



Access to Justice Act 1999

1999 CHAPTER 22

PART I

LEGAL SERVICES COMMISSION

Modifications etc. (not altering text)

- C1** Pt. I extended (1.9.2001) by 2001 c. 17, s. 6(2)(c) (with ss. 16(5), 78); S.I. 2001/2161, art. 2
- C2** Pt. 1: functions of the Lord Chancellor transferred (19.8.2003) to the Secretary of State by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 4, Sch. 1 (with art. 6)
- Pt. 1: functions of the Secretary of State transferred (12.1.2006) to the Lord Chancellor by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 3 (with arts. 4, 5)

Commission

1 Legal Services Commission.

- (1) There shall be a body known as the Legal Services Commission (in this Part referred to as “the Commission”).
- (2) The Commission shall have the functions relating to—
- the Community Legal Service, and
 - the Criminal Defence Service,
- which are conferred or imposed on it by the provisions of this Act or any other enactment.
- (3) The Commission shall consist of—
- not fewer than seven members, and
 - not more than twelve members;

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but the Lord Chancellor may by order substitute for either or both of the numbers for the time being specified in paragraphs (a) and (b) such other number or numbers as he thinks appropriate.

- (4) The members of the Commission shall be appointed by the Lord Chancellor; and the Lord Chancellor shall appoint one of the members to chair the Commission.
- (5) In appointing persons to be members of the Commission the Lord Chancellor shall have regard to the desirability of securing that the Commission includes members who (between them) have experience in or knowledge of—
 - (a) the provision of services which the Commission can fund as part of the Community Legal Service or Criminal Defence Service,
 - (b) the work of the courts,
 - (c) consumer affairs,
 - (d) social conditions, and
 - (e) management.
- (6) Schedule 1 (which makes further provision about the Commission) has effect.

2 Power to replace Commission with two bodies.

- (1) The [^{F1} Secretary of State] may by order establish in place of the Commission two bodies—
 - (a) one to have functions relating to the Community Legal Service, and
 - (b) the other to have functions relating to the Criminal Defence Service.
- (2) The order may make any consequential, incidental, supplementary or transitional provisions, and any savings, which appear to the [^{F1} Secretary of State] to be appropriate.
- (3) The order shall include amendments of—
 - (a) any provisions of, or amended by, this Part which refer to the Commission, and
 - (b) any other enactments which so refer,
 to replace references to the Commission with references to either or both of the bodies established by the order.

Textual Amendments

F1 Words in s. 2 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(a)**

3 Powers of Commission.

- (1) Subject to the provisions of this Part, the Commission may do anything which it considers—
 - (a) is necessary or appropriate for, or for facilitating, the discharge of its functions, or
 - (b) is incidental or conducive to the discharge of its functions.
- (2) In particular, the Commission shall have power—
 - (a) to enter into any contract,

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- (b) to make grants (with or without conditions),
 - (c) to make loans,
 - (d) to invest money,
 - (e) to promote or assist in the promotion of publicity relating to its functions,
 - (f) to undertake any inquiry or investigation which it may consider appropriate in relation to the discharge of any of its functions, and
 - (g) to give the [F2 Secretary of State] any advice which it may consider appropriate in relation to matters concerning any of its functions.
- (3) Subsections (1) and (2) do not confer on the Commission power to borrow money.
- (4) The Commission may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of any of its functions.
- (5) The [F2 Secretary of State] may by order require the Commission—
- (a) to delegate any function specified in the order or to delegate any function so specified to a person (or person of a description) so specified,
 - (b) not to delegate any function so specified or not to delegate any function so specified to a person (or person of a description) so specified, or
 - (c) to make arrangements such as are specified in the order in relation to the delegation of any function so specified.

Textual Amendments

- F2** Words in s. 3 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

Community Legal Service

4 Community Legal Service.

- (1) The Commission shall establish, maintain and develop a service known as the Community Legal Service for the purpose of promoting the availability to individuals of services of the descriptions specified in subsection (2) and, in particular, for securing (within the resources made available, and priorities set, in accordance with this Part) that individuals have access to services that effectively meet their needs.
- (2) The descriptions of services referred to in subsection (1) are—
- (a) the provision of general information about the law and legal system and the availability of legal services,
 - (b) the provision of help by the giving of advice as to how the law applies in particular circumstances,
 - (c) the provision of help in preventing, or settling or otherwise resolving, disputes about legal rights and duties,
 - (d) the provision of help in enforcing decisions by which such disputes are resolved, and
 - (e) the provision of help in relation to legal proceedings not relating to disputes.
- (3) Services which the Commission is required to fund as part of the Criminal Defence Service do not fall within subsection (2).

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- (4) Every person who exercises any function relating to the Community Legal Service shall have regard to the desirability of exercising it, so far as is reasonably practicable, so as to—
- (a) promote improvements in the range and quality of services provided as part of the Community Legal Service and in the ways in which they are made accessible to those who need them,
 - (b) secure that the services provided in relation to any matter are appropriate having regard to its nature and importance, and
 - (c) achieve the swift and fair resolution of disputes without unnecessary or unduly protracted proceedings in court.
- (5) The Commission shall fund services of the descriptions specified in subsection (2) as part of the Community Legal Service in accordance with the following sections.
- (6) The Commission shall also inform itself about the need for, and the provision of, services of the descriptions specified in subsection (2) and about the quality of the services provided and, in co-operation with such authorities and other bodies and persons as it considers appropriate—
- (a) plan what can be done towards meeting that need by the performance by the Commission of its functions, and
 - (b) facilitate the planning by other authorities, bodies and persons of what can be done by them to meet that need by the use of any resources available to them;
- and the Commission shall notify the [^{F3} Secretary of State] of what it has done under this subsection.
- (7) The Commission may set and monitor standards in relation to services of the descriptions specified in subsection (2).
- (8) In particular, the Commission may accredit, or authorise others to accredit, persons or bodies providing services of the descriptions specified in subsection (2); and any system of accreditation shall include provision for the monitoring of the services provided by accredited persons and bodies and for the withdrawal of accreditation from any providing services of unsatisfactory quality.
- (9) The Commission may charge—
- (a) for accreditation,
 - (b) for monitoring the services provided by accredited persons and bodies, and
 - (c) for authorising accreditation by others;
- and persons or bodies authorised to accredit may charge for accreditation, and for such monitoring, in accordance with the terms of their authorisation.
- (10) The [^{F3} Secretary of State] may by order require the Commission to discharge the functions in subsections (6) to (9) in accordance with the order.

Textual Amendments

F3 Words in s. 4 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

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5 Funding of services.

- (1) The Commission shall establish and maintain a fund known as the Community Legal Service Fund from which it shall fund services as part of the Community Legal Service.
- (2) The [^{F4} Secretary of State]—
 - (a) shall pay to the Commission the sums which he determines are appropriate for the funding of services by the Commission as part of the Community Legal Service, and
 - (b) may determine the manner in which and times at which the sums are to be paid to the Commission and may impose conditions on the payment of the sums.
- (3) In making any determination under subsection (2) the [^{F4} Secretary of State] shall take into account (in addition to such other factors as he considers relevant) the need for services of the descriptions specified in subsection (2) of section 4 as notified to him by the Commission under subsection (6) of that section.
- (4) The [^{F4} Secretary of State] shall lay before each House of Parliament a copy of every determination under subsection (2)(a).
- (5) The Commission shall pay into the Community Legal Service Fund—
 - (a) sums received from the [^{F4} Secretary of State] under subsection (2), and
 - (b) sums received by the Commission by virtue of regulations under section 10 or 11.
- (6) The [^{F4} Secretary of State] may by direction impose requirements on the Commission as to the descriptions of services to be funded from any specified amount paid into the Community Legal Service Fund.
- (7) In funding services as part of the Community Legal Service the Commission shall aim to obtain the best possible value for money.

Textual Amendments

- F4** Words in s. 5 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(a)**

6 Services which may be funded.

- (1) The Commission shall set priorities in its funding of services as part of the Community Legal Service and the priorities shall be set—
 - (a) in accordance with any directions given by the [^{F5} Secretary of State] , and
 - (b) after taking into account the need for services of the descriptions specified in section 4(2).
- (2) Subject to that (and to subsection (6)), the services which the Commission may fund as part of the Community Legal Service are those which the Commission considers appropriate.
- (3) The Commission may fund services as part of the Community Legal Service by—
 - (a) entering into contracts with persons or bodies for the provision of services by them,

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- (b) making payments to persons or bodies in respect of the provision of services by them,
 - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, services,
 - (d) establishing and maintaining bodies to provide, or facilitate the provision of, services,
 - (e) making grants or loans to individuals to enable them to obtain services,
 - (f) itself providing services, or
 - (g) doing anything else which it considers appropriate for funding services.
- (4) The [^{F5} Secretary of State] may by order require the Commission to discharge the function in subsection (3) in accordance with the order.
- (5) The Commission may fund as part of the Community Legal Service different descriptions of services or services provided by different means—
- (a) in relation to different areas or communities in England and Wales, and
 - (b) in relation to different descriptions of cases.
- (6) The Commission may not fund as part of the Community Legal Service any of the services specified in Schedule 2.
- (7) Regulations may amend that Schedule by adding new services or omitting or varying any services.
- (8) The [^{F5} Secretary of State]—
- (a) may by direction require the Commission to fund the provision of any of the services specified in Schedule 2 in circumstances specified in the direction, and
 - (b) may authorise the Commission to fund the provision of any of those services in specified circumstances or, if the Commission request him to do so, in an individual case.
- (9) The [^{F5} Secretary of State] shall either—
- (a) publish, or
 - (b) require the Commission to publish,
- any authorisation under subsection (8)(b) unless it relates to an individual case (in which case he or the Commission may publish it if appropriate).

Textual Amendments

F5 Words in s. 6 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

7 Individuals for whom services may be funded.

- (1) The Commission may only fund services for an individual as part of the Community Legal Service if his financial resources are such that, under regulations, he is an individual for whom they may be so funded.
- (2) Regulations may provide that, in prescribed circumstances and subject to any prescribed conditions, services of a prescribed description may be so funded for individuals without reference to their financial resources.

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- (3) Regulations under this section may include provision requiring the furnishing of information.

8 Code about provision of funded services.

- (1) The Commission shall prepare a code setting out the criteria according to which it is to decide whether to fund (or continue to fund) services as part of the Community Legal Service for an individual for whom they may be so funded and, if so, what services are to be funded for him.
- (2) In settling the criteria to be set out in the code the Commission shall consider the extent to which they ought to reflect the following factors—
- (a) the likely cost of funding the services and the benefit which may be obtained by their being provided,
 - (b) the availability of sums in the Community Legal Service Fund for funding the services and (having regard to present and likely future demands on that Fund) the appropriateness of applying them to fund the services,
 - (c) the importance of the matters in relation to which the services would be provided for the individual,
 - (d) the availability to the individual of services not funded by the Commission and the likelihood of his being able to avail himself of them,
 - (e) if the services are sought by the individual in relation to a dispute, the prospects of his success in the dispute,
 - (f) the conduct of the individual in connection with services funded as part of the Community Legal Service (or an application for funding) or in, or in connection with, any proceedings,
 - (g) the public interest, and
 - (h) such other factors as the [^{F6} Secretary of State] may by order require the Commission to consider.
- (3) The criteria set out in the code shall reflect the principle that in many family disputes mediation will be more appropriate than court proceedings.
- (4) The code shall seek to secure that, where more than one description of service is available, the service funded is that which (in all the circumstances) is the most appropriate having regard to the criteria set out in the code.
- (5) The code shall also specify procedures for the making of decisions about the funding of services by the Commission as part of the Community Legal Service, including—
- (a) provision about the form and content of applications for funding,
 - (b) provision imposing conditions which must be satisfied by an individual applying for funding,
 - (c) provision requiring applicants to be informed of the reasons for any decision to refuse an application,
 - (d) provision for the giving of information to individuals whose applications are refused about alternative ways of obtaining or funding services, and
 - (e) provision establishing procedures for appeals against decisions about funding and for the giving of information about those procedures.
- (6) The code may make different provision for different purposes.
- (7) The Commission may from time to time prepare a revised version of the code.

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- (8) Before preparing the code the Commission shall undertake such consultation as appears to it to be appropriate; and before revising the code the Commission shall undertake such consultation as appears to it to be appropriate unless it considers that it is desirable for the revised version to come into force without delay.
- (9) The [^{F6} Secretary of State] may by order require the Commission to discharge its functions relating to the code in accordance with the order.

Textual Amendments

F6 Words in s. 8 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

VALID FROM 01/02/2010

[^{F7}8A Funding code: pilot provisions

- (1) The code may contain provisions (“pilot provisions”) which are to have effect for a specified period not exceeding 3 years.
- (2) Pilot provisions may be expressed so as to apply only in relation to—
- (a) one or more specified areas or localities;
 - (b) one or more specified descriptions of court or tribunal;
 - (c) one or more specified descriptions of service that may be provided as part of the Community Legal Service;
 - (d) one or more specified classes of person;
 - (e) persons selected—
 - (i) by reference to specified criteria; or
 - (ii) on a sampling basis.
- (3) Pilot provisions may disapply any other provision of the code in relation to any of the matters mentioned in paragraphs (a) to (e) of subsection (2).
- (4) The period for the time being specified in relation to pilot provisions may be revised—
- (a) if the period is one of less than 3 years, so that it becomes a longer period not exceeding 3 years;
 - (b) so that it becomes a period which exceeds 3 years by such amount as the Commission thinks necessary for the purpose of securing that the pilot provisions remain in operation until the coming into force of a revised code that contains similar provisions that will have effect—
 - (i) generally, or
 - (ii) for purposes wider than those for which the pilot provisions have effect.
- (5) If the code contains pilot provisions, the code may also contain consequential or transitional provision with respect to the cessation of the pilot provisions on the expiry of the specified period (or that period as revised under subsection (4)).]

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Textual Amendments

F7 S. 8A inserted (prosp.) by Coroners and Justice Act 2009 (c. 25), ss. 149(3), 182 (with s. 180)

9 Procedure relating to funding code.

- (1) After preparing the code or a revised version of the code the Commission shall send a copy to the [^{F8} Secretary of State] .
- (2) If he approves it he shall lay it before each House of Parliament.
- (3) The Commission shall publish—
 - (a) the code as first approved by the [^{F8} Secretary of State] , and
 - (b) where he approves a revised version, either the revisions or the revised code as appropriate.
- (4) The code as first approved by the [^{F8} Secretary of State] shall not come into force until it has been approved by a resolution of each House of Parliament.
- (5) A revised version of the code which does not contain changes in the criteria set out in the code shall not come into force until it has been laid before each House of Parliament.
- (6) Subject as follows, a revised version of the code which does contain such changes shall not come into force until it has been approved by a resolution of each House of Parliament.
- (7) Where the [^{F8} Secretary of State] considers that it is desirable for a revised version of the code containing such changes to come into force without delay, he may (when laying the revised version before Parliament) also lay before each House a statement of his reasons for so considering.
- (8) In that event the revised version of the code—
 - (a) shall not come into force until it has been laid before each House of Parliament, and
 - (b) shall cease to have effect at the end of the period of 120 days beginning with the day on which it comes into force unless a resolution approving it has been made by each House (but without that affecting anything previously done in accordance with it).

Textual Amendments

F8 Words in s. 9 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 11(1)(a)

10 Terms of provision of funded services.

- (1) An individual for whom services are funded by the Commission as part of the Community Legal Service shall not be required to make any payment in respect of the services except where regulations otherwise provide.

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- (2) Regulations may provide that, in prescribed circumstances, an individual for whom services are so funded shall—
- (a) pay a fee of such amount as is fixed by or determined under the regulations,
 - (b) if his financial resources are, or relevant conduct is, such as to make him liable to do so under the regulations, pay the cost of the services or make a contribution in respect of the cost of the services of such amount as is so fixed or determined, or
 - (c) if the services relate to a dispute and he has agreed to make a payment (which may exceed the cost of the services) only in specified circumstances, make in those circumstances a payment of the amount agreed, or determined in the manner agreed, by him;
- and in paragraph (b) “relevant conduct” means conduct in connection with the services (or any application for their funding) or in, or in connection with, any proceedings in relation to which they are provided.
- (3) The regulations may include provision for any amount payable in accordance with the regulations to be payable by periodical payments or one or more capital sums, or both.
- (4) The regulations may also include provision for the payment by an individual of interest (on such terms as may be prescribed) in respect of—
- (a) any loan made to him by the Commission as part of the Community Legal Service,
 - (b) any payment in respect of the cost of services required by the regulations to be made by him later than the time when the services are provided, or
 - (c) so much of any payment required by the regulations to be made by him which remains unpaid after the time when it is required to be paid.
- (5) The regulations shall include provision for the repayment to an individual of any payment made by him in excess of his liability under the regulations.
- (6) The regulations may—
- (a) include provision requiring the furnishing of information, and
 - (b) make provision for the determination of the cost of services for the purposes of the regulations.
- (7) Except so far as regulations otherwise provide, where services have been funded by the Commission for an individual as part of the Community Legal Service—
- (a) sums expended by the Commission in funding the services (except to the extent that they are recovered under section 11), and
 - (b) other sums payable by the individual by virtue of regulations under this section,
- shall constitute a first charge on any property recovered or preserved by him (whether for himself or any other person) in any proceedings or in any compromise or settlement of any dispute in connection with which the services were provided.
- (8) Regulations may make provision about the charge, including—
- (a) provision as to whether it is in favour of the Commission or the body or person by whom the services were provided, and
 - (b) provision about its enforcement.

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Modifications etc. (not altering text)

- C3** S. 10(1) applied (4.4.2005) by [The Community Legal Service \(Asylum and Immigration Appeals\) Regulations 2005 \(S.I. 2005/966\)](#), **reg. 9(3)** (with regs. 2, 9(4))
- C4** S. 10(7) excluded (1.4.2000) by [S.I. 2000/516](#), **reg. 44**
S. 10(7) applied (1.4.2000) by [S.I. 2000/516](#), **reg. 49**

11 Costs in funded cases.

- (1) Except in prescribed circumstances, costs ordered against an individual in relation to any proceedings or part of proceedings funded for him shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances including—
- the financial resources of all the parties to the proceedings, and
 - their conduct in connection with the dispute to which the proceedings relate;
- and for this purpose proceedings, or a part of proceedings, are funded for an individual if services relating to the proceedings or part are funded for him by the Commission as part of the Community Legal Service.
- (2) In assessing for the purposes of subsection (1) the financial resources of an individual for whom services are funded by the Commission as part of the Community Legal Service, his clothes and household furniture and the tools and implements of his trade shall not be taken into account, except so far as may be prescribed.
- (3) Subject to subsections (1) and (2), regulations may make provision about costs in relation to proceedings in which services are funded by the Commission for any of the parties as part of the Community Legal Service.
- (4) The regulations may, in particular, make provision—
- specifying the principles to be applied in determining the amount of any costs which may be awarded against a party for whom services are funded by the Commission as part of the Community Legal Service,
 - limiting the circumstances in which, or extent to which, an order for costs may be enforced against such a party,
 - as to the cases in which, and extent to which, such a party may be required to give security for costs and the manner in which it is to be given,
 - requiring the payment by the Commission of the whole or part of any costs incurred by a party for whom services are not funded by the Commission as part of the Community Legal Service,
 - specifying the principles to be applied in determining the amount of any costs which may be awarded to a party for whom services are so funded,
 - requiring the payment to the Commission, or the person or body by which the services were provided, of the whole or part of any sum awarded by way of costs to such a party, and
 - as to the court, tribunal or other person or body by whom the amount of any costs is to be determined and the extent to which any determination of that amount is to be final.

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VALID FROM 01/02/2010

[^{F9}11A Pilot schemes

- (1) This section applies to the following instruments—
 - (a) any order under section 6(4) or 8(9),
 - (b) any regulations under section 6(7), 7, 10 or 11, and
 - (c) any regulations under section 22(5) having effect in relation to the Community Legal Service.
- (2) Any instrument to which this section applies may be made so as to have effect for a specified period not exceeding 3 years.
- (3) In the following provisions of this section—
 - (a) “pilot scheme” means any instrument which, in accordance with subsection (2), is made so as to have effect for a limited period;
 - (b) “connected instrument”, in relation to a pilot scheme, means an instrument made under the same provision as the pilot scheme.
- (4) A pilot scheme may provide that its provisions, or the provisions of a connected instrument, are to apply only in relation to—
 - (a) one or more specified areas or localities;
 - (b) one or more specified descriptions of court or tribunal;
 - (c) one or more specified descriptions of service that may be provided as part of the Community Legal Service;
 - (d) one or more specified classes of person;
 - (e) persons selected—
 - (i) by reference to specified criteria; or
 - (ii) on a sampling basis.
- (5) The period for the time being specified in a pilot scheme may be varied—
 - (a) if the period is one of less than 3 years, so that it becomes a longer period not exceeding 3 years;
 - (b) so that it becomes a period which exceeds 3 years by such amount as the Lord Chancellor thinks necessary for the purpose of securing that the pilot scheme remains in operation until the coming into force of a connected instrument that will have effect—
 - (i) generally, or
 - (ii) for purposes wider than those for which the pilot scheme has effect.
- (6) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period (or that period as varied under subsection (5)).]

Textual Amendments

F9 S. 11A inserted (prosp.) by Coroners and Justice Act 2009 (c. 25), ss. 149(5), 182 (with s. 180)

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Criminal Defence Service

12 Criminal Defence Service.

- (1) The Commission shall establish, maintain and develop a service known as the Criminal Defence Service for the purpose of securing that individuals involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require.
- (2) In this Part “criminal proceedings” means—
 - (a) proceedings before any court for dealing with an individual accused of an offence,
 - (b) proceedings before any court for dealing with an individual convicted of an offence (including proceedings in respect of a sentence or order),
 - (c) proceedings for dealing with an individual under section 9 of, or paragraph 6 of Schedule 1 to, the ^{M1}Extradition Act 1989,
 - (d) proceedings for binding an individual over to keep the peace or to be of good behaviour under section 115 of the ^{M2}Magistrates’ Courts Act 1980 and for dealing with an individual who fails to comply with an order under that section,
 - (e) proceedings on an appeal brought by an individual under section 44A of the ^{M3}Criminal Appeal Act 1968,
 - (f) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and
 - (g) such other proceedings concerning an individual, before any such court or other body, as may be prescribed.
- (3) The Commission shall fund services as part of the Criminal Defence Service in accordance with sections 13 to 15.
- (4) The Commission may accredit, or authorise others to accredit, persons or bodies providing services which may be funded by the Commission as part of the Criminal Defence Service; and any system of accreditation shall include provision for the monitoring of the services provided by accredited persons and bodies and for the withdrawal of accreditation from any providing services of unsatisfactory quality.
- (5) The Commission may charge—
 - (a) for accreditation,
 - (b) for monitoring the services provided by accredited persons and bodies, and
 - (c) for authorising accreditation by others;and persons or bodies authorised to accredit may charge for accreditation, and for such monitoring, in accordance with the terms of their authorisation.
- (6) The [^{F10} Secretary of State] may by order require the Commission to discharge the functions in subsections (4) and (5) in accordance with the order.

Textual Amendments

F10 Words in s. 12 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

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Marginal Citations

- M1** 1989 c.33.
M2 1980 c.43.
M3 1968 c.19.

13 Advice and assistance.

- (1) The Commission shall fund such advice and assistance as it considers appropriate—
- (a) for individuals who are arrested and held in custody at a police station or other premises, and
 - [^{F11}(b) in prescribed circumstances, for individuals who—
 - (i) are not within paragraph (a) but are involved in investigations which may lead to criminal proceedings,
 - (ii) are before a court or other body in such proceedings, or
 - (iii) have been the subject of such proceedings;
 and the assistance which the Commission may consider appropriate includes assistance in the form of advocacy.]
- (2) The Commission may comply with the duty imposed by subsection (1) by—
- (a) entering into contracts with persons or bodies for the provision of advice or assistance by them,
 - (b) making payments to persons or bodies in respect of the provision of advice or assistance by them,
 - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, advice or assistance,
 - (d) establishing and maintaining bodies to provide, or facilitate the provision of, advice or assistance,
 - (e) making grants to individuals to enable them to obtain advice or assistance,
 - (f) employing persons to provide advice or assistance, or
 - (g) doing anything else which it considers appropriate for funding advice and assistance.
- (3) The [^{F12} Secretary of State] may by order require the Commission to discharge the function in subsection (2) in accordance with the order.
- (4) The Commission may fund advice and assistance by different means—
- (a) in different areas in England and Wales, and
 - (b) in relation to different descriptions of cases.

Textual Amendments

- F11** S. 13(1)(b) and following words substituted (retrospectively) by 2001 c. 4, s. 1
F12 Word in s. 13 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 11(1)(a)

Modifications etc. (not altering text)

- C5** S. 13(2)(b) restricted (2.4.2001) by S.I. 2001/855, art. 7

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14 Representation.

- (1) Schedule 3 (which makes provision about the grant of a right to representation in criminal proceedings) has effect; and the Commission shall fund representation to which an individual has been granted a right in accordance with that Schedule.
- (2) Subject to the following provisions, the Commission may comply with the duty imposed by subsection (1) by—
 - (a) entering into contracts with persons or bodies for the provision of representation by them,
 - (b) making payments to persons or bodies in respect of the provision of representation by them,
 - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, representation,
 - (d) establishing and maintaining bodies to provide, or facilitate the provision of, representation,
 - (e) making grants to individuals to enable them to obtain representation,
 - (f) employing persons to provide representation, or
 - (g) doing anything else which it considers appropriate for funding representation.
- (3) The [F13 Secretary of State]—
 - (a) shall by order make provision about the payments which may be made by the Commission in respect of any representation provided by non-contracted private practitioners, and
 - (b) may by order make any other provision requiring the Commission to discharge the function in subsection (2) in accordance with the order.
- (4) For the purposes of subsection (3)(a) representation is provided by a non-contracted private practitioner if it is provided, otherwise than pursuant to a contract entered into by the Commission, by a person or body which is neither—
 - (a) a person or body in receipt of grants or loans made by the Commission as part of the Criminal Defence Service, nor
 - (b) the Commission itself or a body established or maintained by the Commission.
- (5) The provision which the [F13 Secretary of State] is required to make by order under subsection (3)(a) includes provision for reviews of, or appeals against, determinations required for the purposes of the order.
- (6) The Commission may fund representation by different means—
 - (a) in different areas in England and Wales, and
 - (b) in relation to different descriptions of cases.

Textual Amendments

F13 Words in s. 14 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

Modifications etc. (not altering text)

C6 [S. 14\(1\)](#) modified (temp. from 2.4.2001 until 4.4.2005) by [S.I. 2001/855](#), art. 3(1)

C7 [S. 14\(2\)\(b\)](#) restricted (2.4.2001) by [S.I. 2001/855](#), art. 7

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15 Selection of representative.

- (1) An individual who has been granted a right to representation in accordance with Schedule 3 may select any representative or representatives willing to act for him; and, where he does so, the Commission is to comply with the duty imposed by section 14(1) by funding representation by the selected representative or representatives.
- (2) Regulations may provide that in prescribed circumstances—
 - (a) the right conferred by subsection (1) is not to apply in cases of prescribed descriptions,
 - (b) an individual who has been provided with advice or assistance funded by the Commission under section 13 by a person whom he chose to provide it for him is to be taken to have selected that person as his representative pursuant to that right,
 - (c) that right is not to include a right to select a representative of a prescribed description,
 - (d) that right is to select only a representative of a prescribed description,
 - (e) that right is to select not more than a prescribed number of representatives to act at any one time, and
 - (f) that right is not to include a right to select a representative in place of a representative previously selected.
- (3) Regulations under subsection (2)(b) may prescribe circumstances in which an individual is to be taken to have chosen a person to provide advice or assistance for him.
- (4) Regulations under subsection (2) may not provide that only a person employed by the Commission, or by a body established and maintained by the Commission, may be selected.
- (5) Regulations may provide that in prescribed circumstances the Commission is not required to fund, or to continue to fund, representation for an individual by a particular representative (but such provision shall not prejudice any right of the individual to select another representative).
- (6) The circumstances which may be prescribed by regulations under subsection (2) or (5) include that a determination has been made by a prescribed body or person.

16 Code of conduct.

- (1) The Commission shall prepare a code of conduct to be observed by employees of the Commission, and employees of any body established and maintained by the Commission, in the provision of services as part of the Criminal Defence Service.
- (2) The code shall include—
 - (a) duties to avoid discrimination,
 - (b) duties to protect the interests of the individuals for whom services are provided,
 - (c) duties to the court,
 - (d) duties to avoid conflicts of interest, and
 - (e) duties of confidentiality,
 and duties on employees who are members of a professional body to comply with the rules of the body.

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- (3) The Commission may from time to time prepare a revised version of the code.
- (4) Before preparing or revising the code the Commission shall consult the Law Society and the General Council of the Bar and such other bodies or persons as it considers appropriate.
- (5) After preparing the code or a revised version of the code the Commission shall send a copy to the [^{F14} Secretary of State].
- (6) If he approves it he shall lay it before each House of Parliament.
- (7) The Commission shall publish—
 - (a) the code as first approved by the [^{F14} Secretary of State], and
 - (b) where he approves a revised version, either the revisions or the revised code as appropriate.
- (8) The code, and any revised version of the code, shall not come into force until it has been approved by a resolution of each House of Parliament.

Textual Amendments

F14 Words in s. 16 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

17 Terms of provision of funded services.

- (1) An individual for whom services are funded by the Commission as part of the Criminal Defence Service shall not be required to make any payment in respect of the services except where subsection (2) applies.
- (2) Where representation for an individual in respect of criminal proceedings in any court other than a magistrates' court is funded by the Commission as part of the Criminal Defence Service, the court may, subject to regulations under subsection (3), make an order requiring him to pay some or all of the cost of any representation so funded for him (in proceedings in that or any other court).
- (3) Regulations may make provision about—
 - (a) the descriptions of individuals against whom an order under subsection (2) may be made,
 - (b) the circumstances in which such an order may be made and the principles to be applied in deciding whether to make such an order and the amount to be paid,
 - (c) the determination of the cost of representation for the purposes of the making of such an order,
 - (d) the furnishing of information and evidence to the court or the Commission for the purpose of enabling the court to decide whether to make such an order and (if so) the amount to be paid,
 - (e) prohibiting individuals who are required to furnish information or evidence from dealing with property until they have furnished the information or evidence or until a decision whether to make an order, or the amount to be paid, has been made,
 - (f) the person or body to which, and manner in which, payments required by such an order must be made and what that person or body is to do with them, and

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- (g) the enforcement of such an order (including provision for the imposition of charges in respect of unpaid amounts).

VALID FROM 02/10/2006

[^{F15}17A Contribution orders

- (1) Regulations may provide that, in prescribed circumstances, where—
- (a) an individual has been granted a right to representation, and
 - (b) his financial resources are such as to make him liable under the regulations to do so,
- the relevant authority shall order him to pay the cost of his representation or to make a contribution in respect of that cost of such amount as is fixed by or determined under the regulations.
- (2) Regulations under subsection (1) may include—
- (a) provision requiring the furnishing of information;
 - (b) provision for the determination of the cost of representation for the purposes of liability under a contribution order;
 - (c) provision enabling the relevant authority to require that an amount payable under a contribution order be paid by periodical payments or one or more capital sums, or both;
 - (d) provision for the payment by an individual of interest (on such terms as may be prescribed) in respect of—
 - (i) any payment in respect of the cost of representation required by a contribution order to be made by him later than the time when the representation is provided;
 - (ii) so much of any payment which he is required by a contribution order to make which remains unpaid after the time when it is required to be made;
 - (e) provision about the enforcement of any liability under a contribution order, including provision for the withdrawal of the individual's right to representation in certain circumstances;
 - (f) provision for the variation or revocation of contribution orders;
 - (g) provision for an appeal to lie to such court or other person or body as may be prescribed against a contribution order;
 - (h) such transitional provision as the Lord Chancellor may consider appropriate.
- (3) Regulations under subsection (1) shall include provision for the repayment to an individual of any payment made by him in excess of his liability under a contribution order.
- (4) Regulations under subsection (1) shall provide that an order made under the regulations may not order the payment of costs to the extent that they are already the subject of an order under section 17(2).
- (5) Regulations under subsection (1) may—
- (a) be made so as to have effect only for a specified period not exceeding 12 months;

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- (b) provide that their provisions are to apply only in relation to one or more prescribed areas.
- (6) In this section, “contribution order” means an order under regulations under subsection (1).]

Textual Amendments

F15 S. 17A inserted (2.10.2006) by Criminal Defence Service Act 2006 (c. 9), ss. 3(3), 5(2); S.I. 2006/2491, art. 2

18 Funding.

- (1) The [^{F16} Secretary of State] shall pay to the Commission such sums as are required to meet the costs of any advice, assistance and representation funded by the Commission as part of the Criminal Defence Service.
- (2) The [^{F16} Secretary of State] may—
 - (a) determine the manner in which and times at which the sums referred to in subsection (1) shall be paid to the Commission, and
 - (b) impose conditions on the payment of the sums.
- (3) In funding services as part of the Criminal Defence Service the Commission shall aim to obtain the best possible value for money.

Textual Amendments

F16 Words in s. 18 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 11(1)(a)

VALID FROM 14/07/2008

[^{F17}18A Pilot schemes

- (1) This section applies to the following instruments—
 - (a) any order under section 14 or paragraph 5 of Schedule 3,
 - (b) any regulations under section 12, 13, 15, 17 or 17A or any of paragraphs 1A to 5 of Schedule 3, and
 - (c) any regulations under section 22(5) having effect in relation to the Criminal Defence Service.
- (2) Any instrument to which this section applies may be made so as to have effect for a specified period not exceeding 12 months.
- (3) But if the Lord Chancellor thinks that it is necessary or expedient for either of the purposes in subsection (4), the period specified in the instrument—
 - (a) may in the first instance be a period not exceeding 18 months;
 - (b) may be varied so as to become a period not exceeding 18 months.
- (4) The purposes are—

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- (a) ensuring the effective operation of the instrument;
 - (b) co-ordinating the operation of the instrument with the operation of any other provision made under an enactment relating to any aspect of the criminal justice system.
- (5) The period for the time being specified in an instrument to which this section applies may also be varied so that the instrument has effect for such further period as the Lord Chancellor thinks necessary for the purpose of securing that it remains in operation until the coming into force of any order or regulations made under the same provision of this Act that will have effect—
- (a) generally, or
 - (b) for purposes wider than those for which the instrument has effect.
- (6) In the following provisions of this section “pilot scheme” means any instrument which, in accordance with subsections (2) to (5), is to have effect for a limited period.
- (7) A pilot scheme may provide that its provisions are to apply only in relation to—
- (a) one or more specified areas or localities;
 - (b) one or more specified descriptions of court;
 - (c) one or more specified offences or descriptions of offence;
 - (d) one or more specified classes of person;
 - (e) persons selected—
 - (i) by reference to specified criteria; or
 - (ii) on a sampling basis.
- (8) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period (or that period as varied under subsection (3)(b) or (5)).
- (9) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision.]

Textual Amendments

- F17** S. 18A inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 58(3)**, 153; S.I. 2008/1586, **art. 2**, Sch. 1

Supplementary

19 Foreign law.

- (1) The Commission may not fund as part of the Community Legal Service or Criminal Defence Service services relating to any law other than that of England and Wales, unless any such law is relevant for determining any issue relating to the law of England and Wales.
- (2) But the [^{F18} Secretary of State] may, if it appears to him necessary to do so for the purpose of fulfilling any obligation imposed on the United Kingdom by any international agreement, by order specify that there may be funded as part of the Community Legal Service or Criminal Defence Service (or both) services relating to the application of such other law as may be specified in the order.

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Textual Amendments

F18 Word in s. 19 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

20 Restriction of disclosure of information.

- (1) Subject to the following provisions of this section, information which is furnished—
- (a) to the Commission or any court, tribunal or other person or body on whom functions are imposed or conferred by or under this Part, and
 - (b) in connection with the case of an individual seeking or receiving services funded by the Commission as part of the Community Legal Service or Criminal Defence Service,
- shall not be disclosed except as permitted by subsection (2).
- (2) Such information may be disclosed—
- (a) for the purpose of enabling or assisting the Commission to discharge any functions imposed or conferred on it by or under this Part,
 - (b) for the purpose of enabling or assisting the [^{F19} Secretary of State] to discharge any functions imposed or conferred on him by or under this Part,
 - (c) for the purpose of enabling or assisting any court, tribunal or other person or body to discharge any functions imposed or conferred on it by or under this Part,
 - (d) except where regulations otherwise provide, for the purpose of the investigation or prosecution of any offence (or suspected offence) under the law of England and Wales or any other jurisdiction,
 - (e) in connection with any proceedings relating to the Community Legal Service or Criminal Defence Service, or
 - (f) for the purpose of facilitating the proper performance by any tribunal of disciplinary functions.
- (3) Subsection (1) does not limit the disclosure of—
- (a) information in the form of a summary or collection of information so framed as not to enable information relating to any individual to be ascertained from it, or
 - (b) information about the amount of any grant, loan or other payment made to any person or body by the Commission.
- (4) Subsection (1) does not prevent the disclosure of information for any purpose with the consent of the individual in connection with whose case it was furnished and, where he did not furnish it himself, with that of the person or body who did.
- (5) A person who discloses any information in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) Proceedings for an offence under this section shall not be brought without the consent of the Director of Public Prosecutions.
- (7) Nothing in this section applies to information furnished to a person providing services funded as part of the Community Legal Service or the Criminal Defence Service by or on behalf of an individual seeking or receiving such services.

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Textual Amendments

F19 Word in s. 20 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

Modifications etc. (not altering text)

C8 [S. 20\(2\)](#): Disclosure powers extended (14.12.2001) by [2001 c. 24](#), ss. 17, 127(2), [Sch. 4 Pt. I para. 47](#)

21 Misrepresentation etc.

- (1) Any person who—
 - (a) intentionally fails to comply with any requirement imposed by virtue of this Part as to the information to be furnished by him, or
 - (b) in furnishing any information required by virtue of this Part makes any statement or representation which he knows or believes to be false,
 shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
 - (a) a fine not exceeding level 4 on the standard scale, or
 - (b) imprisonment for a term not exceeding three months,
 or to both.
- (3) Proceedings in respect of an offence under subsection (1) may (despite anything in the ^{M4}Magistrates' Courts Act 1980) be brought at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify a prosecution comes to his knowledge.
- (4) But subsection (3) does not authorise the commencement of proceedings for an offence at a time more than two years after the date on which the offence was committed.
- (5) A county court shall have jurisdiction to hear and determine any action brought by the Commission to recover loss sustained by reason of—
 - (a) the failure of any person to comply with any requirement imposed by virtue of this Part as to the information to be furnished by him, or
 - (b) a false statement or false representation made by any person in furnishing any information required by virtue of this Part.

Marginal Citations

M4 [1980 c.43](#).

22 Position of service providers and other parties etc.

- (1) Except as expressly provided by regulations, the fact that services provided for an individual are or could be funded by the Commission as part of the Community Legal Service or Criminal Defence Service shall not affect—
 - (a) the relationship between that individual and the person by whom they are provided or any privilege arising out of that relationship, or

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- (b) any right which that individual may have to be indemnified in respect of expenses incurred by him by any other person.
- (2) A person who provides services funded by the Commission as part of the Community Legal Service or Criminal Defence Service shall not take any payment in respect of the services apart from—
 - (a) that made by way of that funding, and
 - (b) any authorised by the Commission to be taken.
- (3) The withdrawal of a right to representation previously granted to an individual shall not affect the right of any person who has provided to him services funded by the Commission as part of the Criminal Defence Service to remuneration for work done before the date of the withdrawal.
- (4) Except as expressly provided by regulations, any rights conferred by or by virtue of this Part on an individual for whom services are funded by the Commission as part of the Community Legal Service or Criminal Defence Service in relation to any proceedings shall not affect—
 - (a) the rights or liabilities of other parties to the proceedings, or
 - (b) the principles on which the discretion of any court or tribunal is normally exercised.
- (5) Regulations may make provision about the procedure of any court or tribunal in relation to services funded by the Commission as part of the Community Legal Service or Criminal Defence Service.
- (6) Regulations made under subsection (5) may in particular authorise the exercise of the functions of any court or tribunal by any member or officer of that or any other court or tribunal.

23 Guidance.

- (1) The [^{F20} Secretary of State] may give guidance to the Commission as to the manner in which he considers it should discharge its functions.
- (2) The Commission shall take into account any such guidance when considering the manner in which it is to discharge its functions.
- (3) Guidance may not be given under this section in relation to individual cases.
- (4) The [^{F20} Secretary of State] shall either—
 - (a) publish, or
 - (b) require the Commission to publish,any guidance given under this section.

Textual Amendments

F20 Words in s. 23 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(a\)](#)

24 Consequential amendments.

Schedule 4 (which makes amendments consequential on this Part) has effect.

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Commencement Information

- II** S. 24 wholly in force; s. 24 not in force at Royal Assent see s. 108; s. 24 in force for specified purposes at 1.4.2000 by S.I. 2000/774, art. 2(a)(iii) (subject to arts. 3, 4); s. 24 in force insofar as not already in force at 2.4.2001 by S.I. 2001/916, art. 3(a)(ii)

25 Orders, regulations and directions.

- (1) Any power of the [F21 Secretary of State] under this Part to make an order or regulations is exercisable by statutory instrument.
- (2) Before making any remuneration order relating to the payment of remuneration to barristers or solicitors the [F21 Secretary of State] shall consult the General Council of the Bar and the Law Society.
- (3) When making any remuneration order the [F21 Secretary of State] shall have regard to—
 - (a) the need to secure the provision of services of the description to which the order relates by a sufficient number of competent persons and bodies,
 - (b) the cost to public funds, and
 - (c) the need to secure value for money.
- (4) In subsections (2) and (3) “remuneration order” means an order under section 6(4), 13(3) or 14(3) which relates to the payment by the Commission of remuneration—
 - (a) for the provision of services by persons or bodies in individual cases, or
 - (b) by reference to the provision of services by persons or bodies in specified numbers of cases.
- (5) No directions may be given by the [F21 Secretary of State] to the Commission under this Part in relation to individual cases.
- (6) Any directions given by the [F21 Secretary of State] to the Commission under this Part may be varied or revoked.
- (7) The [F21 Secretary of State] shall either—
 - (a) publish, or
 - (b) require the Commission to publish,
 any directions given by him under this Part.
- (8) Orders, regulations and directions of the [F21 Secretary of State] under this Part may make different provision for different purposes (including different areas).
- (9) No order shall be made under section 2 or 8 or paragraph 5(3) of Schedule 3, and no regulations shall be made under section 6(7), 11(1) or (4)(b) or (d) or 15(2)(a) or (5) or paragraph 4 of Schedule 3, unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (10) A statutory instrument containing any other order or regulations under this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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Textual Amendments

- F21** Words in s. 25 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(a)**

26 Interpretation.

In this Part—

- “the Commission” means the Legal Services Commission,
“the Community Legal Service Fund” has the meaning given by section 5(1),
“criminal proceedings” has the meaning given in section 12(2),
“prescribed” means prescribed by regulations and “prescribe” shall be construed accordingly,
“regulations” means regulations made by the [^{F22} Secretary of State], and
“representation” means representation for the purposes of proceedings and includes the assistance which is usually given by a representative in the steps preliminary or incidental to any proceedings and, subject to any time limits which may be prescribed, advice and assistance as to any appeal.

Textual Amendments

- F22** Word in s. 26 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(a)**

PART II

OTHER FUNDING OF LEGAL SERVICES

Modifications etc. (not altering text)

- C9** Pt. 2: functions of the Lord Chancellor transferred (19.8.2003) to the Secretary of State by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 4, **Sch. 1** (with art. 6)
Pt. 2: functions of the Secretary of State transferred (12.1.2006) to the Lord Chancellor by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005 \(S.I. 2005/3429\)](#), **art. 3** (with arts. 4, 5)

Conditional fee and litigation funding agreements

27 Conditional fee agreements.

- (1) For section 58 of the ^{M5}Courts and Legal Services Act 1990 substitute—

“58 Conditional fee agreements.

- (1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its

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being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable.

- (2) For the purposes of this section and section 58A—
- (a) a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances; and
 - (b) a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances.
- (3) The following conditions are applicable to every conditional fee agreement—
- (a) it must be in writing;
 - (b) it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement; and
 - (c) it must comply with such requirements (if any) as may be prescribed by the Lord Chancellor.
- (4) The following further conditions are applicable to a conditional fee agreement which provides for a success fee—
- (a) it must relate to proceedings of a description specified by order made by the Lord Chancellor;
 - (b) it must state the percentage by which the amount of the fees which would be payable if it were not a conditional fee agreement is to be increased; and
 - (c) that percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates by order made by the Lord Chancellor.
- (5) If a conditional fee agreement is an agreement to which section 57 of the ^{M6}Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies, subsection (1) shall not make it unenforceable.

58A Conditional fee agreements: supplementary.

- (1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—
- (a) criminal proceedings, apart from proceedings under section 82 of the ^{M7}Environmental Protection Act 1990; and
 - (b) family proceedings.
- (2) In subsection (1) “family proceedings” means proceedings under any one or more of the following—
- (a) the ^{M8}Matrimonial Causes Act 1973;
 - (b) the ^{M9}Adoption Act 1976;
 - (c) the ^{M10}Domestic Proceedings and Magistrates’ Courts Act 1978;
 - (d) Part III of the ^{M11}Matrimonial and Family Proceedings Act 1984;
 - (e) Parts I, II and IV of the ^{M12}Children Act 1989;
 - (f) Part IV of the ^{M13}Family Law Act 1996; and

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- (g) the inherent jurisdiction of the High Court in relation to children.
- (3) The requirements which the Lord Chancellor may prescribe under section 58(3)(c)—
- (a) include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made; and
 - (b) may be different for different descriptions of conditional fee agreements (and, in particular, may be different for those which provide for a success fee and those which do not).
- (4) In section 58 and this section (and in the definitions of “advocacy services” and “litigation services” as they apply for their purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.
- (5) Before making an order under section 58(4), the Lord Chancellor shall consult—
- (a) the designated judges;
 - (b) the General Council of the Bar;
 - (c) the Law Society; and
 - (d) such other bodies as he considers appropriate.
- (6) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any fees payable under a conditional fee agreement which provides for a success fee.
- (7) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee).”
- (2) In section 120(4) of the ^{M14}Courts and Legal Services Act 1990 (orders and regulations subject to affirmative procedure), for “58,” substitute “ 58(4), ”.

Modifications etc. (not altering text)

C10 S. 27 excluded (1.4.2000) by S.I. 2000/900, art. 2(2)

Marginal Citations

M5 1990 c.41.
M6 1974 c.47.
M7 1990 c.43.
M8 1973 c.18.
M9 1976 c.36.
M10 1978 c.22.
M11 1984 c.42.
M12 1989 c.41.
M13 1996 c.27.
M14 1990 c.41.

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28 Litigation funding agreements.

In the Courts and Legal Services Act 1990, after section 58A (inserted by section 27 above) insert—

“58B Litigation funding agreements.

- (1) A litigation funding agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a litigation funding agreement.
- (2) For the purposes of this section a litigation funding agreement is an agreement under which—
 - (a) a person (“the funder”) agrees to fund (in whole or in part) the provision of advocacy or litigation services (by someone other than the funder) to another person (“the litigant”); and
 - (b) the litigant agrees to pay a sum to the funder in specified circumstances.
- (3) The following conditions are applicable to a litigation funding agreement—
 - (a) the funder must be a person, or person of a description, prescribed by the [F23 Secretary of State];
 - (b) the agreement must be in writing;
 - (c) the agreement must not relate to proceedings which by virtue of section 58A(1) and (2) cannot be the subject of an enforceable conditional fee agreement or to proceedings of any such description as may be prescribed by the [F23 Secretary of State];
 - (d) the agreement must comply with such requirements (if any) as may be so prescribed;
 - (e) the sum to be paid by the litigant must consist of any costs payable to him in respect of the proceedings to which the agreement relates together with an amount calculated by reference to the funder’s anticipated expenditure in funding the provision of the services; and
 - (f) that amount must not exceed such percentage of that anticipated expenditure as may be prescribed by the [F23 Secretary of State] in relation to proceedings of the description to which the agreement relates.
- (4) Regulations under subsection (3)(a) may require a person to be approved by the [F23 Secretary of State] or by a prescribed person.
- (5) The requirements which the [F23 Secretary of State] may prescribe under subsection (3)(d)—
 - (a) include requirements for the funder to have provided prescribed information to the litigant before the agreement is made; and
 - (b) may be different for different descriptions of litigation funding agreements.
- (6) In this section (and in the definitions of “advocacy services” and “litigation services” as they apply for its purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.

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- (7) Before making regulations under this section, the [^{F23} Secretary of State] shall consult—
- (a) the designated judges;
 - (b) the General Council of the Bar;
 - (c) the Law Society; and
 - (d) such other bodies as he considers appropriate.
- (8) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any amount payable under a litigation funding agreement.
- (9) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a litigation funding agreement.”

Textual Amendments

F23 Words in s. 28 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(b\)](#)

Costs

29 Recovery of insurance premiums by way of costs.

Where in any proceedings a costs order is made in favour of any party who has taken out an insurance policy against the risk of incurring a liability in those proceedings, the costs payable to him may, subject in the case of court proceedings to rules of court, include costs in respect of the premium of the policy.

Modifications etc. (not altering text)

C11 [S. 29](#) restricted (1.4.2000) by [S.I. 2000/900](#), [arts. 1, 3](#)

30 Recovery where body undertakes to meet costs liabilities.

- (1) This section applies where a body of a prescribed description undertakes to meet (in accordance with arrangements satisfying prescribed conditions) liabilities which members of the body or other persons who are parties to proceedings may incur to pay the costs of other parties to the proceedings.
- (2) If in any of the proceedings a costs order is made in favour of any of the members or other persons, the costs payable to him may, subject to subsection (3) and (in the case of court proceedings) to rules of court, include an additional amount in respect of any provision made by or on behalf of the body in connection with the proceedings against the risk of having to meet such liabilities.
- (3) But the additional amount shall not exceed a sum determined in a prescribed manner; and there may, in particular, be prescribed as a manner of determination one which takes into account the likely cost to the member or other person of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings.

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- (4) In this section “prescribed” means prescribed by regulations made by the [^{F24} Secretary of State] by statutory instrument; and a statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations under subsection (1) may, in particular, prescribe as a description of body one which is for the time being approved by the [^{F24} Secretary of State] or by a prescribed person.

Textual Amendments

F24 Words in s. 30 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(c\)](#)

Modifications etc. (not altering text)

C12 [S. 30](#) restricted (1.4.2000) by [S.I. 2000/900](#), art. 4

31 Rules as to costs.

In section 51 of the ^{M15}Supreme Court Act 1981 (costs), in subsection (2) (rules regulating matters relating to costs), insert at the end “ or for securing that the amount awarded to a party in respect of the costs to be paid by him to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs. ”

Marginal Citations

M15 [1981 c.54](#).

Legal aid in Scotland

32 Regulations about financial limits in certain proceedings.

In section 9(2) of the ^{M16}Legal Aid (Scotland) Act 1986 (application by regulations of Part II to assistance by way of representation), after paragraph (d) insert—

- “(dd) provide that assistance by way of representation shall be available in relation to such proceedings as may be prescribed, without reference to the financial limits under section 8 of this Act;
- (de) provide that section 11(2) of this Act shall not apply as respects assistance by way of representation received in relation to such proceedings as may be prescribed;”.

Marginal Citations

M16 [1986 c.47](#).

33 Recipients of disabled person’s tax credit.

^{F25}

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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Textual Amendments

- F25** S. 33 repealed (6.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), ss. 60, 61, [Sch. 6](#); S.I. 2003/962, [art. 2\(1\)\(3\)\(e\)](#), [Sch. 1](#) (subject to [arts. 3, 4](#) and with [art. 5](#))

34 References by Scottish Criminal Cases Review Commission.

In section 25(7) of the Legal Aid (Scotland) Act 1986 (legal aid in appeals), for “Secretary of State under section 124” substitute “ Scottish Criminal Cases Review Commission under section 194B ”.

PART III

PROVISION OF LEGAL SERVICES

Modifications etc. (not altering text)

- C13** [Pt. 3](#): functions of the Lord Chancellor transferred (19.8.2003) to the Secretary of State by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [art. 4](#), [Sch. 1](#) (with [art. 6](#))

Legal Services Consultative Panel

35 Replacement of ACLEC by Consultative Panel.

- (1) The Lord Chancellor’s Advisory Committee on Legal Education and Conduct is abolished.
- (2) In the ^{M17}Courts and Legal Services Act 1990, after section 18 insert—

“ The Legal Services Consultative Panel

18A The Consultative Panel.

- (1) The Lord Chancellor shall appoint persons to form a panel to be known as the Legal Services Consultative Panel.
- (2) In appointing persons to the Consultative Panel the Lord Chancellor shall have regard to the desirability of securing that the Consultative Panel includes persons who (between them) have experience in or knowledge of—
 - (a) the provision of legal services;
 - (b) the lay advice sector;
 - (c) civil or criminal proceedings and the working of the courts;
 - (d) legal education and training;
 - (e) the maintenance of the professional standards of persons who provide legal services;
 - (f) the maintenance of standards in professions other than the legal profession;
 - (g) consumer affairs;

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- (h) commercial affairs; and
 - (i) social conditions.
- (3) The Consultative Panel shall have—
- (a) the duty of assisting in the maintenance and development of standards in the education, training and conduct of persons offering legal services by considering relevant issues in accordance with a programme of work approved by the Lord Chancellor and, where the Consultative Panel considers it appropriate to do so, making recommendations to him;
 - (b) the duty of providing to the Lord Chancellor, at his request, advice about particular matters relating to any aspect of the provision of legal services (including the education, training and conduct of persons offering legal services); and
 - (c) the functions conferred or imposed on it by other provisions of this Act or any other enactment.
- (4) The Consultative Panel may, in performance of the duty in subsection (3)(a), seek information from or give advice to any body or person.
- (5) The Lord Chancellor shall publish—
- (a) any recommendations made to him by the Consultative Panel in performance of the duty in paragraph (a) of subsection (3); and
 - (b) any advice provided to him by the Consultative Panel in performance of the duty in paragraph (b) of that subsection.
- (6) The Lord Chancellor shall consider any recommendations made to him by the Consultative Panel in performance of the duty in subsection (3)(a).
- (7) The Lord Chancellor—
- (a) shall make available to the Consultative Panel appropriate administrative support; and
 - (b) may pay to any of the persons forming it any such allowances, and make any such reimbursement of expenses, as he considers appropriate.
- (8) For the purposes of the law of defamation the publication of any advice by the Consultative Panel in the exercise of any of its functions shall be absolutely privileged.”
- (3) In section 119(1) of that Act (interpretation), after the definition of “authorised practitioner” insert—
- ““Consultative Panel” means the Legal Services Consultative Panel;”
- (4) In Schedule 9 to that Act (exemption from prohibition on preparation of probate papers: approval)—
- (a) for “Advisory Committee” (in each place) substitute “ Consultative Panel ”,
 - (b) in paragraph 2(1), for “Advisory Committee’s” substitute “ Consultative Panel’s ”, and
 - (c) in paragraphs 2(3) and 8(3), for “Committee” (in each place) substitute “ Consultative Panel ”.

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(5) In the First Schedule to the ^{M18}Public Records Act 1958 (definition of public records), in Part II of the Table set out at the end of paragraph 3, insert at the appropriate place—

“The Legal Services Consultative Panel.”

Marginal Citations

M17 1990 c.41.

M18 1958 c.51.

Rights of audience and rights to conduct litigation

36 Barristers and solicitors.

For sections 31 to 33 of the ^{M19}Courts and Legal Services Act 1990 (deemed rights of barristers and solicitors) substitute—

“31 Barristers and solicitors.

- (1) Every barrister shall be deemed to have been granted by the General Council of the Bar a right of audience before every court in relation to all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the General Council of the Bar approved for the purposes of section 27 in relation to the right).
- (2) Every solicitor shall be deemed to have been granted by the Law Society—
 - (a) a right of audience before every court in relation to all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the Law Society approved for the purposes of section 27 in relation to the right); and
 - (b) a right to conduct litigation in relation to every court and all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the Law Society approved for the purposes of section 28 in relation to the right).
- (3) A person shall not have a right of audience by virtue of subsection (1) if—
 - (a) he has not been called to the Bar by an Inn of Court; or
 - (b) he has been disbarred, or is temporarily suspended from practice, by order of an Inn of Court.”

Marginal Citations

M19 1990 c.41.

37 Rights of audience: employed advocates.

In the ^{M20}Courts and Legal Services Act 1990, after section 31 (as substituted by section 36 above) insert—

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“31A Employed advocates.

- (1) Where a person who has a right of audience granted by an authorised body is employed as a Crown Prosecutor or in any other description of employment, any qualification regulations or rules of conduct of the body relating to that right which fall within subsection (2) shall not have effect in relation to him.
- (2) Qualification regulations or rules of conduct relating to a right granted by a body fall within this subsection if—
 - (a) they limit the courts before which, or proceedings in which, that right may be exercised by members of the body who are employed or limit the circumstances in which that right may be exercised by them by requiring them to be accompanied by some other person when exercising it; and
 - (b) they do not impose the same limitation on members of the body who have the right but are not employed.”

Marginal Citations

M20 1990 c.41.

38 Employees of Legal Services Commission.

In the Courts and Legal Services Act 1990, after section 31A (inserted by section 37 above) insert—

“31B Advocates and litigators employed by Legal Services Commission.

- (1) Where a person who has a right of audience or right to conduct litigation granted by an authorised body is employed by the Legal Services Commission, or by any body established and maintained by the Legal Services Commission, any rules of the authorised body which fall within subsection (2) shall not have effect in relation to him.
- (2) Rules of a body fall within this subsection if they are—
 - (a) rules of conduct prohibiting or limiting the exercise of the right on behalf of members of the public by members of the body who are employees; or
 - (b) rules of any other description prohibiting or limiting the provision of legal services to members of the public by such members of the body, and either of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are—
 - (a) that the prohibition or limitation is on the exercise of the right, or the provision of the services, otherwise than on the instructions of solicitors (or other persons acting for the members of the public); and
 - (b) that the rules do not impose the same prohibition or limitation on members of the body who have the right but are not employees.”

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.
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39 Rights of audience: change of authorised body.

In the ^{M21}Courts and Legal Services Act 1990, after section 31B (inserted by section 38 above) insert—

“31C Change of authorised body.

- (1) Where a person—
 - (a) has at any time had, and been entitled to exercise, a right of audience before a court in relation to proceedings of any description granted by one authorised body; and
 - (b) becomes a member of another authorised body and has a right of audience before that court in relation to that description of proceedings granted by that body,any qualification regulations of that body relating to that right shall not have effect in relation to him.
- (2) Subsection (1) does not apply in relation to any qualification regulations to the extent that they impose requirements relating to continuing education or training which have effect in relation to the exercise of the right by all members of the body who have the right.
- (3) Subsection (1) does not apply to a person if he has been banned from exercising the right of audience by the body mentioned in paragraph (a) of that subsection as a result of disciplinary proceedings and that body has not lifted the ban.”

Marginal Citations

M21 1990 c.41.

40 Rights to conduct litigation: barristers and legal executives.

- (1) Section 28 of the Courts and Legal Services Act 1990 (rights to conduct litigation) is amended as follows.
- (2) In the definition of “authorised body” in subsection (5), after paragraph (a) (which specifies the Law Society), insert—
 - “(aa) the General Council of the Bar;
 - (ab) the Institute of Legal Executives; and”.
- (3) After that subsection insert—

“(5A) Nothing in this section shall be taken to require the General Council of the Bar or the Institute of Legal Executives to grant a right to conduct litigation.”

41 Authorised bodies: designation and regulations and rules.

Schedule 5 (which substitutes new provisions for sections 29 and 30 of, and Schedule 4 to, the Courts and Legal Services Act 1990) has effect.

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42 Overriding duties of advocates and litigators.

- (1) In section 27 of the ^{M22}Courts and Legal Services Act 1990 (rights of audience), after subsection (2) insert—

“(2A) Every person who exercises before any court a right of audience granted by an authorised body has—

- (a) a duty to the court to act with independence in the interests of justice; and
- (b) a duty to comply with rules of conduct of the body relating to the right and approved for the purposes of this section;

and those duties shall override any obligation which the person may have (otherwise than under the criminal law) if it is inconsistent with them.”

- (2) In section 28 of that Act (rights to conduct litigation), after subsection (2) insert—

“(2A) Every person who exercises in relation to proceedings in any court a right to conduct litigation granted by an authorised body has—

- (a) a duty to the court to act with independence in the interests of justice; and
- (b) a duty to comply with rules of conduct of the body relating to the right and approved for the purposes of this section;

and those duties shall override any obligation which the person may have (otherwise than under the criminal law) if it is inconsistent with them.”

Marginal Citations

M22 1990 c.41.

43 Minor and consequential amendments.

Schedule 6 (which makes minor and consequential amendments relating to rights of audience and rights to conduct litigation) has effect.

Commencement Information

I2 S. 43 wholly in force at 1.1.2000; s. 43 not in force at Royal Assent see s. 108(1); s. 43 in force for certain purposes at 27.9.1999 by S.I. 1999/2657, art. 2(a); s. 43 in force at 1.1.2000 insofar as not already in force by S.I. 1999/3344, art. 2(a) (with art. 4)

Barristers and solicitors

44 Barristers employed by solicitors etc.

- (1) Where a barrister is employed by—

- (a) a solicitor or other authorised litigator (within the meaning of the ^{M23}Courts and Legal Services Act 1990), or
- (b) a body recognised under section 9 of the ^{M24}Administration of Justice Act 1985 (incorporated solicitors' practices),

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any rules of the General Council of the Bar which impose a prohibition or limitation on the provision of legal services shall not operate to prevent him from providing legal services to clients of his employer if either of the conditions specified in subsection (2) is satisfied.

- (2) Those conditions are—
- (a) that the prohibition or limitation is on the provision of the services otherwise than on the instructions of a solicitor (or other person acting for the client), and
 - (b) that the prohibition or limitation does not apply to barristers who provide legal services but are not employees.

Marginal Citations

M23 1990 c.41.

M24 1985 c.61.

45 Fees on application for appointment as Queen’s Counsel.

- (1) A person who applies to the [^{F26} Secretary of State] to be recommended for appointment as Queen’s Counsel in England and Wales shall pay a fee to the [^{F26} Secretary of State].
- (2) The amount of the fee shall be specified by order made by the [^{F26} Secretary of State]; and in determining that amount the [^{F26} Secretary of State] shall have regard to the expenses incurred by him in considering such applications.
- (3) An order under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section does not affect section 9 of the ^{M25}Great Seal (Offices) Act 1874 (under which fees are charged in respect of the grant of Letters Patent under the Great Seal for appointment as Queen’s Counsel).

Textual Amendments

F26 Words in s. 45 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(c)**

Marginal Citations

M25 1874 c.81.

46 Bar practising certificates.

- (1) If the General Council of the Bar makes rules prohibiting barristers from practising as specified in the rules unless authorised by a certificate issued by the Council (a “practising certificate”), the rules may include provision requiring the payment of fees to the Council by applicants for practising certificates.
- (2) Rules made by virtue of subsection (1)—
 - (a) may provide for the payment of different fees by different descriptions of applicants, but

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- (b) may not set fees with a view to raising a total amount in excess of that applied by the Council for the purposes of.
 - [^{F27}(i)] the regulation, education and training of barristers and those wishing to become barristers
 - [^{F28}(ii)] the participation by the Council in law reform and the legislative process,
 - (iii) the provision by barristers and those wishing to become barristers of free legal services to the public,
 - (iv) the promotion of the protection by law of human rights and fundamental freedoms, and
 - (v) the promotion of relations between the Council and bodies representing the members of legal professions in jurisdictions other than England and Wales.]
- (3) The [^{F29} Secretary of State] may by order made by statutory instrument—
 - (a) amend subsection (2)(b) by adding to the purposes referred to in it such other purposes as the [^{F29} Secretary of State] considers appropriate, or
 - (b) vary or revoke an order under paragraph (a).
- (4) No order shall be made under subsection (3) unless—
 - (a) the [^{F29} Secretary of State] has consulted the Council, and
 - (b) a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) No provision included in rules by virtue of subsection (1), and no other provision of rules made by the Council about practising certificates, shall have effect unless approved by the [^{F29} Secretary of State].
- (6) The Council shall provide the [^{F29} Secretary of State] with such information as he may reasonably require for deciding whether to approve any provision of rules made by the Council about practising certificates.

Textual Amendments

F27 S. 46(2)(b)(i) renumbered (31.1.2001) by S.I. 2001/135, art. 2

F28 S. 46(2)(b)(ii)-(v) inserted (31.1.2001) by S.I. 2001/135, art. 2

F29 Words in s. 46 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 11(1)(c)

47 Fees for solicitors' practising certificates.

- (1) The [^{F30} Secretary of State] may by order made by statutory instrument amend section 11(3) of the ^{M26}Solicitors Act 1974 (power of Law Society to apply fees payable on issue of practising certificates for any of its purposes) by substituting for the purposes referred to in it (at any time)—
 - (a) the purposes of the regulation, education and training of solicitors and those wishing to become solicitors, or
 - (b) both those purposes and such other purposes as the [^{F30} Secretary of State] considers appropriate.
- (2) No order shall be made under this section unless—

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- (a) the [^{F30} Secretary of State] has consulted the Master of the Rolls and the Law Society, and
- (b) a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

Textual Amendments

F30 Words in s. 47 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 11(1)(c)

Marginal Citations

M26 1974 c.47.

48 Law Society’s powers in relation to conduct of solicitors etc.

Schedule 7 (which extends the powers of the Law Society in relation to the conduct of solicitors and their employees and consultants) has effect.

Legal Services Ombudsman

49 Powers of Ombudsman.

- (1) Section 23 of the ^{M27}Courts and Legal Services Act 1990 (recommendations of the Legal Services Ombudsman) is amended as follows.
- (2) In subsection (1)(c) (written report of investigation to be sent to person with respect to whom recommendation is made), after “subsection (2)” insert “ or an order under subsection (2A) ”.
- (3) In paragraph (e) of subsection (2) (recommendation that costs be paid by person or body to which recommendation under paragraph (c) or (d) applies), for “which a recommendation under paragraph (c) or (d) applies” substitute “ pay compensation under paragraph (c) or (d) ”.
- (4) After that subsection insert—

“(2A) If after completing any investigation under this Act the Ombudsman considers that, rather than recommending the taking of any action by any person or professional body under paragraph (c), (d) or (e) of subsection (2), he should make an order requiring the taking of that action by the person or body—

 - (a) he shall afford the person or body, and the person who made the allegation, a reasonable opportunity of appearing before him to make representations; and
 - (b) having considered any representations from them, he may, in reporting his conclusions, make the order.”
- (5) In subsections (3) and (4) (reports), after “recommendation” (in each place) insert “ or order ”.
- (6) In subsection (6) (duty to have regard to Ombudsman’s report), for “subsection (1)(b) or (c)” substitute “ subsection (1)(b), (c) or (d) ”.
- (7) For the sidenote substitute “ Recommendations and orders. ”

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Marginal Citations

M27 1990 c.41.

50 Funding of Ombudsman by professional bodies.

In paragraph 7 of Schedule 3 to the Courts and Legal Services Act 1990 (financial provisions relating to Legal Services Ombudsman), for sub-paragraph (1) (Ombudsman’s expenses to be defrayed by [^{F31} Secretary of State]) substitute—

“(1) The [^{F31} Secretary of State] may require any professional body (within the meaning of section 22 of this Act) to make payments of such amount as the [^{F31} Secretary of State] considers appropriate to the Ombudsman towards meeting the expenditure incurred (or to be incurred) by him in the discharge of his functions.

(1A) To the extent that that expenditure is not met by payments under sub-paragraph (1), it shall be met by the [^{F31} Secretary of State] out of money provided by Parliament.”

Textual Amendments

F31 Words in s. 50 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(d)**

VALID FROM 01/11/2003

Legal Services Complaints Commissioner

51 Commissioner.

- (1) The [^{F32} Secretary of State] may appoint a person as Legal Services Complaints Commissioner.
- (2) Any appointment of a person as Commissioner shall be for a period of not more than three years; and a person appointed as Commissioner shall hold and vacate office in accordance with the terms of his appointment.
- (3) At the end of his term of appointment the Commissioner shall be eligible for re-appointment.
- (4) The Commissioner shall not be an authorised advocate, authorised litigator, licensed conveyancer or authorised practitioner (within the meaning of the ^{M28}Courts and Legal Services Act 1990) or a notary.
- (5) Schedule 8 (which makes further provision about the Commissioner) has effect.

Textual Amendments

F32 Words in s. 51 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(e)**

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Marginal Citations

M28 1990 c.41.

52 Commissioner's functions.

- (1) If it appears to the [^{F33}Secretary of State] that complaints about members of any professional body are not being handled effectively and efficiently, he may by direction require the Legal Services Complaints Commissioner to consider exercising in relation to the body such of the powers in subsection (2) as are specified in the direction.
- (2) Those powers are—
 - (a) to require a professional body to provide information, or make reports, to the Commissioner about the handling of complaints about its members,
 - (b) to investigate the handling of complaints about the members of a professional body,
 - (c) to make recommendations in relation to the handling of complaints about the members of a professional body,
 - (d) to set targets in relation to the handling of complaints about the members of a professional body, and
 - (e) to require a professional body to submit to the Commissioner a plan for the handling of complaints about its members.
- (3) Where the Commissioner requires a professional body to submit to him a plan for the handling of complaints about its members but the body—
 - (a) fails to submit to him a plan which he considers adequate for securing that such complaints are handled effectively and efficiently, or
 - (b) submits to him such a plan but fails to handle complaints in accordance with it,he may require the body to pay a penalty.
- (4) Before requiring a professional body to pay a penalty under subsection (3) the Commissioner shall afford it a reasonable opportunity of appearing before him to make representations.
- (5) The [^{F33} Secretary of State] shall by order made by statutory instrument specify the maximum amount of any penalty under subsection (3).
- (6) In determining the amount of any penalty which a professional body is to be required to pay under subsection (3) the Commissioner shall have regard to all the circumstances of the case, including in particular—
 - (a) the total number of complaints about members of the body and, where the penalty is imposed in respect of a failure to handle complaints in accordance with a plan, the number of complaints not so handled, and
 - (b) the assets of the body and the number of its members.
- (7) A penalty under subsection (3) shall be paid to the Commissioner who shall pay it to the [^{F33} Secretary of State].
- (8) Where a direction under subsection (1) in relation to a professional body has been given (and not revoked), section 24(1) of the ^{M29}Courts and Legal Services Act 1990 (power of Legal Services Ombudsman to make recommendations about

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arrangements for investigation of complaints) shall not have effect in relation to the body.

- (9) No order shall be made under subsection (5) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (10) In this section “professional body” has the same meaning as in section 22 of the Courts and Legal Services Act 1990.

Textual Amendments

F33 Words in s. 52 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(e)**

Marginal Citations

M29 1990 c.41.

Public notaries

53 Abolition of scriveners’ monopoly.

A public notary may practise as a notary in, or within three miles of, the City of London whether or not he is a member of the Incorporated Company of Scriveners of London (even if he is admitted to practise only outside that area).

PART IV

APPEALS, COURTS, JUDGES AND COURT PROCEEDINGS

Appeals

54 Permission to appeal.

- (1) Rules of court may provide that any right of appeal to—
- (a) a county court,
 - (b) the High Court, or
 - (c) the Court of Appeal,
- may be exercised only with permission.
- (2) This section does not apply to a right of appeal in a criminal cause or matter.
- (3) For the purposes of subsection (1) rules of court may make provision as to—
- (a) the classes of case in which a right of appeal may be exercised only with permission,
 - (b) the court or courts which may give permission for the purposes of this section,
 - (c) any considerations to be taken into account in deciding whether permission should be given, and
 - (d) any requirements to be satisfied before permission may be given,
- and may make different provision for different circumstances.

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- (4) No appeal may be made against a decision of a court under this section to give or refuse permission (but this subsection does not affect any right under rules of court to make a further application for permission to the same or another court).
- (5) For the purposes of this section a right to make an application to have a case stated for the opinion of the High Court constitutes a right of appeal.
- (6) For the purposes of this section a right of appeal to the Court of Appeal includes—
 - (a) the right to make an application for a new trial, and
 - (b) the right to make an application to set aside a verdict, finding or judgment in any cause or matter in the High Court which has been tried, or in which any issue has been tried, by a jury.

55 Second appeals.

- (1) Where an appeal is made to a county court or the High Court in relation to any matter, and on hearing the appeal the court makes a decision in relation to that matter, no appeal may be made to the Court of Appeal from that decision unless the Court of Appeal considers that—
 - (a) the appeal would raise an important point of principle or practice, or
 - (b) there is some other compelling reason for the Court of Appeal to hear it.
- (2) This section does not apply in relation to an appeal in a criminal cause or matter.

56 Power to prescribe alternative destination of appeals.

- (1) The Lord Chancellor may by order provide that appeals which would otherwise lie to—
 - (a) a county court,
 - (b) the High Court, or
 - (c) the Court of Appeal,shall lie instead to another of those courts, as specified in the order.
- (2) This section does not apply to an appeal in a criminal cause or matter.
- (3) An order under subsection (1)—
 - (a) may make different provision for different classes of proceedings or appeals, and
 - (b) may contain consequential amendments or repeals of enactments.
- (4) Before making an order under subsection (1) the Lord Chancellor shall consult—
 - (a) the Lord Chief Justice,
 - (b) the Master of the Rolls,
 - (c) the President of the Family Division, and
 - (d) the Vice-Chancellor.
- (5) An order under subsection (1) shall be made by statutory instrument.
- (6) No such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

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- (7) For the purposes of this section an application to have a case stated for the opinion of the High Court constitutes an appeal.

57 Assignment of appeals to Court of Appeal.

- (1) Where in any proceedings in a county court or the High Court a person appeals, or seeks permission to appeal, to a court other than the Court of Appeal or the House of Lords—
- (a) the Master of the Rolls, or
 - (b) the court from which or to which the appeal is made, or from which permission to appeal is sought,
- may direct that the appeal shall be heard instead by the Court of Appeal.
- (2) The power conferred by subsection (1)(b) shall be subject to rules of court.

58 Criminal appeals: minor amendments.

- ^{F34}(1)
- (2) In section 8(1B)(b) of the Criminal Appeal Act 1968 (power of Court to direct entry of judgment and verdict of acquittal on applications relating to order for retrial), after “to” insert “ set aside the order for retrial and ”.
- (3) In section 9(2) of that Act (right of appeal against sentence for summary offence), insert at the end “ or sub-paragraph (4) of that paragraph. ”
- (4) Section 10 of that Act (appeal to Court of Appeal by person dealt with by Crown Court for offence of which he was not convicted on indictment) is amended in accordance with subsections (5) to (7).
- (5) In subsection (2) (proceedings from which an appeal lies), insert at the end “; or
- (c) having been released under Part II of the Criminal Justice Act 1991 after serving part of a sentence of imprisonment or detention imposed for the offence, is ordered by the Crown Court to be returned to prison or detention.”
- ^{F34}(6)
- (7) In subsection (4) (calculation of length of term of imprisonment), after “imprisonment” insert “ or detention ”.

Textual Amendments

- F34** S. 58(1)(6) repealed (25.8.2000) by 2000 c. 6, ss. 165(4), 168(1), **Sch. 12 Pt. I** (with Sch. 11 paras. 1, 2)

Civil division of Court of Appeal

59 Composition.

In section 54 of the ^{M30}Supreme Court Act 1981 (composition of court of civil division of Court of Appeal), for subsections (2) to (4) (number of judges) substitute—

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- “(2) Subject as follows, a court shall be duly constituted for the purpose of exercising any of its jurisdiction if it consists of one or more judges.
- (3) The Master of the Rolls may, with the concurrence of the Lord Chancellor, give (or vary or revoke) directions about the minimum number of judges of which a court must consist if it is to be duly constituted for the purpose of any description of proceedings.
- (4) The Master of the Rolls, or any Lord Justice of Appeal designated by him, may (subject to any directions under subsection (3)) determine the number of judges of which a court is to consist for the purpose of any particular proceedings.
- (4A) The Master of the Rolls may give directions as to what is to happen in any particular case where one or more members of a court which has partly heard proceedings are unable to continue.”

Marginal Citations

M30 1981 c.54.

60 Calling into question of incidental decisions.

For section 58 of the Supreme Court Act 1981 (exercise of incidental jurisdiction in civil division of Court of Appeal) substitute—

“58 Calling into question of incidental decisions in civil division.

- (1) Rules of court may provide that decisions of the Court of Appeal which—
- (a) are taken by a single judge or any officer or member of staff of that court in proceedings incidental to any cause or matter pending before the civil division of that court; and
 - (b) do not involve the determination of an appeal or of an application for permission to appeal,
- may be called into question in such manner as may be prescribed.
- (2) No appeal shall lie to the House of Lords from a decision which may be called into question pursuant to rules under subsection (1).”

High Court

61 Cases stated by Crown Court.

For section 28A of the Supreme Court Act 1981 (proceedings on case stated by magistrates’ court) substitute—

“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 ^{M31}Magistrates’ Courts Act 1980; or
 - (b) by the Crown Court under section 28(1) of this Act.

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- (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 ^{M32}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.”

Marginal Citations

M31 1980 c.43.

M32 1960 c.65.

62 Power to vary committal in default.

In the ^{M33}Supreme Court Act 1981, after section 43 insert—

“43ZA Power of High Court to vary committal in default.

- (1) Where the High Court quashes the committal of a person to prison or detention by a magistrates’ court or the Crown Court for—
 - (a) a default in paying a sum adjudged to be paid by a conviction; or
 - (b) want of sufficient distress to satisfy such a sum,
 the High Court may deal with the person for the default or want of sufficient distress in any way in which the magistrates’ court or Crown Court would have power to deal with him if it were dealing with him at the time when the committal is quashed.
- (2) If the High Court commits him to prison or detention, the period of imprisonment or detention shall, unless the High Court otherwise directs, be treated as having begun when the person was committed by the magistrates’ court or the Crown Court (except that any time during which he was released on bail shall not be counted as part of the period).”

Marginal Citations

M33 1981 c.54.

63 Criminal causes and matters.

- (1) In section 1(1)(a) of the Administration of Justice Act 1960 (appeal to House of Lords from decision of Divisional Court of the Queen’s Bench Division in a criminal cause

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or matter), for “a Divisional Court of the Queen’s Bench Division” substitute “ the High Court ”.

(2) In sections 4(2) and (3) and 9(2) of that Act (bail pending appeal), for “a Divisional Court” substitute “ the High Court ”.

64 Contempt of court.

(1) Section 13(2) of the Administration of Justice Act 1960 (appeals in cases of contempt of court) is amended as follows.

(2) In paragraph (a) (appeal from inferior courts from which appeal does not lie to Court of Appeal to lie to a Divisional Court of the High Court), omit “a Divisional Court of”.

(3) In paragraph (b) (appeal to Court of Appeal from county court or single judge of High Court), for “decision, of a single” substitute “ decision (other than a decision on an appeal under this section) of a single ”.

(4) In paragraph (c) (appeal from Divisional Court or Court of Appeal to House of Lords), insert at the beginning “ from a decision of a single judge of the High Court on an appeal under this section, ”.

65 Habeas corpus.

(1) In the ^{M34}Administration of Justice Act 1960, omit—

(a) section 14(1) (order for release on criminal application for habeas corpus to be refused only by Divisional Court of Queen’s Bench Division), and

(b) section 15(2) (no appeal to House of Lords from order made by single judge on criminal application for habeas corpus).

(2) In section 15 of that Act (appeals in habeas corpus cases)—

(a) in subsection (3) (no restriction on grant of leave to appeal to House of Lords against decision of Divisional Court on a criminal application for habeas corpus), and

(b) in subsection (4) (exceptions to right to be discharged in case of appeal to House of Lords against order of Divisional Court on such an application),

for “a Divisional Court” substitute “ the High Court ”.

Marginal Citations

M34 1960 c.65.

Crown Court

^{F35}66

Textual Amendments

F35 S. 66 repealed (25.8.2000) by 2000 c. 6, ss. 165(4), 168(1), Sch. 12 Pt. I (with Sch. 11 paras. 1, 2)

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67 Time limits where accused sent for trial.

- (1) In paragraph 1 of Schedule 3 to the ^{M35}Crime and Disorder Act 1998 (regulations about service of evidence where a person is sent without committal proceedings to Crown Court)—
 - (a) in sub-paragraph (1) (regulations to provide that evidence be served on or before the relevant date) omit the words “on or before the relevant date” and after paragraph (b) insert “ before the expiry of the period prescribed by the regulations; but the judge may at his discretion extend or further extend that period. ”, and
 - (b) for sub-paragraph (2) substitute—
 - “(2) The regulations may make provision as to the procedure to be followed on an application for the extension or further extension of a period under sub-paragraph (1) above.”
- (2) In section 13(1) of the ^{M36}Criminal Procedure and Investigations Act 1996 (transitional time limits relating to service of unused material), after paragraph (c) insert—
 - “(ca) copies of the documents containing the evidence on which the charge or charges are based are served on the accused (where this Part applies by virtue of section 1(2)(cc)),”.
- (3) In section 22 of the ^{M37}Prosecution of Offences Act 1985 (time limits in preliminary stages of criminal proceedings), in paragraph (a) of the definition of “appropriate court” in subsection (11) (which has effect so as to allow the Crown Court to extend time limits where the accused is committed for trial or indicted), after “trial” insert “, sent for trial under section 51 of the ^{M38}Crime and Disorder Act 1998 ”.

Commencement Information

I3 S. 67 partly in force; s. 67 not in force at Royal Assent see s. 108(1); s. 67(1)(3) in force at 27.9.1999 see s. 108(3)(b); s. 67(2) in force for certain areas at 27.9.1999 by S.I. 1999/2657, art. 2(b), **Sch. 1**; s. 67(2) in force insofar as not already in force (8.1.2001) by S.I. 2000/3280, **art. 2(a)**

Marginal Citations

M35 1998 c.37.
M36 1996 c.25.
M37 1985 c.23.
M38 1998 c.37.

Judges etc.

68 Judges holding office in European or international courts.

- (1) A holder of a United Kingdom judicial office may hold office in a relevant international court without being required to relinquish the United Kingdom judicial office.
- (2) In this section—
 - “United Kingdom judicial office” means the office of—
 - (a) Lord Justice of Appeal, Justice of the High Court or Circuit judge, in England and Wales,

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- (b) judge of the Court of Session or sheriff, in Scotland, or
 - (c) Lord Justice of Appeal, judge of the High Court or county court judge, in Northern Ireland, and
- “relevant international court” means—
- (a) any court established for any purposes of the European Communities, or
 - (b) any international court (apart from the European Court of Human Rights) which is designated for the purposes of this section by the Lord Chancellor or the Secretary of State.
- (3) A holder of a United Kingdom judicial office who also holds office in a relevant international court is not required to perform any duties as the holder of the United Kingdom judicial office but does not count as holding the United Kingdom judicial office—
- (a) for the purposes of section 12(1) to (6) of the ^{M39}Supreme Court Act 1981, section 9(1)(c) or (d) of the ^{M40}Administration of Justice Act 1973, section 18 of the ^{M41}Courts Act 1971, section 14 of the ^{M42}Sheriff Courts (Scotland) Act 1907 or section 106 of the ^{M43}County Courts Act (Northern Ireland) 1959 (judicial salaries),
 - (b) for the purposes of, or of any scheme established by and in accordance with, the ^{M44}Judicial Pensions and Retirement Act 1993, the ^{M45}Judicial Pensions Act 1981, the ^{M46}Sheriffs’ Pensions (Scotland) Act 1961 or the County Courts Act (Northern Ireland) 1959 (judicial pensions), or
 - (c) for the purposes of section 2(1) or 4(1) of the Supreme Court Act 1981, section 1(1) of the ^{M47}Court of Session Act 1988 or section 2(1) or 3(1) of the ^{M48}Judicature (Northern Ireland) Act 1978 (judicial numbers).
- (4) If the sheriff principal of any sheriffdom also holds office in a relevant international court, section 11(1) of the ^{M49}Sheriff Courts (Scotland) Act 1971 (temporary appointment of sheriff principal) applies as if the office of sheriff principal of that sheriffdom were vacant.
- (5) The appropriate Minister may by order made by statutory instrument make in relation to a holder of a United Kingdom judicial office who has ceased to hold office in a relevant international court such transitional provision (including, in particular, provision for a temporary increase in the maximum number of judges) as he considers appropriate.
- (6) In subsection (5) “the appropriate Minister” means—
- (a) in relation to any United Kingdom judicial office specified in paragraph (a) or (c) of the definition in subsection (2), the Lord Chancellor, and
 - (b) in relation to any United Kingdom judicial office specified in paragraph (b) of that definition, the Secretary of State.
- (7) A statutory instrument containing an order made under subsection (5) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C14 S. 68(3)(b) excluded (1.9.2001) by 2001 c. 17, s. 1(3), **Sch. 1 para. 7(5)(a)** (with s. 78); S.I. 2001/2161, **art. 2**

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Marginal Citations

- M39** 1981 c.54.
- M40** 1973 c.15.
- M41** 1971 c.23.
- M42** 1907 c.51.
- M43** 1959 c.25(N.I.).
- M44** 1993 c.8.
- M45** 1981 c.20.
- M46** 1961 c.42.
- M47** 1988 c.36.
- M48** 1978 c.23.
- M49** 1971 c.58.

69 Vice-president of Queen’s Bench Division.

- (1) The Lord Chancellor may appoint one of the ordinary judges of the Court of Appeal as vice-president of the Queen’s Bench Division; and any person so appointed shall hold that office in accordance with the terms of his appointment.
- (2) In section 4 of the ^{M50}Supreme Court Act 1981 (composition of High Court)—
 - (a) in subsection (1) (membership), after the words “the Senior Presiding Judge;” insert—

“(ddd) the vice-president of the Queen’s Bench Division;”,
 - (b) in subsection (6) (vacancy in offices not to affect constitution), at the end insert “ and whether or not an appointment has been made to the office of vice-president of the Queen’s Bench Division. ”
- (3) In section 5 of that Act (divisions of High Court), in subsection (1)(b) (Queen’s Bench Division), after “thereof,” insert “ the vice-president of the Queen’s Bench Division ”.

Marginal Citations

- M50** 1981 c.54.

70 Registrar of civil appeals.

The office of registrar of civil appeals is abolished.

Modifications etc. (not altering text)

- C15** S. 70 restricted (27.9.1999) by S.I. 1999/2689, art. 2 (with art. 3)

Court proceedings

71 Adjournment of inquest in event of judicial inquiry.

- (1) In the ^{M51}Coroners Act 1988, after section 17 insert—

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“17A Adjournment of inquest in event of judicial inquiry.

- (1) If on an inquest into a death the coroner is informed by the Lord Chancellor before the conclusion of the inquest that—
 - (a) a public inquiry conducted or chaired by a judge is being, or is to be, held into the events surrounding the death; and
 - (b) the Lord Chancellor considers that the cause of death is likely to be adequately investigated by the inquiry,the coroner shall, in the absence of any exceptional reason to the contrary, adjourn the inquest and, if a jury has been summoned, may, if he thinks fit, discharge them.
 - (2) Where a coroner adjourns an inquest in compliance with subsection (1) above, he shall send to the registrar of deaths a certificate under his hand stating, so far as they have been ascertained at the date of the certificate, the particulars which under the 1953 Act are required to be registered concerning the death.
 - (3) Where a coroner has adjourned an inquest in compliance with subsection (1) above, the Lord Chancellor shall send him the findings of the public inquiry as soon as reasonably practicable after their publication.
 - (4) A coroner may only resume an inquest which has been adjourned in compliance with subsection (1) above if in his opinion there is exceptional reason for doing so; and he shall not do so—
 - (a) before the end of the period of 28 days beginning with the day on which the findings of the public inquiry are published; or
 - (b) if the Lord Chancellor notifies the coroner that this paragraph applies, before the end of the period of 28 days beginning with the day on which the public inquiry is concluded.
 - (5) Where a coroner resumes an inquest which has been adjourned in compliance with subsection (1) above—
 - (a) the provisions of section 8(3) above shall not apply in relation to that inquest; and
 - (b) if he summons a jury (but not where he resumes without a jury, or with the same jury as before the adjournment), he shall proceed in all respects as if the inquest had not previously begun and the provisions of this Act shall apply accordingly as if the resumed inquest were a fresh inquest.
 - (6) Where a coroner does not resume an inquest which he has adjourned in compliance with subsection (1) above, he shall (without prejudice to subsection (2) above) send to the registrar of deaths a certificate under his hand stating any findings of the public inquiry in relation to the death.”
- (2) In section 8(4) of that Act (power to summon jury), for “either before he proceeds to hold an inquest” substitute “ before he proceeds to hold an inquest, on resuming an inquest begun with a jury after the inquest has been adjourned and the jury discharged ”.
 - (3) In the sidenote to section 16 of that Act (adjournment of inquest in certain cases), for “certain cases” substitute “ event of criminal proceedings ”.

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Marginal Citations

M51 1988 c.13.

72 Reporting of proceedings relating to children.

In section 97 of the ^{M52}Children Act 1989 (privacy for children involved in certain proceedings)—

- (a) in subsection (2) (which prohibits the publication of material intended or likely to identify a child as being involved in proceedings before a magistrates' court in which powers under that Act may be exercised), after “before” insert “ the High Court, a county court or ”, and
- (b) in subsection (8) (which makes provision about the application of certain provisions of the ^{M53}Magistrates' Courts Act 1980 in relation to proceedings to which section 97 applies), after “any proceedings” insert “ (before a magistrates' court) ”.

Marginal Citations

M52 1989 c.41.

M53 1980 c.43.

73 Power to allow children to attend criminal proceedings.

- (1) In section 36 of the ^{M54}Children and Young Persons Act 1933 (child not to be present at criminal trial except where required as witness or otherwise for the purposes of justice), after “justice” insert “ or while the court consents to his presence ”.
- (2) In section 50(1) of the ^{M55}Criminal Procedure (Scotland) Act 1995 (child not to be present at criminal proceedings unless required as witness or otherwise for the purposes of justice), after “justice” insert “ or the court consents to his presence ”.

Marginal Citations

M54 1933 c.12.

M55 1995 c.46.

PART V

MAGISTRATES AND MAGISTRATES' COURTS

Territorial organisation

74 Commission areas.

- (1) For sections 1 and 2 of the ^{M56}Justices of the Peace Act 1997 (commission areas outside London and London commission areas) substitute—

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“1 Commission areas.

- (1) England and Wales shall be divided into areas for each of which there shall be a commission of the peace.
- (2) The areas shall be as specified by the Lord Chancellor by order made by statutory instrument; but a commission area may not consist of an area partly within and partly outside Greater London.
- (3) An area for which there is a commission of the peace shall be known as a commission area.”

(2) In that Act, after section 32 insert—

“32A Alteration of commission areas.

- (1) A magistrates' courts committee may at any time submit to the Lord Chancellor written proposals for an alteration of any commission area which includes the whole or any part of their area.
- (2) Before submitting such proposals the magistrates' courts committee shall consult—
 - (a) the magistrates for their area or that of any affected magistrates' courts committee; and
 - (b) any affected magistrates' courts committee.
- (3) Before making an order under section 1(2) above which makes an alteration of a commission area, other than an order which implements proposals submitted to him under subsection (1) above, the Lord Chancellor shall consult—
 - (a) the magistrates for the area of any affected magistrates' courts committee; and
 - (b) any affected magistrates' courts committee.
- (4) For the purposes of subsection (3) above an order shall be taken to implement proposals if it implements them without changes or any departures from the proposals do not, in the opinion of the Lord Chancellor, effect important changes in the proposals.
- (5) An order under section 1(2) above which makes an alteration of a commission area may contain such consequential and transitional provisions as appear to the Lord Chancellor to be necessary or expedient.
- (6) A statutory instrument containing an order under section 1(2) above which makes an alteration of a commission area shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section references to the alteration of a commission area include (as well as a change in the boundaries of the area)—
 - (a) the combination of the area with another commission area; and
 - (b) the division of the area between two or more commission areas.
- (8) For the purposes of this section a magistrates' courts committee is affected by proposals or a proposed order if the alteration proposed would affect any commission area which includes the whole or any part of their area.”

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Marginal Citations

M56 1997 c.25.

75 Petty sessions areas.

- (1) For section 4 of the ^{M57}Justices of the Peace Act 1997 (petty sessions areas and petty sessional divisions) substitute—

“4 Petty sessions areas.

- (1) England and Wales shall also be divided into areas known as petty sessions areas.
 - (2) The areas and their names shall be as specified by the Lord Chancellor by order made by statutory instrument.
 - (3) Each petty sessions area shall consist of either—
 - (a) the whole of a commission area; or
 - (b) an area wholly included within a commission area.”
- (2) For section 33 of that Act (functions of magistrates' courts committee as to petty sessional divisions and related procedure) substitute—

“33 Alteration of petty sessions areas.

- (1) A magistrates' courts committee may at any time submit to the Lord Chancellor a draft order which makes an alteration of a petty sessions area for which they are the committee.
- (2) A magistrates' courts committee shall, if directed to do so by the Lord Chancellor, consider whether any alteration is required to any petty sessions area for which they are the committee and, on completion of its consideration, shall submit to the Lord Chancellor either—
 - (a) a draft order under subsection (1) above; or
 - (b) a report giving reasons for no alteration.
- (3) The Lord Chancellor may only make an order under section 4(2) above which makes an alteration of a petty sessions area where—
 - (a) the magistrates' courts committee for the area have submitted a draft order to him under subsection (1) above and the alteration made by the order is in the terms of the draft or subject only to such modifications as the Lord Chancellor thinks fit;
 - (b) a magistrates' courts committee fail to comply within six months with a direction of the Lord Chancellor under subsection (2) above or he is dissatisfied with the draft order or report submitted in pursuance of such a direction; or
 - (c) the alteration is consequential on an order under section 1(2) or 27A(2) above.

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- (4) An order under section 4(2) above which makes an alteration of a petty sessions area may contain such consequential and transitional provisions as appear to the Lord Chancellor to be necessary or expedient.
- (5) In this section and section 34 below references to the alteration of a petty sessions area include (as well as a change in the boundaries of the area)—
 - (a) the combination of the area with another petty sessions area;
 - (b) the division of the area between two or more petty sessions areas; and
 - (c) changing the name of the area.”
- (3) In section 34 of that Act (procedure relating to alteration of petty sessions areas)—
 - (a) in subsection (1) (consultation), after “any” insert “ petty sessions ”,
 - (b) in subsection (3) (copies of proposals), for “section 33 above about any area” substitute “ section 4(2) above which makes an alteration of a petty sessions area ”, and
 - (c) in subsection (4) (objections and inquiry), for “section 33 above” substitute “ section 4(2) above which makes an alteration of a petty sessions area, ”.

Marginal Citations

M57 1997 c.25.

76 Areas: consequential provision.

- (1) The Lord Mayor and aldermen of the City of London shall not be justices of the peace unless appointed by the Lord Chancellor in accordance with the ^{M58}Justices of the Peace Act 1997.
- (2) Schedule 10 (which contains other provisions consequential on sections 74 and 75) has effect.

Marginal Citations

M58 1997 c.25.

77 Youth courts.

- (1) Part I of the Second Schedule to the ^{M59}Children and Young Persons Act 1933 (constitution of youth courts outside the metropolitan area) is amended in accordance with subsections (2) to (5).
- (2) Omit the headings “Outside Metropolitan Area” and “Youth court panels”.
- (3) Omit paragraph 1 (exclusion of inner London and the City of London from the scope of Part I).
- (4) In paragraph 8 (as amended by Schedule 10) (prohibition on forming combined youth court panel unless the area consists of single commission area), at the end insert “ , or includes the City of London ”.
- (5) For paragraph 9 substitute—

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“9. No order under this Schedule shall provide for the formation of a combined youth panel for an area unless the area consists of, or is wholly included in, the area of a single magistrates' courts committee.”

(6) Omit Part II of that Schedule (particular provision for inner London and the City).

Marginal Citations

M59 1933 c.12.

Justices

78 Unification and renaming of stipendiary bench.

(1) For sections 11 to 20 of the ^{M60}Justices of the Peace Act 1997 and the heading preceding section 11 (stipendiary magistrates and metropolitan stipendiary magistrates) substitute—

“ District Judges (Magistrates' Courts)

10A Appointment and tenure.

- (1) Her Majesty may, on the recommendation of the Lord Chancellor, appoint a person who has a 7 year general qualification (within the meaning of section 71 of the ^{M61}Courts and Legal Services Act 1990) to be a District Judge (Magistrates' Courts).
- (2) The Lord Chancellor—
 - (a) shall designate one of the District Judges (Magistrates' Courts) to be the Senior District Judge (Chief Magistrate); and
 - (b) may designate another of them to be his deputy.
- (3) A District Judge (Magistrates' Courts) may not be removed from office except by the Lord Chancellor on the ground of incapacity or misbehaviour.
- (4) The Lord Chancellor may pay to a District Judge (Magistrates' Courts) (in addition to the salary charged on and paid out of the Consolidated Fund under section 9 of the ^{M62}Administration of Justice Act 1973) such allowances as he may, with the approval of the Treasury, determine.

10B Deputies.

- (1) The Lord Chancellor may appoint any person who has a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990) to be a Deputy District Judge (Magistrates' Courts) for such period as the Lord Chancellor considers appropriate (but subject to subsection (2) below).
- (2) The Lord Chancellor may remove a Deputy District Judge (Magistrates' Courts) from office on the ground of incapacity or misbehaviour.

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- (3) The Lord Chancellor may pay to a Deputy District Judge (Magistrates' Courts) such remuneration and allowances as he may, with the approval of the Treasury, determine.
- (4) During the period of his appointment a Deputy District Judge (Magistrates' Courts) shall act as a District Judge (Magistrates' Courts) and shall be treated for all purposes (apart from appointment, tenure, remuneration and allowances and pensions) as if he were a District Judge (Magistrates' Courts).

10C Status.

- (1) A District Judge (Magistrates' Courts) shall by virtue of his office be a justice of the peace for every commission area.
- (2) Where any enactment makes provision defining the powers of any person or court by reference to the area for which a person is a justice of the peace, the provision shall have effect where that person is a District Judge (Magistrates' Courts) as if it defined the powers by reference to the area for which he is for the time being acting as a justice of the peace.
- (3) A District Judge (Magistrates' Courts) shall sit at such court-houses, on such days and at such times, as may be determined by, or in accordance with, directions given by the Lord Chancellor from time to time.
- (4) References in any enactment, instrument or other document to a district judge or deputy district judge do not include a District Judge (Magistrates' Courts).

10D Power to discharge functions exercisable by two justices.

- (1) A District Judge (Magistrates' Courts), sitting in a place appointed for the purpose, shall have power—
 - (a) to do any act; and
 - (b) to exercise alone any jurisdiction,which can be done or exercised by two justices, including any act or jurisdiction expressly required to be done or exercised by justices sitting or acting in petty sessions.
- (2) Subsection (1) above does not apply where the law under which the act or jurisdiction can be done or exercised was made after 2nd August 1858 and contains express provision contrary to that subsection.
- (3) Any statutory provision auxiliary to the jurisdiction exercisable by two justices of the peace shall apply also to the jurisdiction of a District Judge (Magistrates' Courts).
- (4) Subsections (1) and (3) above do not apply where the act or jurisdiction relates to the grant or transfer of any licence.
- (5) Any authority or requirement in any enactment for persons to be summoned or to appear at petty sessions in any case shall include authority or a requirement in such a case for persons to be summoned or to appear before a District Judge (Magistrates' Courts) at the place appointed for his sitting.

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- (6) Nothing in this section applies to the hearing or determination of family proceedings within the meaning of section 65 of the Magistrates’ Courts Act 1980.

10E Disapplication of restrictions.

- (1) Nothing in the ^{M63}Magistrates’ Courts Act 1980—
- (a) requiring a magistrates’ court to be composed of two or more justices or to sit in a petty sessional court-house or an occasional court-house; or
 - (b) limiting the powers of a magistrates’ court when composed of a single justice or when sitting elsewhere than in a petty sessional court-house,
- shall apply to any District Judge (Magistrates’ Courts) sitting in a place appointed for the purpose.
- (2) Subsection (1) above does not apply to the hearing or determination of family proceedings within the meaning of section 65 of the Magistrates’ Courts Act 1980.”

- (2) Schedule 11 (which makes amendments consequential on this section) has effect.

Marginal Citations

- M60** 1997 c.25.
M61 1990 c.41.
M62 1973 c.15.
M63 1980 c.43.

79 Justices not to sit on committal for sentence.

In section 74(1) of the ^{M64}Supreme Court Act 1981 (cases in which Crown Court is to consist of a judge sitting with justices of the peace), omit paragraph (b) (proceedings on committal for sentence).

Marginal Citations

- M64** 1991 c.54.

80 Jurisdiction over offences outside area.

- (1) In the Magistrates’ Courts Act 1980, after section 3A insert—

“3B Transfer of trials of summary offences.

- (1) Where a person is required to appear, or to be brought, before a magistrates’ court on an information charging him with a summary offence, he or the prosecutor may apply to the court for the offence to be tried by a magistrates’ court which is named in the application but which would not, apart from subsection (2) below, have jurisdiction to try the offence.

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- (2) Where an application under this section is granted, the court named in it shall have jurisdiction to try the offence.
- (3) The Lord Chancellor may make regulations specifying—
 - (a) matters which a court must consider in deciding whether to grant or refuse an application under this section; and
 - (b) circumstances in which a court must grant or refuse such an application.
- (4) The power to make regulations under subsection (3) above shall be exercisable by statutory instrument which shall be subject to annulment by resolution of either House of Parliament.”

(2) ^{F36}

Textual Amendments

F36 S. 80(2) repealed (1.9.2004) by Courts Act 2003 (c. 39), ss. 109(3), 110, Sch. 10; S.I. 2004/2066, art. 2(d)(vi)(e) (subject to art. 3)

80 Jurisdiction over offences outside area. U.K.

(1) In the Magistrates' Courts Act 1980, after section 3A insert—

“3B Transfer of trials of summary offences.

- (1) Where a person is required to appear, or to be brought, before a magistrates' court on an information charging him with a summary offence, he or the prosecutor may apply to the court for the offence to be tried by a magistrates' court which is named in the application but which would not, apart from subsection (2) below, have jurisdiction to try the offence.
- (2) Where an application under this section is granted, the court named in it shall have jurisdiction to try the offence.
- (3) The Lord Chancellor may make regulations specifying—
 - (a) matters which a court must consider in deciding whether to grant or refuse an application under this section; and
 - (b) circumstances in which a court must grant or refuse such an application.
- (4) The power to make regulations under subsection (3) above shall be exercisable by statutory instrument which shall be subject to annulment by resolution of either House of Parliament.”

(2) In section 145(1) of that Act (power to make rules of court as to specified matters), after paragraph (a) insert—

“(aa) as to the determination of applications under section 3B above (including provision for their determination by justices' clerks);”.

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Magistrates’ courts committees

81 Areas outside Greater London.

For section 27 of the ^{M65}Justices of the Peace Act 1997 (general provisions about magistrates’ courts committees) substitute—

“ Introductory

27 Introduction.

Magistrates’ courts committees shall have—

- (a) such functions as are conferred or imposed on them by or under this Act or any other enactment; and
- (b) such other functions relating to matters of an administrative character as they may be authorised by the Lord Chancellor to undertake.

Magistrates’ courts committees outside Greater London

27A Committees.

- (1) England and Wales outside Greater London shall be divided into areas for each of which there shall be a magistrates’ courts committee.
- (2) The areas of the committees shall be as specified by the Lord Chancellor by order made by statutory instrument.
- (3) Each area outside Greater London for which there is a magistrates’ courts committee shall—
 - (a) consist of the whole of one or more commission areas or be included wholly within a single commission area; and
 - (b) comprise the whole of one or more petty sessions areas.

27B Alteration of committee areas.

- (1) A magistrates’ courts committee for an area outside Greater London may at any time submit to the Lord Chancellor written proposals for the alteration of their area.
- (2) Before submitting such proposals, the magistrates’ courts committee shall consult—
 - (a) the magistrates for their area or any other magistrates’ courts committee area to which the proposals relate;
 - (b) any other magistrates’ courts committee to which the proposals relate; and
 - (c) every relevant authority whose area includes all or any part of any of the magistrates’ courts committee areas to which the proposals relate.
- (3) The Lord Chancellor shall not make an order under section 27A(2) above which makes an alteration of any area unless he is satisfied that the making of

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the order is likely to contribute to an overall increase in the efficiency of the administration of magistrates’ courts.

- (4) Before making an order under section 27A(2) above which makes an alteration of any area, other than an order which implements proposals submitted to him under subsection (1) above, the Lord Chancellor shall consult—
 - (a) the magistrates for the area;
 - (b) the magistrates’ courts committees for the area; and
 - (c) every relevant authority whose area includes all or any part of the magistrates’ courts committee area.
- (5) For the purposes of subsection (4) above, an order shall be taken to implement proposals if it implements them without changes or any departures from the proposals do not, in the opinion of the Lord Chancellor, effect important changes in the proposals.
- (6) An order under section 27A(2) above which makes an alteration of any area may contain such consequential and transitional provisions as appear to the Lord Chancellor to be necessary or expedient, including—
 - (a) provision for the transfer of property, rights and liabilities;
 - (b) provision for the management or custody of transferred property (whether real or personal); and
 - (c) provision for any magistrates’ courts committee coming into existence by virtue of the order to be constituted under section 30 below as a body corporate, and to incur liabilities, before the date on which the functions of any magistrates’ courts committee are transferred to it.
- (7) The Lord Chancellor may give directions with respect to convening the first meeting of a magistrates’ courts committee coming into existence by virtue of an order under section 27A(2) above.
- (8) A statutory instrument containing an order under section 27A(2) above which makes an alteration of any area shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section references to the alteration of a magistrates’ courts committee area include (as well as a change in the boundaries of the area)—
 - (a) the combination of the area with another magistrates’ courts committee area; and
 - (b) the division of the area between two or more magistrates’ courts committee areas.
- (10) In this section “relevant authority” means—
 - (a) a county council;
 - (b) a county borough council; or
 - (c) the council of a unitary district.”

Marginal Citations

M65 1997 c.25.

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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82 Constitution of committees outside Greater London.

For sections 28 to 30 of the ^{M66}Justices of the Peace Act 1997 (constitution of magistrates’ courts committees) substitute—

“28 Constitution of committees.

- (1) A magistrates’ courts committee for an area outside Greater London shall, subject to subsection (2) below, be composed of justices of the peace for the area to which the committee relates, chosen in accordance with regulations under section 29 below.
- (2) Such a magistrates’ courts committee may also include persons (who need not be justices of the peace)—
 - (a) co-opted by the committee with the approval of the Lord Chancellor; or
 - (b) appointed by the Lord Chancellor.

29 Regulations about committees.

- (1) The Lord Chancellor may by statutory instrument make general regulations about the constitution, procedure and quorum of magistrates’ courts committees for areas outside Greater London; but any such regulations shall have effect subject to the provisions of section 28 above.
- (2) The regulations shall provide for the members referred to in section 28(1) above to be chosen by a selection panel constituted in accordance with the regulations.
- (3) The regulations may—
 - (a) lay down an upper limit for the number of members of a magistrates’ courts committee (inclusive of the members referred to in subsection (2) of section 28 above); and
 - (b) enable the Lord Chancellor to direct that, in relation to any magistrates’ courts committee to which the direction is given, any members co-opted or appointed under that subsection are to be left out of account in applying the upper limit.
- (4) The regulations may make provision for the payment of remuneration to members of a magistrates’ courts committee co-opted or appointed under section 28(2) above.
- (5) The regulations may make different provision in relation to magistrates’ courts committees for different areas.
- (6) The regulations may also make provision with respect to the persons (other than the members, clerks and officers of the committee) who may be entitled to attend the meetings of a magistrates’ courts committee and the rights of such persons to make representations to the committee.
- (7) A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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30 Supplementary provisions about committees.

- (1) A magistrates’ courts committee for an area outside Greater London shall appoint one of their members to be chairman of the committee.
- (2) Where the magistrates for a petty sessions area are required to meet for the purpose of carrying out any functions under section 29 above, a meeting shall be convened by the magistrates’ courts committee or, if there is no such committee or the Lord Chancellor considers it appropriate, by the Lord Chancellor.
- (3) A magistrates’ courts committee for an area outside Greater London may act through sub-committees appointed by them which, if they include at least one member of the committee, may also include persons who are not members.
- (4) Such a magistrates’ courts committee may also arrange for the discharge of any of their functions—
 - (a) by the chairman of the committee; or
 - (b) by the justices’ chief executive.
- (5) Subject to the provisions of this Act, a magistrates’ courts committee for an area outside Greater London shall have power to regulate their own procedure, including quorum.
- (6) A magistrates’ courts committee for an area outside Greater London shall be a body corporate.
- (7) A magistrates’ courts committee for an area outside Greater London shall, on at least one occasion in every calendar year, admit members of the public to a meeting of the committee.
- (8) The minutes of proceedings of every meeting of such a magistrates’ courts committee shall be open to inspection by members of the public at the offices of the committee, except to the extent that the committee determine that the minutes disclose information of a confidential nature.
- (9) Copies of any minutes which are open to inspection under subsection (8) above shall be made available to the public on payment of such reasonable fee as the magistrates’ courts committee may in any case determine.
- (10) A magistrates’ courts committee making a determination under subsection (8) above shall state their reasons for regarding the information in question as being of a confidential nature.”

Marginal Citations

M66 1997 c.25.

83 Greater London Magistrates’ Courts Authority.

- (1) In the ^{M67}Justices of the Peace Act 1997, after section 30 insert—

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“ Greater London

30A Greater London Magistrates' Courts Authority.

- (1) There shall be a body corporate known as the Greater London Magistrates' Courts Authority.
- (2) The Authority shall be the magistrates' courts committee for Greater London.

30B Regulations about Authority.

- (1) The Lord Chancellor may by regulations made by statutory instrument make provision relating to the Greater London Magistrates' Courts Authority, including—
 - (a) provision about the membership of the Authority (including provision as to who is to chair it and about the payment of remuneration to its members); and
 - (b) provision about the Authority's constitution and procedure (including quorum and meetings).
- (2) A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

30C Procedure of Authority.

- (1) The Greater London Magistrates' Courts Authority may, with the approval of the Lord Chancellor, act through committees appointed by the Authority which, if they include at least one member of the Authority, may also include persons who are not members.
- (2) The Authority may also arrange for the discharge of any of their functions—
 - (a) by the chairman of the Authority; or
 - (b) by the justices' chief executive.
- (3) Subject to regulations made under this Act, the Authority shall have power to regulate their own procedure, including quorum.

Provisions applying to all magistrates' courts committees.”

- (2) After section 59 of that Act insert—

“ Greater London Magistrates' Courts Authority

59A Functions.

- (1) The Greater London Magistrates' Courts Authority shall provide such petty sessional court-houses and other accommodation, and such goods and services, as they may determine proper for the performance of the Authority's functions and those of—

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- (a) the magistrates for Greater London;
 - (b) any committee of the magistrates for Greater London; and
 - (c) the justices' clerks for any part of Greater London.
- (2) The Authority may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of the function in subsection (1) above; but the Authority may not borrow money except insofar as authorised by any other enactment to do so.

59B Funding.

- (1) The Lord Chancellor may pay grants to the Greater London Magistrates' Courts Authority in respect of the Authority's expenditure.
- (2) Grants under this section shall be paid at such times, in such manner and subject to such conditions as the Lord Chancellor may with the concurrence of the Treasury determine.
- (3) Each London local authority shall pay to the Authority such amount in respect of—
 - (a) any kind of the Authority's expenditure in any year; or
 - (b) if less, such amount as may, in relation to that kind of expenditure and that year, be for the time being determined by the Lord Chancellor, as may be determined in accordance with regulations made by the Lord Chancellor by statutory instrument.
- (4) The Lord Chancellor may by regulations made by statutory instrument make provision as to the making of payments under subsection (3) above, including provision—
 - (a) as to whether payments are to be made by instalments or otherwise;
 - (b) as to the time when payments are to be made;
 - (c) conferring a right to interest on anything unpaid; and
 - (d) permitting a London local authority to anticipate a payment under this section when making calculations in accordance with section 32 of the ^{M68}Local Government Finance Act 1992 (originally or by way of substitute).
- (5) The Lord Chancellor may with the consent of the Treasury make provision by regulations made by statutory instrument as to how any kind of the Authority's expenditure is to be determined.
- (6) Subject to any such regulations, the Lord Chancellor may direct that in determining any kind of the Authority's expenditure there shall be taken into account or disregarded, to such extent as may be specified in the direction, such items as may be so specified.
- (7) A statutory instrument containing regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section "London local authority" means the council of any London borough or the Common Council of the City of London.

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59C Consultation.

- (1) The Greater London Magistrates' Courts Authority shall consult each London local authority before making any determination under section 59A(1) above or any determination as to—
 - (a) the salary to be paid to a justices' clerk or justices' chief executive and to staff of the Authority; or
 - (b) the nature and amount of the expenses which the Authority may incur in the discharge of their functions or may authorise to be incurred.
- (2) Any London local authority which is aggrieved by such a determination may, within one month from the receipt by the London local authority of written notice of the determination, appeal to the Lord Chancellor, whose decision shall be binding upon the Authority and the London local authority concerned.
- (3) In this section, "London local authority" has the same meaning as in section 59B above.

59D Accounting.

- (1) The Greater London Magistrates' Courts Authority shall keep a fund to be known as the GLMCA fund.
- (2) All the Authority's receipts shall be paid into the GLMCA fund and all the Authority's expenditure shall be paid out of it.
- (3) The Authority shall—
 - (a) keep accounts of payments made into or out of the GLMCA fund; and
 - (b) make arrangements for the proper administration of their financial affairs.
- (4) The Lord Chancellor may by regulations made by statutory instrument make provision applying—
 - (a) Part VIII of the ^{M69}Local Government Finance Act 1988 (financial administration); and
 - (b) Part II of the ^{M70}Audit Commission Act 1998 (accounts and audit of public bodies),
 to the Authority, with or without modifications and exceptions.
- (5) A statutory instrument containing regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Provisions applying to all magistrates' courts committees."

- (3) Schedule 12 (which makes provision supplementary to this section) shall have effect.

Commencement Information

- I4** S. 83 wholly in force; s. 83 not in force at Royal Assent see s. 108(1); s. 83(1)(3) in force for certain purposes at 27.9.1999 by S.I. 1999/2657, art. 2(c)(i)(ii); s. 83(1)(3) in force for certain further purposes at 1.3.2000 by S.I. 1999/3344, art. 3(a)(i)(ii); s. 83(2) in force for certain further purposes at

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31.8.2000 by S.I. 2000/1920, art. 3(b); s. 83 in force insofar as not already in force at 1.4.2001 by S.I. 2001/916, art. 2(a)(i)

Marginal Citations

- M67** 1997 c.25.
M68 1992 c. 14.
M69 1988 c.41.
M70 1998 c.18.

84 Standard goods and services.

- (1) Part VI of the ^{M71}Justices of the Peace Act 1997 (administrative and financial arrangements) has effect subject to the following amendments.
- (2) After section 59D and the heading after that section (inserted by section 83 above) insert—

“59E Standard goods and services.

- (1) The Lord Chancellor may by statutory instrument make regulations requiring every magistrates' courts committee, or every specified magistrates' courts committee, to obtain for the performance of any function referred to in section 55(1) or 59A(1) above—
 - (a) specified goods or services; or
 - (b) goods or services of a specified description,if he considers that it would be in the interests of the efficient and effective administration of magistrates' courts generally for them to do so.
- (2) Regulations made by virtue of subsection (1) above may include provision requiring magistrates' courts committees to obtain the specified goods or services, or goods or services of the specified description—
 - (a) from a specified person or person of a specified description;
 - (b) at or by a specified time; or
 - (c) both from such a person and at or by such a time.
- (3) A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (3) In section 55(2) (case where paying authority is not required to provide goods and services to magistrates' courts committee), after “or authorities” insert “—
 - (a) to provide any goods or services which regulations made by virtue of section 59E(2) below require the magistrates' courts committee to obtain otherwise than from that authority or any of those authorities; or
 - (b)”.
- (4) After subsection (1) of section 56 (which specifies that, subject to the provisions of that section, the goods and services to be provided by a paying authority are to be determined by the magistrates' courts committee) insert—

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“(1A) Subsection (1) above does not apply to the extent that regulations made by virtue of section 59E below have the effect of precluding a determination as to any of the matters mentioned in that subsection.”

Marginal Citations

M71 1997c. 25.

85 Power to direct implementation of inspectors' recommendations.

In section 62 of the ^{M72}Justices of the Peace Act 1997 (inspectors of the magistrates' courts service), after subsection (4) insert—

“(4A) If pursuant to this section a recommendation is made for the taking of any action by a magistrates' courts committee, the Lord Chancellor may give a direction requiring the committee to take the recommended action within a period specified in the direction.”

Marginal Citations

M72 1997 c.25.

86 Code of conduct.

In the Justices of the Peace Act 1997, after section 39 insert—

“39A Code of conduct for members etc.

- (1) The Lord Chancellor may prepare a code of conduct to be observed by—
 - (a) members of magistrates' courts committees; and
 - (b) members of selection panels for choosing members of such committees.
- (2) The Lord Chancellor may from time to time prepare a revised version of the code.
- (3) Before preparing the code or a revised version of the code the Lord Chancellor shall undertake such consultation as appears to him to be appropriate.
- (4) The code, and any revised version of the code, shall come into force as provided by an order made by the Lord Chancellor by statutory instrument; and an order providing for the coming into force of the code or a revised version shall set out the code or revised version.
- (5) A statutory instrument containing an order made by virtue of subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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39B Non-compliance with code.

- (1) The Lord Chancellor may make an order under subsection (2) below if he is of the opinion that—
 - (a) a member of a magistrates’ courts committee; or
 - (b) a member of a selection panel for choosing members of such a committee,has, without reasonable excuse, failed to observe the code.
- (2) An order under this subsection shall state that the Lord Chancellor is of the opinion mentioned in subsection (1) above and may provide either or both of the following—
 - (a) that, on the making of the order, the person is to cease to be a member of the committee or selection panel concerned or to cease to be such a member for a specified period; or
 - (b) that, for a specified period, the person may not be appointed (or co-opted) as a member of any magistrates’ courts committee or any selection panel for choosing members of such a committee.
- (3) The Lord Chancellor may by regulations made by statutory instrument make provision for the purpose of establishing whether persons have failed to observe the code.
- (4) A statutory instrument containing regulations made by virtue of subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Justices’ chief executives, justices’ clerks and staff

87 Qualification for appointment as chief executive.

In section 40 of the ^{M73}Justices of the Peace Act 1997 (appointment of justices’ chief executive), omit subsection (5) (under which a person may not be appointed unless eligible for appointment as a justices’ clerk).

Marginal Citations

M73 1997 c.25.

88 Role of chief executives.

- (1) For section 41 of the Justices of the Peace Act 1997 (functions of justices’ chief executives) substitute—

“41 Role of justices’ chief executive.

- (1) The justices’ chief executive appointed by any magistrates’ courts committee shall make arrangements for the efficient and effective administration of the magistrates’ courts for the area to which the committee relates.

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- (2) For that purpose the administration of the magistrates’ courts for the area to which a magistrates’ courts committee relates includes—
 - (a) the exercise of the function of acting as clerk to the committee; and
 - (b) the exercise of all of the functions conferred or imposed on justices’ chief executives by or under any other enactment so far as relating to any of those courts or that committee.
 - (3) The duty imposed on a justices’ chief executive by subsection (1) above shall in particular require him—
 - (a) to allocate responsibility for what falls to be done in the exercise of his functions among justices’ clerks and the staff of the committee; and
 - (b) to determine the administrative procedures to be followed by them.
 - (4) The justices’ chief executive appointed by a magistrates’ courts committee shall make arrangements for discussions relating to matters of law (including procedure and practice) among the justices’ clerks appointed by the committee, in particular with a view to securing consistency in the advice given by them to justices about such matters.
 - (5) The justices’ chief executive appointed by a magistrates’ courts committee shall perform—
 - (a) the duties imposed on him by this section; and
 - (b) any other functions conferred or imposed on him by or under any other enactment,
 in accordance with any directions given to him by the committee.
 - (6) Subject to section 48 below, the justices’ chief executive appointed by a magistrates’ courts committee may give directions to justices’ clerks and the staff of the committee as to the carrying out of their responsibilities (including the performance of any functions conferred or imposed on them by or under any enactment).”
- (2) In section 31 of that Act (powers and duties of magistrates’ courts committees), omit subsection (2) (power of magistrates’ courts committees to allocate responsibilities among chief executive, clerks and members of staff and to determine the administrative procedures to be followed by them).
 - (3) In section 40 of that Act (appointment of justices’ chief executive), after subsection (1) insert—

“(1A) The justices’ chief executive appointed by a magistrates’ courts committee is—

 - (a) the justices’ chief executive for every magistrates’ court for the committee’s area;
 - (b) the justices’ chief executive for every petty sessions area for which they are the committee; and
 - (c) the chief executive to the justices acting for every such petty sessions area.”
 - (4) In section 61 of that Act (defaults of justices’ clerk etc.), after “clerk” insert “ , of a justices’ chief executive ”.

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89 Independence of clerks and staff exercising legal functions.

(1) For section 48 of the ^{M74}Justices of the Peace Act 1997 substitute—

“48 Independence of justices’ clerks and staff exercising legal functions.

(1) When exercising any legal function—

- (a) a justices’ clerk shall not be subject to the direction of the justices’ chief executive or any other person or body; and
- (b) a member of the staff of a magistrates’ courts committee shall not be subject to the direction of any person or body other than a justices’ clerk.

(2) In subsection (1) “legal function” means—

- (a) any function exercisable by one or more justices of the peace; or
- (b) a function specified in section 45(4) or (5) above.”

(2) In section 45 of that Act (functions of justices’ clerks)—

- (a) in subsection (4) (advice on law, practice or procedure to justices at their request), for “law, practice or procedure” substitute “ matters of law (including procedure and practice) ”, and
- (b) in subsection (5) (power to bring point of law, practice or procedure to attention of justices), for “law, practice or procedure” substitute “ law (including procedure and practice) ”.

Marginal Citations

M74 1997 c.25.

90 Transfer of clerks’ functions to chief executives.

- (1) Schedule 13 (which makes amendments transferring administrative functions of justices’ clerks to justices’ chief executives) has effect.
- (2) The Lord Chancellor may by order made by statutory instrument make provision for the transfer of other administrative functions of justices’ clerks to justices’ chief executives.
- (3) An order under subsection (2) may contain amendments of enactments.
- (4) A statutory instrument containing an order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) For the purposes of this section the administrative functions of justices’ clerks are all of their functions apart from those which are legal functions within the meaning given by section 48(2) of the ^{M75}Justices of the Peace Act 1997.

Marginal Citations

M75 1997 c.25.

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91 Accounting etc. functions of chief executives.

- (1) In the Justices of the Peace Act 1997, after section 41 (as substituted by section 88(1) above) insert—

“41A Justices’ chief executive as collecting officer.

- (1) A justices’ chief executive shall, by virtue of his office, be collecting officer of each of the courts for the area of the magistrates’ courts committee which appointed him.
- (2) A justices’ chief executive shall act under any order made under section 30 of the ^{M76}Criminal Justice Administration Act 1914 (which provided for periodical payments under court orders to be made through an officer of the court or other third party) which, in accordance with the provisions of paragraph 16A of Schedule 4 to this Act, has effect to direct the payment of money to him.
- (3) This section is without prejudice to the provisions of—
- (a) section 59 of the ^{M77}Magistrates’ Courts Act 1980 (periodical payments through justices’ chief executive); and
 - (b) sections 59A and 62 of that Act (proceedings by justices’ chief executive).”
- (2) In section 60 of that Act (application of fines and fees)—
- (a) in subsection (1) (payment to Lord Chancellor of sums received by a justices’ clerk), for “justices’ clerk” substitute “ justices’ chief executive ” and omit paragraph (b)(ii) (special provision for compensation orders),
 - (b) in subsection (3) (exception for salary and expenses of justices’ clerk), for “justices’ clerk” substitute “ justices’ chief executive ”,
 - (c) omit subsection (4) (which is superseded by the amendment made by subsection (3) of this section), and
 - (d) in the sidenote, for “fines and fees” substitute “ receipts of justices’ chief executive ”.
- (3) After that section insert—

“60A Regulations about payment, accounting and banking.

The Lord Chancellor, with the concurrence of the Treasury, may by statutory instrument make regulations—

- (a) as to the times at which, and the manner in which, a justices’ chief executive shall pay sums payable by him to the Lord Chancellor or any other person;
- (b) requiring the keeping and production of accounts by justices’ chief executives in respect of sums received by them (apart from any received on account of their salaries or expenses as such) and for the inspection and audit of the accounts required to be kept; and
- (c) requiring justices’ chief executives to use specified banking arrangements or facilities, or banking arrangements or facilities of a specified description, in relation to sums received by them (apart from any received on account of their salaries or expenses as such).”

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(4) In Part II of Schedule 4 to that Act (transitional provisions and savings), after paragraph 16 insert—

- “16A Any order made before 1st April 1953 under section 30 of the^{M78}Criminal Justice Administration Act 1914 or section 1 of the^{M79}Affiliation Orders Act 1914—
- (a) if it directs payments to be made to any officer of a court of summary jurisdiction, shall have effect as if it directed them to be made to the justices' chief executive who is the collecting officer of that court; and
 - (b) if it directs payments to be made to any person who is not an officer of a court of summary jurisdiction, shall have effect as if it directed them to be made to the justices' chief executive who is the collecting officer of the court making the order.”

Marginal Citations

M76 1914 c.58.

M77 1980 c.43.

M78 1914 c.58.

M79 1914 c.6 (4&5 Geo.5).

Execution of warrants

92 Civilian enforcement officers.

In the^{M80}Magistrates' Courts Act 1980, after section 125 insert—

“125A Civilian enforcement officers.

- (1) A warrant to which this subsection applies may be executed anywhere in England and Wales by a civilian enforcement officer.
- (2) In this section “civilian enforcement officer”, in relation to a warrant, means a person who—
 - (a) is employed by an authority of a prescribed class which performs functions in relation to any area specified in the warrant; and
 - (b) is authorised in the prescribed manner to execute warrants.
- (3) The warrants to which subsection (1) above applies are any warrant of arrest, commitment, detention or distress issued by a justice of the peace—
 - (a) under any provision specified for the purposes of this subsection by an order made by the Lord Chancellor and the Secretary of State, acting jointly; or
 - (b) for the enforcement of a court order of any description so specified.
- (4) Where a warrant has been executed by a civilian enforcement officer, a written statement indicating—
 - (a) the name of the officer;

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(b) the authority by which he is employed; and
 (c) that he is authorised in the prescribed manner to execute warrants,
 shall, on the demand of the person arrested, committed or detained or against whom distress is levied, be shown to him as soon as practicable.

(5) The power to make orders conferred by subsection (3) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Marginal Citations

M80 1980 c.43.

93 Approved enforcement agencies.

(1) In the ^{M81}Justices of the Peace Act 1997, after section 31 insert—

“31A Execution of warrants.

- (1) A magistrates' courts committee may approve persons or bodies for the purpose of executing warrants pursuant to section 125B of the ^{M82}Magistrates' Courts Act 1980.
- (2) The Lord Chancellor may by statutory instrument make regulations as to—
 - (a) conditions which must be satisfied by a person or body in order to be approved under subsection (1) above; and
 - (b) the procedure by which a person or body may be so approved.
- (3) A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A magistrates' courts committee shall maintain a register—
 - (a) containing the names of all persons and bodies approved by the committee under subsection (1) above; or
 - (b) stating that no person or body has been so approved.
- (5) Copies of the register kept by a committee under subsection (4) above shall be available for inspection by members of the public in every petty sessional court-house in the committee's area during the hours that the court-house is open to the public.
- (6) A decision by a magistrates' courts committee to revoke the approval of a person or body under subsection (1) above does not have effect to revoke the approval until the committee have informed the person or body in writing of the decision.”

(2) In the ^{M83}Magistrates' Courts Act 1980, after section 125A (inserted by section 92 above) insert—

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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“125B Execution by approved enforcement agency.

- (1) A warrant to which section 125A(1) above applies may also be executed anywhere in England and Wales—
 - (a) by an individual who is an approved enforcement agency;
 - (b) by a director of a company which is an approved enforcement agency;
 - (c) by a partner in a partnership which is an approved enforcement agency; or
 - (d) by an employee of an approved enforcement agency who is authorised in writing by the agency to execute warrants.
- (2) In this section “approved enforcement agency”, in relation to a warrant, means a person or body approved under section 31A of the ^{M84}Justices of the Peace Act 1997 by the magistrates’ courts committee for the petty sessions area of the justice (or any of the justices) who issued the warrant.
- (3) Failure by a magistrates’ courts committee to comply with any provision of, or made under, section 31A(2) to (5) of the Justices of the Peace Act 1997 does not of itself render unlawful the execution of a warrant.
- (4) Where a warrant has been executed by a person mentioned in subsection (1) above, a written statement indicating the matters specified in subsection (5) below shall, on the demand of the person arrested, committed or detained or against whom distress is levied, be shown to him as soon as practicable.
- (5) The matters referred to in subsection (4) above are—
 - (a) the name of the person by whom the warrant was executed;
 - (b) if he is a director of, or partner in, an approved enforcement agency, the fact that he is a director of, or partner in, that agency;
 - (c) if he is an employee of an approved enforcement agency, the fact that he is an employee authorised in writing by that agency to execute warrants; and
 - (d) the fact that his name, or (where paragraph (b) or (c) above applies) that of the agency indicated, is contained in the register maintained under section 31A(4) of the ^{M85}Peace Act 1997 by the magistrates’ courts committee concerned.”

Marginal Citations

- M81** 1997 c.25.
M82 1980 c.43.
M83 1980 c.43.
M84 1997 c.25.
M85 1997 c.25.

94 Disclosure of information for enforcing warrants.

In the ^{M86}Magistrates’ Courts Act 1980, after section 125B (inserted by section 93(2) above) insert—

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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“125C Disclosure of information for enforcing warrants.

- (1) Basic personal information held by a relevant public authority may, on the application of a justices' chief executive, be supplied by the authority to him (or to a justices' clerk appointed by, or member of the staff of, his magistrates' courts committee who is specified in the application) for the purpose of facilitating the enforcement of a section 125A(1) warrant which is so specified.
- (2) In this section—
 - “basic personal information” means a person's name, date of birth or national insurance number or the address (or any of the addresses) of a person;
 - “relevant public authority” means a Minister of the Crown, government department, local authority or chief officer of police specified in an order made by the Lord Chancellor; and
 - “a section 125A(1) warrant” means a warrant to which section 125A(1) above applies and which has been issued by a justice of the peace to whom the justices' chief executive making the application is chief executive.
- (3) Information supplied to any person under subsection (1) above, or this subsection, for the purpose of facilitating the enforcement of a section 125A(1) warrant may be supplied by him for that purpose to—
 - (a) any person entitled to execute the warrant;
 - (b) any employee of a body or person who, for the purposes of section 125B above, is an approved enforcement agency in relation to the warrant; or
 - (c) any person who is the justices' chief executive, a justices' clerk or a member of the staff of the magistrates' courts committee whose justices' chief executive made the application for the information.
- (4) A person who intentionally or recklessly—
 - (a) discloses information supplied to him under this section otherwise than as permitted by subsection (3) above; or
 - (b) uses information so supplied otherwise than for the purpose of facilitating the enforcement of the section 125A(1) warrant concerned, commits an offence.
- (5) But it is not an offence under subsection (4) above—
 - (a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or
 - (b) to disclose any information which has previously been lawfully disclosed to the public.
- (6) A person guilty of an offence under subsection (4) above is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.

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- (7) The power to make orders conferred by subsection (2) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Marginal Citations

M86 1980 c.43.

95 Warrants of detention.

- (1) In section 125(2) of the ^{M87}Magistrates' Courts Act 1980 (execution by person to whom warrant is directed or constable), after “warrant of commitment,” insert “warrant of detention,”.
- (2) In section 136(2) of that Act (warrants of detention), for the words from “, unless” to “functions” substitute “—
- (a) shall authorise the person executing it”.

Marginal Citations

M87 1980 c.43.

96 Execution by person not in possession of warrant.

In the Magistrates' Courts Act 1980, after section 125C (inserted by section 94 above) insert—

“125D Execution by person not in possession of warrant.

- (1) A warrant to which section 125A(1) above applies may be executed by any person entitled to execute it even though it is not in his possession at the time.
- (2) A warrant to which this subsection applies (and which is not a warrant to which section 125A(1) above applies) may be executed by a constable even though it is not in his possession at the time.
- (3) Subsection (2) above applies to—
- (a) a warrant to arrest a person in connection with an offence;
- (b) a warrant under section 186(3) of the ^{M88}Army Act 1955, section 186(3) of the ^{M89}Air Force Act 1955, section 105(3) of the ^{M90}Naval Discipline Act 1957 or Schedule 2 to the ^{M91}Reserve Forces Act 1996 (desertion etc.);
- (c) a warrant under section 102 or 104 of the ^{M92}General Rate Act 1967 (insufficiency of distress);
- (d) a warrant under section 47(8) of the ^{M93}Family Law Act 1996 (failure to comply with occupation order or non-molestation order);
- (e) a warrant under paragraph 4 of Schedule 3 to the ^{M94}Crime and Disorder Act 1998 (unwilling witnesses);

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- (f) a warrant under paragraph 3(2) of Schedule 1 to [^{F37}the Powers of Criminal Courts (Sentencing) Act 2000] (offenders referred to court by youth offender panel); and
- (g) a warrant under section 55, 76, 93, 97 or 97A above.

(4) Where by virtue of this section a warrant is executed by a person not in possession of it, it shall, on the demand of the person arrested, committed or detained or against whom distress is levied, be shown to him as soon as practicable.”

Textual Amendments

F37 Words in s. 96 substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 204**

Commencement Information

I5 S. 96 wholly in force; s. 96 not in force at Royal Assent see s. 108; s. 96 in force at 19.2.2001 by S.I. 2001/168, **art. 2(a)** (subject to transitional provisions in art. 3)

Marginal Citations

M88 1955 c.18.
M89 1955 c.19.
M90 1957 c.53.
M91 1966 c.14.
M92 1967 c.9.
M93 1996 c.27.
M94 1998 c.37.

97 Cessation of warrants.

- (1) In the ^{M95}Maintenance Orders Act 1958, in—
 - (a) section 2(4) (registration of orders), and
 - (b) section 5(4) (cancellation of registration),
 omit paragraph (b) (cessation of warrant of commitment on giving notice), apart from the word “and” at the end.
- (2) In section 83 of the ^{M96}Magistrates' Courts Act 1980 (process for securing attendance of offender for purposes of section 82), omit subsection (4) (warrant to cease to have effect when sum in respect of which it is issued is paid to police officer holding the warrant).
- (3) In section 86(4) of that Act (which applies subsections (3) and (4) of section 83 to warrants issued under section 86), for “subsections (3) and (4)” substitute “subsection (3) ”.
- (4) In section 125(1) of that Act (warrants of arrest), insert at the end “ or it ceases to have effect in accordance with the rules ”.

Commencement Information

I6 S. 97 wholly in force; s. 97 not in force at Royal Assent see s. 108; s. 97 in force at 19.2.2001 by S.I. 2001/168, **art. 2(a)** (subject to transitional provisions in art. 3)

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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Marginal Citations

M95 1958 c.39.

M96 1980 c.43.

PART VI

IMMUNITY AND INDEMNITY

Justices and their clerks

98 Justices and clerks: immunity from costs.

(1) In the ^{M97}Justices of the Peace Act 1997, after section 53 insert—

“53A Costs in legal proceedings.

- (1) A court may not order any justice of the peace or justices’ clerk to pay costs in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty—
 - (a) as such a justice; or
 - (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice.
- (2) Subsection (1) above does not apply in relation to—
 - (a) any proceedings in which a justice or justices’ clerk is being tried for an offence or is appealing against a conviction; or
 - (b) any proceedings in which it is proved that a justice or justices’ clerk acted in bad faith in respect of the matters giving rise to the proceedings.
- (3) Where a court is prevented by subsection (1) above from ordering a justice or justices’ clerk to pay costs in any proceedings, the court may instead order the making by the Lord Chancellor of a payment in respect of the costs of a person in the proceedings.
- (4) The Lord Chancellor may by statutory instrument make regulations specifying—
 - (a) circumstances when a court shall or shall not exercise the power conferred on it by subsection (3) above; and
 - (b) how the amount of any payment ordered under that subsection is to be determined.
- (5) No regulations may be made under subsection (4) above unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section references to a justices’ clerk include any person appointed by a magistrates’ courts committee to assist a justices’ clerk.”

(2) In the ^{M98}Magistrates’ Courts (Northern Ireland) Order 1981, after Article 6 insert—

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6A “Costs in legal proceedings

- (1) A court may not order any resident magistrate, justice of the peace or clerk of petty sessions to pay costs in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty—
 - (a) as such a magistrate or justice; or
 - (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a magistrates’ court.
 - (2) Paragraph (1) does not apply in relation to—
 - (a) any proceedings in which a resident magistrate, justice of the peace or clerk of petty sessions is being tried for an offence or is appealing against a conviction; or
 - (b) any proceedings in which it is proved that a resident magistrate, justice of the peace or clerk of petty sessions acted in bad faith in respect of the matters giving rise to the proceedings.
 - (3) Where a court is prevented by paragraph (1) from ordering a resident magistrate, justice of the peace or clerk of petty sessions to pay costs in any proceedings, the court may instead order the making by the Lord Chancellor of a payment in respect of the costs of a person in the proceedings.
 - (4) The Lord Chancellor may by regulations specify—
 - (a) circumstances when a court shall or shall not exercise the power conferred on it by paragraph (3); and
 - (b) how the amount of any payment ordered under that paragraph is to be determined.
 - (5) Regulations under paragraph (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the ^{M99}Statutory Instruments Act 1946 shall apply accordingly.”
- (3) In—
- (a) Article 145A of the ^{M100}Magistrates’ Courts (Northern Ireland) Order 1981 (county court judge hearing certain appeals to be treated like resident magistrate in relation to immunity), and
 - (b) paragraph 2A of Schedule 2 to the ^{M101}Children and Young Persons Act (Northern Ireland) 1968 (member of panel formed under paragraph 1 of that Schedule to be so treated),

after “6” insert “ , 6A ”.

Marginal Citations

M97 1997 c.25.

M98 S.I. 1981/1765 (N.I.26).

M99 1946 c.36.

M100 S.I. 1981/1675 (N.I.26).

M101 1968 c.34 (N.I.).

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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99 Justices and clerks: indemnity.

In section 54 of the ^{M102}Justices of the Peace Act 1997 (indemnity for justices and their clerks)—

- (a) in subsection (1)(a)(i) (which refers to proceedings against a justice, clerk or assistant clerk), omit “against him”, and
- (b) in subsection (2)(b)(i) (which makes provision for the indemnification of a justice, clerk or assistant clerk on a discretionary basis), after “funds” insert “ unless it is proved, in respect of the matters giving rise to the proceedings or claim, that he acted in bad faith ”.

Marginal Citations

M102 1997 c.25.

100 Assistant justices’ clerks: immunity from action.

In each of sections 51 and 52 of the ^{M103}Justices of the Peace Act 1997 (immunity for acts of justices and justices’ clerks within and beyond jurisdiction), number the existing provision as subsection (1) and after it insert—

“(2) In this section references to a justices’ clerk include any person appointed by a magistrates’ courts committee to assist a justices’ clerk.”

Marginal Citations

M103 1997 c.25.

General Commissioners of income tax and their clerks

101 General Commissioners: immunity from action.

In section 2 of the ^{M104}Taxes Management Act 1970 (General Commissioners), after subsection (8) insert—

“(9) No action shall lie against a General Commissioner in respect of any act or omission of his—

- (a) in the execution of his duty; and
- (b) with respect to any matter within his jurisdiction.

(10) No action shall lie against a General Commissioner in respect of any act or omission of his—

- (a) in the purported execution of his duty; but
 - (b) with respect to any matter not within his jurisdiction,
- unless it is proved that he acted in bad faith.”

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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Commencement Information

I7 S. 101 wholly in force at 31.3.2003; s. 101 not in force at Royal Assent, see s. 108; s. 101 in force for E.W.N.I. at 1.4.2001 by S.I. 2001/916, art. 2(b)(ii); s. 101 in force for S. at 31.3.2003 by S.S.I. 2003/207, art. 2(a)

Marginal Citations

M104 1970 c.9.

102 General Commissioners: immunity from costs and expenses.

In the ^{M105}Taxes Management Act 1970, after section 2 insert—

“2A General Commissioners: costs and expenses in legal proceedings.

- (1) A court may not order a General Commissioner to pay costs or (in Scotland) expenses in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty as a General Commissioner.
- (2) Subsection (1) above does not apply in relation to—
 - (a) any proceedings in which a General Commissioner is being tried for an offence or is appealing against a conviction; or
 - (b) any proceedings in which it is proved that a General Commissioner acted in bad faith in respect of the matters giving rise to the proceedings.
- (3) Where a court is prevented by subsection (1) above from ordering a General Commissioner to pay costs or expenses in any proceedings, the court may instead order the making by the relevant Minister of a payment in respect of the costs or expenses of a person in the proceedings.
- (4) The relevant Minister may by regulations made by statutory instrument make provision specifying—
 - (a) circumstances when a court shall or shall not exercise the power conferred on it by subsection (3) above; and
 - (b) how the amount of any payment ordered under that subsection is to be determined.
- (5) No regulations may be made under subsection (4) above unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section “relevant Minister” means the Lord Chancellor or, in Scotland, the Secretary of State.”

Commencement Information

I8 S. 102 wholly in force at 31.3.2003; s. 102 not in force at Royal Assent, see s. 108; s. 102 in force for E.W.N.I. at 1.4.2001 by S.I. 2001/916, art. 2(b)(ii); s. 101 in force for S. at 31.3.2003 by S.S.I. 2003/207, art. 2(b) (with art. 3)

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Marginal Citations

M105 1970 c.9.

103 General Commissioners and clerks: indemnity.

In the Taxes Management Act 1970, after section 3 insert—

“3A General Commissioners and clerks: indemnity.

- (1) A General Commissioner or a clerk may be indemnified by the relevant Minister in respect of—
 - (a) any costs or (in Scotland) expenses which the General Commissioner or clerk reasonably incurs in or in connection with proceedings in respect of anything done or omitted in the exercise (or purported exercise) of his duty as a General Commissioner or clerk;
 - (b) any costs or expenses which he reasonably incurs in taking steps to dispute any claim which might be made in such proceedings;
 - (c) any damages awarded against him or costs or expenses ordered to be paid by him in any such proceedings; and
 - (d) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim,unless it is proved, in respect of matters giving rise to the proceedings or claim in question, that he acted in bad faith.
- (2) A General Commissioner or a clerk shall be indemnified by the relevant Minister in respect of any such costs or expenses, damages or sums as are mentioned in subsection (1)(a) to (d) above if, in respect of the matters giving rise to the proceedings or claim in question, he acted reasonably and in good faith.
- (3) Any question whether, or to what extent, a person is to be indemnified under this section shall be determined by the relevant Minister.
- (4) A determination under subsection (3) above with respect to any such costs or expenses or sums as are mentioned in subsection (1)(a), (b) or (d) above may, if the person claiming to be indemnified so requests, be made in advance before they are incurred or the settlement made.
- (5) Any such determination in advance for indemnity in respect of costs or expenses to be incurred—
 - (a) shall be subject to such limitations, if any, as the relevant Minister thinks proper and to the subsequent determination of the amount of the costs or expenses reasonably incurred; and
 - (b) shall not affect any other determination which may fall to be made in connection with the proceedings or claim in question.
- (6) In this section “clerk” means—
 - (a) any person appointed to be a clerk or assistant clerk to the General Commissioners for any division; or
 - (b) a person who assists any such person;

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and “relevant Minister” means the Lord Chancellor or, in Scotland, the Secretary of State.”

Commencement Information

I9 S. 103 wholly in force at 31.3.2003; s. 103 not in force at Royal Assent, see s. 108; s. 103 in force for E.W.N.I. at 1.4.2001 by S.I. 2001/916, art. 2(b)(ii); s. 101 in force for S. at 31.3.2003 by S.S.I. 2003/207, art. 2(c)

Coroners

104 Indemnity.

(1) In the ^{M106}Coroners Act 1988, after section 27 insert—

“27A Indemnity.

- (1) A coroner shall be indemnified by the relevant council (without having to lay before them an account under section 27 above) in respect of—
 - (a) any costs which he reasonably incurs in or in connection with proceedings in respect of anything done or omitted in the exercise (or purported exercise) of his duty as a coroner;
 - (b) any costs which he reasonably incurs in taking steps to dispute any claim which might be made in such proceedings;
 - (c) any damages awarded against him or costs ordered to be paid by him in any such proceedings; and
 - (d) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim.
- (2) Subsection (1) above applies in relation to proceedings by a coroner only if and to the extent that the relevant council agrees in advance to indemnify him.
- (3) A coroner may appeal to the Secretary of State, or to any person appointed by the Secretary of State for the purpose, from any decision of the relevant council under subsection (2) above.
- (4) Any amount due to a coroner under this section shall be paid—
 - (a) in the case of a metropolitan or non-metropolitan district council or London borough council, out of the general fund;
 - (b) in the case of a non-metropolitan county council in England, out of the county fund;
 - (c) in the case of the council of a Welsh principal area, out of the council fund; and
 - (d) in the case of the Common Council, out of the City fund.
- (5) In the case of a coroner for a coroner’s district which—
 - (a) consists of two or more metropolitan districts, special non-metropolitan districts or London boroughs;
 - (b) lies partly in each of two or more Welsh principal areas; or

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(c) lies partly in each of two or more non-metropolitan counties in England,

any amount due to the coroner under this section shall be apportioned between the councils of those districts, boroughs, areas or counties in such manner as they may agree or, in default of agreement, as may be determined by the Secretary of State.”

(2) In ^{M107}the Coroners Act (Northern Ireland) 1959, after section 5 insert—

“5A Indemnity.

(1) A coroner shall be indemnified by the Lord Chancellor in respect of—

- (a) any costs which he reasonably incurs in or in connection with proceedings in respect of anything done or omitted in the exercise (or purported exercise) of his duty as a coroner;
- (b) any costs which he reasonably incurs in taking steps to dispute any claim which might be made in such proceedings;
- (c) any damages awarded against him or costs ordered to be paid by him in any such proceedings; and
- (d) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim.

(2) Sub-section (1) applies in relation to proceedings by a coroner only if and to the extent that the Lord Chancellor agrees in advance to indemnify him.”

Marginal Citations

M106 1988 c.13.

M107 1959 c.15(N.I.).

PART VII

SUPPLEMENTARY

Modifications etc. (not altering text)

C16 Pt. 7: functions of the Lord Chancellor transferred (19.8.2003) to the Secretary of State by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 4, **Sch. 1** (with art. 6)
Pt. 7: functions of the Secretary of State transferred (12.1.2006) to the Lord Chancellor by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005 \(S.I. 2005/3429\)](#), **art. 3** (with arts. 4, 5)

105 Transitional provisions and savings.

Schedule 14 (transitional provisions and savings) has effect.

106 Repeals and revocations.

Schedule 15 (repeals and revocations) has effect.

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Commencement Information

I10 S. 106 partly in force; s. 106 not in force at Royal Assent see s. 108(1); s. 106 in force for certain purposes at 27.9.1999 and for certain further purposes at 1.11.1999 and for certain further purposes at 12.11.1999 by S.I. 1999/2657, arts. 2(d)(iii), 3(c), 4(b); s. 106 in force for certain further purposes at 1.1.2000 and for certain further purposes at 1.3.2000 by S.I. 1999/3344, arts. 2(d), 3(b), Sch. 1 (with art. 4); s. 106 in force for certain purposes at 1.4.2000 by S.I. 2000/774, art. 2(c)(ii); s. 106 in force for certain purposes at 31.7.2000 by S.I. 2000/1920, art. 2(c)(3)(c); s. 106 in force for certain purposes at 8.1.2001 by S.I. 2000/3280, art. 2(c); s. 106 in force for specified purposes at 19.2.2001 by S.I. 2001/168, art. 2(c); s. 106 in force for specified purposes at 1.4.2001 by S.I. 2001/916, art. 2(c)(iv); s. 106 in force for specified purposes at 2.4.2001 by S.I. 2001/916, art. 3(b)

107 Crown application.

This Act binds the Crown.

108 Commencement.

- (1) Subject to subsections (2) and (3), the preceding provisions of this Act shall come into force on such day as the Lord Chancellor [^{F38}or Secretary of State] may by order made by statutory instrument appoint; and different days may be appointed for different purposes and, in the case of section 67(2), for different areas.
- (2) Section 45 shall come into force on the day on which this Act is passed.
- (3) The following provisions shall come into force at the end of the period of two months beginning with the day on which this Act is passed—
 - (a) in Part II, sections 32 to 34,
 - (b) Part IV, apart from section 66 and Schedule 9 and sections 67(2) and 71,
 - (c) in Part V, sections 74 to 76, 81, 82, 84, 86 and 87 and Schedule 10,
 - (d) in Part VI, section 104,
 - (e) Schedule 14,
 - (f) in Schedule 15, Part III and Part V(1) and (5), apart from the provisions specified in subsection (4), and
 - (g) section 107.
- (4) The provisions excepted from subsection (3)(f) are the repeal of section 67(8) of the ^{M108}Magistrates' Courts Act 1980 (and that in Schedule 11 to the ^{M109}Children Act 1989) contained in Part V(1) of Schedule 15.

Subordinate Legislation Made

P1 S. 108(1): power partly exercised (21.9.1999): different dates appointed for specified provisions by S.I. 1999/2657, arts. 2, 3, 4, Sch. 1, Sch. 2
 S. 108(1): power partly exercised (13.12.1999): different dates appointed for specified provisions by S.I. 1999/3344, arts. 2, 3, Sch. 1 (with art. 4, Sch. 2)
 S. 108(1): power partly exercised (20.3.2000): 1.4.2000 appointed for specified provisions by S.I. 2000/774, art. 2 (with arts. 3-5)
 S. 108(1): power partly exercised (19.7.2000): different dates appointed for specified provisions by S.I. 2000/1920, arts. 2, 3 (with art. 4)

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: Access to Justice Act 1999 is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

S. 108(1): power partly exercised (13.12.2000): 8.1.2001 appointed for specified provisions by S.I. 2000/3280, **art. 2** (with **art. 3**)

S. 108(1): power partly exercised: 19.2.2001 appointed for specified provisions by S.I. 2001/168, **art. 1**

S. 108(1) power partly exercised: different dates appointed for specified provisions by S.I. 2001/916, **art. 2**

S. 108(1) power partly exercised: 25.5.2001 appointed for specified purposes by S.I. 2001/1655, **art. 2**

P2 S. 108(1) power partly exercised: 31.3.2003 appointed for specified provisions by {S.I. 2003/207}, **art. 2** (with **art. 3**)

P3 S. 108(1) power partly exercised: 2.6.2003 appointed for specified provision by {S.I. 2003/1241}, **art. 2**

P4 S. 108(1) power partly exercised: 1.11.2003 appointed for specified provisions by {S.I. 2003/2571}, **art. 2**

Textual Amendments

F38 Words in s. 108(1) inserted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), **art. 9, Sch. 2 para. 11(2)**

Modifications etc. (not altering text)

C17 S. 108(1): certain functions transferred (28.2.2003) to the Scottish Ministers by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415), **arts. 1, 2, Sch.** (with **art. 5**)

Marginal Citations

M108 1980 c.43.

M109 1989 c.41.

109 Extent.

- (1) Sections 32 to 34 and 73(2) extend to Scotland.
- (2) Sections 98(2) and (3) and 104(2) extend to Northern Ireland.
- (3) Sections 68, 101, 102 and 103 extend to England and Wales, Scotland and Northern Ireland.
- (4) The other provisions of this Act which make amendments or repeals or revocations in other enactments also have the same extent as the enactments which they amend or repeal or revoke.
- (5) Subject to subsection (4), the provisions of this Part (including paragraph 1, but not the rest, of Schedule 14) extend to England and Wales, Scotland and Northern Ireland.
- (6) Subject to the preceding provisions, this Act extends to England and Wales.
- (7) For the purposes of the ^{M110}Scotland Act 1998 this Act, so far as it extends to Scotland, shall be taken to be a pre-commencement enactment within the meaning of that Act.

Marginal Citations

M110 1998 c.46.

Status: Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

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110 Short title.

This Act may be cited as the Access to Justice Act 1999.

Status:

Point in time view as at 19/08/2003. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:

Access to Justice Act 1999 is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.