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Courts and Legal Services Act 1990

1990 CHAPTER 41

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

PROSPECTIVE

Tying-in

104 Tying-in arrangements in connection with residential property loans.

(1) In this section and sections 105 and 106 "residential property loan" means any loan which—
- (a) is secured on land in the United Kingdom; and
- (b) is made to an individual in respect of the acquisition of land which is for his residential use or the residential use of a dependant of his.

(2) No person ("the lender") shall provide a residential property loan together with one or more controlled services to another person ("the borrower") unless the conditions mentioned in subsection (3) are complied with before a relevant step is taken with respect to any of those services or the loan.

(3) The conditions are that the lender—
- (a) informs the borrower by notice that the residential property loan, and each of the controlled services in question, are separate services;
- (b) informs the borrower by notice whether the terms and conditions of the residential property loan will be capable of being varied by the lender after it is made;
- (c) provides the borrower with a statement of—
  - (i) the price which will be payable by the borrower for each of the controlled services if they are all provided in accordance with the terms proposed by the lender; and

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(ii) the extent to which (if at all) the terms and conditions of the residential property loan would differ if it were to be provided by the lender without the controlled services in question being provided by the lender; and

(d) informs the borrower by notice that, if the borrower declines to take from the lender any of the controlled services in question, the lender will not on that account refuse to provide the residential property loan.

(4) A person who—

(a) in the course of his business provides, or makes arrangements for the provision of, controlled services together with residential property loans; and

(b) advertises or in any other manner promotes—

(i) the provision of any controlled service or any residential property loan; or

(ii) the making by him of any such arrangements,

shall comply with such requirements as to the information to be given, or which may not be given, in any such advertisement or promotion as the Secretary of State may by regulations impose.

105 Tying-in arrangements: supplemental provisions.

(1) In section 104, this section and section 106 "controlled services" means any services of a description prescribed by order made by the Secretary of State.

(2) The order may, in particular, prescribe any description of—

(a) banking, insurance, investment, trusteeship, executorship or other financial services;

(b) services relating to the acquisition, valuation, surveying or disposal of property;

(c) conveyancing services; or

(d) removal services.

(3) For the purposes of section 104(1), the Secretary of State may by order specify—

(a) the circumstances in which land is to be treated as being for a person's residential use; and

(b) who are to be treated as a person's dependants.

(4) Section 104(2) shall not apply in relation to the provision of a controlled service if the lender proves—

(a) that the provision of that service was not connected with the transaction in respect of which the borrower required the residential property loan in question; or

(b) where it was so connected, that the lender did not know, and had no reasonable cause to know, that it was.

(5) For the purposes of section 104, this section and section 106—

(a) where the lender is a member of a group of companies, the lender and all the other members of the group shall be treated as one; and

(b) where the lender derives any financial benefit from the provision of a controlled service by any other person, the lender shall be treated as providing that service.

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(6) In subsection (5), "a group of companies" means a holding company and its subsidiaries within the meaning of **[**[F1]section 1159 of the Companies Act 2006**]**.

(7) The Secretary of State may by order provide that, in such cases or for such purposes as may be prescribed by the order, paragraph (a) or (b) of subsection (5) shall not have effect.

(8) For the purposes of section 104—

"notice" means a notice in writing given in the form prescribed by regulations made by the Secretary of State;

"price" shall have the meaning given by order made by the Secretary of State;

"relevant step", in relation to any controlled service or residential property loan, means such step as may be prescribed by order made by the Secretary of State in relation to that service or loan (taken by such person as may be so prescribed); and

"statement" means a statement in writing given in the form prescribed by regulations made by the Secretary of State.

(9) In relation to land in Scotland—

(a) "conveyancing services" has the same meaning as in the [M1]Law Reform (Miscellaneous Provisions) (Scotland) Act 1990; and

(b) the reference in section 104(1) to a loan being secured on land shall be read as a reference to its being secured over land by a standard security.

(10) Before making any order or regulations under section 104 or this section the Secretary of State shall consult the **[**[F2]FCA**]** and such other persons as he considers appropriate.

Textual Amendments

F1 Words in s. 105(6) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 1(2), 2(1), **Sch. 1 para. 118** (with art. 10)

F2 Word in s. 105(10) substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 2(2)**

Marginal Citations

M1 1990 c. 40.

106 Tying-in: offences.

(1) If any person contravenes section 104(2) or (4) he shall be guilty of an offence.

(2) Subsection (3) applies where—

(a) a person ("the lender") has, in relation to the proposed provision to any person ("the borrower") of a residential property loan together with one or more controlled services, complied with the conditions mentioned in section 104(3); and

(b) the borrower has declined to take from the lender one or more of the controlled services.

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(3) The lender shall be guilty of an offence if he refuses to provide the borrower with the residential property loan or refuses to provide it to him—

(a) on the terms applicable if it were provided together with the controlled services; or

(b) where they differ, on terms which are compatible with the statement required by section 104(3)(c)(ii),

unless he proves that his reason for so refusing was unconnected with the borrower's having declined as mentioned in subsection (2)(b).

(4) Any person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

(5) Subsection (6) applies where an offence under this section is committed by a body corporate.

(6) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—

(a) any director, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(7) The fact that a person has committed an offence under this section in connection with any agreement shall not make the agreement void, or unenforceable (whether as a whole or in part) or otherwise affect its validity or give rise to any cause of action for breach of statutory duty.

107 Tying-in: enforcement.

(1) Every local weights and measures authority ("an authority") and the **[**[F3]FCA**]** shall have the duty of enforcing sections 104 to 106 and any regulations made under them.

(2) Nothing in subsection (1) is to be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

(3) Where an authority propose to institute proceedings for an offence under section 106 they shall give the **[**[F3]FCA**]** notice of the intended proceedings together with a summary of the facts on which the charges are to be founded.

(4) Where an authority are under a duty to give such a notice and summary they shall not institute the proceedings until—

(a) the end of the period of 28 days beginning with the date on which they gave the required notice and summary; or

(b) if earlier, the date on which the **[**[F3]FCA**]** notifies them of receipt of the notice and summary.

(5) Every authority shall, whenever the **[**[F3]FCA**]** requires, report to **[**[F4]it**]** in such form and with such particulars as **[**[F4]it**]** requires on the exercise of their functions under this section.

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(6) A duly authorised officer of the **[**[F3]FCA**]** or of an authority ("an authorised officer") who has reasonable cause to suspect that an offence may have been committed under section 106 may, at any reasonable time—

(a) enter any premises which are not used solely as a dwelling;

(b) require any officer, agent or other competent person on the premises who is, or may be, in possession of information relevant to an investigation in connection with the provision made by section 104 or 105 to provide such information;

(c) require the production of any document which may be relevant to such an investigation;

(d) take copies, or extracts, of any such documents;

(e) seize and retain any document which he has reason to believe may be required as evidence in proceedings for an offence under section 106.

(7) Any authorised officer exercising any power given by subsection (6) shall, if asked to do so, produce evidence that he is such an officer.

(8) A justice of the peace may issue a warrant under this section if satisfied, on information on oath given by an authorised officer, that there is reasonable cause to believe that an offence may have been committed under section 106 and that—

(a) entry to the premises concerned, or production of any documents which may be relevant to an investigation in connection with the provision made by section 104 or 105, has been or is likely to be refused to the authorised officer; or

(b) there is reasonable cause to believe that, if production of any such document were to be required by the authorised officer without a warrant having been issued under this section, the document would not be produced but would be removed from the premises or hidden, tampered with or destroyed.

(9) In the application of this section to Scotland, "justice of the peace" includes a sheriff and "information on oath" shall be read as "evidence on oath".

(10) A warrant issued under this section shall authorise the authorised officer (accompanied, where he considers it appropriate, by a constable or any other person)—

(a) to enter the premises specified in the information, using such force as is reasonably necessary; and

(b) to exercise any of the powers given to the authorised officer by subsection (6).

(11) If a person—

(a) intentionally obstructs an authorised officer in the exercise of any power under this section;

(b) intentionally fails to comply with any requirement properly imposed on him by an authorised officer in the exercise of any such power;

(c) fails, without reasonable excuse, to give to an authorised officer any assistance or information which he may reasonably require of him for the purpose of exercising any such power; or

(d) in giving to an authorised officer any information which he has been required to give to an authorised officer exercising any such power, makes any statement which he knows to be false or misleading in a material particular,

he shall be guilty of an offence.

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(12) A person guilty of an offence under subsection (11)(a), (b) or (c) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) A person guilty of an offence under subsection (11)(d) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(14) Nothing in this section shall be taken to require any person to answer any question put to him by an authorised officer, or to give any information to an authorised officer, if to do so might incriminate him.

(15) In this section "document" includes information recorded in any form.

(16) In relation to information recorded otherwise than in legible form, references in this section to its production include references to producing a copy of the information in legible form.

[[F5](17) The functions of the FCA under this section are to be treated for the purposes of the Financial Services and Markets Act 2000 as functions conferred on the FCA by or under that Act.**]**

Textual Amendments

F3 Word in s. 107 substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 2(3)(a)**

F4 Words in s. 107(5) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(8)(b); S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F5 S. 107(17) inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 2(3)(b)**

Miscellaneous

108 Liability of magistrates for damages and costs.

(1) The Justices of the [M2]Peace Act 1979 shall be amended as follows.

(2) For section 44 (acts done within jurisdiction) there shall be substituted the following section—

"**44 Immunity for acts within jurisdiction.**

No action shall lie against any justice of the peace or justice's clerk in respect of any act or omission of his—

(a) in the execution of his duty—

(i) as such a justice; or

(ii) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice; and

(b) with respect to any matter within his jurisdiction."

(3) For section 45 (acts beyond jurisdiction) there shall be substituted the following section—

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"**45 Immunity for certain acts beyond jurisdiction.**

An action shall lie against any justice of the peace or justice's clerk in respect of any act or omission of his—

(a) in the purported execution of his duty—

(i) as such a justice; or

(ii) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice; but

(b) with respect to a matter which is not within his jurisdiction,

if, but only if, it is proved that he acted in bad faith."

(4) In section 15 (acting stipendiary magistrate) after subsection (2) there shall be inserted the following subsection—

"(2A) Sections 44, 45 and 53 of this Act shall apply to a person acting as a stipendiary magistrate under subsection (1) as they apply to a stipendiary magistrate."

(5) In section 34 (acting metropolitan stipendiary magistrate) after subsection (2) there shall be inserted the following subsection—

"(2A) Sections 44, 45 and 53 of this Act shall apply to a person acting as a metropolitan stipendiary magistrate under subsection (1) as they apply to a metropolitan stipendiary magistrate."

(6) The following sections shall cease to have effect—

(a) 46 (warrant granted on conviction or order made by another justice);

(b) 47 (exercise of discretionary powers);

(c) 48 (compliance with, or confirmation on appeal to, superior court);

(d) 49 (distress warrant for rates);

(e) 51 (no action in county court if defendant justice objects);

(f) 52 (limitation of damages against justice); and

(g) 54 (provisions as to prerogative proceedings and membership of Crown Court).

Marginal Citations

M2 1979 c. 55.

109 Liability of resident magistrates etc. in Northern Ireland for damages and costs.

(1) The [M3]Magistrates' Courts (Northern Ireland) Order 1981 shall be amended as follows.

(2) For Articles 5 and 6 (general immunity of resident magistrates etc.) there shall be substituted the following Articles—

"5 **Immunity of resident magistrates etc. for acts within jurisdiction.**

No action shall lie against any resident magistrate, justice of the peace or clerk of petty sessions in respect of any act or omission of his—

(a) in the execution of his duty—

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(i) as such a magistrate or justice; or

(ii) as such a clerk exercising, by virtue of any statutory provision, any function of a magistrates' court; and

(b) with respect to any matter within his jurisdiction.

6 **Immunity for certain acts beyond jurisdiction.**

An action shall lie against any resident magistrate, justice of the peace or clerk of petty sessions in respect of any act or omission of his—

(a) in the purported exercise of his duty—

(i) as such a magistrate or justice; or

(ii) as such a clerk exercising, by virtue of any statutory provision, any function of a magistrates' court; but

(b) with respect to a matter which is not within his jurisdiction,

if, but only if, it is proved that he acted in bad faith."

(3) After Article 145 there shall be inserted the following Article—

"145A **Immunity of county court judges hearing appeals under this Part.**

Articles 5, 6 and 10 shall apply in relation to a county court judge sitting in connection with an appeal under this Part as they apply in relation to a resident magistrate."

(4) In Schedule 2 to the [M4]Children and Young Persons Act (Northern Ireland) 1968 (constitution of juvenile courts) after paragraph 2 there shall be inserted the following paragraph—

"2A Articles 5, 6 and 10 of the Magistrates' Courts (Northern Ireland) Order 1981 shall apply in relation to a member of a panel formed under paragraph 1 as they apply in relation to a resident magistrate."

(5) Section 63 of the [M5]Administration of Justice Act 1985 (limitation of damages in respect of acts by resident magistrates etc. in Northern Ireland) shall cease to have effect.

(6) The following provisions of the [M6]Magistrates' Courts (Northern Ireland) Order 1981 shall cease to have effect and are hereby repealed—

(a) in Article 7, the words from "another" to "or by", and the words "magistrate, justice or"; and

(b) in Article 8, paragraph (1), and in paragraph (2) the words "resident magistrate or justice of the peace or" and the words "magistrate, justice or".

Marginal Citations

M3 S.I. 1981/1675 (N.I. 26).

M4 1968 c. 34 (N.I.).

M5 1985 c. 61.

M6 S.I. 1981/1675 (N.I.26).

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110 Jurisdiction of the Parliamentary Commissioner for Administration.

(1) In section 5 of the [M7]Parliamentary Commissioner Act 1967 (matters subject to investigation), the following subsection shall be added at the end—

"(6) For the purposes of this section, administrative functions exercisable by any person appointed by the Lord Chancellor as a member of the administrative staff of any court or tribunal shall be taken to be administrative functions of the Lord Chancellor's Department or, in Northern Ireland, of the Northern Ireland Court Service."

(2) In Schedule 3 to that Act (matters not subject to investigation), the following paragraph shall be inserted after paragraph 6—

"6A Action taken by any person appointed by the Lord Chancellor as a member of the administrative staff of any court or tribunal, so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in a judicial capacity or in his capacity as a member of the tribunal."

Marginal Citations
M7 1967 c. 13.

111 Costs against legal representatives etc. in criminal proceedings.

The following section shall be inserted after section 19 of the Prosecution of Offences Act 1985—

"**19A Costs against legal representatives etc.**

(1) In any criminal proceedings—
(a) the Court of Appeal;
(b) the Crown Court; or
(c) a magistrates' court,
may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.

(2) Regulations shall provide that a legal or other representative against whom action is taken by a magistrates' court under subsection (1) may appeal to the Crown Court and that a legal or other representative against whom action is taken by the Crown Court under subsection (1) may appeal to the Court of Appeal.

(3) In this section—

"legal or other representative", in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings;

"regulations" means regulations made by the Lord Chancellor; and

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"wasted costs" means any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay."

Commencement Information

I1 S. 111 wholly in force at 1.5.1991 see s. 124(3) and S.I. 1991/985, **art. 2(a)**

112 Costs against legal representatives in magistrates' courts.

The following section shall be inserted in the [M8] Magistrates' Courts Act 1980 after section 145 (which contains supplementary provisions about rules of court)—

"**145A Rules: costs order against legal representative.**

(1) In any civil proceedings, a magistrates' court may disallow or (as the case may be) order the legal or other representative concerned to meet the whole of any wasted costs or such part of them as may be determined in accordance with rules.

(2) In subsection (1), "wasted costs" means any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

(3) In this section "legal or other representative", in relation to any proceedings, means any person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings.

(4) Rules made by virtue of this section may, in particular, make provision as to the destination of any payment required to be made under the rules (including provision for the reimbursement of sums paid by the Legal Aid Board).

(5) Rules made by virtue of this section—

(a) shall require a magistrates' court which proposes to act under the rules against a legal or other representative to allow him a reasonable opportunity to appear before it and show cause why it should not do so;

(b) shall provide that action may be taken under the rules either on the application of any party to the proceedings or on the motion of the court;

(c) shall provide that no such action shall be taken after the end of the period of six months beginning with the date on which the proceedings are disposed of by the court; and

(d) shall provide that a legal or other representative against whom action is taken under the rules may appeal to the Crown Court."

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Commencement Information

I2 S. 112 wholly in force at 1.10.1991 see s. 124(3) and S.I. 1991/1883, **art.2**

Marginal Citations

M8 1980 c. 43.

113 Administration of oaths and taking of affidavits.

(1) In this section—

"authorised person" means—

(a) any authorised advocate or authorised litigator, other than one who is a solicitor (in relation to whom provision similiar to that made by this section is made by section 81 of the [M9] Solicitors Act 1974); or

(b) any person who is a member of a professional or other body prescribed by the Lord Chancellor for the purposes of this Section; and

"general notary" means any public notary other than—

(a) an ecclesiastical notary; or

(b) one who is member of the Incorporated Company of Scriveners (in relation to whom provision similiar to that made by this section is made by section 65 of the [M10] Administration of Justice Act 1985).

(2) Section 1(1) of the [M11] Commissioners for Oaths Act 1889 (appointment of commissioners by Lord Chancellor) shall cease to have effect.

(3) Subject to the provisions of this section, every authorised person shall have the powers conferred on a commissioner for oaths by the Commissioners for Oaths Acts 1889 and 1891 and section 24 of the [M12] Stamp Duties Management Act 1891; and any reference to such a commissioner in an enactment or instrument (including an enactment passed or instrument made after the commencement of this Act) shall include a reference to an authorised person unless the context otherwise requires.

(4) Subject to the provisions of this section, every general notary shall have the powers conferred on a commissioner for oaths by the Commissioners for Oaths Acts 1889 and 1891; and any reference to such a concede in an enactment or instrument (including an enactment passed or instrument made after the commencement of this Act) shall include a reference to a general notary unless the context otherwise requires.

(5) No person shall exercise the powers conferred by this section in any proceedings in which he is interested.

(6) A person exercising such powers and before whom any oath or affidavit is taken or made shall state in the jurat or attestation at which place and on what date the oath or affidavit is taken or made.

(7) A document containing such a statement and purporting to be sealed or signed by an authorised person or general notary shall be admitted in evidence without proof of the seal or signature, and without proof that he is an authorised person or general notary.

(8) The Lord Chancellor may, with the concurrence of the Lord Chief Justice and the Master of the Rolls, by order prescribe the fees to be charged by authorised persons exercising the powers of commissioners for oaths by virtue of this section in respect of the administration of an oath or the taking of an affidavit.

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(9) In this section "affidavit" has the same meaning as in the Commissioners for Oaths Act 1889.

(10) Every—

(a) solicitor who holds a practising certificate which is in force;

(b) authorised person;

(c) general notary; and

(d) member of the Incorporated Company of Scriveners ("the Company") who has been admitted to practise as a public notary within the jurisdiction of the Company,

shall have the right to use the title "Commissioner for Oaths".

Commencement Information

I3 S. 113 wholly in force at 1. 4.1991 see s. 124(3) and S.I. 1991/608, art. 2, **Sch.**

Marginal Citations

M9 1974 c. 47.

M10 1985 c. 61.

M11 1889 c. 10.

M12 1891 c. 38.

114 Bail applications.

The following section shall be inserted in the [M13] Prosecution of Offences Act 1985, after section 7—

"7A Bail applications.

(1) The Director may designate, for the purposes of this section, members of the staff of the Crown Prosecution Service who are not Crown Prosecutors.

(2) A person so designated shall have the powers of a Crown Prosecutor in relation to any application for, or relating to, bail in criminal proceedings, but shall exercise those powers subject to instructions given to him by the Director.

(3) Any such instructions may be given so as to apply generally.

(4) In this section "bail in criminal proceedings" has the same meaning as it has in the Bail Act 1976 by virtue of the definition in section 1 of that Act."

Commencement Information

I4 S. 114 wholly in force at 1.4.1991 see s. 124(3) and S.I. 1991/608, art. 2, **Sch.**

Marginal Citations

M13 1985 c. 23.

Status: *Point in time view as at 14/10/1991. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Courts and Legal Services Act 1990, Part VI is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

115 Law reports.

A report of a case made by a person who is not a barrister but who is a solicitor or has a Supreme Court qualification (within the meaning of section 71) shall have the same authority as if it had been made by a barrister.

Commencement Information

I5 S. 115 wholly in force at 1. 4.1991 see s. 124(3) and S.I. 1991/608, art. 2, **Sch.**

116 Provision with respect to the Children Act 1989.

(1) The provisions of Part I of Schedule 16 shall have effect for the purpose of making amendments to the [M14] or to provisions of other enactments amended by that Act.

(2) Part II of Schedule 16 shall have effect for the purpose of making further provision consequential on the Act of 1989.

(3) The general rule making power of any authority having power to make rules of court for Northern Ireland shall include power to make any provision which may be made under section 93 of the Act of 1989 (rules of court) subject to the modifications that in subsection (2)—

(a) paragraphs (e) and (i) shall be omitted; and

(b) in paragraphs (f) and (g) the references to England and Wales shall be read as references to Northern Ireland.

Commencement Information

I6 S. 116 in force 14.10.1991 so far as it relates to Sch. 16, paras. 1-7 and 9-42 see s. 124(3) and S.I. 1991/1883, art. 3, **Sch.**

I7 S. 116(3) wholly in force at 1.1.1992 see s. 124(3) and S.I. 1991/2730, **art. 2**,Sch.

Marginal Citations

M14 1989 c. 41.

117 Extension of powers of justices' clerks.

In section 28 of the [M15] Justices of the Peace Act 1979 (general powers and duties of justices' clerks) after subsection (1) there shall be inserted the following subsection—

"(1A) Such rules may also make provision enabling things authorised to be done by, to or before a justices' clerk (whether by virtue of subsection (1) above or otherwise) to be done instead by, to or before—

(a) a person appointed by a magistrates' courts committee to assist him;

(b) where he is a part-time justices' clerk, any member of his staff who has been appointed by the magistrates' courts committee to assist him in his duties as such;

(c) any officer appointed by the committee of magistrates to be his deputy or to assist him".

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Commencement Information

I8 S. 117 wholly in force at 1.7.1991 see s. 124(3) and S.I. 1991/1364, art. 2, **Sch.**

Marginal Citations

M15 1979 c. 55.

PROSPECTIVE

118 Functions of Treasury.

(1) The Judicial Pensions Act 1981 shall have effect subject to the following amendments (which reflect the transfer of functions from the Minister of the Civil Service to the Treasury effected by the Transfer of Functions (Minister for the [M16] Civil Service and Treasury) Order 1981).

(2) In section 10(1), and paragraph 23(2) of Schedule 1, for the words “the Minister for the Civil Service" there shall be substituted “ the Treasury ”.

(3) In section 29, for the words “the Minister for the Civil Service or any other Minister" there shall be substituted “ the Treasury or any Minister of the Crown ”.

(4) In the following provisions—

(a) sections 3(4), 5(6), 7(5), 8(1), 11(a) and (b), 12(5), 13(4)(b), 15, 18(2), 20(4), 21(5), 22(1), 23(4), 25(1)(a) and 32(2);

(b) paragraphs 4(1)(b)(ii), 8, 10(2), 14(2), 15(2),(5) and (7), 17, 20(1) and (2) and 22 of Schedule 1; and

(c) paragraph 2(2) of Schedule 2,

for the words “the Minister", wherever they occur, there shall be substituted “ the Treasury ”.

(5) In section 21(4), for the words “the Minister may, if he" there shall be substituted “ the Treasury may, if it ”.

(6) In section 22(4)—

(a) for the “Minister", where it first occurs, there shall be substituted “ Treasury ”; and

(b) for the words from “if the Minister" to “he thinks fit" there shall be substituted “ if the Treasury does specially so direct, it may, if it thinks fit ”.

(7) In Schedule 1—

(a) in paragraph 8(2), for the words “to him" there shall be substituted “ to it ”;

(b) in paragraph 15(7), for the words “he is satisfied" there shall be substituted “ it is satisfied ”;

(c) in paragraph 17(1), for the words “he shall" there shall be substituted “ it shall ”; and

(d) in paragraph 21, for the word “Minister", where it first occurs, there shall be substituted “ Treasury ” and for the words “he thinks" there shall be substituted “ it thinks ”.

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(8) In section 33, the definition of "the Minister" shall be omitted.

Marginal Citations
M16 S.I. 1981/1670

Supplemental

119 Interpretation.

(1) In this Act—

"administration", in relation to letters of administration, has the same meaning as in section 128 of the [M17]Supreme Court Act 1981;

"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

"authorised advocate" means any person (including a barrister or solicitor) who has a right of audience granted by an authorised body in accordance with the provisions of this Act;

"authorised body" and "appropriate authorised body"—

(a) in relation to any right of audience or proposed right of audience, have the meanings given in section 27; and

(b) in relation to any right to conduct litigation or proposed right to conduct litigation, have the meanings given in section 28;

"authorised litigator" means any person (including a solicitor) who has a right to conduct litigation granted by an authorised body in accordance with the provisions of this Act;

"authorised practitioner" has the same meaning as in section 37;

"conveyancing services" means the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land;

"court" includes—

(a) any tribunal which the Council on Tribunals is under a duty to keep under review;

(b) any court-martial; and

(c) a statutory inquiry within the meaning of section 19(1) of the [M18]Tribunals and Inquiries Act 1971;

"designated judge" means the Lord Chief Justice, the Master of the Rolls, the President of the Family Division or the Vice-Chancellor;

"the Director" means the Director General of Fair Trading;

"duly certificated notary public" has the same meaning as it has in the [M19]Solicitors Act 1974 by virtue of section 87(1) of that Act;

"the general principle" has the meaning given in section 17(4);

"licensed conveyancer" has the same meaning as it has in the [M20]Administration of Justice Act 1985 by virtue of section 11 of that Act;

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"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide;

"member", in relation to any professional or other body (other than any body established by this Act), includes any person who is not a member of that body but who may be subject to disciplinary sanctions for failure to comply with any of that body's rules;

"multi-national partnership" has the meaning given by section 89(9);

"probate services" means the drawing or preparation of any papers on which to found or oppose a grant of probate or a grant of letters of administration and the administration of the estate of a deceased person;

"prescribed" means prescribed by regulations under this Act;

"proceedings" means proceedings in any court;

"qualification regulations" and "rules of conduct"—

(a) in relation to any right of audience or proposed right of audience, have the meanings given in section 27; and

(b) in relation to any right to conduct litigation or proposed right to conduct litigation, have the meanings given in section 28;

"qualified person" has the meaning given in section 36(6);

"registered foreign lawyer" has the meaning given by section 89(9);

"right of audience" means the right to exercise any of the functions of appearing before and addressing a court including the calling and examining of witnesses;

"right to conduct litigation" means the right—

(a) to exercise all or any of the functions of issuing a writ or otherwise commencing proceedings before any court; and

(b) to perform any ancillary functions in relation to proceedings (such as entering appearances to actions);

"solicitor" means solicitor of the Supreme Court; and

"the statutory objective" has the meaning given in section 17(2).

(2) For the purposes of the definition of "conveyancing services" in subsection (1)—

"disposition"—

(i) does not include a testamentary disposition or any disposition in the case of such a lease as is referred to in section 54(2) of the [M21]Law of Property Act 1925 (short leases); but

(ii) subject to that, includes in the case of leases both their grant and their assignment; and

"acquisition" has a corresponding meaning.

(3) In this Act any reference (including those in sections 27(9) and 28(5)) to rules of conduct includes a reference to rules of practice.

Marginal Citations

M17 1981 c. 54.
M18 1971 c. 62.
M19 1974 c. 47.
M20 1985 c. 61.

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M21 1925 c. 20.

120 Regulations and orders.

(1) Any power to make orders or regulations conferred by this Act shall be exercisable by statutory instrument.

(2) Any such regulations or order may make different provision for different cases or classes of case.

(3) Any such regulations or order may contain such incidental, supplemental or transitional provisions or savings as the person making the regulations or order considers expedient.

(4) No instrument shall be made under section 1(1), 26(1), 37(10), 40(1), 58, 60, 89(5) or (7), 125(4) or paragraph 4 or 6 of Schedule 9 or paragraph 9(c) of Schedule 14 unless a draft of the instrument has been approved by both Houses of Parliament.

(5) An Order in Council shall not be made in pursuance of a recommendation made under section 29(2) or 30(1) unless a draft of the Order has been approved by both Houses of Parliament.

(6) Any other statutory instrument made under this Act other than one under section 124(3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

121 Financial provisions.

Any expenses incurred by the Lord Chancellor under this Act shall be payable out of money provided by Parliament.

122 Power to make corresponding provision for Northern Ireland.

An Order in Council made under paragraph 1(1)(b) of Schedule 1 to the [M22]Northern Ireland Act 1974 which contains a statement—

(a) that it amends the law in Northern Ireland with respect to —

(i) the pensions of county court judges and resident magistrates, and

(ii) pensions in relation to which provisions of the [M23]Judicial Pensions Act (Northern Ireland) 1951 apply; and

(b) that it is made only for purposes corresponding to those of—

(i) sections 79 to 83 and Schedules 12 and 13 and such other provisions of this Act as are consequential on those sections and those Schedules;

(ii) section 118,

shall not be subject to sub-paragraphs (4) and (5) of paragraph 1 of that Schedule (affirmative resolution of both Houses of Parliament) but shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M22 1974 c. 28.

M23 1951 c. 20. (N.I.).

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123 Extent.

(1) The following provisions of this Act extend to Scotland—

(a) section 65;
(b) section 71(2), so far as necessary;
(c) sections 79 to 83;
(d) sections 104 to 107;
(e) section 116, this section and sections 124 and 125, so far as necessary;
(f) paragraph 13 of Schedule 1;
(g) paragraph 8 of Schedule 3;
(h) paragraph 11 of Schedule 5;
(i) Schedule 10, so far as it amends any enactment extending to Scotland;
(j) paragraphs 5, 34 to 36, 39, 41 and 42 of Schedule 16;
(k) paragraph 1 of Schedule 17; and
(l) Schedule 20, so far as it repeals any enactment extending to Scotland.

(2) The following provisions of this Act extend to Northern Ireland—

(a) section 8;
(b) section 71(2), so far as necessary;
(c) sections 79(1) and 80 to 84;
(d) sections 109, 110, 116, 118, 121, 122, this section and sections 124 and 125 so far as necessary;
(e) paragraph 13 of Schedule 1;
(f) paragraph 8 of Schedule 3;
(g) paragraph 11 of Schedule 5;
(h) Schedule 10, so far as it amends any enactment extending to Northern Ireland;
(i) Schedule 13;
(j) paragraphs 5, 25, 33, 35, 39 and 41 of Schedule 16;
(k) Schedules 17, 18 and 19, so far as they amend or relate to any enactment extending to Northern Ireland;
(l) Schedule 20 so far as it repeals any such enactment.

124 Commencement.

(1) The following provisions come into force on the passing of this Act—

(a) sections 1, 5, 119 to 123, this section and section 125(1); and
(b) paragraphs 2 and 3 of Schedule 17.

(2) The following provisions come into force at the end of the period of two months beginning on the day on which this Act is passed—

(a) sections 6, 8, 11, 16, 64, 65, 72, 73, 85, 87 and 88, 90 to 92, 94 to 97, 98 and 108 to 110;
(b) paragraphs 1, 11, 12, 16 and 20 of Schedule 17;
(c) paragraphs 7, 8, 14 to 16, 55 and 57 of Schedule 18; and
(d) paragraph 1 of Schedule 19.

(3) The other provisions of this Act shall come into force on such date as may be appointed by order made by the Lord Chancellor or by the Secretary of State or by both, acting jointly.

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(4) Different dates may be appointed for different provisions of this Act and for different purposes.

Subordinate Legislation Made

P1 S. 124(3): power conferred by s. 124(3) partly exercised by S.I. 1990/2170, 1990/2484, 1991/608, 1991/985, 1991/1364
S. 124(3): power conferred by s. 124(3) partly exercised (17.8.1991) by S.I. 1991/1883
S. 124(3): power conferred by s. 124(3) partly exercised (3.12.1991) by S.I. 1991/2730
S. 124(3): power conferred by s. 124(3) partly exercised (22.5.1992) by S.I. 1992/1221, art. 2, **Sch.**
S. 124(3): power conferred by s. 124(3) partly exercised (23.7.1993) by S.I. 1993/2132, **arts. 2**, 3,Sch.
S. 124(3): power conferred by s. 124(3) partly exercised (6.3.1995) by S.I. 1995/641, **art. 2**

P2 S. 124(3) power partly exercised: 7.12.2004 appointed for specified provisions by {S.I. 2004/2950}, art. 2

Modifications etc. (not altering text)

C1 S. 124: transfer of functions (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), arts. 4, 5, **Sch. 1** (with arts. 6, 8)

VALID FROM 31/03/2009

125 Short title, minor and consequential amendments, transitionals and repeals.

(1) This Act may be cited as the Courts and Legal Services Act 1990.

(2) The minor amendments set out in Schedule 17 shall have effect.

(3) The consequential amendments set out in Schedule 18 shall have effect.

(4) The **[**[F6]Lord Chancellor**]** may by order make such amendments or repeals in relevant enactments as appear to him to be necessary or expedient in consequence of any provision made by Part II with respect to advocacy, litigation, conveyancing or probate services.

[[F7](5) In subsection (4)—

(a) "relevant enactments" means such enactments or instruments passed or made before or in the same Session as the Legal Services Act 2007 was passed as may be specified in the order, and

(b) the reference to Part 2 is a reference to that Part as amended by that Act or any enactment or instruments passed or made before or in the same Session as that Act was passed.**]**

(6) The transitional provisions and savings set out in Schedule 19 shall have effect.

(7) The repeals set out in Schedule 20 (which include repeals of certain enactments that are spent or of no further practical utility) shall have effect.

Textual Amendments

F6 Words in s. 125(4) substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 211, **Sch. 21 para. 99(a)** (with ss. 29, 192, 193): S.I. 2009/503, **art. 2(d)**

F7 S. 125(5) substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 211, **Sch. 21 para. 99(b)** (with ss. 29, 192, 193): S.I. 2009/503, **art. 2(d)**

Modifications etc. (not altering text)

C2 S. 125: transfer of functions (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), arts. 4, 5, **Sch. 1** (with arts. 6, 8)

Commencement Information

I9 S. 125 partly in force; s. 125(1) in force at 1.11.1990; s. 125(7) partly in force at 1.11.1990 see s. 124(3) and S.I. 1990/2170; s. 125 partly in force at 1.1.1991 see s. 124(3) and S.I. 1990/2484; s. 125(2) in force 1.4.1991 so far as it relates to Sch. 17 paras. 4, 7, 8, 10 and 13, s. 125(3) in force at 1.4.1991 so far as it relates to Sch. 18 paras. 1 (in part), 5, 41, 48, 49, 52, 56, 58 - 63, s. 125(6) in force at 1.4.1991 so far as it relates to Sch. 19 paras. 14, 15, 17, s. 125(7) in force at 1.4.1991 so far as it relates to certain repeals in Sch. 20 see s. 124(3) and S.I. 1991/608 art. 2, Sch.
S. 125(3) in force 1.5.1991 so far as it relates to Sch. 18 para. 53 see s. 124(3) and S.I. 1991/985, **art. 2**
S. 125(2) in force 1.7.1991 so far as it relates to Sch. 17 paras. 6, 17 and 18 see s. 124(3) and S.I. 1991/1364, art. 2, **Sch.**
S. 125(3) in force 1.7.1991 so far as it relates to Sch. 18 paras. 9, 10, 17, 18 and 43-46 see s. 124(3) and S.I. 1991/1364, art. 2, **Sch.**
S. 125(6) in force 1.7.1991 so far as it relates to Sch. 19 paras. 12 and 13 see s. 124(3) and S.I. 1991/1364, art. 2, **Sch.**
S. 125(7) in force 1.7.1991 for certain purposes see s. 124(3) and S.I. 1991/1364, art. 2, **Sch.**
S. 125(4) and (5) wholly in force at 14.10.1991 see s. 124(3) and S.I. 1991/1883, art. 3, **Sch.**
S. 125(2) in force 14.10.1991 so far as it relates to Sch. 17 para. 14 see s. 124(3) and S.I. 1991/1883, art.3, **Sch.**
S. 125(3) in force 14.10.1991 so far as it relates to Sch. 18 paras. 21 and 54 see s. 124(3) and S.I. 1991/1883, art.3, **Sch.**
S. 125(7) in force 14.10.1991 for certain purposes see s. 124(3) and S.I. 1991/1883, art. 3, **Sch.**
S. 125(3) in force 1.1.1992 so far as it relates to Sch. 18 paras. 26-30 and 33-35 see s. 124(3) and S.I. 1991/2730, **art. 2**.Sch; s. 125(3) in force at 1.6.1992 so far as it relates to Sch. 18 para. 13 see s. 124(3) and S.I. 1992/1221, **reg. 2**,Sch.
S. 125(6) in force 1.1.1992 so far as it relates to Sch. 19 para. 9 see s. 124(3) and S.I. 1991/2730, art. 2, **Sch.**
S. 125(7) in force 1.1.1992 so far as it relates to certain repeals in Sch. 20 see S.I. 1991/2730, art. 2,Sch; s. 125(7) in force at 1.6.1992 for certain purposes in Sch. 20 see S.I. 1992/1221, art. 2,Sch.
S. 125(7) in force 1.10.1993 so far as it relates to certain repeals in Sch. 20 see S.I. 1993/2132, art. 3, Sch.

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