



# Senior Courts Act 1981

## 1981 CHAPTER 54

### PART III

#### PRACTICE AND PROCEDURE

##### THE HIGH COURT

###### *Distribution of business*

#### **61 Distribution of business among Divisions.**

- (1) Subject to any provision made by or under this or any other Act (and in particular to any rules of court made in pursuance of subsection (2) and any order under subsection (3)), business in the High Court of any description mentioned in Schedule 1, as for the time being in force, shall be distributed among the Divisions in accordance with that Schedule.
- (2) Rules of court may provide for the distribution of business in the High Court among the Divisions; but any rules made in pursuance of this subsection shall have effect subject to any orders for the time being in force under subsection (3).
- (3) Subject to subsection (5), the [<sup>F1</sup>Lord Chief Justice may, with the concurrence of the Lord Chancellor,] by order—
  - (a) direct that any business in the High Court which is not for the time being assigned by or under this or any other Act to any Division be assigned to such Division as may be specified in the order;
  - (b) if at any time it [<sup>F2</sup>appears to the Lord Chief Justice and the Lord Chancellor] desirable to do so with a view to the more convenient administration of justice, direct that any business for the time being assigned by or under this or any other Act to any Division be assigned to such other Division as may be specified in the order; and

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- (c) amend Schedule 1 so far as may be necessary in consequence of provision made by order under paragraph (a) or (b).
- (4) The powers conferred by subsection (2) and subsection (3) include power to assign business of any description to two or more Divisions concurrently.
- (5) No order under subsection (3)(b) relating to any business shall be made without the concurrence of the senior judge of—
- (a) the Division or each of the Divisions to which the business is for the time being assigned; and
  - (b) the Division or each of the Divisions to which the business is to be assigned by the order.
- (6) Subject to rules of court, the fact that a cause or matter commenced in the High Court falls within a class of business assigned by or under this Act to a particular Division does not make it obligatory for it to be allocated or transferred to that Division.
- (7) Without prejudice to subsections (1) to (5) and section 63, rules of court may provide for the distribution of the business (other than business required to be heard by a divisional court) in any Division of the High Court among the judges of that Division.
- (8) Any order under subsection (3) shall be made by statutory instrument, which shall be laid before Parliament after being made.
- [<sup>F3</sup>(9) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (3).]

#### Textual Amendments

- F1** Words in s. 61(3) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 129\(2\)\(a\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 11(p)
- F2** Words in s. 61(3)(b) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 129\(2\)\(b\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 11(p)
- F3** S. 61(9) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, [Sch. 4 para. 129\(3\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 11(p)

## 62 Business of Patents, Admiralty and Commercial Courts.

- (1) The Patents Court shall take such proceedings relating to patents as are within the jurisdiction conferred on it by the <sup>M1</sup>Patents Act 1977, and such other proceedings relating to patents or other matters as may be prescribed.
- (2) The Admiralty Court shall take Admiralty business, that is to say causes and matters assigned to the Queen's Bench Division and involving the exercise of the High Court's Admiralty jurisdiction or its jurisdiction as a prize court.
- (3) The Commercial Court shall take such causes and matters as may in accordance with rules of court be entered in the commercial list.

#### Marginal Citations

- M1** 1977 c. 37.

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### 63 Business assigned to specially nominated judges.

- (1) Any business assigned, in accordance with this or any other Act or rules of court, to one or more specially nominated judges of the High Court may—
  - (a) during vacation; or
  - (b) during the illness or absence of that judge or any of those judges; or
  - (c) for any other reasonable cause,be dealt with by any judge of the High Court named for that purpose [<sup>F4</sup>by the Lord Chief Justice after consulting the Lord Chancellor].
- (2) If at any time it appears to the [<sup>F5</sup>Lord Chief Justice, after consulting the Lord Chancellor, to be] desirable to do so with a view to the more convenient administration of justice, he may by order direct that business of any description which is for the time being assigned, in accordance with this or any other Act or rules of court, to one or more specially nominated judges of the High Court shall cease to be so assigned and may be dealt with by any one or more judges of the High Court.
- (3) An order under subsection (2) shall not be made in respect of any business without the concurrence of the senior judge of the Division to which the business is for the time being assigned.
- [<sup>F6</sup>(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (1) or (2).]

#### Textual Amendments

- F4** Words in s. 63(1) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 130\(2\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 11(p)
- F5** Words in s. 63(2) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 130\(3\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 11(p)
- F6** S. 63(4) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 130\(4\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 11(p)

### 64 Choice of Division by plaintiff.

- (1) Without prejudice to the power of transfer under section 65, the person by whom any cause or matter is commenced in the High Court shall in the prescribed manner allocate it to whichever Division he thinks fit.
- (2) Where a cause or matter is commenced in the High Court, all subsequent interlocutory or other steps or proceedings in the High Court in that cause or matter shall be taken in the Division to which the cause or matter is for the time being allocated (whether under subsection (1) or in consequence of its transfer under section 65).

### 65 Power of transfer.

- (1) Any cause or matter may at any time and at any stage thereof, and either with or without application from any of the parties, be transferred, by such authority and in such manner as rules of court may direct, from one Division or judge of the High Court to another Division or judge thereof.

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- (2) The transfer of a cause or matter under subsection (1) to a different Division or judge of the High Court shall not affect the validity of any steps or proceedings taken or order made in that cause or matter before the transfer.

#### *Divisional courts*

### **66 Divisional courts of High Court.**

- (1) Divisional courts may be held for the transaction of any business in the High Court which is, by or by virtue of rules of court or any other statutory provision, required to be heard by a divisional court.
- (2) Any number of divisional courts may sit at the same time.
- (3) A divisional court shall be constituted of not less than two judges.
- (4) Every judge of the High Court shall be qualified to sit in any divisional court.
- (5) The judge who is, according to the order of precedence under this Act, the senior of the judges constituting a divisional court shall be the president of the court.

#### *Mode of conducting business*

### **67 Proceedings in court and in chambers.**

Business in the High Court shall be heard and disposed of in court except in so far as it may, under this or any other Act, under rules of court or in accordance with the practice of the court, be dealt with in chambers.

### **68 Exercise of High Court jurisdiction otherwise than by judges of that court.**

- (1) Provision may be made by rules of court as to the cases in which jurisdiction of the High Court may be exercised by—
- (a) such [<sup>F7</sup>Circuit judges, deputy Circuit judges or Recorders] as the [<sup>F8</sup>Lord Chief Justice may, after consulting the Lord Chancellor,] from time to time nominate to deal with official referees' business; or
  - (b) special referees; [<sup>F9</sup>or
  - (c) masters, registrars, district registrars or other officers of the court.]
- (2) Without prejudice to the generality of subsection (1), rules of court may in particular—
- [<sup>F10</sup>(a) authorise the whole of any cause or matter, or any question or issue therein, to be tried before any such person as is mentioned in that subsection; or]
  - (b) authorise any question arising in any cause or matter to be referred to [<sup>F11</sup>a special referee] for inquiry and report.
- (3) Rules of court shall not authorise the exercise of powers of attachment and committal by [<sup>F12</sup>a special referee or any officer or other staff of the court].
- (4) Subject to subsection (5), the decision of
- [<sup>F13</sup>(a)] any such person as is mentioned in subsection (1) [<sup>F14</sup>or
  - (b) any officer or other staff of the court]

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may be called in question in such manner as may be prescribed by rules of court, whether by appeal to the Court of Appeal, or by an appeal or application to a divisional court or a judge in court or a judge in chambers, or by an adjournment to a judge in court or a judge in chambers.

- (5) Rules of court may provide either generally or to a limited extent for decisions of [<sup>F15</sup>persons] nominated under subsection (1)(a) being called in question only by appeal on a question of law.
- (6) The cases in which jurisdiction of the High Court may be exercised by [<sup>F15</sup>persons] nominated under subsection (1)(a) shall be known as “official referees’ business”; and, subject to rules of court, the distribution of official referees’ business among [<sup>F16</sup>persons] so nominated shall be determined in accordance with directions given [<sup>F17</sup>by the Lord Chief Justice after consulting the Lord Chancellor].
- (7) Any reference to an official referee in any enactment, whenever passed, or in rules of court or any other instrument or document, whenever made, shall, unless the context otherwise requires, be construed as, or (where the context requires) as including a reference to a [<sup>F18</sup>person] nominated under subsection (1)(a).
- [<sup>F19</sup>(8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsections (1)(a) and (6).]

#### Textual Amendments

- F7** Words substituted by Administration of Justice Act 1982 (c. 53, SIF 37), s. 59(1)
- F8** Words in s. 68(1)(a) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 4 para. 131(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(p)
- F9** S. 68(1)(a) and the preceding word “or” omitted (26.4.1999) by virtue of 1997 c. 12, s. 10, Sch. 2 para. 1(3)(a); S.I. 1999/1009, art. 3(a)
- F10** S. 68(2)(a) omitted (26.4.1999) by virtue of 1997 c. 12, s. 10, Sch. 2 para. 1(3)(b)(i); S.I. 1999/1009, art. 3(a)
- F11** Words in s. 68(2)(b) substituted (26.4.1999) by 1997 c. 12, s. 10, Sch. 2 para. 1(3)(b)(ii); S.I. 1999/1009, art. 3(a)
- F12** Words in s. 68(3) substituted (26.4.1999) by 1997 c. 12, s. 10, Sch. 2 para. 1(3)(c); S.I. 1999/1009, art. 3(a)
- F13** S. 68(4): “(a)” inserted (26.4.1999) by 1997 c. 12, s. 10, Sch. 2 para. 1(3)(d)(i); S.I. 1999/1009, art. 3(a)
- F14** S. 68(4)(b) and the preceding word “or” inserted (26.4.1999) by 1997 c. 12, s. 10, Sch. 2 para. 1(3)(d)(ii); S.I. 1999/1009, art. 3(a)
- F15** Word substituted by Administration of Justice Act 1982 (c. 53, SIF 37), s. 59(2)(a)(i)
- F16** Word substituted by Administration of Justice Act 1982 (c. 53, SIF 37), s. 59(2)(a)(ii)
- F17** Words in s. 68(6) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 4 para. 131(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(p)
- F18** Word substituted by Administration of Justice Act 1982 (c. 53, SIF 37), s. 59(2)(b)
- F19** S. 68(8) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 4 para. 131(4); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(p)

## 69 Trial by jury.

- (1) Where, on the application of any party to an action to be tried in the Queen’s Bench Division, the court is satisfied that there is in issue—

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- (a) a charge of fraud against that party; or
  - (b) a claim in respect of libel, slander, malicious prosecution or false imprisonment; or
  - (c) any question or issue of a kind prescribed for the purposes of this paragraph, the action shall be tried with a jury, unless the court is of opinion that the trial requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury.
- (2) An application under subsection (1) must be made not later than such time before the trial as may be prescribed.
- (3) An action to be tried in the Queen’s Bench Division which does not by virtue of subsection (1) fall to be tried with a jury shall be tried without a jury unless the court in its discretion orders it to be tried with a jury.
- (4) Nothing in subsections (1) to (3) shall affect the power of the court to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial; and where any such order is made, subsection (1) shall have effect only as respects questions relating to any such charge, claim, question or issue as is mentioned in that subsection.
- (5) Where for the purpose of disposing of any action or other matter which is being tried in the High Court by a judge with a jury it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone.

## 70 Assessors and scientific advisers.

- (1) In any cause or matter before the High Court the court may, if it thinks it expedient to do so, call in the aid of one or more assessors specially qualified, and hear and dispose of the cause or matter wholly or partially with their assistance.
- (2) The remuneration, if any, to be paid to an assessor for his services under subsection (1) in connection with any proceedings shall be determined by the court, and shall form part of the costs of the proceedings.
- (3) Rules of court shall make provision for the appointment of scientific advisers to assist the Patents Court in proceedings under the <sup>M2</sup>Patents Act 1949 and the <sup>M3</sup>Patents Act 1977 and for regulating the functions of such advisers.
- (4) The remuneration of any such adviser shall be determined by the Lord Chancellor with the concurrence of the Minister for the Civil Service and shall be defrayed out of money provided by Parliament.

### Marginal Citations

**M2** 1949 c. 87.

**M3** 1977 c. 37.

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### *Sittings and vacations*

#### **71 Sittings and vacations.**

- (1) Sittings of the High Court may be held, and any other business of the High Court may be conducted, at any place in England or Wales.
- (2) Subject to rules of court—
  - (a) the places at which the High Court sits outside the Royal Courts of Justice; and
  - (b) the days and times when the High Court sits at any place outside the Royal Courts of Justice,shall be determined in accordance with directions given by the Lord Chancellor [F20 after consulting the Lord Chief Justice].
- (3) Rules of court may make provision for regulating the vacations to be observed by the High Court and in the offices of that court.
- (4) Rules of court—
  - (a) may provide for securing such sittings of any Division of the High Court during vacation as the senior judge of that Division may with the concurrence of the Lord Chancellor determine; and
  - (b) without prejudice to paragraph (a), shall provide for the transaction during vacation by judges of the High Court of all such business in the High Court as may require to be immediately or promptly transacted.
- (5) Different provision may be made in pursuance of subsection (3) for different parts of the country.
- [F21(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

#### **Textual Amendments**

- F20** Words in s. 71(2) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 132\(2\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 11(p)
- F21** S. 71(6) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 132\(3\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 11(p)

### *Other provisions*

#### **72 Withdrawal of privilege against incrimination of self or spouse in certain proceedings.**

- (1) In any proceedings to which this subsection applies a person shall not be excused, by reason that to do so would tend to expose that person, or his or her spouse [F22 or civil partner], to proceedings for a related offence or for the recovery of a related penalty—
  - (a) from answering any questions put to that person in the first-mentioned proceedings; or
  - (b) from complying with any order made in those proceedings.
- (2) Subsection (1) applies to the following civil proceedings in the High Court, namely—

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- (a) proceedings for infringement of rights pertaining to any intellectual property or for passing off;
  - (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights or to any passing off; and
  - (c) proceedings brought to prevent any apprehended infringement of such rights or any apprehended passing off.
- (3) Subject to subsection (4), no statement or admission made by a person—
- (a) in answering a question put to him in any proceedings to which subsection (1) applies; or
  - (b) in complying with any order made in any such proceedings,
- shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or (unless they <sup>[F23]</sup> married or became civil partners after the making of the statement or admission) against the spouse or civil partner] of that person.
- (4) Nothing in subsection (3) shall render any statement or admission made by a person as there mentioned inadmissible in evidence against that person in proceedings for perjury or contempt of court.
- (5) In this section—
- “intellectual property” means any patent, trade mark, copyright <sup>[F24]</sup>, design right], registered design, technical or commercial information or other intellectual property;
- “related offence”, in relation to any proceedings to which subsection (1) applies, means—
- (a) in the case of proceedings within subsection (2)(a) or (b)—
    - (i) any offence committed by or in the course of the infringement or passing off to which those proceedings relate; or
    - (ii) any offence not within sub-paragraph (i) committed in connection with that infringement or passing off, being an offence involving fraud or dishonesty;
  - (b) in the case of proceedings within subsection (2)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;
- “related penalty”, in relation to any proceedings to which subsection (1) applies means—
- (a) in the case of proceedings within subsection (2)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement or passing off to which those proceedings relate;
  - (b) in the case of proceedings within subsection (2)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the plaintiff relies in those proceedings.
- (6) Any reference in this section to civil proceedings in the High Court of any description includes a reference to proceedings on appeal arising out of civil proceedings in the High Court of that description.

#### Textual Amendments

**F22** Words in s. 72(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 69\(2\)](#); S.I. 2005/3175, [art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))



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- F23** Words in s. 72(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 69(3)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))
- F24** Words inserted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 303(1), **Sch. 7 para. 28(1)(2)**

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**Modifications etc. (not altering text)**

- C1** S. 72 extended by Cable and Broadcasting Act 1984 (c. 46, SIF 96), **s. 54(6)** (Cable and Broadcasting Act 1984 (c. 46) is repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 134, 203(3) (4), Sch. 12 Pt. II para. 1, Sch. 21, **Sch. 22 para. 4**, the repeal being in force 1.1.1991 subject to the provisions of art. 3 of S.I. 1990/2347)  
S. 72(5) amended (31.10.1994) by 1994 c. 26, s. 106(1), **Sch. 4 para. 1(2)**; S.I. 1994/2550, **art.2**
- C2** S. 72 extended by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), **ss. 296(6)(b)**, 298(4)
- C3** S. 72 applied (28.5.2000) by 1988 c. 48, **s. 298(4)** (as substituted (28.5.2000) by S.I. 2000/1175, **reg. 2(3)**)
- C4** S. 72 applied (31.10.2003) by 1988 c. 48, ss. 296(7), 296ZA(5), 296ZD(6) (as inserted by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 24(1)** (with regs. 31-40))
- C5** S. 72 applied (31.10.2003) by 1988 (c. 48), s. 296ZG (as inserted by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 25** (with regs. 31-40))
- C6** Definition of “intellectual property” extended by Patents, Designs and Marks Act 1986 (c. 39, SIF 67A), s. 2(3), **Sch. 2 Pt I para. 1(2)(h)**

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