



# Administration of Justice Act 1985

## 1985 CHAPTER 61

### PART IV

#### THE SUPREME COURT AND COUNTY COURTS

##### *Proceedings relating to estates of deceased persons and trusts*

**47 Power of High Court to make judgments binding on persons who are not parties.**

- (1) This section applies to actions in the High Court relating to the estates of deceased persons or to trusts and falling within any description specified in rules of court.
- (2) Rules of court may make provision for enabling any judgment given in an action to which this section applies to be made binding on persons who—
  - (a) are or may be affected by the judgment and would not otherwise be bound by it; but
  - (b) have in accordance with the rules been given notice of the action and of such matters connected with it as the rules may require.
- (3) Different provision may be made under this section in relation to actions of different descriptions.

**48 Power of High Court to authorise action to be taken in reliance on counsel's opinion.**

- (1) Where—
  - (a) any question of construction has arisen out of the terms of a will or a trust; and
  - (b) an opinion in writing given by a [<sup>F1</sup>person who has a 10 year High Court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990,] has been obtained on that question by the personal representatives or trustees under the will or trust,

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the High Court may, on the application of the personal representatives or trustees and without hearing argument, make an order authorising those persons to take such steps in reliance on the said opinion as are specified in the order.

- (2) The High Court shall not make an order under subsection (1) if it appears to the court that a dispute exists which would make it inappropriate for the court to make the order without hearing argument.

#### **Textual Amendments**

**F1** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), [Sch. 10 para. 63](#)

### **49 Powers of High Court on compromise of probate action.**

- (1) Where on a compromise of a probate action in the High Court—
- (a) the court is invited to pronounce for the validity of one or more wills, or against the validity of one or more wills, or for the validity of one or more wills and against the validity of one or more other wills; and
  - (b) the court is satisfied that consent to the making of the pronouncement or, as the case may be, each of the pronouncements in question has been given by or on behalf of every relevant beneficiary,
- the court may without more pronounce accordingly.

- (2) In this section—

“probate action” means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business; and

“relevant beneficiary”, in relation to a pronouncement relating to any will or wills of a deceased person, means—

- (a) a person who under any such will is beneficially interested in the deceased’s estate; and
- (b) where the effect of the pronouncement would be to cause the estate to devolve as on an intestacy (or partial intestacy), or to prevent it from so devolving, a person who under the law relating to intestacy is beneficially interested in the estate.

### **50 Power of High Court to appoint substitute for, or to remove, personal representative.**

- (1) Where an application relating to the estate of a deceased person is made to the High Court under this subsection by or on behalf of a personal representative of the deceased or a beneficiary of the estate, the court may in its discretion—
- (a) appoint a person (in this section called a substituted personal representative) to act as personal representative of the deceased in place of the existing personal representative or representatives of the deceased or any of them; or
  - (b) if there are two or more existing personal representatives of the deceased, terminate the appointment of one or more, but not all, of those persons.

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- (2) Where the court appoints a person to act as a substituted personal representative of a deceased person, then—
  - (a) if that person is appointed to act with an executor or executors the appointment shall (except for the purpose of including him in any chain of representation) constitute him executor of the deceased as from the date of the appointment; and
  - (b) in any other case the appointment shall constitute that person administrator of the deceased's estate as from the date of the appointment.
- (3) The court may authorise a person appointed as a substituted personal representative to charge remuneration for his services as such, on such terms (whether or not involving the submission of bills of charges for taxation by the court) as the court may think fit.
- (4) Where an application relating to the estate of a deceased person is made to the court under subsection (1), the court may if it thinks fit, proceed as if the application were, or included, an application for the appointment under the <sup>M1</sup>Judicial Trustees Act 1896 of a judicial trustee in relation to that estate.
- (5) In this section “beneficiary”, in relation to the estate of a deceased person, means a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.
- (6) In section 1 of the Judicial Trustees Act 1896, after subsection (6) there shall be added—
  - “(7) Where an application relating to the estate of a deceased person is made to the court under this section, the court may, if it thinks fit, proceed as if the application were, or included, an application under section 50 of the Administration of Justice Act 1985 (power of High Court to appoint substitute for, or to remove, personal representative).”.

**Marginal Citations**

**M1** 1896 c. 35.

**51 Amendments relating to jurisdiction of county courts and district probate registrars in probate proceedings.**

- (1) For section 32 of the <sup>M2</sup>County Courts Act 1984 there shall be substituted—

**“32 Contentious probate jurisdiction.**

- (1) Where—
  - (a) an application for the grant or revocation of probate or administration has been made through the principal registry of the Family Division or a district probate registry under section 105 of the Supreme Court Act 1981; and
  - (b) it is shown to the satisfaction of a county court that the value at the date of the death of the deceased of his net estate does not exceed the county court limit,

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the county court shall have the jurisdiction of the High Court in respect of any contentious matter arising in connection with the grant or revocation.

(2) In subsection (1) “net estate”, in relation to a deceased person, means the estate of that person exclusive of any property he was possessed of or entitled to as a trustee and not beneficially, and after making allowances for funeral expenses and for debts and liabilities.”.

(2) In section 106 of the <sup>M3</sup>Supreme Court Act 1981 (grants by district probate registrars), subsections (2) to (4) shall be omitted.

#### **Marginal Citations**

**M2** 1984 c. 28.

**M3** 1981 c. 54.

### *Garnishee proceedings*

#### **52 Administrative and clerical expenses of garnishees.**

(1) Section 40A of the <sup>M4</sup>Supreme Court Act 1981 and section 109 of the <sup>M5</sup>County Courts Act 1984 (administrative and clerical expenses of garnishees) shall each be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Where an order nisi made in the exercise of the jurisdiction mentioned in subsection (2) of the preceding section is served on any deposit-taking institution, the institution may, subject to the provisions of this section, deduct from the relevant debt or debts an amount not exceeding the prescribed sum towards the administrative and clerical expenses of the institution in complying with the order; and the right of an institution to make a deduction under this subsection shall be exercisable as from the time the order nisi is served on it.

(1A) In subsection (1) “the relevant debt or debts”, in relation to an order nisi served on any such institution as is mentioned in that subsection, means the amount, as at the time the order is served on the institution, of the debt or debts of which the whole or a part is expressed to be attached by the order.

(1B) A deduction may be made under subsection (1) in a case where the amount referred to in subsection (1A) is insufficient to cover both the amount of the deduction and the amount of the judgment debt and costs in respect of which the attachment was made, notwithstanding that the benefit of the attachment to the creditor is reduced as a result of the deduction.”.

(3) In subsection (2), for “The prescribed sum may not” there shall be substituted “An amount may not in pursuance of subsection (1)”.

(4) In subsection (4), the word “and” shall be omitted, and after paragraph (b) there shall be inserted—

“(c) may provide for this section not to apply to deposit-taking institutions of any prescribed description.”.

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**Marginal Citations**

- M4 1981 c. 54.
- M5 1984 c. 28.

*Reimbursement of costs*

**53 Reimbursement of additional costs resulting from death or incapacity of presiding judge etc.**

(1) Where—

- (a) the judge, or (as the case may be) any of the judges, presiding at any proceedings to which this section applies becomes temporarily or permanently incapacitated from presiding at the proceedings, or dies, at any time prior to the conclusion of the proceedings; and
- (b) any party represented at the proceedings incurs any additional costs in consequence of the judge’s incapacity or death,

the Lord Chancellor may, if he thinks fit, reimburse that party in respect of any such additional costs, or in respect of such part thereof as he may determine; but the amount of any such reimbursement shall not exceed such sum as the Lord Chancellor may by order prescribe for the purposes of this section.

(2) Subject to subsection (3), this section applies to—

- (a) proceedings in the civil division of the Court of Appeal;
- (b) civil proceedings in the High Court; and
- (c) proceedings in a county court;

and, in the case of any interlocutory proceedings falling within paragraphs (a) to (c), applies separately to any such proceedings and to any other proceedings in the cause or matter in question.

(3) . . . . .<sup>F2</sup>

(4) For the purposes of this section the amount of any additional costs incurred by any person as mentioned in subsection (1)(b) shall be such amount as may be agreed between the Lord Chancellor and that person or, in default of agreement, as may be ascertained by taxation.

(5) Where any proceedings to which this section applies—

- (a) are due to be begun before a judge at a particular time; but
- (b) are not begun at that time by reason of the judge becoming temporarily or permanently incapacitated from presiding at the proceedings or by reason of his death,

subsection (1) shall have effect in relation to the incapacity or death of the judge as it has effect in relation to any such incapacity or death of a presiding judge as is mentioned in paragraph (a) of that subsection, but as if any reference to any party represented at the proceedings were a reference to any party who would have been so represented but for the judge’s incapacity or death.

(6) In this section<sup>F3</sup> . . . “judge” in relation to any proceedings, includes—

- (a) a master, registrar or other person acting in a judicial capacity in the proceedings; or

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- (b) a person assisting at the proceedings as an assessor or as an adviser appointed by virtue of section 70(3) of the <sup>M6</sup>Supreme Court Act 1981; and, in relation to any such person as is mentioned in paragraph (b), any reference to presiding at any proceedings shall be construed as including a reference to assisting at the proceedings.
- (7) Any order made by the Lord Chancellor under this section shall be made with the concurrence of the Treasury, and shall be so made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Any sums required by the Lord Chancellor for making payments under this section shall be paid out of money provided by Parliament.

#### Textual Amendments

- F2** S. 53(3) repealed (27.9.1999) by 1999 c. 22, ss. 106, 108(3)(f), **Sch. 15 Pt.III** (with Sch. 14 paras. 7(2), 36(9))
- F3** Words in s. 53(6) repealed (27.9.1999) by 1999 c. 22, ss. 106, 108(3)(f), **Sch. 15 Pt.III** (with Sch. 14 paras. 7(2), 36(9))

#### Marginal Citations

- M6** 1981 c. 54.

### *Register of county court judgments*

#### **54 Register of county court judgments.**

- (1) Section 73 of the County Courts Act 1984 (register of judgments and orders) shall be amended as provided in subsections (2) to (4) of this section.
- (2) For subsection (1) there shall be substituted—
- “(1) A register of every judgment entered in a county court for a sum of money of not less than the relevant amount shall be kept in such manner and in such place as may be prescribed.
- In this subsection “the relevant amount” means £10 or such other amount as may be prescribed.”.
- (3) For subsection (3) there shall be substituted—
- “(3) Regulations under this section may—
- (a) prescribe circumstances in which judgments are to be exempt from registration or in which the registration of any judgment is to be cancelled;
- (b) provide for any specified class of judgments to be exempt from registration.”.
- (4) For subsection (5) there shall be substituted—
- “(5) The Lord Chancellor may, with the concurrence of the Treasury, fix the fees to be paid in respect of—

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- (a) the making of any information contained in an entry in the register available for inspection in visible and legible form;
- (b) the carrying out of any official search of the register;
- (c) the supply of a certified copy of any information contained in an entry in the register.”.

(5) After section 73 of the <sup>M7</sup>County Courts Act 1984 there shall be inserted—

**“73A Provision for register under s. 73 to be kept by body under contract to Lord Chancellor.**

- (1) If—
  - (a) there is in force an agreement between the Lord Chancellor and a body corporate relating to the keeping by that body corporate of the register under section 73 (“the register”); and
  - (b) provision is made by regulations under that section for the register to be kept in accordance with such an agreement,the register shall be kept by that body corporate.
- (2) Where the register is kept by a body corporate in pursuance of subsection (1)—
  - (a) the Lord Chancellor may recover from that body any expenses incurred by the Lord Chancellor in connection with the supply of information to that body for the purposes of the register;
  - (b) subsection (5) of section 73 shall have effect as if the words “maximum amounts in relation to” were inserted after the word “fix”;
  - and
  - (c) subsection (6) of that section shall not apply.
- (3) Where subsection (1) of this section ceases to apply to a body corporate as a result of the termination (for any reason) of the agreement in question, the Lord Chancellor may require the information for the time being contained in the entries in the register to be transferred to such person as he may direct.”.

**Marginal Citations**

M7 1984 c. 28.

*Relief from forfeiture in county court*

**55 Power of county court to grant relief from forfeiture for non-payment of rent.**

- (1) Section 138 of the County Courts Act 1984 (provisions as to forfeiture for non-payment of rent) shall be amended as provided in subsections (2) to (4) of this section.
- (2) In subsection (5), the words “Subject to subsection (6),” shall be omitted.
- (3) In subsection (7)—
  - (a) for “enforced” there shall be substituted “enforceable”; and
  - (b) after “the lessee shall” there shall be inserted “, subject to subsections (8) and (9A),”.

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(4) After subsection (9) there shall be inserted—

“(9A) Where the lessor recovers possession of the land at any time after the making of the order under subsection (3) (whether as a result of the enforcement of the order or otherwise) the lessee may, at any time within six months from the date on which the lessor recovers possession, apply to the court for relief; and on any such application the court may, if it thinks fit, grant to the lessee such relief, subject to such terms and conditions, as it thinks fit.

(9B) Where the lessee is granted relief on an application under subsection (9A) he shall hold the land according to the lease without any new lease.

(9C) An application under subsection (9A) may be made by a person with an interest under a lease of the land derived (whether immediately or otherwise) from the lessee’s interest therein in like manner as if he were the lessee; and on any such application the court may make an order which (subject to such terms and conditions as the court thinks fit) vests the land in such a person, as lessee of the lessor, for the remainder of the term of the lease under which he has any such interest as aforesaid, or for any lesser term.

In this subsection any reference to the land includes a reference to a part of the land.”.

(5) In section 139 of the <sup>M8</sup>County Courts Act 1984 (service of summons and re-entry), after subsection (2) there shall be inserted—

“(3) Subsections (9B) and (9C) of section 138 shall have effect in relation to an application under subsection (2) of this section as they have effect in relation to an application under subsection (9A) of that section.”.

**Marginal Citations**

**M8** 1984 c. 28.

*Interpretation*

**56 Interpretation of Part IV.**

In this Part—

“action” means any civil proceedings commenced by writ or in any other manner prescribed by rules of court;

“judgment” includes an order;

“will” includes a nuncupative will and any testamentary document of which probate may be granted.



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