



# Courts Act 1971

## 1971 CHAPTER 23

### PART VI

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Merger or abolition of certain courts and offices*

#### **41 Merger of Palatine Courts with High Court**

- (1) On the appointed day—
- (a) the Court of Chancery of the county palatine of Lancaster (in this Act referred to as "the Lancaster Palatine Court"), and
  - (b) the Court of Chancery of the county palatine of Durham and Sadberge (in this Act referred to as "the Durham Palatine Court"),
- shall be merged with the High Court and accordingly on and after that day no jurisdiction, whether conferred by statute or otherwise, shall be exercised by the Palatine Courts as such
- (2) The provisions of Part I of Schedule 5 to this Act shall have effect with respect to certain transitional matters consequential on the provisions of this section.

#### **42 Local court for City of London**

- (1) The Mayor's and City of London Court, as constituted immediately before the commencement of this Act, is hereby abolished.
- (2) For the purpose of establishing a court to exercise so much of the jurisdiction previously exercised by the Mayor's and City of London Court as is appropriate to a county court and for exercising any other jurisdiction which may hereafter be conferred on a county court, the City of London shall, by virtue of this section, become a county court district and accordingly the enactments relating to county courts shall apply in relation to the county court for the City of London as they apply in relation to a county court for any other county court district.

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- (3) Without prejudice to subsection (1) above, the county court for the district constituted by subsection (2) above shall be known as the Mayor's and City of London Court and the Circuit judge assigned to that district under section 20(1) of this Act shall be known as the judge of the Mayor's and City of London Court.
- (4) The provisions of Part II of Schedule 5 to this Act shall have effect with respect to certain transitional matters consequential on the provisions of this section.

#### **43 Abolition of certain other local courts**

- (1) There are hereby abolished the following local courts of record, being those which actively exercise a civil jurisdiction comparable to or greater than that of the county court for the district in which they are situated:—
  - (a) the Tolzey and Pie Poudre Courts of the City and County of Bristol;
  - (b) the Liverpool Court of Passage ;
  - (c) the Norwich Guildhall Court; and
  - (d) the Court of Record for the Hundred of Salford.
- (2) The provisions of Part III of Schedule 5 to this Act shall have effect with respect to certain transitional matters consequential on the abolition of the courts specified in subsection (1) above.

#### **44 Abolition of certain offices**

- (1) The following offices are hereby abolished:—
  - (a) chairman and deputy chairman of county quarter sessions; recorder, and deputy, assistant or temporary recorder, of a borough (but not the Recorder of London); clerk and deputy clerk of the peace;
  - (b) any judicial or other office in a court abolished or merged with the High Court by the preceding provisions of this Part of this Act, other than the office of Vice-Chancellor of the County Palatine of Lancaster;
  - (c) clerk of assize, circuit bailiff and any other office the duties of which relate exclusively to courts of assize.
- (2) The Lord Chancellor may, with the concurrence of the Minister for the Civil Service, by regulations provide for the payment out of money provided by Parliament of compensation to or in respect of persons who suffer loss of employment or loss or diminution of emoluments which is attributable—
  - (a) to the preceding provisions of this section, or
  - (b) to the abolition or merger of any court (including courts of assize, courts of quarter sessions and Palatine courts) by this Act, or
  - (c) to the transfer by this Act of any function to the Lord Chancellor or to any other Minister.
- (3) Regulations under this section may—
  - (a) include provision as to the manner in which and the person to whom any claim for compensation under the regulations is to be made, and for the determination of all questions arising under the regulations,
  - (b) make special provision for persons who, but for any national service, would be holders of any office or engaged in any employment,

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- (c) make different provision for different classes of persons and for other different circumstances, and make, or authorise the Lord Chancellor to make, exceptions and conditions,
  - (d) be framed so as to have effect from a date earlier than the making of the regulations,
- but so that regulations having effect from a date earlier than their making shall not place any individual in a worse position than he would have been in if the regulations had been so framed as to have effect only from the date of their making.
- (4) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

*Matrimonial jurisdiction and patent appeals*

**45 Matrimonial jurisdiction**

- (1) This section has effect as respects any proceedings for the exercise of a power under—
  - (a) Part II or Part III of the Matrimonial Causes Act 1965 ;
  - (b) Part I of the Matrimonial Proceedings and Property Act 1970;
  - (c) section 17 of the Married Women's Property Act 1882.
- (2) Rules of court may provide for the transfer or retransfer from a county court to the High Court, or from the High Court to a divorce county court, of any such proceedings.
- (3) The power conferred by subsection (2) above and the power conferred by section 1(3)(b) of the Matrimonial Causes Act 1967 (transfer of matrimonial causes) shall be construed as including power to provide for the removal of proceedings at the direction of the High Court.
- (4) A court shall have jurisdiction to entertain any proceedings transferred to the court by virtue of rules made in pursuance of subsection (2) above.
- (5) Rules of court may, as respects any of the jurisdiction conferred by the enactments referred to in paragraphs (a), (b) and (c) of subsection (1) above—
  - (a) provide for its exercise in the principal probate registry,
  - (b) make any such provision as section 4 of the Matrimonial Causes Act 1967 (assimilation of proceedings in the principal probate registry to proceedings in divorce county courts) makes, or authorises rules of court to make, as respects any jurisdiction.
- (6) Where, in pursuance of rules of court made under this section or the said Act of 1967, any proceedings are removed into the High Court section 76 of the County Courts Act 1959 (costs) shall apply as if the proceedings had been transferred.
- (7) This section is without prejudice to any power of making rules of court conferred by the said Act of 1967, and in section 7(1)(b) of that Act (matrimonial causes rules) the reference to that Act shall include a reference to this section.
- (8) Any reference in this section to section 17 of the Married Women's Property Act 1882 is a reference to that Act as originally enacted, or as extended by section 7 of the Matrimonial Causes (Property and Maintenance) Act 1958 or by section 2 of the Law Reform (Miscellaneous Provisions) Act 1970 or by section 39 of the Matrimonial Proceedings and Property Act 1970.

## **46 Patent appeals**

- (1) Section 87 of the Patents Act 1949 (appeal to Court of Appeal or, in Scotland, the Court of Session from Patents Appeal Tribunal and Scottish Patents Appeal Tribunal) shall be amended as follows.
- (2) In subsection (1) before paragraph (a) insert
  - “(aa) from any decision of the Appeal Tribunal on the ground that it is wrong in law or is in excess of jurisdiction, but this paragraph applies only if leave to appeal is given by the Tribunal or the Court of Appeal”.
- (3) For subsection (3) substitute—
  - “(3) An appeal shall lie to the Court of Session—
    - (a) from any decision of the Scottish Appeal Tribunal on the ground that it is wrong in law or is in excess of jurisdiction, but this paragraph applies only if leave to appeal is given by the Tribunal or by the Court of Session;
    - (b) from any decision of the Scottish Appeal Tribunal under section 55 of this Act”.

## *Costs*

## **47 Costs awarded by Crown Court out of central funds**

- (1) Subject to the provisions of this section where a person is prosecuted or tried on indictment before the Crown Court, the court may—
  - (a) order the payment out of central funds of the costs of the prosecution;
  - (b) if the accused is acquitted, order the payment out of central funds of the costs of the defence.
- (2) Subject to the provisions of this section, where an appeal is brought to the Crown Court against a conviction by a magistrates' court of an indictable offence, or against the sentence imposed on such a conviction, the court may—
  - (a) order the payment out of central funds of the costs of the prosecution,
  - (b) if the appeal is against a conviction, and the conviction is set aside in consequence of the decision on the appeal, order the payment out of central funds of the costs of the defence.
- (3) The costs payable out of central funds under the preceding provisions of this section shall be such sums as appear to the Crown Court reasonably sufficient—
  - (a) to compensate the prosecutor, or as the case may be, the accused, for the expenses properly incurred by him in carrying on the proceedings, and
  - (b) to compensate any witness for the prosecution, or as the case may be for the defence, for the expense, trouble or loss of time properly incurred in or incidental to his attendance.
- (4) Notwithstanding that the court makes no order under this section as respects the costs of the defence, it may order the payment out of central funds of such sums as appear to the court reasonably sufficient to compensate any witness for the defence for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

- (5) References in subsections (3) and (4) above to a witness include any person who is a witness to character only and in respect of whom the court certifies that the interests of justice required his attendance but no sums shall be payable in pursuance of an order made under this section to or in respect of any witness who is a witness to character only" and in respect of whom no such certificate is given.
- (6) The amount of costs ordered to be paid under this section shall be ascertained as soon as practicable by the appropriate officer of the Crown Court.
- (7) In this section the expression " witness " means a person properly attending to give evidence, whether or not he gives evidence; and a person called to give evidence at the instance of the court may, whether or not he is a witness for the defence, be made the subject of an order under subsection (4) above.
- (8) The costs of carrying on the defence that may be awarded to any person under this section may include the costs of carrying on the defence before the examining justices who committed him for trial, or as the case may be before the magistrates' court who convicted him.

#### **48 Costs awarded by Crown Court as between parties**

- (1) Where a person is prosecuted or tried on indictment before the Crown Court, the Court may—
  - (a) if the accused is convicted, order him to pay the whole or any part of the costs incurred in or about the prosecution and conviction, including any proceedings before the examining justices ;
  - (b) if the accused is acquitted, order the prosecutor to pay the whole or any part of the costs incurred in or about the defence including any proceedings before the examining justices.
- (2) The amount of costs ordered to be paid under this section shall (except where it is a specific amount ordered to be so paid) be ascertained as soon as practicable by the appropriate officer of the Crown Court.

#### **49 Costs awarded by Divisional Court or House of Lords out of central funds**

- (1) A Divisional Court of the Queen's Bench Division may order the payment out of central funds of the costs of any party to proceedings before the Divisional Court in a criminal cause or matter.
- (2) The costs payable out of central funds under subsection (1) above shall be such sums as appear to the Divisional Court reasonably sufficient to compensate the party concerned for any expenses properly incurred by him in the proceedings or in any court below.
- (3) Where an appeal to the House of Lords from a decision of the Divisional Court in a criminal cause or matter is determined in favour of the accused, the House of Lords may order the payment to the accused out of central funds of such sums as appear to it reasonably sufficient to compensate him for any expenses properly incurred by him in the appeal to the House of Lords (including any application for leave to appeal), or in any court below.
- (4) Any amount ordered to be paid under this section shall be ascertained—
  - (a) if under subsection (1) above, by the master of the Crown Office, and

- (b) if under subsection (3) above (except where it is a specific amount ordered to be paid towards the accused's expenses as a whole) by such officer or officers, and in such manner, as may be prescribed by order of the House of Lords.

## **50 Crown Court rules relating to costs**

- (1) Crown Court rules may authorise the court to award costs and may regulate any matters relating to costs of proceedings in the Crown Court, and in particular may make provision as to—
  - (a) any discretion to award costs,
  - (b) the taxation of costs, or the fixing of a sum instead of directing a taxation, and as to the officer of the court or other person by whom costs are to be taxed,
  - (c) a right of appeal from any decision on the taxation of costs whether to a Taxing Master of the Supreme Court, or to any other officer or authority,
  - (d) the enforcement of an order for costs,
  - (e) the charges or expenses or other disbursements which are to be treated as costs for the purposes of the rules.
- (2) The costs dealt with by rules under this section may, where an appeal is brought to the Crown Court from the decision of a magistrates' court, or from the decision of any other court or tribunal, include costs in the proceedings in that court or tribunal.
- (3) Nothing in this section shall authorise the making of rules about the payment of costs out of central funds, whether under the Costs in Criminal Cases Act 1952 or otherwise, but rules under this section may make any such provision as is contained in section 48 above.
- (4) Rules under this section may amend or repeal all or any of the provisions of section 48 above or of any other enactment passed before this Act about costs between party and party in criminal or other proceedings in the Crown Court.
- (5) Rules under this section shall have effect subject to the provisions of section 41 of, and Schedule 9 to, the Administration of Justice Act 1970 (method of enforcing orders for costs).

## **51 Construction and consequential amendments**

- (1) Sections 47, 48 and 49 above shall be construed as one with the Costs in Criminal Cases Act 1952, and accordingly references to that Act shall, unless the context otherwise requires, be construed as including references to those sections.
- (2) Schedule 6 to this Act, which amends the Costs in Criminal Cases Act 1952 and other enactments about costs, shall have effect.

## **52 Award of costs where information or complaint is not proceeded with**

- (1) Where an information charging an indictable offence is laid before a justice of the peace for any area but the information is not proceeded with (either by summary trial or by an inquiry by examining justices) a magistrates' court for that area may order the payment out of central funds of—
  - (a) the costs properly incurred in preparing a defence to the offence charged; and

- (b) such sums as appear to the court reasonably sufficient to compensate any person attending to give evidence as a witness for the defence for the expense, trouble or loss of time properly incurred in or incidental to his attendance.
- (2) The amount of costs ordered to be paid under subsection (1) above shall be ascertained as soon as practicable by the proper officer of the court.
- (3) Where—
  - (a) an information is laid before a justice of the peace for any area but the information is not proceeded with (either by summary trial or by an inquiry by examining magistrates), or
  - (b) a complaint is made to a justice of the peace acting for any area but the complaint is not proceeded with,a magistrates' court for that area may make such order as to costs to be paid by the prosecutor to the accused or, as the case may be, by the complainant to the defendant as it thinks just and reasonable.
- (4) An order under subsection (3) above shall specify the amount of the costs ordered to be paid.
- (5) Subsections (1) and (2) above and, so far as they relate to informations, subsections (3) and (4) above shall be construed as one with the Costs in Criminal Cases Act 1952; and for the purpose of enforcement an order under subsection (3) above made in relation to a complaint which is not proceeded with shall be treated as if it were an order made under section 55 of the Magistrates' Courts Act 1952 (power to award, and enforcement of, costs in civil proceedings).

### *Administrative functions of justices*

## **53 Administrative functions of justices**

- (1) The provisions of section 16 of and Schedule 4 to the Justices of the Peace Act 1949 (which provide for the establishment of magistrates' courts committees) shall be amended in accordance with Part I of Schedule 7 to this Act; and the following provisions of this section shall have effect with respect to certain administrative functions exercised by courts of quarter sessions and by members of such courts before the day appointed for the purposes of section 3 of this Act.
- (2) Schedule 5 to the Criminal Justice Act 1948 (which contains administrative provisions about probation and after-care areas and committees, etc.) shall be amended as follows:
  - (a) in paragraph 1(1) (which relates to probation and after care areas comprising more than one petty sessional division) for the words " court of quarter sessions " there shall be substituted the words " magistrates' courts committee "; and
  - (b) in paragraph 2(1)(a) (which provides for the constitution of probation and after-care committees for areas comprising more than one petty sessional division) for the words from " such number of additional " to the end of paragraph (a) there shall be substituted the words " such number of judges of the Crown Court and of additional justices who have experience of sitting as members of the Crown Court, as may be specified in the order ".

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- (3) Visiting committees appointed as mentioned in subsection (1) of section 6 of the Prison Act 1952 (that is to say by courts of quarter sessions for counties and benches of magistrates for boroughs) shall be replaced by boards of visitors appointed under subsection (2) of that section, and accordingly the said section 6 and section 43(4) of the Prison Act 1952 (which relates to the application of certain provisions of that Act about prisons to remand centres, detention centres and Borstal institutions) shall be amended in accordance with Part II of Schedule 7 to this Act.
- (4) For the purpose of replacing the references to courts of quarter sessions where they occur in the Licensing Act 1964 in relation to—
  - (a) county compensation committees, and
  - (b) the licensing planning committee for any licensing planning area that consists of or includes the metropolis, as defined in that Act,the provisions of that Act specified in Part III of Schedule 7 to this Act shall be amended in accordance with that Part of that Schedule.
- (5) In paragraph (b) of section 2(2) of the Police Act 1964 (one-third of police committee for a county police area to be magistrates for the county appointed by quarter sessions) for the words from " magistrates " in the first place where it occurs to the end of the paragraph there shall be substituted the words " appointed from among their own number by the magistrates for the county in accordance with a scheme made by the magistrates' courts committee for, or for an area including, the county and approved by the Secretary of State ".
- (6) Without prejudice to their effect on appointments made after the commencement of this Act, nothing in subsection (2), subsection (4) or subsection (5) above shall affect the membership of any probation and after-care committee, county compensation authority or police committee in existence at the commencement of this Act.
- (7) The Secretary of State may by order made by statutory instrument make such amendments as appear to him to be expedient in consequence of the provisions of this Act in—
  - (a) any order made under paragraph 1 of Schedule 5 to the Criminal Justice Act 1948 (relating to combined probation and after-care areas), and
  - (b) any amalgamation scheme within the meaning of Part I of the Police Act 1964 ;and an order under this subsection amending any such amalgamation scheme shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Boroughs: honorary offices*

#### **54      Boroughs: honorary offices**

- (1) The council of a borough shall have power to appoint a person to be honorary recorder of the borough.
- (2) Where there is a borough civil court, the council of the borough shall have power to appoint the honorary recorder of the borough, or some other person, to be the judge of the court, and a person appointed under this subsection shall hold his office during good behaviour.

- (3) A person shall not be qualified to hold office as an honorary recorder of a borough or as judge of a borough civil court unless he is a Circuit judge or Recorder (that is to say a Recorder appointed under this Act):

Provided that this subsection shall not apply to a borough which immediately before the appointed day—

- (a) had power by charter to appoint a recorder of the borough, and
  - (b) did not have a separate court of quarter sessions.
- (4) Where, immediately before the appointed day, there was a judge of a borough civil court, but he did not hold office by virtue of holding the office of recorder abolished by this Act, he shall continue to be and act as the judge as if appointed under subsection (2) above and subsection (3) above shall not apply to him.

### *Supplemental*

## **55 Financial provisions**

- (1) There shall be paid out of money provided by Parliament, or out of the Consolidated Fund, any increase attributable to the provisions of this Act in the sums respectively so payable under any other enactment.
- (2) There shall be paid out of money provided by Parliament any sums payable by any Minister under or by virtue of this Act.
- (3) Any sum payable under this Act to the Lord Chancellor or any other Minister shall be paid into the Consolidated Fund.
- (4) In the application of section 3(1) of the Local Government Act 1966 (variation of rate support grant orders) to a rate support grant order made before the date of the coming into operation of any provision of this Act for a grant period ending after that date, the Minister having power to make orders under the said section 3 shall take into account any relief obtained, or likely to be obtained, by local authorities—
  - (a) which is attributable to the coming into operation of the said provision of this Act, and
  - (b) which was not taken into account in making the rate support grant order the variation of which is in question.

The provisions of this subsection are without prejudice to section 3(4) of the said Act of 1966 (under which an order under that section may vary the matters prescribed by a rate support grant order).

## **56 Minor and consequential amendments, transitional provisions and repeals**

- (1) Schedule 8 to this Act (which contains consequential and other amendments) shall have effect.
- (2) In the enactments listed in Schedule 9 to this Act (which confer jurisdiction transferred to the Crown Court) for any reference to quarter sessions there shall be substituted a reference to the Crown Court.

This subsection applies to references to quarter sessions however expressed and in particular to any reference to " the next court of quarter sessions " , or to the quarter

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sessions for any particular area, or to any sessions which, by section 13(14) of the Interpretation Act 1889, were included in the expression " court of quarter sessions ".

- (3) Schedule 10 to this Act, which contains transitional provisions, shall have effect.
- (4) The enactments specified in Schedule 11 to this Act (which includes certain obsolete or unnecessary enactments) are hereby repealed to the extent specified in the third column of that Schedule, but subject to any provision at the end of that Schedule.

## **57 Interpretation of this Act and rules of construction of other Acts**

- (1) In this Act, unless the context otherwise requires—
  - the " appointed day " means the commencement of this Act which, as provided by this Act, may be a different date for different purposes,
  - " the Judicature Act 1925 " means the Supreme Court of Judicature (Consolidation) Act 1925,
  - " sentence ", in relation to an offence, includes any order made by a court when dealing with an offender including—
    - (a) a hospital order under Part V of the Mental Health Act 1959, with or without an order restricting discharge, and
    - (b) a recommendation for deportation made when dealing with an offender.
- (2) Except where the context otherwise requires, this Act applies in relation to proceedings on a coroner's inquisition and to matters arising out of such proceedings, as it applies in relation to proceedings on indictment and matters arising out of them.
 

Except as otherwise provided, this subsection shall apply for the construction of any Act passed after this Act as it applies for the construction of this Act.
- (3) Except where the context otherwise requires, in this or any other Act—
  - (a) a reference to a judge of the Supreme Court shall not include a reference to a judge of the Crown Court,
  - (b) any reference to the courts abolished by this Act shall include a reference to the Lancaster Palatine Court and the Durham Palatine Court (which are abolished on merger with the High Court).
- (4) Except where the context otherwise requires, in any Act passed after this Act the expression " recorder " shall not include the Recorder of London or an honorary recorder of a borough.
- (5) Any power of making orders contained in any provision of this Act shall include power to vary or revoke an order made under that provision.
- (6) It is hereby declared that any power conferred by this Act on the Lord Chancellor or any other authority to give directions includes a power to vary or rescind any direction so given.
- (7) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.

## **58 Northern Ireland powers concerning majority verdicts of juries**

The provisions of the Government of Ireland Act 1920 about reserved matters shall not preclude the Parliament of Northern Ireland from making any law corresponding to section 13 of the Criminal Justice Act 1967, or otherwise authorising a majority verdict of a jury, or from making any provision related to or consequential upon a provision about majority verdicts of juries.

## **59 Short title, commencement and extent**

- (1) This Act may be cited as the Courts Act 1971.
- (2) This Act shall come into force on such date as the Lord Chancellor may by order in a statutory instrument appoint, and different dates may be appointed for different provisions of this Act, or for different purposes.
- (3) Without prejudice to the other transitory provisions of this Act, any order under this section may make such transitional provision as appears to the Lord Chancellor to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or any provisions of this Act then in force, and such savings of the provisions repealed by this Act, as appear to him to be necessary or expedient in consequence of the partial operation of this Act (whether before or after the day appointed by the order).
- (4) A statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The following provisions of this Act, and no others, shall extend to Scotland—
  - (a) section 13(8) and, so far as it relates to the Court of Session, section 46,
  - (b) any provision of this Act amending or repealing any provision of the House of Commons Disqualification Act 1957,
  - (c) any provision of this Act affecting the operation of the law of Scotland in relation to courts in England and Wales,
  - (d) the provisions of this Act about interpretation and commencement,
  - (e) Schedule 8 to this Act so far as it amends section 14 of the Indictable Offences Act 1848, and sections 72A and 72B of the Magistrates' Courts Act 1952.
- (6) The following provisions of this Act, and no others, shall extend to Northern Ireland—
  - (a) section 46 of this Act except so far as it relates to the Court of Session and section 58,
  - (b) any provision of this Act which amends or repeals any provision of the House of Commons Disqualification Act 1957,
  - (c) any provision of this Act affecting the operation of the law of Northern Ireland in relation to courts in England and Wales,
  - (d) the provisions of this Act about interpretation and commencement,
  - (e) Schedule 8 to this Act so far as it amends section 12 of the Indictable Offences Act 1848 and section 30 of the Petty Sessions (Ireland) Act 1851.
- (7) Schedule 8 to this Act shall extend to the Isle of Man and the Channel Islands so far as it amends section 13 of the Indictable Offences Act 1848.