



# Judicature (Northern Ireland) Act 1978

## 1978 CHAPTER 23

### PART II

#### THE HIGH COURT

##### *General jurisdiction*

#### **16 General jurisdiction of the High Court and its judges**

- (1) The High Court shall be a superior court of record.
- (2) There shall, subject to the provisions of this Act, be exercisable by the High Court—
  - (a) all such jurisdiction as was heretofore capable of being exercised by the High Court of Justice in Northern Ireland",
  - (b) such other jurisdiction as is conferred by this Act or as may from time to time be conferred on the High Court by any subsequent statutory provision.
- (3) The jurisdiction vested in the High Court shall, save as provided by this Act, include the jurisdiction heretofore capable of being exercised by the High Court of Justice in Northern Ireland or by any division or judge or officer thereof in pursuance of any statutory provision, prerogative, law or custom and also all ministerial and other powers, duties and authorities incident to any and every part of the jurisdiction so vested.
- (4) In addition to the jurisdiction and functions exercisable by him under or by virtue of any other provision of this Act, the Lord Chief Justice may, save as provided by this Act, exercise all the jurisdiction and ministerial and other powers, duties and authorities which, in pursuance of any statutory provision, prerogative, law or custom, were heretofore capable of being exercised by the Lord Chief Justice of Northern Ireland otherwise than as a judge of the High Court or Court of Appeal.
- (5) Except where a statutory provision otherwise provides, any jurisdiction of the High Court or a division thereof shall be exercised by a single judge.
- (6) The generality of this section is not limited by any other provision of this Act.

## 17 Assignment of business to judges

Without prejudice to section 5(3), the Lord Chief Justice may assign to any judge of the High Court any part of the business of that court or of any division thereof and, in particular, may assign to such a judge, to be known as the Chancery Judge, the whole or any part of the business of the Chancery Division.

*Supervisory and declaratory jurisdiction*

## 18 Application for judicial review

- (1) Rules of court shall provide for a procedure, to be known as an application for judicial review, under which application may be made to the High Court for one or more of the following forms of relief, that is to say, relief by way of—
  - (a) an order of mandamus;
  - (b) an order of certiorari;
  - (c) an order of prohibition ;
  - (d) a declaration;
  - (e) an injunction.
- (2) Without prejudice to the generality of subsection (1), the rules shall provide—
  - (a) that leave of the court shall be obtained before any application for judicial review, other than an application for an order of certiorari by the Attorney General acting on behalf of the Crown, is made ;
  - (b) that such leave shall not be granted if, having regard to the nature of the persons and bodies against whom relief may be granted by way of an order of mandamus, prohibition or certiorari, the court is satisfied that the case is one in respect of which relief could not be granted by way of any such order;
  - (c) that, where leave is so obtained, the grounds relied on and the relief granted shall only be one or more of those specified in the application;
  - (d) that the court may direct, or grant leave for, the application to be amended to specify different or additional grounds or relief; and
  - (e) that the court may, subject to subsection (6), direct pleadings to be delivered or authorise or require oral evidence to be given where this appears to the court to be necessary or desirable.
- (3) On an application for judicial review the court may grant any of the forms of relief mentioned in subsection (1)(a) to (e) which the applicant has claimed and to which he appears to be entitled whether or not he appears to be entitled to any of the other forms of relief so mentioned, whether claimed or not.
- (4) The court shall not grant any relief on an application for judicial review unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) Without prejudice to section 25 of this Act or to section 160 of the Magistrates' Courts Act (Northern Ireland) 1964, where, on an application for judicial review, the court finds that—
  - (a) the sole ground of relief established is a defect in form or a technical irregularity; and
  - (b) no substantial wrong and no miscarriage of justice has occurred or no remedial advantage could accrue to the applicant,

the court may refuse relief and, where a lower deciding authority has exercised jurisdiction, may make an order, having effect from such time and on such terms as the court thinks just, validating any decision or determination of the lower deciding authority or any act done in consequence thereof notwithstanding that defect or irregularity.

- (6) No return shall be made to orders of mandamus, prohibition or certiorari and no pleadings in prohibition shall be allowed but, subject to any right of appeal, such orders shall be final.
- (7) For references in any statutory provision coming into operation as respects Northern Ireland before 15th September 1965 to a writ of mandamus, prohibition or certiorari there shall be substituted references to the corresponding order and for references to the issue or award of any such writ there shall be substituted references to the making of the corresponding order.

## **19 Stay and interim relief**

On an application for judicial review, the High Court may grant a stay of proceedings or of enforcement of an order or may grant such interim relief as it considers appropriate pending final determination of the application.

## **20 Damages**

In proceedings on an application for judicial review the High Court may, in lieu of or in addition to any other relief, award damages to an applicant, if—

- (a) he has, in accordance with rules of court, joined with his application a claim for damages arising from any matter to which the application relates ; and
- (b) the court is satisfied that, if such claim had been made in a separate action begun by the applicant at the time of making his application, he would have been entitled to such damages.

## **21 Power to remit matter or reverse or vary decision**

Without prejudice to section 18(5), where on an application for judicial review—

- (a) the relief sought is an order of certiorari; and
- (b) the High Court is satisfied that there are grounds for quashing the decision in issue,

the court may, instead of quashing the decision, remit the matter to the lower deciding authority concerned, with a direction to reconsider it and reach a decision in accordance with the ruling of the court or may reverse or vary the decision of the lower deciding authority.

## **22 Extension of supervisory powers of High Court 23. Declaratory judgments**

- (1) Any statutory provision to the effect that any order or determination shall not be called into question in any court, or which by similar words excludes any of the powers of the High Court, shall not operate so as to—
  - (a) prevent the removal of the proceedings into the High Court by order of certiorari; or
  - (b) prejudice the powers of the High Court to make orders of mandamus.

- (2) This section does not apply to—
- (a) section 26 of the British Nationality Act 1948;
  - (b) any statutory provision specially authorising applications to the High Court within a time limited by that provision ; or
  - (c) a statutory provision passed or made on or after 1st August 1958.

### **23 Declaratory judgments.**

- (1) No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby.
- (2) The High Court may make binding declarations of right in any action or other proceeding whether or not any consequential relief is or could be claimed therein.
- (3) Notwithstanding that the events on which a right depends may not have occurred, the High Court may in its discretion make a binding declaration of right if it is satisfied that—
  - (a) the question for decision involves a point of general public importance or that it would in the circumstances be unjust or inconvenient to withhold the declaration ; and
  - (b) the interests of persons not parties to the proceedings would not be unjustly prejudiced by the declaration.

### **24 Injunction concerning public office**

- (1) Where a person is acting or has acted in an office to which this section applies without being entitled so to act, the High Court, on an application under this section, may—
  - (a) grant an injunction restraining him from so acting;
  - (b) declare the office to be vacant.
- (2) This section applies to any substantive office of a public nature and permanent character which is held under the Crown or has been created by or under a statutory provision or royal charter.

### **25 Power of High Court to vary sentence on certiorari**

- (1) Where a person has been sentenced for an offence by a magistrates' court or, on appeal, by a county court and an application is made to the High Court for an order of certiorari to remove the proceedings of the magistrates' court or the county court into the High Court, and the High Court determines that the magistrates' court or county court had no power to pass the sentence, the High Court may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence which the magistrates' court had power to impose.
- (2) Any sentence passed by the High Court by virtue of this section in substitution for the sentence passed in the proceedings of the magistrates' court or county court shall, unless the High Court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings.
- (3) Subsections (1) and (2) shall apply, with the necessary modifications, in relation to any order of a magistrates' court or county court which is made on, but does not form part of, the conviction of an offender as they apply in relation to a conviction and sentence.

- (4) The High Court may release from custody a person who has been convicted or sentenced by a magistrates' court or, on appeal, by a county court and has applied to the High Court for an order of certiorari to remove the proceedings of the magistrates' court or the county court into the High Court on his entering into a recognizance, with or without sureties, conditioned for his appearance within ten days after the judgment of the High Court is given, unless the conviction or sentence is quashed by that judgment.
- (5) The time during which a person is admitted to bail under this section shall not count as any term of imprisonment or detention under his sentence, and any sentence of imprisonment or detention imposed by a magistrates' court or, on appeal, by a county court after the imposition of which a person is so admitted to bail shall be deemed to begin to run or to be resumed as from the date on which he is received under the sentence in the prison or other place where he is to be detained.
- (6) Rules of court may prescribe the persons before whom and the manner in which a recognizance under subsection (4) shall be entered into by a person applying for an order of certiorari and the manner in which such a recognizance may be enforced and may authorise the recommittal of persons so applying.

*Jurisdiction in relation to persons under disability*

**26 Wards of court**

- (1) Subject to the provisions of this section, no minor shall be made a ward of court except by virtue of an order to that effect made by the High Court.
- (2) Where application is made for such an order in respect of a minor, the minor shall become a ward of court on the making of the application, but shall cease to be a ward of court at the expiration of such period as may be prescribed, unless within that period an order has been made in accordance with the application.
- (3) The High Court may, either upon an application in that behalf or without such an application, order that any minor who is for the time being a ward of court shall cease to be a ward of court.
- (4) The power of the High Court to make a minor a ward of court or to make an order in relation to a minor who is a ward of court may be exercised irrespective of whether or not the minor has property of any kind.

**27 Maintenance of wards of court**

- (1) Subject to the provisions of this section, the High Court may make an order—
  - (a) requiring either parent of a ward of court to pay to the other parent; or
  - (b) requiring either parent or both parents of a ward of court to pay to any other person having the care and control of the ward,such weekly or other periodical sums towards the maintenance and education of the ward as the court thinks reasonable having regard to the means of the person or persons on whom the requirement is imposed.
- (2) An order under subsection (1) may require such sums as are mentioned in that subsection to continue to be paid in respect of any period after the date on which the person for whose benefit the payments are to be made ceases to be a minor but not

beyond the date on which he attains the age of twenty-one, and any order made as aforesaid may provide that any sum which is payable thereunder for the benefit of that person after he has ceased to be a minor shall be paid to that person himself.

- (3) Subject to the provisions of this section, where a person who has ceased to be a minor but has not attained the age of twenty-one has at any time been the subject of an order making him a ward of court, the court may, on the application of either parent of that person or of that person himself, make an order requiring either parent to pay to the other parent, to anyone else for the benefit of that person or to that person himself, in respect of any period not extending beyond the date on which he attains the said age, such weekly or other periodical sums towards his maintenance or education as the court thinks reasonable having regard to the means of the person on whom the requirement in question is imposed.
- (4) The court shall have power from time to time by an order under this section to vary or discharge any previous order thereunder.
- (5) In this section "parent", in relation to a person ("the child") who is or has been a ward of court, includes, where the child is illegitimate, a natural parent, where the child has been adopted, an adoptive parent, and where the child (not being a child boarded-out with them by a local or public body or a voluntary organisation) has been treated by spouses as a child of their family, either of those spouses.

## **28 Jurisdiction with respect to property and affairs of patients**

- (1) Subject to subsections (2) and (3), there is hereby vested in the High Court all jurisdiction in matters relating to patients heretofore exercisable by the Lord Chief Justice or any other person under the Lunacy Regulation (Ireland) Act 1871 or any other statutory provision or by virtue of Her Majesty's Sign Manual.
- (2) The legal visitors and medical visitors mentioned in the Lunacy Regulation (Ireland) Act 1871 shall be appointed by the Lord Chief Justice and shall be known as the Lord Chief Justice's Visitors.
- (3) In this section "matters relating to patients" includes all matters relating to the care and commitment of the custody of idiots, lunatics and persons of unsound mind and their estates and relating to the guardianship of persons of weak mind.

## **29 Co-ordination of exercise of jurisdiction in relation to persons under disability**

- (1) Rules of court may make provision for ensuring that where—
  - (a) a cause or matter affecting a person under a disability of any kind is brought before a judge of the High Court other than a judge ("the assigned judge") to whom causes or matters particularly affecting persons under a disability of that kind are assigned; or
  - (b) any question affecting such a person arises in a cause or matter so brought;
 

any conflict between the exercise of jurisdiction by the judge seised of the proceedings ("the seised judge") and the assigned judge is avoided and the exercise of those jurisdictions is co-ordinated.
- (2) For example, in relation to minors the rules may make provision for the purposes of—
  - (a) enabling the seised judge to make an order making a minor a ward of court, if he considers it proper to do so, and to transfer the cause or matter to the assigned judge;

- (b) enabling or requiring the seised judge to refer the question of wardship to the assigned judge ;
  - (c) empowering the seised judge, where a question arising in the proceedings affects the welfare (including care, custody or control) or property of a minor who is already a ward of court, either—
    - (i) to refer the question to the assigned judge, or
    - (ii) to make such order as he considers necessary to dispose of the question (not being an order which conflicts with an order previously made in wardship proceedings affecting the minor),and enabling an order made by virtue of sub-paragraph (ii) to be varied or discharged;
  - (d) requiring the seised judge—
    - (i) when he makes an order and transfers a cause or matter as mentioned in paragraph (a), or
    - (ii) when he makes a reference as mentioned in paragraph (b), or
    - (iii) when he makes a reference or order as mentioned in paragraph (c),to furnish to the assigned judge a report on the relevant facts and proceedings together with such observations and recommendations as he thinks fit;
  - (e) empowering the assigned judge, on a cause or matter being transferred to him or a question being referred to him, to proceed as though it had originated before him.
- (3) Rules of court shall provide for the transmission to the Office of Care and Protection of a copy of an order made by the seised judge—
- (a) which relates to a person under a disability which brings him within the jurisdiction of that Office ;
  - (b) which makes a minor a ward of court; or
  - (c) which the judge directs be so transmitted.

#### *Admiralty jurisdiction*

### **30 High Court to have exclusive original jurisdiction in admiralty**

The High Court shall, subject to section 46(3), have exclusive original jurisdiction in admiralty and, accordingly, a county court shall not have jurisdiction to hear any admiralty cause or matter and the admiralty jurisdiction conferred on the Court of the Recorder of Belfast by section 55 of, and Part I of Schedule 1 to, the Administration of Justice Act 1956 is hereby abolished.

#### *Miscellaneous powers of High Court*

### **31 Remittal and removal of proceedings**

- (1) The High Court may in accordance with rules of court at any stage remit to a county court the whole or any part of any civil proceedings to which this subsection applies if—
- (a) the parties consent to the remittal thereof;

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*Status: This is the original version (as it was originally enacted).*

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- (b) the court is satisfied upon the application of any party to proceedings involving an unliquidated claim that the full amount of that claim is likely to be within the monetary limit of the jurisdiction of the county court;
  - (c) the court is satisfied, whether upon the application of any party or otherwise, that the subject matter of the proceedings (not being an unliquidated claim) is or is likely to be within the limits of the jurisdiction of the county court; or
  - (d) the claimant abandons the right to recover any amount in excess of the monetary limit of the jurisdiction of the county court,
- and in any such case the court is of the opinion that in all the circumstances the proceedings may properly be heard and determined in the county court.
- (2) Subsection (1) applies to civil proceedings commenced in the High Court of a kind which the county court would, apart from any limitation by reason of amount or value or annual value, have jurisdiction to hear and determine if commenced in that court.
  - (3) Proceedings remitted under this section shall be remitted to such county court as the High Court may specify, being either a county court in which the proceedings could, apart from any limitation by reason of amount or value or annual value, have been commenced or, with the concurrence of the parties, any other county court appearing to the High Court to be convenient.
  - (4) Where proceedings are remitted to a county court under this section, the county court shall have jurisdiction to hear and determine those proceedings and—
    - (a) the county court shall have the like jurisdiction as the High Court as to the giving of any relief claimed, including (but without prejudice to the generality of this provision) the amount of damages that may be awarded; and
    - (b) the parties to the proceedings shall have the like right of appeal as if the proceedings had been commenced in the county court.
  - (5) The High Court may in accordance with rules of court at any stage remove to that court from a county court and hear and determine the whole or any part of any civil proceedings which could have been commenced in the High Court but have been commenced in that county court if—
    - (a) the parties consent to the removal thereof; or
    - (b) on the application of any party the court is satisfied that there is a triable issue, and in either such case the court is of opinion that, by reason of the nature of the proceedings, the amount of the claim or the value or annual value of the subject matter, the proceedings are not within the jurisdiction of the county court or that the proceedings could in all the circumstances be more appropriately heard and determined in the High Court.
  - (6) The High Court may require any party on whose application any proceedings are removed to that court to give security of such nature and amount as that court may by order direct.
  - (7) This section shall not apply to the following proceedings, namely—
    - (a) applications for adoption orders (including provisional adoption orders);
    - (b) applications under section 17 of the Married Women's Property Act 1882;
    - (c) proceedings under section 57 of the Trustee Act (Northern Ireland) 1958;
    - (d) appeals under section 13 of the Agricultural Marketing Act (Northern Ireland) 1964.
  - (8) This section shall apply to proceedings by and against the Crown, but—



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- (a) in its application to proceedings against the Crown this section shall have effect subject to the provisions of section 20(2) of the Crown Proceedings Act 1947 as they extend to Northern Ireland ;
  - (b) nothing in subsection (6) shall have effect so as to require or to authorise the making of an order requiring security to be given by the Crown ;
  - (c) no proceedings by the Crown shall be remitted to a county court without the consent of the Crown;
  - (d) nothing in this section shall apply to proceedings affecting Her Majesty in Her private capacity.
- (9) For the purposes of this section—
- (a) the amount of a claim shall be taken as the amount remaining in dispute after allowance has been made for any payment, set off or other amount admitted by tender or otherwise to be due and after any abandonment by the claimant of any amount by which the sum claimed exceeds the monetary limit of the jurisdiction of the county court;
  - (b) the full amount of an unliquidated claim shall be taken as the amount which would be recoverable if no deduction were made in respect of the claimant's own fault;
  - (c) in determining whether an amount exceeds the monetary limit of the jurisdiction of the county court, no account shall be taken of any power exercisable by virtue of section 17 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 or of any order made in the exercise of such a power ;
  - (d) " proceedings " includes proceedings on a counterclaim ; and
  - (e) " the Crown " includes the Crown in right of Her Majesty's Government in the United Kingdom and in right of Her Majesty's Government in Northern Ireland.

### **32 Restriction on institution of vexatious actions**

- (1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court or tribunal, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order—
- (a) that no legal proceedings shall without the leave of the High Court be instituted by him in any court or tribunal;
  - (b) that any legal proceedings instituted by him in any court or tribunal before the making of the order shall not be continued by him without such leave ;
- and such leave shall not be given unless the court is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.
- (2) The court may in its discretion assign a solicitor or counsel to any person against whom an order is sought under this section and the expenses of any such solicitor or counsel shall be taxed and paid out of the legal aid fund.
- (3) A notice of the making of any order under this section shall be published in the Belfast Gazette.

**33 Execution of instruments by order of court**

Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document or to endorse any negotiable instrument, the High Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.