



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART VI

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

**F1** 108 .....

#### Textual Amendments

**F1** S. 108 repealed (19.6.1997) by 1997 c. 25, ss. 73(1), 74(1), Sch. 6 Pt. 1 (with Sch. 4 para. 27)

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

- (1) The <sup>M1</sup>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—
  - (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.

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**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) <sup>F2</sup> .....
- (5) <sup>F3</sup> .....
- (6) <sup>F3</sup> .....

<b>Textual Amendments</b>	
<b>F2</b>	S. 109(4) repealed (1.4.2005) by 2002 c. 26, ss. 86, 87(2), Sch. 13; S.R. 2005/109, art. 2, Sch.
<b>F3</b>	S. 109(5)(6) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 1 Group. 4}
<b>Marginal Citations</b>	
<b>M1</b>	S.I. 1981/1675 (N.I. 26).

**110 Jurisdiction of the Parliamentary Commissioner for Administration.**

(1) In section 5 of the <sup>M2</sup>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

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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.”

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**Marginal Citations**

M2 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
- “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.”

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**Commencement Information**

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

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**112 Costs against legal representatives in magistrates’ courts.**

The following section shall be inserted in the <sup>M3</sup> 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.”

<p><b>Commencement Information</b></p> <p><b>I2</b> S. 112 wholly in force at 1.10.1991 see s. 124(3) and S.I. 1991/1883, art.2</p> <hr/> <p><b>Marginal Citations</b></p> <p><b>M3</b> 1980 c. 43.</p>
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**113 Administration of oaths and taking of affidavits.**

F4 .....

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#### Textual Amendments

- F4** S. 113 repealed (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 96, **Sch. 23** (with ss. 29, 192, 193); S.I. 2009/3250, **art. 2(h)(i)(viii)(kk)** (subject to art. 9)

### 114 Bail applications.

**F5** .....

#### Textual Amendments

- F5** S. 114 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **s. 1(1)**, {Sch. 1 Pt. 1 Group. 4}

### 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 [<sup>F6</sup>Senior Courts] qualification (within the meaning of section 71) shall have the same authority as if it had been made by a barrister.

#### Textual Amendments

- F6** Words in s. 115 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59, 148, **Sch. 11 para. 4**; S.I. 2009/1604, **art. 2(d)**

#### Commencement Information

- I3** 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 <sup>M4</sup> 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

- I4** 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.**
- I5** S. 116(3) wholly in force at 1.1.1992 see s. 124(3) and S.I. 1991/2730, **art. 2, Sch.**

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### Marginal Citations

M4 1989 c. 41.

F7 117 .....

### Textual Amendments

F7 S. 117 repealed (19.6.1997) by 1997 c. 25, ss. 73(1), 74(1), Sch. 6 Pt. I (with Sch. 4 para. 27)

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 <sup>M5</sup> 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

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(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”.

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

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**Marginal Citations**

**M5** [S.I. 1981/1670](#)

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