



# Senior Courts Act 1981

## 1981 CHAPTER 54

### PART II

#### JURISDICTION

##### THE HIGH COURT

###### *Other particular fields of jurisdiction*

#### **25 Probate jurisdiction of High Court.**

- (1) Subject to the provisions of Part V, the High Court shall, in accordance with section 19(2), have the following probate jurisdiction, that is to say all such jurisdiction in relation to probates and letters of administration as it had immediately before the commencement of this Act, and in particular all such contentious and non-contentious jurisdiction as it then had in relation to—
  - (a) testamentary causes or matters;
  - (b) the grant, amendment or revocation of probates and letters of administration; and
  - (c) the real and personal estate of deceased persons.
- (2) Subject to the provisions of Part V, the High Court shall, in the exercise of its probate jurisdiction, perform all such duties with respect to the estates of deceased persons as fell to be performed by it immediately before the commencement of this Act.

#### **26 Matrimonial jurisdiction of High Court.**

The High Court shall, in accordance with section 19(2), have all such jurisdiction in relation to matrimonial causes and matters as was immediately before the commencement of the <sup>M1</sup>Matrimonial Causes Act 1857 vested in or exercisable by any ecclesiastical court or person in England or Wales in respect of—

- (a) divorce a mensa et thoro (renamed judicial separation by that Act);
- (b) nullity of marriage . . . <sup>F1</sup>; and

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- (c) any matrimonial cause or matter except marriage licences.

#### Textual Amendments

**F1** Words repealed by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), s. 68(1)(2), [Sch. 1 para. 25](#), [Sch. 2](#)

#### Marginal Citations

**M1** [1857 c. 85](#).

## 27 Prize jurisdiction of High Court.

The High Court shall, in accordance with section 19(2), have as a prize court—

- (a) all such jurisdiction as is conferred on it by the Prize Acts 1864 to 1944 (in which references to the High Court of Admiralty are by virtue of paragraph 1 of Schedule 4 to this Act to be construed as references to the High Court); and
- (b) all such other jurisdiction on the high seas and elsewhere as it had as a prize court immediately before the commencement of this Act.

## 28 Appeals from Crown Court and inferior courts.

(1) Subject to subsection (2), any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to have a case stated by that court for the opinion of the High Court.

(2) Subsection (1) shall not apply to—

- (a) a judgment or other decision of the Crown Court relating to trial on indictment; or
- (b) any decision of that court under the <sup>M2</sup>Betting, Gaming and Lotteries Act 1963, <sup>F2</sup> . . . [<sup>F3</sup> the Gaming Act 1968 or the Local Government (Miscellaneous Provisions) Act 1982] which, by any provision of any of those Acts, is to be final.

(3) Subject to the provisions of this Act and to rules of court, the High Court shall, in accordance with section 19(2), have jurisdiction to hear and determine—

- (a) any application, or any appeal (whether by way of case stated or otherwise), which it has power to hear and determine under or by virtue of this or any other Act; and
- (b) all such other appeals as it had jurisdiction to hear and determine immediately before the commencement of this Act.

[<sup>F4</sup>(4) In subsection (2)(a) the reference to a decision of the Crown Court relating to trial on indictment does not include a decision relating to an order under section 17 of the Access to Justice Act 1999.]

#### Textual Amendments

**F2** Words in s. 28(2)(b) repealed (24.11.2005) by [Licensing Act 2003 \(c. 17\)](#), ss. 199, 201(2), [Sch. 7](#) (with ss. 2(3), 15(2), 195); [S.I. 2005/3056](#), [art. 2\(2\)](#)

**F3** Words substituted by [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30, SIF 81:1\)](#), s. 2, [Sch. 3 para. 27\(6\)](#)

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**F4** S. 28(4) inserted (2.4.2001) by 1999 c. 22, s. 24, **Sch. 4 para. 22** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 3(a)(ii)** (with Sch. 2 para. 2)

#### Marginal Citations

**M2** 1963 c. 2.

### [<sup>F5</sup>28A Proceedings on case stated by magistrates' court or Crown Court.

- (1) This section applies where a case is stated for the opinion of the High Court—
  - (a) by a magistrates' court under section 111 of the <sup>M3</sup>Magistrates' Courts Act 1980; or
  - (b) by the Crown Court under section 28(1) of this Act.
- (2) The High Court may, if it thinks fit, cause the case to be sent back for amendment and, where it does so, the case shall be amended accordingly.
- (3) The High Court shall hear and determine the question arising on the case (or the case as amended) and shall—
  - (a) reverse, affirm or amend the determination in respect of which the case has been stated; or
  - (b) remit the matter to the magistrates' court, or the Crown Court, with the opinion of the High Court,and may make such other order in relation to the matter (including as to costs) as it thinks fit.
- (4) Except as provided by the <sup>M4</sup>Administration of Justice Act 1960 (right of appeal to House of Lords in criminal cases), a decision of the High Court under this section is final.]

#### Textual Amendments

**F5** S. 28A substituted (27.9.1999) by 1999 c. 22, **ss. 61, 108(3)(b)** (with Sch. 14 para. 7(2))

#### Marginal Citations

**M3** 1980 c.43.

**M4** 1960 c.65.

### 29 [<sup>F6</sup>Mandatory, prohibiting and quashing orders]

- [<sup>F7</sup>(1) The orders of mandamus, prohibition and certiorari shall be known instead as mandatory, prohibiting and quashing orders respectively.
- (1A) The High Court shall have jurisdiction to make mandatory, prohibiting and quashing orders in those classes of case in which, immediately before 1st May 2004, it had jurisdiction to make orders of mandamus, prohibition and certiorari respectively.]
- (2) Every such order shall be final, subject to any right of appeal therefrom.
- (3) In relation to the jurisdiction of the Crown Court, other than its jurisdiction in matters relating to trial on indictment, the High Court shall have all such jurisdiction to make [<sup>F8</sup>mandatory, prohibiting or quashing orders] as the High Court possesses in relation to the jurisdiction of an inferior court.

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- [<sup>F9</sup>(3A) The High Court shall have no jurisdiction to make [<sup>F8</sup>mandatory, prohibiting or quashing orders] in relation to the jurisdiction of a court-martial in matters relating to—
- (a) trial by court-martial for an offence, or
  - (b) appeals from a Standing Civilian Court;
- and in this subsection “court-martial” means a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.]
- (4) The power of the High Court under any enactment to require justices of the peace or a judge or officer of a county court to do any act relating to the duties of their respective offices, or to require a magistrates’ court to state a case for the opinion of the High Court, in any case where the High Court formerly had by virtue of any enactment jurisdiction to make a rule absolute, or an order, for any of those purposes, shall be exercisable by [<sup>F10</sup>mandatory order].
- [<sup>F11</sup>(5) In any statutory provision—
- (a) references to mandamus or to a writ or order of mandamus shall be read as references to a mandatory order;
  - (b) references to prohibition or to a writ or order of prohibition shall be read as references to a prohibiting order;
  - (c) references to certiorari or to a writ or order of certiorari shall be read as references to a quashing order; and
  - (d) references to the issue or award of a writ of mandamus, prohibition or certiorari shall be read as references to the making of the corresponding mandatory, prohibiting or quashing order.]

[<sup>F12</sup>(6) In subsection (3) the reference to the Crown Court’s jurisdiction in matters relating to trial on indictment does not include its jurisdiction relating to orders under section 17 of the Access to Justice Act 1999.]

#### Textual Amendments

- F6** S. 29 sidenote substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(e\)](#)
- F7** S. 29(1)(1A) substituted (1.5.2004) for s. 29(1) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(a\)](#)
- F8** Words in s. 29(3)(3A) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(b\)](#)
- F9** S. 29(3A) inserted (28.2.2002) by 2001 c. 19, s. 23(3); S.I. 2002/439, [art. 2](#) (subject to art. 3)
- F10** Words in s. 29(4) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(c\)](#)
- F11** S. 29(5) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 3\(d\)](#)
- F12** S. 29(6) inserted (2.4.2001) by 1999 c. 22, s. 24, [Sch. 4 para. 23](#) (with Sch. 14 para. 7(2)); S.I. 2001/916, [art. 3\(a\)\(ii\)](#)

### 30 Injunctions to restrain persons from acting in offices in which they are not entitled to act.

- (1) Where a person not entitled to do so acts in an office to which this section applies, the High Court may—

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- (a) grant an injunction restraining him from so acting; and
  - (b) if the case so requires, declare the office to be vacant.
- (2) This section applies to any substantive office of a public nature and permanent character which is held under the Crown or which has been created by any statutory provision or royal charter.

### **31 Application for judicial review.**

- (1) An application to the High Court for one or more of the following forms of relief, namely—
- [<sup>F13</sup>(a) a mandatory, prohibiting or quashing order;]
  - (b) a declaration or injunction under subsection (2); or
  - (c) an injunction under section 30 restraining a person not entitled to do so from acting in an office to which that section applies,
- shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.
- (2) A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review, seeking that relief, has been made and the High Court considers that, having regard to—
- (a) the nature of the matters in respect of which relief may be granted by [<sup>F14</sup>mandatory, prohibiting or quashing orders];
  - (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
  - (c) all the circumstances of the case,
- it would be just and convenient for the declaration to be made or the injunction to be granted, as the case may be.
- (3) No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- [<sup>F15</sup>(4) On an application for judicial review the High Court may award to the applicant damages, restitution or the recovery of a sum due if—
- (a) the application includes a claim for such an award arising from any matter to which the application relates; and
  - (b) the court is satisfied that such an award would have been made if the claim had been made in an action begun by the applicant at the time of making the application.]
- (5) If, on an application for judicial review seeking [<sup>F16</sup>a quashing order], the High Court quashes the decision to which the application relates, the High Court may remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the High Court.
- (6) Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant—
- (a) leave for the making of the application; or
  - (b) any relief sought on the application,

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if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

- (7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

#### Textual Amendments

- F13** S. 31(1)(a) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 4\(a\)](#)
- F14** Words in s. 31(2)(a) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 4\(b\)](#)
- F15** S. 31(4) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 4\(c\)](#)
- F16** Words in s. 31(5) substituted (1.5.2004) by [The Civil Procedure \(Modification of Supreme Court Act 1981\) Order 2004 \(S.I. 2004/1033\)](#), [art. 4\(d\)](#)

VALID FROM 03/11/2008

#### <sup>F17</sup>31A Transfer of judicial review applications to Upper Tribunal

- (1) This section applies where an application is made to the High Court—
  - (a) for judicial review, or
  - (b) for permission to apply for judicial review.
- (2) If Conditions 1, 2, 3 and 4 are met, the High Court must by order transfer the application to the Upper Tribunal.
- (3) If Conditions 1, 2 and 4 are met, but Condition 3 is not, the High Court may by order transfer the application to the Upper Tribunal if it appears to the High Court to be just and convenient to do so.
- (4) Condition 1 is that the application does not seek anything other than—
  - (a) relief under section 31(1)(a) and (b);
  - (b) permission to apply for relief under section 31(1)(a) and (b);
  - (c) an award under section 31(4);
  - (d) interest;
  - (e) costs.
- (5) Condition 2 is that the application does not call into question anything done by the Crown Court.
- (6) Condition 3 is that the application falls within a class specified under section 18(6) of the Tribunals, Courts and Enforcement Act 2007.
- (7) Condition 4 is that the application does not call into question any decision made under—
  - (a) the Immigration Acts,
  - (b) the British Nationality Act 1981 (c. 61),

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- (c) any instrument having effect under an enactment within paragraph (a) or (b),  
or
- (d) any other provision of law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.]

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**Textual Amendments**

**F17** S. 31A inserted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 19, 148; S.I. 2008/2696, art. 5(a) (with arts. 3, 4)

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