



# Judicature (Northern Ireland) Act 1978

## 1978 CHAPTER 23

### PART X

#### MISCELLANEOUS MATTERS

#### **103 Appointment of justices of the peace.**

- (1) Subject to the following provisions of this section there shall in Northern Ireland be a commission of the peace for each county court division and not, as heretofore, for each county and county borough.
- (2) The commission of the peace for a county court division shall be a commission under the Great Seal of Northern Ireland addressed generally, and not by name, to all such persons as may from time to time hold office as justices of the peace for the county court division.
- (3) Justices of the peace for a county court division shall be appointed [<sup>F1</sup>by the Lord Chancellor by instrument on behalf and in the name of Her Majesty], and a justice so appointed may be removed from office in like manner.
- (4) A justice of the peace shall, within the county court division for which he is appointed, have all the jurisdiction and duties which were heretofore vested in or imposed on a justice of the peace acting for any area which included any part of that county court division.
- (5) Any act, matter or thing which by any statutory provision was heretofore required or authorised to be done before, or in the presence of, or to be served on, a justice of the peace acting for a county or county borough shall be required or authorised (as the case may be) to be done before, or in the presence of, or to be served on, a justice of the peace acting for any county court division in which that county or county borough or any part thereof is included.
- (6) In each county court division such one of the justices of the peace as may be designated by the Lord Chancellor shall be keeper of the rolls and shall exercise in relation to that county court division the functions heretofore exercised in relation to a county by the keeper of the rolls for that county.

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- (7) There shall be transmitted to the keeper of the rolls for each county court division, and be enrolled in the records of the justices for that division, a copy of any instrument appointing or removing a justice of the peace in that division in accordance with this section; and the keeper of the rolls shall be notified in such manner as the Lord Chancellor may direct of any resignation or death of a justice so appointed, and shall cause to be kept and from time to time rectified a record of those for the time being holding office by virtue of any such appointment.
- (8) A record of all persons for the time being holding office as justice of the peace by virtue of appointments made in accordance with this section, together with the instruments of appointment or removal shall be kept in the office of the Clerk of the Crown for Northern Ireland.
- (9) The Lord Chancellor may by order make such incidental, consequential, transitional or supplementary provisions (including the amendment or repeal of any statutory provision) as appear to the Lord Chancellor to be necessary or proper for giving full effect to the provisions of this section.
- (10) In this and the next following section “county court division” means a division specified under <sup>F2</sup>Article 3(1) of the County Courts (Northern Ireland) Order 1980].

**Textual Amendments**

**F1** Words substituted by [Administration of Justice Act 1985 \(c. 61, SIF 34\), s. 62\(2\)](#)

**F2** Words substituted by [S.I. 1980/397 \(N.I. 3\), art. 68\(2\), Sch. 1 Pt. II](#)

VALID FROM 01/04/2005

**<sup>F3</sup>103A Power of court of record to bind over**

(1) Any court of record in Northern Ireland having a criminal jurisdiction has, as ancillary to that jurisdiction, the power—

- (a) to bind over to keep the peace; or
- (b) to bind over to be of good behaviour,

a person who or whose case is before the court by requiring him to enter into his own recognisances or to find sureties (or both) and committing him to prison if he does not comply.

(2) A magistrates’ court is not to be regarded as a court of record for the purposes of subsection (1).]

**Textual Amendments**

**F3** [S. 103A](#) inserted (1.4.2005) by [2002 c. 26, ss. 10, 87\(1\), Sch. 4 para. 18; S.R. 2005/109, art. 2, Sch.](#)

**104 Under-sheriffs.**

- (1) . . . . . **F4**

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- (2) The Lord Chancellor may by order abolish the office of under-sheriff and transfer all or any of the functions of that office to such other person or body as may be specified in the order.
- (3) An order under this section may—
  - (a) with the concurrence of the Minister for the Civil Service, make provision for the payment by the Lord Chancellor of compensation to or in respect of persons who suffer loss of employment or loss or diminution of emoluments (including superannuation rights) which is attributable to the operation of any such order; or
  - (b) make such other incidental, consequential, transitional or supplementary provisions (including the amendment or repeal of any statutory provision) as appear to the Lord Chancellor to be necessary for giving full effect to the provisions of any such order.

#### Textual Amendments

F4 S. 104(1) repealed by S.R. 1982/192, Sch. 2

### 105 Solicitors to be officers of court.

- (1) Any person duly admitted as a solicitor in Northern Ireland or entitled to practise therein as a solicitor shall be an officer of the Supreme Court, but nothing in this subsection shall affect the operation of any statutory provision (including a provision contained in this Act) which imposes on officers of a court restrictions as to practice as solicitors.
- (2) References in any statutory provision in force in Northern Ireland to attorneys or proctors shall be construed as references to solicitors of the Supreme Court.

### 106 Rights of audience in the High Court and Court of Appeal.

- (1) A solicitor of the Supreme Court shall have a right of audience in any proceedings in the High Court or the Court of Appeal respecting—
  - [<sup>F5</sup>(a) any bankruptcy matter any matter relating to individual voluntary arrangements or bankruptcy under Parts VIII to X of the Insolvency (Northern Ireland) Order 1989;
  - (b) any matter relating to the winding-up of a company any matter relating to company voluntary arrangements, receivership or the winding up of a company under Parts II and IV to VII of that Order of 1989]
  - (c) any matter to be heard in chambers or which is adjourned from chambers into court; or
  - (d) any matter in which counsel already instructed is for any reason unable to appear,
 without being required to instruct counsel, or other counsel as the case may be, and may act and plead therein as counsel might have acted or pleaded.
- (2) Where in any proceedings in the High Court or the Court of Appeal (other than proceedings to which subsection (1) relates) a solicitor has had no reasonable opportunity, having regard to all the circumstances, of adequately instructing counsel,

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the court, if of opinion that it is desirable in the interests of justice to do so, may grant the solicitor a right of audience as ample as that which counsel would have enjoyed.

- (3) A solicitor of the Supreme Court shall have a right of audience in any enquiries or proceedings before a statutory officer sitting in the exercise of his jurisdiction whether original or delegated; and any such officer may in his discretion permit such right of audience to be enjoyed by an experienced solicitor's clerk acting on behalf of his principal.
- (4) Nothing in this section shall take away or affect the inherent powers of any court or judge to confer a right of audience.

#### Textual Amendments

**F5** S. 106(1)(a)(b) substituted(*prosp.*) by S.I. 1989/2405, art. 381, Sch. 9 Pt. II para. 30

### 107 Qualification for holding office of solicitors who have been barristers and vice versa.

- (1) For the purpose of any statutory provision or custom whereby the qualification of a solicitor for holding any office in Northern Ireland depends upon—
- (a) his having been admitted for a specified period; or
  - (b) his having been admitted and in practice for a specified period,
- that period, in the case of a solicitor who before admission was a barrister, shall be deemed to include—
- (i) where paragraph (a) applies, any period during which he was a barrister; and
  - (ii) where paragraph (b) applies, any period after his call to the bar during which he was in practice as a barrister.
- (2) For the purpose of any statutory provision or custom whereby the qualification of a barrister for holding any office in Northern Ireland depends upon—
- (a) his having been called to the bar for a specified period; or
  - (b) his having been called to the bar and in practice for a specified period,
- that period, in the case of a barrister who before call was a solicitor, shall be deemed to include—
- (i) where paragraph (a) applies, any period during which he was a solicitor; and
  - (ii) where paragraph (b) applies, any period after his admission as a solicitor during which he was in practice as such.
- (3) This section applies—
- (a) to this Act and to any other statutory provision whether passed or made before or after this Act; and
  - (b) in relation to persons admitted as solicitors or called to the bar before, as well as after, the passing of this Act.

### 108 Election courts.

- (1) On or before 1st October in each year the judges of the High Court and the Court of Appeal shall select two of their number to be judges for the trial of parliamentary election petitions for the purposes of <sup>F6</sup>section 123 of the <sup>M1</sup>Representation of the

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People Act 1983] and section 72(2) of the <sup>M2</sup>Electoral Law Act (Northern Ireland) 1962.

- (2) In the event of the death, retirement or unavailability through illness or other cause of any judge selected pursuant to this section, the judges of the High Court and the Court of Appeal shall as soon as may be convenient select one of their number to replace or act for him.

#### Textual Amendments

**F6** Words substituted by [Representation of the People Act 1983 \(c. 2, SIF 42\), Sch. 8 para. 25](#)

#### Marginal Citations

**M1** 1983 c. 2.

**M2** 1962 c. 14 (N.I)

### 109 Enrolment etc. of instruments.

- (1) The Lord Chief Justice may make regulations with respect to the enrolment, engrossment, filing or registration in the Supreme Court of documents to which subsection (2) refers and specifying the form in which certificates of enrolment, engrossment, filing or registration are to be granted or the manner in which the respective rolls, registers or files of documents may be inspected.
- (2) Any document which is required or authorised by any statutory provision or rule of law or practice to be enrolled or engrossed or filed or registered in any manner in the Supreme Court (not being a document required to be filed or registered pursuant to rules of court) shall be deemed to have been duly enrolled, engrossed, filed or registered as the case may be, in compliance therewith if it is written on such material and has been filed or registered in such manner as may be authorised by regulations under this section and for this purpose “written” shall be taken as including typewritten, printed, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in a visible form.
- (3) Except as provided by subsection (2), nothing in regulations made under this section shall prejudice or affect the operation of any statutory provision requiring or authorising the enrolment, engrossment, filing or registration of deeds in the Supreme Court.

### 110 Court bonds.

- (1) Rules of court may provide that bonds to be given for the purposes of any proceedings in the High Court or the Court of Appeal—
- (a) shall be given in such form and to such officer of the court by his official title; and
  - (b) may be given by such surety companies, as may be prescribed.
- (2) The bond of a surety company prescribed under subsection (1) shall be sufficient without any other surety or any affidavit of justification but in other cases rules of court may prescribe or the court ordering the bond may require that one or more than one surety be joined in the bond.

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- (3) Where a bond has been given for the purpose of proceedings in any court and it appears to the court, upon application made to it, that a condition of the bond has been broken, the court may order either—
  - (a) that the bond be enforced; or
  - (b) that the bond be assigned to a person named in the order for the purpose of being enforced by him.
- (4) In the case of an order under subsection (3) (a), the officer of the court to whom the bond was given and, in the case of an order under subsection (3) (b), the person to whom the bond was ordered to be assigned shall be entitled by virtue of the order to enforce the bond in his own name as if it had been originally given to him and shall hold, as trustee for all persons entitled thereto, all money recoverable for the breach of the condition in respect of which the order was made.
- (5) Any judge or officer having jurisdiction in a matter to which a bond relates may upon application made to him disallow or annul any bond upon evidence appearing to him to be sufficient to justify its disallowance or annulment.
- (6) In this section “surety company” means a body corporate having a place of business in Northern Ireland and authorised by law to give bonds there by way of guarantee and indemnity.

## **111 Lost negotiable instruments.**

In any cause or matter founded on a negotiable instrument a court in Northern Ireland may order that the loss of such instrument shall not be set up, so long as an indemnity is given, to the satisfaction of the court or of an officer of the court specified by the court, against the claims of any other person upon such negotiable instrument.

## **112 Oaths and affidavits.**

- (1) The Lord Chief Justice may, in accordance with rules of court, appoint persons to act, subject to such conditions and such limits as to territory, duration or purpose as he may specify in the appointment, as commissioners for oaths or notaries public and, subject to those conditions and limits, the respective persons so appointed may exercise all the powers and shall perform all the duties conferred by the law of Northern Ireland on commissioners for oaths or notaries public, as the case may be.
- (2) A commissioner for oaths may, by virtue of his commission, in Northern Ireland or elsewhere, administer any oath or take any affidavit for the purposes of any court or matter in Northern Ireland, including any matters relating to applications for notarial faculties and matters relating to the registration of any instrument, whether under a statutory provision or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or the Court of appeal.
- (3) Every person who, being an officer of or performing duties in relation to any court, is for the time being so authorised by the Lord Chancellor or by a judge of the court, or by or in pursuance of any rules or orders regulating the procedure of the court, and every person directed to take an examination in any cause or matter in the High Court or the Court of Appeal, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties.

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- (4) Any oath or affidavit required for the purpose of any court or matter in Northern Ireland, or for the purpose of the registration of any instrument in any part of the United Kingdom, may be taken or made in any place out of Northern Ireland before any person having authority to administer an oath in that place.
- (5) In the case of a person having such authority otherwise than by the law of a foreign country, judicial and official notice shall be taken of his seal or signature affixed, impressed or subscribed to or on any such oath or affidavit.
- (6) Every commissioner before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
- (7) In this section “affidavit” includes statutory or other declaration, acknowledgment, examination, and attestation or protestation of honour.

### **113 Appointment of conveyancing counsel.**

- (1) The High Court may, for the purposes of any civil cause or matter before it, appoint to act as conveyancing counsel to the court a person who has practised for not less than ten years at the Bar of Northern Ireland.
- (2) Rules of court may make provision with respect to the appointment and allowances of counsel appointed under subsection (1).

### **114 Other law in Northern Ireland courts.**

- (1) For the purposes of proceedings before any court in Northern Ireland whether sitting with or without a jury, any question, as to the effect of evidence given with respect to the law of any country or territory outside Northern Ireland shall be a matter to be determined by the judge of the court.
- (2) Without prejudice to any other statutory provision or to any rule of law or practice, in proceedings before a court in Northern Ireland judicial notice may be taken of the law of England and Wales or of the law of the Republic of Ireland.
- (3) In proceedings before a court in Northern Ireland a person who is suitably qualified to do so on account of his knowledge or experience is competent to give expert evidence as to the law of any country or territory outside Northern Ireland, irrespective of whether he has acted, or is entitled to act, as a legal practitioner in that country or territory.
- (4) Where any question as to the law of any country or territory outside Northern Ireland with respect to any matter has been determined (whether before or after the commencement of this section) in any such proceedings as are mentioned in subsection (6), then in any subsequent proceedings before a court in Northern Ireland not otherwise empowered to take judicial notice of that determination—
  - (a) any finding made or decision given on that question in the first-mentioned proceedings shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that country or territory with respect to that matter; and
  - (b) if that finding or decision, as so reported or recorded, is adduced for that purpose, the law of that country or territory with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is

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proved, but this paragraph shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question adduced by virtue of this subsection in the same proceedings.

- (5) Except with the leave of the court, a party to any proceedings shall not be permitted to adduce any such finding or decision by virtue of subsection (4) unless, before the hearing at which he seeks to adduce it, written notice that he intends to do so has been served on each of the other parties to the proceedings or on his solicitor.
- (6) The proceedings referred to in subsection (4) are the following, whether civil or criminal, namely—
  - (a) proceedings at first instance in any of the following courts, namely the High Court or the Crown Court, or the High Court or the Crown Court in England and Wales;
  - (b) appeals arising out of any such proceedings as are mentioned in paragraph (a);
  - (c) proceedings before the Judicial Committee of the Privy Council on appeal (whether to Her Majesty in Council or to the Judicial Committee as such) from any decision of any court outside the United Kingdom.
- (7) For the purpose of this section a finding or decision on any such question as in mentioned in subsection (4) shall be taken to be reported or recorded in citable form if, but only if, it is reported or recorded in writing in a report, transcript or other document which, if that question had been a question as to the law of Northern Ireland could be cited as an authority in legal proceedings in Northern Ireland.

## **115 Official seals.**

- (1) There shall be an official seal of the Supreme Court which shall be used for such purposes as the Lord Chief Justice may direct or as may be authorised or required by any statutory provision.
- (2) The seals heretofore used in the High Court and the Court of Appeal may continue to be used.
- (3) The Lord Chief Justice may from time to time direct what seals shall be used in the several divisions and departments of the Supreme Court.
- (4) All writs, decrees, orders, instruments, certificates and other documents and copies thereof which purport to be sealed with a seal provided under this section shall, in all parts of the United Kingdom, be judicially noticed and received in evidence without further proof of their authenticity.

## **116 Fees.**

- (1) The Lord Chancellor, after consultation with the Lord Chief Justice and with the concurrence of the Treasury may by order fix the fees to be taken in any court in Northern Ireland or in any office or by any officer connected with any such court or by the Enforcement of Judgments Office and may from time to time increase, reduce or abolish any such fees or fix new fees to be so taken.
- (2) The Lord Chancellor, after consultation with the Lord Chief Justice and with the concurrence of the Treasury, may by order fix the fees to be taken by commissioners for oaths or notaries public and may from time to time increase, reduce or abolish any such fees or fix new fees to be so taken.



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- (3) Any functions heretofore exercisable by any other authority or person in relation to the fixing of the fees mentioned in subsections (1) and (2) shall cease to be exercisable.
- (4) An order under subsection (1) or (2) may provide for the manner in which any fees fixed thereby are to be taken, applied and accounted for but, subject to any provision so made, the fees mentioned in those subsections shall continue to be taken, applied and accounted for as heretofore.

## 117 Transfer of certain functions relating to courts to Lord Chancellor.

- (1) The functions heretofore exercisable by the Secretary of State under the enactments listed in subsection (2) and under any instrument made under any such enactment are hereby transferred to the Lord Chancellor.
- (2) The enactments referred to in subsection (1) are—
  - (a) in the <sup>M3</sup>Administration of Justice Act (Northern Ireland) 1954, sections 11 and 14;
  - (b) the <sup>M4</sup>Coroners' Act (Northern Ireland) 1959;
  - (c) the <sup>M5</sup>County Courts Act (Northern Ireland) 1959;
  - (d) the <sup>M6</sup>Magistrates' Courts Act (Northern Ireland) 1964 (except sections 25(1) and 46);
  - (e) ..... F7
  - (f) ..... F8

### Textual Amendments

- F7 S. 117(2)(e) repealed by S.I. 1981/226 (N.I. 6), Sch. 4  
F8 S. 117(2)(f) repealed by S.I. 1980/397 (N.I. 3), Sch. 3

### Marginal Citations

- M3 1954 c. 9 (N.I.)  
M4 1959 c. 15 (N.I.)  
M5 1959 c. 25 (N.I.)  
M6 1964 c. 21 (N.I.)

## [<sup>F9</sup>117A Allowances for judges.

The Lord Chancellor shall pay to any judge of the Court of Appeal or of the High Court, in addition to his salary, such allowances as may be determined by the Lord Chancellor with the concurrence of the Treasury.]

### Textual Amendments

- F9 S. 117A inserted by Administration of Justice Act 1982 (c. 53, SIF 38), Sch. 8 para. 12

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