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## STATUTORY INSTRUMENTS

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# 1981 No. 1675

## The Magistrates' Courts (Northern Ireland) Order 1981

### PART II

#### FUNCTIONS OF RESIDENT MAGISTRATES AND JUSTICES OF THE PEACE

##### *Protection from legal proceedings*

#### **[<sup>F1</sup>Immunity of resident magistrates etc. for acts within jurisdiction.]**

**5.** No action shall lie against any resident magistrate,<sup>[<sup>F2</sup> lay magistrate]</sup> or clerk of petty sessions in respect of any act or omission of his—

- (a) in the execution of his duty—
  - (i) as<sup>[<sup>F2</sup> a resident magistrate or a lay magistrate]</sup>; 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.]

**F1** 1990 c. 41

**F2** 2002 c. 26

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

**6.** An action shall lie against any resident magistrate,<sup>[<sup>F3</sup> lay magistrate]</sup> or clerk of petty sessions in respect of any act or omission of his—

- (a) in the purported exercise of his duty—
  - (i) as<sup>[<sup>F3</sup> a resident magistrate or a lay magistrate]</sup>; 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.

**F3** 2002 c. 26

#### **[<sup>F4</sup>Costs in legal proceedings]**

**6A.—(1)** A court may not order any resident magistrate,<sup>[<sup>F5</sup> lay magistrate]</sup> or clerk of petty sessions to pay costs in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty—

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- (a) as<sup>F5</sup> a resident magistrate or a lay magistrate]; or
  - (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a magistrates' court.
- (2) Paragraph (1) does not apply in relation to—
- (a) any proceedings in which a resident magistrate,<sup>F5</sup> lay magistrate] or clerk of petty sessions is being tried for an offence or is appealing against a conviction; or
  - (b) any proceedings in which it is proved that a resident magistrate,<sup>F5</sup> lay magistrate] or clerk of petty sessions acted in bad faith in respect of the matters giving rise to the proceedings.
- (3) Where a court is prevented by paragraph (1) from ordering a resident magistrate,<sup>F5</sup> lay magistrate] or clerk of petty sessions to pay costs in any proceedings, the court may instead order the making by the Lord Chancellor of a payment in respect of the costs of a person in the proceedings.
- (4) The Lord Chancellor may<sup>F6</sup>, after consultation with the Lord Chief Justice,] by regulations specify—
- (a) circumstances when a court shall or shall not exercise the power conferred on it by paragraph (3); and
  - (b) how the amount of any payment ordered under that paragraph is to be determined.
- [
- <sup>F7</sup>(4A) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (4)—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]
- (5) Regulations under paragraph (4) shall be subject to [<sup>F8</sup>negative resolution].]

**F4** 1999 c. 22

**F5** 2002 c. 26

**F6** Words in art. 6A(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 62(2); S.I. 2006/1014, art. 2(a), Sch. 1

**F7** Art. 6A(4A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 62(3); S.I. 2006/1014, art. 2(a), Sch. 1

**F8** Words in art. 6A(5) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 132 (with arts. 28-31); S.I. 2010/977, art. 1(2)

### Where warrant on conviction is issued by clerk or another justice

7. Where a conviction or order is made by a<sup>F9</sup> magistrates' court] and a warrant to enforce it is signed by<sup>F10</sup> . . . a clerk of petty sessions, no action shall be brought against the<sup>F10</sup> . . . clerk who signed the warrant by reason of any lack of jurisdiction in the magistrates' court which made the conviction or order.

**F9** 2002 c. 26

**F10** 1990 c. 41

## Acts performed pursuant to decision of High Court or on appeal

Para. (1) rep. by 1990 c. 41

(2) Where a warrant or other document signed by a<sup>F11</sup> . . . clerk of petty sessions is issued upon any conviction or order which is confirmed upon appeal no action shall be brought against that<sup>F11</sup> . . . clerk in respect of anything done pursuant to the warrant or document.

F11 1990 c. 41

## Where action is prohibited proceedings may be set aside

9. Where any action which is prohibited by this Part is commenced, the judge may, upon an application by the defendant supported by an affidavit of facts, order that the proceedings in such action be set aside with or without costs.

## Defrayal by Lord Chancellor of expenses in connection with proceedings

10.—(1) The Lord Chancellor, with the approval of the Treasury, may defray the whole or part of any expenses incurred by a resident magistrate<sup>F12</sup>, by a lay magistrate] or by a clerk of petty sessions in, or in connection with, any proceedings or claim brought as a result of the execution, or purported execution of the office of that<sup>F12</sup> resident magistrate, lay magistrate] or clerk<sup>F13</sup> in relation to any matter other than a criminal matter] if and in so far as it appears to the Lord Chancellor to be reasonable, having regard to the circumstances, that such expenses, or part of them should not be borne by that magistrate, justice or clerk personally.

<sup>F13</sup>(1A) The Lord Chancellor shall defray any expenses reasonably incurred by a resident magistrate<sup>F12</sup>, by a lay magistrate] or by a clerk of petty sessions in, or in connection with, any proceedings or claim brought as a result of the execution, or purported execution, of the office of that<sup>F12</sup> resident magistrate, lay magistrate] or clerk in relation to any criminal matter, unless it is proved, in respect of the matters giving rise to the proceedings or claim, that he acted in bad faith.]

(2) In this Article “expenses” includes damages or costs and any sums payable in connection with a settlement of proceedings or of a claim.

F12 2002 c. 26

F13 1996 c. 25

### Modifications etc. (not altering text)

C1 [Art. 10\(1\)](#): functions of Treasury or Minister for the Civil Service transferred to Department of Finance and Personnel (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), **15(4)(f)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) arts.3\(4\)25](#)
- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) art.3\(5\)Sch.1](#)
- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) art.5\(2\)](#)
- Instrument mod (prosp) by [1994 c. 33 s. 91\(3\)](#)
- Instrument revoked by [1998 c. 41 s.74\(1\)\(3\)Sch.12 para.5Sch.14 Pt.I](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Act amended by [1996 c. 25 s.79Sch.4 para 30](#)
- Act amended by [1996 c. 25 s.79Sch.4 para 30](#)
- Order applied by [S.R. 2007/199 reg. 19\(6\)](#)
- Order applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to legislation.gov.uk. [S.I. 2018/1125, reg. 8 omitted \(31.12.2020\)](#) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))
- Order power to modify conferred by [2015 c. 9 \(N.I.\) s. 24\(5\)\(a\)](#) (see [s 24\(6\)](#))

**Whole provisions yet to be inserted into this Order (including any effects on those provisions):**

- [Sch.6 Pt.I paras.1819](#) revoked by [1995 c. 21 s. 314\(1\)Sch.12](#) (Amendment could not be applied. The relevant affected text is not available on legislation.gov)
- [Sch.6 Pt.I para.5](#) revoked by [S.I. 1995/756 art.15Sch.](#)
- [Sch. 6 para. 128-130](#) repealed by [2011 c. 15 \(N.I.\) Sch. 3 Pt. 2](#) (Amendment could not be applied. The relevant affected text is not available on legislation.gov)
- [Sch. 6 para. 125](#) repealed by [2011 c. 16 \(N.I.\) Sch. 5](#) (Amendment could not be applied. The relevant affected text is not available on legislation.gov)
- [Sch. 6 Pt. 3 para. 170](#) repealed by [S.I. 2007/916 \(N.I.\) Sch. 8 Pt. 1](#) (Amendment could not be applied. The relevant affected text is not available on legislation.gov)
- [Sch. 6 para. 144](#) repealed by [2006 c. 48 Sch. 15 Pt. 4](#) (Amendment could not be applied. The relevant affected text is not available on legislation.gov)
- [Sch. 6 para. 21](#) repealed by [2013 c. 22 Sch. 11 para. 210](#) (Amendment could not be applied. The relevant affected text is not available on legislation.gov)
- [Sch. 6 para. 25](#) repealed by [2013 c. 22 Sch. 11 para. 210](#) (Amendment could not be applied. The relevant affected text is not available on legislation.gov)
- [art. 29A](#) excluded by [1975 c. 59, s. 4\(3\)](#) (as substituted) by [2015 c. 9 \(N.I.\) s. 7\(6\)](#)
- [art. 29A](#) inserted by [2015 c. 9 \(N.I.\) s. 7\(2\)](#)
- [art. 34\(1A\)-\(1E\)](#) inserted by [2015 c. 9 \(N.I.\) s. 8\(2\)](#)
- [art. 140\(2ZA\)](#) inserted by [2016 c. 18 \(N.I.\) Sch. 10 para. 16](#)