



Judicature (Northern Ireland) Act 1978

1978 CHAPTER 23

PART X

MISCELLANEOUS MATTERS

^{F1}103 Appointment of justices of the peace.

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Textual Amendments

F1 S. 103 repealed (N.I.) (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), Sch. 1 para. 74(1), [Sch. 9 Pt. 1](#) (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

^{F2}103A Power of court of record to bind over

- (1) Any court of record in Northern Ireland having a criminal jurisdiction has, as ancillary to that jurisdiction, the power—
 - (a) to bind over to keep the peace; or
 - (b) to bind over to be of good behaviour,a person who or whose case is before the court by requiring him to enter into his own recognisances or to find sureties (or both) and committing him to prison if he does not comply.
- (2) A magistrates' court is not to be regarded as a court of record for the purposes of subsection (1).]

Textual Amendments

F2 S. 103A inserted (1.4.2005) by [2002 c. 26](#), ss. 10, 87(1), Sch. 4 para. 18; S.R. 2005/109, [art. 2](#), Sch.

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104 Under-sheriffs.

F3

Textual Amendments

F3 S. 104 repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 37, Sch. 18 Pt. 3; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 12(a), 30(c)

105 Solicitors to be officers of court.

- (1) Any person duly admitted as a solicitor in Northern Ireland or entitled to practise therein as a solicitor shall be an officer of the [F4Court of Judicature], but nothing in this subsection shall affect the operation of any statutory provision (including a provision contained in this Act) which imposes on officers of a court restrictions as to practice as solicitors.
- (2) References in any statutory provision in force in Northern Ireland to attorneys or proctors shall be construed as references to solicitors of the [F4Court of Judicature].

Textual Amendments

F4 S. 105(1)(2): words substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59, 148, Sch. 11 para. 6(1); S.I. 2009/1604, art. 2(d)

106 Rights of audience in the High Court and Court of Appeal.

- (1) A solicitor of the [F5Court of Judicature] shall have a right of audience in any proceedings in the High Court or the Court of Appeal respecting—
 - [F6(a) any matter relating to [F7debt relief orders,] individual voluntary arrangements or bankruptcy under [F8Parts 7A to 10] of the Insolvency (Northern Ireland) Order 1989;
 - (b) any matter relating to company voluntary arrangements, receivership or the winding up of a company under Parts II and IV to VII of that Order of 1989]
 - (c) any matter to be heard in chambers or which is adjourned from chambers into court; or
 - (d) any matter in which counsel already instructed is for any reason unable to appear,
without being required to instruct counsel, or other counsel as the case may be, and may act and plead therein as counsel might have acted or pleaded.
- (2) Where in any proceedings in the High Court or the Court of Appeal (other than proceedings to which subsection (1) relates) a solicitor has had no reasonable opportunity, having regard to all the circumstances, of adequately instructing counsel, the court, if of opinion that it is desirable in the interests of justice to do so, may grant the solicitor a right of audience as ample as that which counsel would have enjoyed.
- (3) A solicitor of the [F5Court of Judicature] shall have a right of audience in any enquiries or proceedings before a statutory officer sitting in the exercise of his jurisdiction whether original or delegated; and any such officer may in his discretion permit such

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right of audience to be enjoyed by an experienced solicitor's clerk acting on behalf of his principal.

- (4) Nothing in this section shall take away or affect the inherent powers of any court or judge to confer a right of audience.

Textual Amendments

- F5** S. 106(1)(3): words substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148, [Sch. 11 para. 6\(1\)](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)
- F6** S. 106(1)(a)(b) substituted (N.I.) (1. 10. 1991) by [S.I. 1989/2405](#), [art. 381](#), [Sch. 9 Pt. II para. 30](#); [S.R. 1991/411](#), [art.2](#).
- F7** Words in s. 106(1)(a) inserted (N.I.) (30.6.2011) by [Debt Relief Act \(Northern Ireland\) 2010 \(c. 16\)](#), s. 7(1), [Sch. para. 2\(a\)](#); [S.R. 2011/13](#), [art. 2](#)
- F8** Words in s. 106(1)(a) substituted (N.I.) (30.6.2011) by [Debt Relief Act \(Northern Ireland\) 2010 \(c. 16\)](#), s. 7(1), [Sch. para. 2\(b\)](#); [S.R. 2011/13](#), [art. 2](#)

107 Qualification for holding office of solicitors who have been barristers and vice versa.

- (1) For the purpose of any statutory provision or custom whereby the qualification of a solicitor for holding any office in Northern Ireland depends upon—
- (a) his having been admitted for a specified period; or
 - (b) his having been admitted and in practice for a specified period,
- that period, in the case of a solicitor who before admission was a barrister, shall be deemed to include—
- (i) where paragraph (a) applies, any period during which he was a barrister; and
 - (ii) where paragraph (b) applies, any period after his call to the bar during which he was in practice as a barrister.
- (2) For the purpose of any statutory provision or custom whereby the qualification of a barrister for holding any office in Northern Ireland depends upon—
- (a) his having been called to the bar for a specified period; or
 - (b) his having been called to the bar and in practice for a specified period,
- that period, in the case of a barrister who before call was a solicitor, shall be deemed to include—
- (i) where paragraph (a) applies, any period during which he was a solicitor; and
 - (ii) where paragraph (b) applies, any period after his admission as a solicitor during which he was in practice as such.
- (3) This section applies—
- (a) to this Act and to any other statutory provision whether passed or made before or after this Act; and
 - (b) in relation to persons admitted as solicitors or called to the bar before, as well as after, the passing of this Act.

108 Election courts.

- (1) On or before 1st October in each year the judges of the High Court and the Court of Appeal shall select two of their number to be judges for the trial of parliamentary

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election petitions for the purposes of ^{F9}section 123 of the ^{M1}Representation of the People Act 1983] and section 72(2) of the ^{M2}Electoral Law Act (Northern Ireland) 1962.

- (2) In the event of the death, retirement or unavailability through illness or other cause of any judge selected pursuant to this section, the judges of the High Court and the Court of Appeal shall as soon as may be convenient select one of their number to replace or act for him.

Textual Amendments

F9 Words substituted by [Representation of the People Act 1983 \(c. 2, SIF 42\), Sch. 8 para. 25](#)

Marginal Citations

M1 1983 c. 2.

M2 1962 c. 14 (N.I)

109 Enrolment etc. of instruments.

- (1) The Lord Chief Justice may make regulations with respect to the enrolment, engrossment, filing or registration in the ^{F10}Court of Judicature] of documents to which subsection (2) refers and specifying the form in which certificates of enrolment, engrossment, filing or registration are to be granted or the manner in which the respective rolls, registers or files of documents may be inspected.
- (2) Any document which is required or authorised by any statutory provision or rule of law or practice to be enrolled or engrossed or filed or registered in any manner in the ^{F10}Court of Judicature](not being a document required to be filed or registered pursuant to rules of court) shall be deemed to have been duly enrolled, engrossed, filed or registered as the case may be, in compliance therewith if it is written on such material and has been filed or registered in such manner as may be authorised by regulations under this section and for this purpose “written” shall be taken as including typewritten, printed, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in a visible form.
- (3) Except as provided by subsection (2), nothing in regulations made under this section shall prejudice or affect the operation of any statutory provision requiring or authorising the enrolment, engrossment, filing or registration of deeds in the ^{F10}Court of Judicature].

Textual Amendments

F10 [S. 109\(1\)\(2\)\(3\)](#): words substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148, Sch. 11 para. 6\(1\)](#); [S.I. 2009/1604, art. 2\(d\)](#)

110 Court bonds.

- (1) Rules of court may provide that bonds to be given for the purposes of any proceedings in the High Court or the Court of Appeal—
- (a) shall be given in such form and to such officer of the court by his official title; and

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- (b) may be given by such surety companies,
as may be prescribed.
- (2) The bond of a surety company prescribed under subsection (1) shall be sufficient without any other surety or any affidavit of justification but in other cases rules of court may prescribe or the court ordering the bond may require that one or more than one surety be joined in the bond.
- (3) Where a bond has been given for the purpose of proceedings in any court and it appears to the court, upon application made to it, that a condition of the bond has been broken, the court may order either—
- (a) that the bond be enforced; or
 - (b) that the bond be assigned to a person named in the order for the purpose of being enforced by him.
- (4) In the case of an order under subsection (3) (a), the officer of the court to whom the bond was given and, in the case of an order under subsection (3) (b), the person to whom the bond was ordered to be assigned shall be entitled by virtue of the order to enforce the bond in his own name as if it had been originally given to him and shall hold, as trustee for all persons entitled thereto, all money recoverable for the breach of the condition in respect of which the order was made.
- (5) Any judge or officer having jurisdiction in a matter to which a bond relates may upon application made to him disallow or annul any bond upon evidence appearing to him to be sufficient to justify its disallowance or annulment.
- (6) In this section “surety company” means a body corporate having a place of business in Northern Ireland and authorised by law to give bonds there by way of guarantee and indemnity.

111 Lost negotiable instruments.

In any cause or matter founded on a negotiable instrument a court in Northern Ireland may order that the loss of such instrument shall not be set up, so long as an indemnity is given, to the satisfaction of the court or of an officer of the court specified by the court, against the claims of any other person upon such negotiable instrument.

112 Oaths and affidavits.

- (1) The Lord Chief Justice may, in accordance with rules of court, appoint persons to act, subject to such conditions and such limits as to territory, duration or purpose as he may specify in the appointment, as commissioners for oaths or notaries public and, subject to those conditions and limits, the respective persons so appointed may exercise all the powers and shall perform all the duties conferred by the law of Northern Ireland on commissioners for oaths or notaries public, as the case may be.
- (2) A commissioner for oaths may, by virtue of his commission, in Northern Ireland or elsewhere, administer any oath or take any affidavit for the purposes of any court or matter in Northern Ireland, including any matters relating to applications for notarial faculties and matters relating to the registration of any instrument, whether under a statutory provision or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or the Court of appeal.

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- (3) Every person who, being an officer of or performing duties in relation to any court, is for the time being so authorised by the ^{F11}[Lord Chief Justice] or by a judge of the court, or by or in pursuance of any rules or orders regulating the procedure of the court, and every person directed to take an examination in any cause or matter in the High Court or the Court of Appeal, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties.
- (4) Any oath or affidavit required for the purpose of any court or matter in Northern Ireland, or for the purpose of the registration of any instrument in any part of the United Kingdom, may be taken or made in any place out of Northern Ireland before any person having authority to administer an oath in that place.
- (5) In the case of a person having such authority otherwise than by the law of a foreign country, judicial and official notice shall be taken of his seal or signature affixed, impressed or subscribed to or on any such oath or affidavit.
- (6) Every commissioner before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
- (7) In this section “affidavit” includes statutory or other declaration, acknowledgment, examination, and attestation or protestation of honour.
- ^{F12}(8) The Lord Chief Justice may nominate any of the following to exercise his functions under subsection (3)—
- (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).]

Textual Amendments

F11 Words in s. 112(3) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 38(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

F12 S. 112(8) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 38(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

113 Appointment of conveyancing counsel.

- (1) The High Court may, for the purposes of any civil cause or matter before it, appoint to act as conveyancing counsel to the court a person who has practised for not less than ten years at the Bar of Northern Ireland.
- (2) Rules of court may make provision with respect to the appointment and allowances of counsel appointed under subsection (1).

114 Other law in Northern Ireland courts.

- (1) For the purposes of proceedings before any court in Northern Ireland whether sitting with or without a jury, any question, as to the effect of evidence given with respect to the law of any country or territory outside Northern Ireland shall be a matter to be determined by the judge of the court.

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- (2) Without prejudice to any other statutory provision or to any rule of law or practice, in proceedings before a court in Northern Ireland judicial notice may be taken of the law of England and Wales or of the law of the Republic of Ireland.
- (3) In proceedings before a court in Northern Ireland a person who is suitably qualified to do so on account of his knowledge or experience is competent to give expert evidence as to the law of any country or territory outside Northern Ireland, irrespective of whether he has acted, or is entitled to act, as a legal practitioner in that country or territory.
- (4) Where any question as to the law of any country or territory outside Northern Ireland with respect to any matter has been determined (whether before or after the commencement of this section) in any such proceedings as are mentioned in subsection (6), then in any subsequent proceedings before a court in Northern Ireland not otherwise empowered to take judicial notice of that determination—
 - (a) any finding made or decision given on that question in the first-mentioned proceedings shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that country or territory with respect to that matter; and
 - (b) if that finding or decision, as so reported or recorded, is adduced for that purpose, the law of that country or territory with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved, but this paragraph shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question adduced by virtue of this subsection in the same proceedings.
- (5) Except with the leave of the court, a party to any proceedings shall not be permitted to adduce any such finding or decision by virtue of subsection (4) unless, before the hearing at which he seeks to adduce it, written notice that he intends to do so has been served on each of the other parties to the proceedings or on his solicitor.
- (6) The proceedings referred to in subsection (4) are the following, whether civil or criminal, namely—
 - (a) proceedings at first instance in any of the following courts, namely the High Court or the Crown Court, or the High Court or the Crown Court in England and Wales;
 - (b) appeals arising out of any such proceedings as are mentioned in paragraph (a);
 - (c) proceedings before the Judicial Committee of the Privy Council on appeal (whether to Her Majesty in Council or to the Judicial Committee as such) from any decision of any court outside the United Kingdom.
- (7) For the purpose of this section a finding or decision on any such question as in mentioned in subsection (4) shall be taken to be reported or recorded in citable form if, but only if, it is reported or recorded in writing in a report, transcript or other document which, if that question had been a question as to the law of Northern Ireland could be cited as an authority in legal proceedings in Northern Ireland.

115 Official seals.

- (1) There shall be an official seal of the [F¹³Court of Judicature] which shall be used for such purposes as the Lord Chief Justice may direct or as may be authorised or required by any statutory provision.

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- (2) The seals heretofore used in the High Court and the Court of Appeal may continue to be used.
- (3) The Lord Chief Justice may from time to time direct what seals shall be used in the several divisions and departments of the [^{F13}Court of Judicature].
- (4) All writs, decrees, orders, instruments, certificates and other documents and copies thereof which purport to be sealed with a seal provided under this section shall, in all parts of the United Kingdom, be judicially noticed and received in evidence without further proof of their authenticity.

Textual Amendments

F13 Words in s. 115(1)(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148, Sch. 11 para. 6\(1\)](#); S.I. 2009/1604, [art. 2\(d\)](#)

116 Fees.

- (1) The Lord Chancellor, after consultation with the Lord Chief Justice and with the concurrence of the Treasury may by order fix the fees to be taken in any court in Northern Ireland or in any office or by any officer connected with any such court [^{F14}(including the Accountant General and the office maintained under section 77(2))] or by the Enforcement of Judgments Office and may from time to time increase, reduce or abolish any such fees or fix new fees to be so taken.
- [^{F15}(1A) Without prejudice to the generality of subsection (1), an order under that subsection may make provision for exemptions from fees and remission of fees (in whole or in part).]
- (2) The Lord Chancellor, after consultation with the Lord Chief Justice and with the concurrence of the Treasury, may by order fix the fees to be taken by commissioners for oaths or notaries public and may from time to time increase, reduce or abolish any such fees or fix new fees to be so taken.
- (3) Any functions heretofore exercisable by any other authority or person in relation to the fixing of the fees mentioned in subsections (1) and (2) shall cease to be exercisable.
- (4) An order under subsection (1) or (2) may provide for the manner in which any fees fixed thereby are to be taken, applied and accounted for but, subject to any provision so made, the fees mentioned in those subsections shall continue to be taken, applied and accounted for as heretofore.
- [^{F16}(5) Nothing in this section affects section 39 of the Administration of Justice Act 1982 (which includes provision relating to the costs of administering funds in court).]

Textual Amendments

F14 Words in s. 116(1) inserted (N.I.) (13.5.2016) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\), ss. 59\(1\), 61\(1\)](#)

F15 S. 116(1A) inserted (1.5.2004) by [Courts Act 2003 \(c. 39\), ss. 106, 110\(1\)](#); S.I. 2004/1104, [art. 3\(g\)](#)

F16 S. 116(5) inserted (N.I.) (13.5.2016) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\), ss. 59\(2\), 61\(1\)](#)

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Modifications etc. (not altering text)

- C1** S. 116(1)(2) transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), **15(4)(b)** (with arts. 15(6), arts. 28-31)
- C2** S. 116(1)(2) transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 17 para. 6(h)** (with arts. 28-31)

117 Transfer of certain functions relating to courts to Lord Chancellor.

- (1) The functions heretofore exercisable by the Secretary of State under the enactments listed in subsection (2) and under any instrument made under any such enactment are hereby transferred to the Lord Chancellor.
- (2) The enactments referred to in subsection (1) are—
 - (a) in the ^{M3}Administration of Justice Act (Northern Ireland) 1954, sections 11 and 14;
 - (b) the ^{M4}Coroners' Act (Northern Ireland) 1959;
 - (c) the ^{M5}County Courts Act (Northern Ireland) 1959;
 - (d) the ^{M6}Magistrates' Courts Act (Northern Ireland) 1964 (except sections 25(1) and 46);
 - (e) **F17**
 - (f) **F18**

Textual Amendments

- F17** S. 117(2)(e) repealed by [S.I. 1981/226 \(N.I. 6\)](#), **Sch. 4**
- F18** S. 117(2)(f) repealed by [S.I. 1980/397 \(N.I. 3\)](#), **Sch. 3**

Marginal Citations

- M3** 1954 c. 9 (N.I.)
- M4** 1959 c. 15 (N.I.)
- M5** 1959 c. 25 (N.I.)
- M6** 1964 c. 21 (N.I.)

^{F19}
117A Allowances for judges.

[^{F20}The Department of Justice shall pay] to any judge of the Court of Appeal or of the High Court, in addition to his salary, such allowances as may be determined by the Lord Chancellor with the concurrence of the Treasury.]

Textual Amendments

- F19** S. 117A inserted by [Administration of Justice Act 1982 \(c. 53, SIF 38\)](#), **Sch. 8 para. 12**
- F20** Words in s. 117A substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), **Sch. 18 para. 25** (with arts. 28-31)

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Modifications etc. (not altering text)

- C3** S. 117A transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 17 para. 6(i)** (with arts. 28-31)

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