.
- [<sup>F68</sup>(3A) Leave for the laying of an information or for an application for leave to prefer a bill of indictment by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant.]
- (4) No appeal shall lie from a decision of the High Court refusing leave [<sup>F69</sup>required by virtue of this section].
- (5) A copy of any order made under subsection (1) shall be published in the London Gazette.

#### Textual Amendments

- F63** Word substituted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(2\)\(a\)](#)
- F64** S. 42(1)(c) and word “or” preceding it inserted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s.24\(2\)\(b\)](#)
- F65** Words substituted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(2\)\(c\)](#)
- F66** S. 42(1A) inserted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(3\)](#)
- F67** Word substituted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(4\)](#)
- F68** S. 42(3A) inserted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39\), s. 24\(5\)](#)
- F69** Words substituted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(6\)](#)

#### Modifications etc. (not altering text)

- C15** S. 42 amended by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s.24\(7\)](#)

### 43 Power of High Court to vary sentence on [<sup>F70</sup>application for quashing order].

- (1) Where a person who has been sentenced for an offence—
  - (a) by a magistrates’ court; or
  - (b) by the Crown Court after being convicted of the offence by a magistrates’ court and committed to the Crown Court for sentence; or
  - (c) by the Crown Court on appeal against conviction or sentence,applies to the High Court in accordance with section 31 for an [<sup>F71</sup>a quashing order] to remove the proceedings of the magistrates’ court or the Crown Court into the High Court, then, if the High Court determines that the magistrates’ court or the Crown Court had no power to pass the sentence, the High Court may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence which the magistrates’ court or, in a case within paragraph (b), the Crown Court had power to impose.

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- (2) Any sentence passed by the High Court by virtue of this section in substitution for the sentence passed in the proceedings of the magistrates' court or the Crown Court shall, unless the High Court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings; but in computing the term of the sentence, any time during which the offender was released on bail in pursuance of section 37(1)(d) of the <sup>M10</sup>Criminal Justice Act 1948 shall be disregarded.
- (3) Subsections (1) and (2) shall, with the necessary modifications, apply in relation to any order of a magistrates' court or the Crown Court which is made on, but does not form part of, the conviction of an offender as they apply in relation to a conviction and sentence.

#### Textual Amendments

- F70** Words in s. 43 sidenote substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 5\(b\)](#)
- F71** Words in s. 43(1) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 5\(a\)](#)

#### Marginal Citations

- M10** 1948 c. 58.

### [<sup>F72</sup>43ZAPower of High Court to vary committal in default.

- (1) Where the High Court quashes the committal of a person to prison or detention by a magistrates' court or the Crown Court for—
- (a) a default in paying a sum adjudged to be paid by a conviction; or
  - (b) want of sufficient distress to satisfy such a sum,
- the High Court may deal with the person for the default or want of sufficient distress in any way in which the magistrates' court or Crown Court would have power to deal with him if it were dealing with him at the time when the committal is quashed.
- (2) If the High Court commits him to prison or detention, the period of imprisonment or detention shall, unless the High Court otherwise directs, be treated as having begun when the person was committed by the magistrates' court or the Crown Court (except that any time during which he was released on bail shall not be counted as part of the period).]

#### Textual Amendments

- F72** S. 43ZA inserted (27.9.1999) by [1999 c. 22](#), [ss. 62](#), [108\(3\)\(b\)](#) (with [Sch. 14 para. 7\(2\)](#))

### [<sup>F73</sup>43A Specific powers of arbitrator exercisable by High Court.

In any cause or matter proceeding in the High Court in connection with any contract incorporating an arbitration agreement which confers specific powers upon the arbitrator, the High Court may, if all parties to the agreement agree, exercise any such powers.]

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#### Textual Amendments

**F73** S. 43A inserted (1. 4. 1991) by Courts and Legal Services Act 1990 (c. 41, SIF 5), s. 100; S.I. 1991/608, art. 2, Sch.

#### *Other provisions*

#### **44 Extraordinary functions of judges of High Court.**

- (1) Subject to the provisions of this Act, every judge of the High Court shall be—
- (a) liable to perform any duty not incident to the administration of justice in any court of law which a judge of the High Court was, as the successor of any judge formerly subject to that duty, liable to perform immediately before the commencement of this Act by virtue of any statute, law or custom; and
  - (b) empowered to exercise any authority or power not so incident which a judge of the High Court was, as the successor of any judge formerly possessing that authority or power, empowered to exercise immediately before that commencement by virtue of any statute, law or custom.
- (2) Any such duty, authority or power which immediately before commencement of this Act was imposed or conferred by any statute, the law or custom on <sup>F74</sup> . . . the Lord Chief Justice or the Master of the Rolls shall continue to be performed and exercised by them respectively.

#### Textual Amendments

**F74** Words in s. 44(2) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 126, Sch. 18 Pt. 2; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(p), 30(b)

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