



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART VI

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

#### **108 Liability of magistrates for damages and costs**

- (1) The Justices of the 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—

##### **“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

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- (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).

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

- (1) The 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.

### **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

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- (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 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 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 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”.

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

(1) In section 5 of the 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.”

## **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.”

## **112 Costs against legal representatives in magistrates' courts**

The following section shall be inserted in the 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

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- (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.”

### **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 similar to that made by this section is made by section 81 of the 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 a member of the Incorporated Company of Scriveners (in relation to whom provision similar to that made by this section is made by section 65 of the Administration of Justice Act 1985).
- (2) Section 1(1) of the 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 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 commissioner in an enactment or instrument

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(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.
- (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”.

## **114 Bail applications**

The following section shall be inserted in the 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 all 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.”

## **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.

## **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 Children Act 1989 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 (1) and (g) the references to England and Wales shall be read as references to Northern Ireland.

## **117 Extension of powers of justices' clerks**

In section 28 of the 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”.

## **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 Ministers of the Civil Service to the Treasury effected by the Transfer of Functions (Minister for the 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);

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- (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 2 1(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 word “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”.
- (8) In section 33, the definition of “the Minister” shall be omitted.