



# Senior Courts Act 1981

## 1981 CHAPTER 54

### PART II

#### JURISDICTION

##### GENERAL PROVISIONS

###### *Law and equity*

#### **49 Concurrent administration of law and equity.**

- (1) Subject to the provisions of this or any other Act, every court exercising jurisdiction in England or Wales in any civil cause or matter shall continue to administer law and equity on the basis that, wherever there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.
- (2) Every such court shall give the same effect as hitherto—
  - (a) to all equitable estates, titles, rights, reliefs, defences and counterclaims, and to all equitable duties and liabilities; and
  - (b) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom or created by any statute,and, subject to the provisions of this or any other Act, shall so exercise its jurisdiction in every cause or matter before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of those matters is avoided.
- (3) Nothing in this Act shall affect the power of the Court of Appeal or the High Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person, whether or not a party to the proceedings.

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**50 Power to award damages as well as, or in substitution for, injunction or specific performance.**

Where the Court of Appeal or the High Court has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance.

*Costs*

**[<sup>F1</sup>51 Costs in civil division of Court of Appeal, High Court and county courts.**

- (1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in—
  - (a) the civil division of the Court of Appeal;
  - (b) the High Court; and
  - [<sup>F2</sup>(ba) the family court;]
  - (c) [<sup>F3</sup> the ] county court,
 shall be in the discretion of the court.
- (2) Without prejudice to any general power to make rules of court, such rules may make provision for regulating matters relating to the costs of those proceedings including, in particular, prescribing scales of costs to be paid to legal or other representatives [<sup>F4</sup> or for securing that the amount awarded to a party in respect of the costs to be paid by him to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs.].
- (3) The court shall have full power to determine by whom and to what extent the costs are to be paid.
- (4) In subsections (1) and (2) “proceedings” includes the administration of estates and trusts.
- (5) Nothing in subsection (1) shall alter the practice in any criminal cause, or in bankruptcy.
- (6) In any proceedings mentioned in subsection (1), the 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 of court.
- (7) In subsection (6), “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.
- [<sup>F5</sup>(7A) Where the court exercises a power under subsection (6) in relation to costs incurred by a party, it must inform such of the following as it considers appropriate—
  - (a) an approved regulator;
  - (b) the Director of Legal Aid Casework.]
- (8) Where—

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- (a) a person has commenced proceedings in the High Court; but
- (b) those proceedings should, in the opinion of the court, have been commenced in [<sup>F6</sup> the county court ] [<sup>F7</sup> or family court ] in accordance with any provision made under section 1 of the Courts and Legal Services Act 1990 or by or under any other enactment,

the person responsible for determining the amount which is to be awarded to that person by way of costs shall have regard to those circumstances.

- (9) Where, in complying with subsection (8), the responsible person reduces the amount which would otherwise be awarded to the person in question—
  - (a) the amount of that reduction shall not exceed 25 per cent; and
  - (b) on any taxation of the costs payable by that person to his legal representative, regard shall be had to the amount of the reduction.
- (10) The Lord Chancellor may by order amend subsection (9)(a) by substituting, for the percentage for the time being mentioned there, a different percentage.
- (11) Any such order shall be made by statutory instrument and may make such transitional or incidental provision as the Lord Chancellor considers expedient.
- (12) No such statutory instrument shall be made unless a draft of the instrument has been approved by both Houses of Parliament.

[<sup>F8</sup>(12A) In subsection (7A)—

“approved regulator” has the meaning given by section 20 of the Legal Services Act 2007;

“the Director of Legal Aid Casework” means the civil servant designated under section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.]

- (13) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf.]

#### Annotations:

##### Amendments (Textual)

- F1** S. 51 commencing “Subject to the provisions of this or any other enactment” substituted (1.10.1991) for s. 51 commencing “Subject to the provisions of this or any other Act” by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), [s. 4\(1\)](#); S.I. 1991/1883, [art. 2](#)
- F2** S. 51(1)(ba) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 10 para. 61\(2\)](#); S.I. 2014/954, [art. 2\(d\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F3** Word in s. 51(1)(c) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 9 para. 29\(a\)](#); S.I. 2014/954, [art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F4** Words in s. 51(2) inserted (2.6.2003) by [1999 c. 22, s. 31](#) (with Sch. 14 para. 7(2)); S.I. 2003/1241, [art. 2](#)
- F5** S. 51(7A) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 67\(2\)](#), [95\(1\)](#); S.I. 2015/778, [art. 3](#), [Sch. 1 para. 53](#)
- F6** Words in s. 51(8)(b) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 9 para. 29\(b\)](#); S.I. 2014/954, [art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

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- F7** Words in s. 51(8)(b) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 61(3)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F8** S. 51(12A) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), **ss. 67(3)**, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 53

## 52 Costs in Crown Court.

- (1) [<sup>F9</sup>Rules of court] may authorise the Crown Court to award costs and may regulate any matters relating to costs of proceedings in that 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 [<sup>F10</sup>Senior Courts] or to any other officer or authority;
  - (d) a right of appeal to the High Court, subject to any conditions specified in the rules, from any decision on an appeal brought by virtue of paragraph (c);
  - (e) the enforcement of an order for costs; and
  - (f) the charges or expenses or other disbursements which are to be treated as costs for the purposes of the rules.
- (2) The costs to be dealt with by rules made in pursuance of 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.
- [<sup>F11</sup>(2A) Subsection (6) of section 51 applies in relation to any civil proceedings in the Crown Court as it applies in relation to any proceedings mentioned in subsection (1) of that section]
- (3) Nothing in this section authorises the making of rules about the payment of costs out of central funds, whether under the [<sup>F12</sup>Part II of the Prosecution of Offences Act 1985] or otherwise, but rules made in pursuance of this section may make any such provision as [<sup>F13</sup>in relation to costs of proceedings in the Crown Court, is contained in section 18 of that Act or in regulations made under section 19 of that Act (awards of party and party costs in criminal proceedings)].
- (4) Rules made in pursuance of this section may amend or repeal all or any of the provisions of any enactment about costs between party and party in criminal or other proceedings in the Crown Court, being an enactment passed before, or contained in, the [<sup>F14</sup>Part II of the Prosecution of Offences Act 1985].
- (5) Rules made in pursuance of this section shall have effect subject to the provisions of section 41 of, and Schedule 9 to, the <sup>M1</sup>Administration of Justice Act 1970 (method of enforcing orders for costs).

### Annotations:

#### Amendments (Textual)

- F9** Words in s. 52(1) substituted (1.9.2004) by [The Courts Act 2003 \(Consequential Amendments\) Order 2004 \(S.I. 2004/2035\)](#), art. 3, **Sch. para. 12(a)** (with art. 2(2))

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- F10** Words in s. 52 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59, 148, **Sch. 11 para. 26(1)(2)**; S.I. 2009/1604, **art. 2(d)**
- F11** S. 52(2A) inserted (1.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), **s. 4(2)**; S.I. 1991/1883, **art. 2**
- F12** Words substituted by Prosecution of Offences Act 1985 (c. 23, SIF 39:1), s. 31(5), **Sch. 1 para. 9**
- F13** Words substituted by Prosecution of Offences Act 1985 (c. 23, SIF 39:1), s. 31(5), **Sch. 1 para. 9**
- F14** Words substituted by Prosecution of Offences Act 1985 (c. 23, SIF 39:1), s. 31(5), **Sch. 1 para. 10**

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**Marginal Citations**

- M1** 1970 c. 31.

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

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

- s. 31(3)(a) word inserted by 2015 c. 2 s. 85(1)(a)
- s. 31(3)(a) word inserted by 2015 c. 2 s. 85(1)(a)
- s. 31(3)(b) and word inserted by 2015 c. 2 s. 85(1)(b)
- s. 31(3)(b) and word inserted by 2015 c. 2 s. 85(1)(b)
- s. 31(3A)(3B) inserted by 2015 c. 2 s. 85(2)
- s. 31(3A)(3B) inserted by 2015 c. 2 s. 85(2)