



Habeas Corpus Act 1816

1816 CHAPTER 100 56 Geo 3

An Act for more effectually securing the Liberty of the Subject.

[1st July 1816]

Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Preamble omitted under authority of [Statute Law Revision \(No. 2\) Act 1890 \(c. 51\)](#)
- C3 References to Ireland to be construed as exclusive of Republic of Ireland: S. R. & O. 1923/405 (Rev. X, p. 298: 1923, p. 400), art. 2

[1.] **Judges to issue, in Vacation, Writs of Habeas Corpus returnable immediately, in Cases other than for Criminal Matter, or for Debt.**

Where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit) within England, dominion of Wales, or town of Berwick-upon-Tweed, or the Isles of Jersey, Guernsey, or Man, it shall and may be lawful for any one of the barons of the Exchequer, of the degree of the coif, as well as for any one of the justices of one bench or the other, and where any person shall be so confined in Ireland, it shall and may be lawful for any one of the barons of the Exchequer, or of the justices of one bench or the other in Ireland, and they are hereby required, upon complaint made to them by or on the behalf of the person so confined or restrained, if it shall appear by affidavit . . . ^{F1} that there is a probable and reasonable ground for such complaint, to award in vacation time a writ of habeas corpus ad subjiciendum, under the seal of such court, whereof he or they shall then be judges or one of the judges, to be directed to the person or persons in whose custody or power the party so confined or restrained shall be, returnable immediately before the person so awarding the same, or before any other judge of the court under the seal of which the said writ issued.

Textual Amendments

- F1 Words repealed by [Statute Law \(Repeals\) Act 1981 \(c. 19\)](#), [Sch. 1 Pt. VIII](#)

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Modifications etc. (not altering text)

- C4** References to barons of the Exchequer to be construed as references (E.W.) to a judge of the High Court: [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), ss. 18, 224\(1\)](#) and (N.I.) to a judge of the High Court of Justice in Northern Ireland: [Supreme Court of Judicature Act \(Ireland\) 1877 \(c. 57\), ss. 21, 71](#) and S. R. & O. 1921/1802 (Rev. XVI, p. 954: 1921, p. 1332), art. 2(1) and [Judicature \(Northern Ireland\) Act 1978 \(c. 23\), s. 16\(2\), Sch. 5 para. 1](#)

2 Non-obedience to such Writ to be a Contempt of Court, and punishable accordingly. Judges to make Writs of Habeas Corpus, issued late in Vacation, returnable in Court in the next Term. Courts to make Writs issued in Term, returnable in Vacation.

If the person or persons to whom any writ of habeas corpus shall be directed according to the provision of this Act, upon service of such writ, either by the actual delivery thereof to him, her, or them, or by leaving the same at the place where the party shall be confined or restrained with any servant or agent of the person or persons so confining or restraining, shall wilfully neglect or refuse to make a return or pay obedience thereto, he, she, or they shall be deemed guilty of a contempt of the court, under the seal whereof such writ shall have issued; and it shall be lawful to and for the said justice or baron, before whom such writ shall be returnable, upon proof made by affidavit of wilful disobedience of the said writ, to issue a warrant under his hand and seal for the apprehending and bringing before him, or before some other justice or baron of the same court, the person or persons so wilfully disobeying the said writ, in order to his, her, or their being bound to the King's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the court of which the said justice or baron is a judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she, or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such justice or baron to commit such person or persons so neglecting or refusing to the [F²]jail or] prison of the court of which such justice or baron shall be a judge there to remain until he, she, or they shall have become bound as aforesaid, or shall be discharged by order of the court in term time, or by order of one of the justices or barons of the court in vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the same court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the court to be discharged: Provided, that if such writ shall be awarded so late in the vacation by any one of the said justices or barons, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall and may, at his discretion, be made returnable in the court of which the said justice or baron shall be a justice or baron, at a day certain in the next term; and the said court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said court: Provided also, that if such writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer, in the said countries respectively, which last-mentioned court shall have like power to award such writs as the respective courts of King's Bench and Common Pleas in each of the said countries now have, in term, but so late that, in the judgment of the court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the coif, or if in Ireland, before any justice or baron of the same court, who shall and may proceed

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thereupon, in such manner as by this Act is directed concerning writs issuing in and made returnable during the vacation.

Textual Amendments

F2 Words repealed (N.I.) by [Prison Act \(Northern Ireland\) 1953 \(c. 18\), s. 45](#)

Modifications etc. (not altering text)

C5 References to the Courts of King's Bench, Common Pleas and Exchequer to be construed as references (E.W.) to the High Court: [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), ss. 18, 224\(1\)](#) and (N.I.) to the High Court of Justice in Northern Ireland: [Supreme Court of Judicature Act \(Ireland\) 1877 \(c. 57\), ss. 21, 71](#) and S. R. & O. 1921/1802 (Rev. XVI, p. 954: 1921, p. 1332), art. 2(1) and [Judicature \(Northern Ireland\) Act 1978 \(c. 23\), s. 16\(2\), Sch. 5 para. 1](#)

3 Judges to inquire into the Truth of Facts contained in Return. Judge to bail on Recognizance to appear in Term, &c.

In all cases provided for by this Act, although the return to any writ of habeas corpus shall be good and sufficient in law, it shall be lawful for the justice or baron, before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return by affidavit . . . ^{F3}; and to do therein as to justice shall appertain; and if such writ shall be returned before any one of the said justices or barons, and it shall appear doubtful to him on such examination, whether the material facts set forth in the said return or any of them be true or not, in such case it shall and may be lawful for the said justice or baron to let to bail the said person so confined or restrained, upon his or her entering into a recognizance with one or more sureties, or in cases of infancy or coverture, or other disability, upon security by recognizance, in a reasonable sum, to appear in the court of which the said justice or baron shall be a justice or baron upon a day certain in the term following, and so from day to day as the court shall require, and to abide such order as the court shall make in and concerning the premises; and such justice or baron shall transmit into the same court the said writ and return, together with such recognizance, affidavits, . . . ^{F3}; and thereupon it shall be lawful for the said court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit . . . ^{F3}, and to order and determine touching the discharging, bailing, or remanding the party.

Textual Amendments

F3 Words repealed by [Statute Law \(Repeals\) Act 1981 \(c. 19\), Sch. 1 Pt. VIII](#)

4 Court may controvert the Truth of the Return.

The like proceeding may be had in the court for controverting the truth of the return to any such writ of habeas corpus awarded as aforesaid, although such writ shall be awarded by the said court itself, or be returnable therein.

5 Writ may run into Counties Palatine, Cinque Ports, and other privileged Places, &c.

A writ of habeas corpus, according to the true intent and meaning of this Act, may be directed and run into any county palatine or cinque port, or any other privileged

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place within England, dominion of Wales, and town of Berwick-upon-Tweed, and the Isles of Jersey, Guernsey, and Man, respectively; and also into any port, harbour, road, creek, or bay, upon the coast of England and Wales, although the same should lie out of the body of any county; and if such writ shall issue in Ireland, the same may be directed and run into any port, harbour, road, creek, or bay, although the same should not be in the body of any county; any law or usage to the contrary in anywise notwithstanding.

6 Process of Contempt may be awarded in Vacation against Persons disobeying Writs of Habeas Corpus in Cases within Stat. 31 Cha. 2 c. 2.

The several provisions made in this Act, touching the making of writs of habeas corpus issuing in time of vacation returnable into the said courts, or for making such writs awarded in term time returnable in vacation, as the cases may respectively happen, and also for making wilful disobedience thereto a contempt of the court, and for issuing warrants to apprehend and bring before the said justices or barons, or any of them, any person or persons wilfully disobeying any such writ, and in case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to jail as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon, shall extend to all writs of habeas corpus awarded in pursuance of the ^{M1}Habeas Corpus Act 1679, or of the ^{M2}Habeas Corpus Act (Ireland) 1781, and herein-before recited, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been herein-before specially named and provided for respectively.

Marginal Citations

M1 1679 c. 2.

M2 1781 c. 11 (Ir.)

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