



# Senior Courts Act 1981

## 1981 CHAPTER 54

### PART II

#### JURISDICTION

#### THE HIGH COURT

##### *Powers*

### **32 Orders for interim payment.**

- (1) As regards proceedings pending in the High Court, provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to make an order requiring a party to the proceedings to make an interim payment of such amount as may be specified in the order, with provision for the payment to be made to such other party to the proceedings as may be so specified or, if the order so provides, by paying it into court.
- (2) Any rules of court which make provision in accordance with subsection (1) may include provision for enabling a party to any proceedings who, in pursuance of such an order, has made an interim payment to recover the whole or part of the amount of the payment in such circumstances, and from such other party to the proceedings, as may be determined in accordance with the rules.
- (3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.
- (4) Nothing in this section shall be construed as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs.
- (5) In this section “interim payment”, in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which that party may be held liable to pay to or for the benefit of another party to the

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proceedings if a final judgment or order of the court in the proceedings is given or made in favour of that other party.

### [<sup>F1</sup>32A Orders for provisional damages for personal injuries.

- (1) This section applies to an action for damages for personal injuries in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration in his physical or mental condition.
- (2) Subject to subsection (4) below, as regards any action for damages to which this section applies in which a judgment is given in the High Court, provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to award the injured person—
  - (a) damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition; and
  - (b) further damages at a future date if he develops the disease or suffers the deterioration.
- (3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.
- (4) Nothing in this section shall be construed—
  - (a) as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs; or
  - (b) as prejudicing any duty of the court under any enactment or rule of law to reduce or limit the total damages which would have been recoverable apart from any such duty.]

#### Textual Amendments

F1 S. 32A inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), ss. 6(1), 73(2)

#### Modifications etc. (not altering text)

C1 S. 32A amended by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), ss. 6(3), 73(2)

### [<sup>F2</sup>33 Powers of High Court exercisable before commencement of action.

- (1) On the application of any person in accordance with rules of court, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say—
  - (a) the inspection, photographing, preservation, custody and detention of property which appears to the court to be property which may become the subject-matter of subsequent proceedings in the High Court, or as to which any question may arise in any such proceedings; and
  - (b) the taking of samples of any such property as is mentioned in paragraph (a), and the carrying out of any experiment on or with any such property.
- <sup>F3</sup>(2) On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court in which

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a claim in respect of personal injuries to a person, or in respect of a person's death, is likely to be made, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim—

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order—
  - (i) to the applicant's legal advisers; or
  - (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
  - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.]

#### Textual Amendments

- F2** S. 33 repealed so far as it relates to county courts by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(3), [Sch. 4](#)
- F3** Power to amend conferred on s. 33(2) (27.4.1997) by [1997 c. 12, s. 8\(1\)](#); [S.I.1997/841](#), [art.3\(a\)](#)

#### Modifications etc. (not altering text)

- C2** S.33 extended by [SI 1988/593](#), art. 4(2)
- C3** S.33 extended (temp. for a period of 12 months beginning with 22.3.90: [SI 1990/675](#); and for a further period of 12 months beginning with 22.3.1991: [SI 1991/549](#), 779) by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 13(8), [Sch. 4 para. 9\(6\)](#)

### [<sup>F4</sup>34] **Power of High Court to order disclosure of documents, inspection of property etc. in proceedings for personal injuries or death.**

- (1) This section applies to any proceedings in the High Court in which a claim is made in respect of personal injuries to a person, or in respect of a person's death.
- (2) On the application, in accordance with rules of court, of a party to any proceedings to which this section applies, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the court to be likely to have in his possession, custody or power any documents which are relevant to an issue arising out of the said claim—
  - (a) to disclose whether those documents are in his possession, custody or power; and
  - (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order—
    - (i) to the applicant's legal advisers; or
    - (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
    - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.
- (3) On the application, in accordance with rules of court, of a party to any proceedings to which this section applies, the High Court shall, in such circumstances as may be

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specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say—

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject-matter of the proceedings or as to which any question arises in the proceedings;
  - (b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.
- (4) The preceding provisions of this section are without prejudice to the exercise by the High Court of any power to make orders which is exercisable apart from those provisions.]

#### Textual Amendments

- F4** S. 34 repealed so far as it relates to county courts by [County Courts Act 1984 \(c. 28, SIF 34\), s. 148\(3\), Sch. 4](#)

#### [<sup>F5</sup>35 Provisions supplementary to ss. 33 and 34.

- (1) The High Court shall not make an order under section 33 or 34 if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.
- (2) Rules of court may make provision as to the circumstances in which an order under section 33 or 34 can be made; and any rules making such provision may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.
- (3) Without prejudice to the generality of subsection (2), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under section 33(2) or 34 incurred by the person against whom the order is sought shall be awarded to that person unless the court otherwise directs.
- (4) Sections 33(2) and 34 and this section bind the Crown; and section 33(1) binds the Crown so far as it relates to property as to which it appears to the court that it may become the subject-matter of subsequent proceedings involving a claim in respect of personal injuries to a person or in respect of a person's death.

In this subsection references to the Crown do not include references to Her Majesty in Her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall.

- (5) In sections [<sup>F6</sup>32A,] 33 and 34 and this section—
  - “property” includes any land, chattel or other corporeal property of any description;
  - “personal injuries” includes any disease and any impairment of a person's physical or mental condition.]

#### Textual Amendments

- F5** S. 35 repealed so far as it relates to county courts by [County Courts Act 1984 \(c. 28, SIF 34\), s. 148\(3\), Sch. 4](#)

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**F6** “32A,” inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\), ss. 6\(2\), 73\(2\)](#)

**[<sup>F7</sup>35A Power of High Court to award interest on debts and damages.**

- (1) Subject to rules of court, in proceedings (whenever instituted) before the High Court for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and—
  - (a) in the case of any sum paid before judgment, the date of the payment; and
  - (b) in the case of the sum for which judgment is given, the date of the judgment.
- (2) In relation to a judgment given for damages for personal injuries or death which exceed £200 subsection (1) shall have effect—
  - (a) with the substitution of “shall be included” for “may be included”; and
  - (b) with the addition of “unless the court is satisfied that there are special reasons to the contrary” after “given”, where first occurring.
- (3) Subject to rules of court, where—
  - (a) there are proceedings (whenever instituted) before the High Court for the recovery of a debt; and
  - (b) the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings),the defendant shall be liable to pay the plaintiff simple interest at such rate as the court thinks fit or as rules of court may provide on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.
- (4) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.
- (5) Without prejudice to the generality of section 84, rules of court may provide for a rate of interest by reference to the rate specified in section 17 of the Judgments Act 1838 as that section has effect from time to time or by reference to a rate for which any other enactment provides.
- (6) Interest under this section may be calculated at different rates in respect of different periods.
- (7) In this section “plaintiff” means the person seeking the debt or damages and “defendant” means the person from whom the plaintiff seeks the debt or damages and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.
- (8) Nothing in this section affects the damages recoverable for the dishonour of a bill of exchange.]

**Textual Amendments**

**F7** S. 35A inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\), s. 15\(1\), Sch. 1 Pt. I](#)

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### 36 Subpoena issued by High Court to run throughout United Kingdom.

- (1) If in any cause or matter in the High Court it appears to the court that it is proper to compel the personal attendance at any trial of a witness who may not be within the jurisdiction of the court, it shall be lawful for the court, if in the discretion of the court it seems fit so to do, to order that a writ of subpoena ad testificandum or writ of subpoena duces tecum shall issue in special form commanding the witness to attend the trial wherever he shall be within the United Kingdom; and the service of any such writ in any part of the United Kingdom shall be as valid and effectual for all purposes as if it had been served within the jurisdiction of the High Court.
- (2) Every such writ shall have at its foot a statement to the effect that it is issued by the special order of the High Court, and no such writ shall issue without such a special order.
- (3) If any person served with a writ issued under this section does not appear as required by the writ, the High Court, on proof to the satisfaction of the court of the service of the writ and of the default, may transmit a certificate of the default under the seal of the court or under the hand of a judge of the court—
  - (a) if the service was in Scotland, to the Court of Session at Edinburgh; or
  - (b) if the service was in Northern Ireland, to the High Court of Justice in Northern Ireland at Belfast;
 and the court to which the certificate is sent shall thereupon proceed against and punish the person in default in like manner as if that person had neglected or refused to appear in obedience to process issued out of that court.
- (4) No court shall in any case proceed against or punish any person for having made such default as aforesaid unless it is shown to the court that a reasonable and sufficient sum of money to defray [<sup>F8</sup>the expenses of coming and attending to give evidence and of returning from giving evidence was tendered to that person at the time when the writ was served upon him.]
  - [<sup>F8</sup>(a) the expenses of coming and attending to give evidence and of returning from giving evidence; and
  - (b) any other reasonable expenses which he has asked to be defrayed in connection with his evidence,
 was tendered to him at the time when the writ was served upon him.]
- (5) Nothing in this section shall affect—
  - (a) the power of the High Court to issue a commission for the examination of witnesses out of the jurisdiction of the court in any case in which, notwithstanding this section, the court thinks fit to issue such a commission; or
  - (b) the admissibility at any trial of any evidence which, if this section had not been enacted, would have been admissible on the ground of a witness being outside the jurisdiction of the court.
- (6) In this section references to attendance at a trial include references to attendance before an examiner or commissioner appointed by the High Court in any cause or matter in that court, including an examiner or commissioner appointed to take evidence outside the jurisdiction of the court.

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### Textual Amendments

- F8** Words commencing “(a) the expenses of coming” substituted (*prosp.*) for words commencing “the expenses” by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), ss. 124(3), 125(2), [Sch. 17 para. 13](#)

### Modifications etc. (not altering text)

- C4** [S. 36](#) extended by [Medical Act 1983 \(c. 54, SIF 83:1\)](#), s. 43, [Sch. 4 para. 2\(2\)](#)  
**C5** [S. 36](#) extended by [Dentists Act 1984 \(c. 24, SIF 83:1\)](#), ss. 33, 50(2), [Sch. 3 para. 3](#)  
**C6** [S. 36](#) extended by [Administration of Justice Act 1985 \(c. 61, SIF 98:1\)](#), s. 30, [Sch. 4 para. 2\(2\)](#)  
**C7** [S. 36](#) applied by [Opticians Act 1989 \(c. 44, SIF 83:1\)](#), s. 21(2)  
**C8** [S. 36\(1\)–\(4\)](#) modified by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 104(4), [Sch. 5 para. 43\(2\)](#)

## 37 Powers of High Court with respect to injunctions and receivers.

- (1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
- (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.
- (3) The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction.
- (4) The power of the High Court to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power—
  - (a) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 1 of the <sup>M1</sup>Charging Orders Act 1979 for the purpose of enforcing the judgment, order or award in question; and
  - (b) shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.
- (5) Where an order under the said section 1 imposing a charge for the purpose of enforcing a judgment, order or award has been, or has effect as if, registered under section 6 of the <sup>M2</sup>Land Charges Act 1972, subsection (4) of the said section 6 (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made either—
  - (a) in proceedings for enforcing the charge; or
  - (b) by way of equitable execution of the judgment, order or award or, as the case may be, of so much of it as requires payment of moneys secured by the charge.

### Marginal Citations

- M1** 1979 c. 53.  
**M2** 1972 c. 61.

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### **38 Relief against forfeiture for non-payment of rent.**

- (1) In any action in the High Court for the forfeiture of a lease for non-payment of rent, the court shall have power to grant relief against forfeiture in a summary manner, and may do so subject to the same terms and conditions as to the payment of rent, costs or otherwise as could have been imposed by it in such an action immediately before the commencement of this Act.
- (2) Where the lessee or a person deriving title under him is granted relief under this section, he shall hold the demised premises in accordance with the terms of the lease without the necessity for a new lease.

### **39 Execution of instrument by person nominated by High Court.**

- (1) Where the High Court has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to indorse any negotiable instrument, then, if that person—
  - (a) neglects or refuses to comply with the judgment or order; or
  - (b) cannot after reasonable inquiry be found,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 indorsed, by such person as the court may nominate for that purpose.
- (2) A conveyance, contract, document or instrument executed or indorsed in pursuance of an order under this section shall operate, and be for all purposes available, as if it had been executed or indorsed by the person originally directed to execute or indorse it.

### **40 Attachment of debts.**

- (1) Subject to any order for the time being in force under subsection (4), this section applies to the following accounts, namely—
  - (a) any deposit account with a bank or other deposit-taking institution; and
  - (b) any withdrawable share account with any deposit-taking institution.
- (2) In determining whether, for the purposes of the jurisdiction of the High Court to attach debts for the purpose of satisfying judgments or orders for the payment of money, a sum standing to the credit of a person in an account to which this section applies is a sum due or accruing to that person and, as such, attachable in accordance with rules of court, any condition mentioned in subsection (3) which applies to the account shall be disregarded.
- (3) Those conditions are—
  - (a) any condition that notice is required before any money or share is withdrawn;
  - (b) any condition that a personal application must be made before any money or share is withdrawn;
  - (c) any condition that a deposit book or share-account book must be produced before any money or share is withdrawn; or
  - (d) any other prescribed condition.
- (4) The Lord Chancellor may by order make such provision as he thinks fit, by way of amendment of this section or otherwise, for all or any of the following purposes, namely—



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- (a) including in, or excluding from, the accounts to which this section applies accounts of any description specified in the order;
  - (b) excluding from the accounts to which this section applies all accounts with any particular deposit-taking institution so specified or with any deposit-taking institution of a description so specified.
- (5) Any order under subsection (4) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section “deposit-taking institution” means any person carrying on a business which is a deposit-taking business for the purposes of [<sup>F9</sup>the Banking Act 1987].

#### Textual Amendments

**F9** Words substituted by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), [Sch. 6 para. 11](#)

#### [<sup>F10</sup>40A Administrative and clerical expenses of garnishees.

[ Where an order nisi made in the exercise of the jurisdiction mentioned in subsection (2) <sup>F11</sup>(1) of the preceding section is served on any deposit-taking institution, the institution may, subject to the provisions of this section, deduct from the relevant debt or debts an amount not exceeding the prescribed sum towards the administrative and clerical expenses of the institution in complying with the order; and the right of an institution to make a deduction under this subsection shall be exercisable as from the time the order nisi is served on it.

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

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

(2) [<sup>F12</sup>An amount may not in pursuance of subsection (1)] be deducted or, as the case may be, retained in a case where, by virtue of [<sup>F13</sup>section 346 of the Insolvency Act <sup>M3</sup>1986] or [<sup>F14</sup>section][<sup>F15</sup>183 of the Insolvency Act 1986] or otherwise, the creditor is not entitled to retain the benefit of the attachment.

(3) In this section—

“deposit-taking institution” has the meaning assigned to it by section 40(6);  
and

“prescribed” means prescribed by an order made by the Lord Chancellor.

(4) An order under this section—

- (a) may make different provision for different cases; . . . <sup>F16</sup>
- (b) without prejudice to the generality of paragraph (a) of this subsection, may prescribe sums differing according to the amount due under the judgment or order to be satisfied.

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[ may provide for this section not to apply to deposit-taking institutions of any <sup>F17</sup>(c) prescribed description.]

(5) Any such order shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F10** S. 40A inserted by Administration of Justice Act 1982 (c. 53, SIF 37), s. 55(1), **Sch. 4 Pt. I**
- F11** S. 40A(1)(1A)(1B) substituted for s. 40A(1) by Administration of Justice Act 1985 (c. 61, SIF 37), ss. 52(2), 69(5), **Sch. 9 para. 11(2)**
- F12** Words substituted by Administration of Justice Act 1985 (c. 61, SIF 37), ss. **52(3)** 69(5), Sch. 9 para. 11(2)
- F13** Words substituted by virtue of Insolvency Act 1985 (c. 65, SIF 66), s. **235(1)** **Sch. 8 para. 35** and Insolvency Act 1986 (c.45, SIF 66), s. 439(2), Sch. 11 para. 9, **Sch. 14**
- F14** Word substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), ss. 21, 23, 30, 31(8), **Sch. 2**
- F15** Words substituted by virtue of Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), ss. 21, 23, 30, 31(8), **Sch. 2** and Insolvency Act 1986 (c. 45, SIF 66), s. 439(2), **Sch. 14**
- F16** Word repealed by Administration of Justice Act 1985 (c. 61, SIF 37), ss. 52(4), 67(2), 69(5), Sch. 8 Pt. II, **Sch. 9 para. 11(2)**
- F17** Words inserted by Administration of Justice Act 1985 (c. 61, SIF 37), ss. 52(4), 69(5), **Sch. 9 para. 11(2)**

#### Marginal Citations

- M3** 1986 c.45(66)

#### 41 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 an 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 end of such period as may be prescribed unless within that period an order has been made in accordance with the application.

[<sup>F18</sup>(2A) Subsection (2) does not apply with respect to a child who is the subject of a care order (as defined by section 105 of the Children Act 1989).]

- (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.

#### Textual Amendments

- F18** S. 41(2A) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5)(6), Sch. 13 para. 45(2), **Sch. 14 para. 1(1)**; S.I. 1991/828, **art. 3(2)**

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## 42 Restriction of vexatious legal proceedings.

(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—

- (a) instituted vexatious [<sup>F19</sup>civil] proceedings, whether in the High Court or any inferior court, and whether against the same person or against different persons; or
- (b) made vexatious applications in any [<sup>F19</sup>civil] proceedings, whether in the High Court or any inferior court, and whether instituted by him or another, [<sup>F20</sup>or
- (c) instituted vexatious prosecutions (whether against the same person or different persons),]

the court may, after hearing that person or giving him an opportunity of being heard, [<sup>F21</sup>make a civil proceedings order, a criminal proceedings order or an all proceedings order.]

[<sup>F22</sup>(1A) In this section—

“civil proceedings order” means an order that—

- (a) no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made;
- (b) any civil proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and
- (c) no application (other than one for leave under this section) shall be made by him, in any civil proceedings instituted in any court by any person, without the leave of the High Court;

“criminal proceedings order” means an order that—

- (a) no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and
- (b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and

“all proceedings order” means an order which has the combined effect of the two other orders.]

(2) An order under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.

(3) Leave for the institution or continuance of, or for the making of an application in, any [<sup>F23</sup>civil] proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application.

[<sup>F24</sup>(3A) Leave for the laying of an information or for an application for leave to prefer a bill of indictment by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant.]

(4) No appeal shall lie from a decision of the High Court refusing leave [<sup>F25</sup>required by virtue of this section].

(5) A copy of any order made under subsection (1) shall be published in the London Gazette.

*Status: Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Senior Courts Act 1981, Cross Heading: Powers is up to date with all changes known to be in force on or before 19 April 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)*

#### Textual Amendments

- F19** Word substituted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(2\)\(a\)](#)
- F20** S. 42(1)(c) and word “or” preceding it inserted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s.24\(2\)\(b\)](#)
- F21** Words substituted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(2\)\(c\)](#)
- F22** S. 42(1A) inserted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(3\)](#)
- F23** Word substituted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(4\)](#)
- F24** S. 42(3A) inserted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39\), s. 24\(5\)](#)
- F25** Words substituted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s. 24\(6\)](#)

#### Modifications etc. (not altering text)

- C9** S. 42 amended by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\), s.24\(7\)](#)

### 43 Power of High Court to vary sentence on certiorari.

- (1) Where a person who has been sentenced for an offence—
- by a magistrates’ court; or
  - by the Crown Court after being convicted of the offence by a magistrates’ court and committed to the Crown Court for sentence; or
  - by the Crown Court on appeal against conviction or sentence,
- applies to the High Court in accordance with section 31 for an order of certiorari to remove the proceedings of the magistrates’ court or the Crown Court into the High Court, then, if the High Court determines that the magistrates’ court or the Crown 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 or, in a case within paragraph (b), the Crown 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 the Crown 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; but in computing the term of the sentence, any time during which the offender was released on bail in pursuance of section 37(1)(d) of the <sup>M4</sup>Criminal Justice Act 1948 shall be disregarded.
- (3) Subsections (1) and (2) shall, with the necessary modifications, apply in relation to any order of a magistrates’ court or the Crown 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.

#### Marginal Citations

- M4** 1948 c. 58.

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VALID FROM 27/09/1999

[<sup>F26</sup>**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).]

**Textual Amendments**

**F26** S. 43ZA inserted (27.9.1999) by 1999 c. 22, ss. 62, 108(3)(b) (with Sch. 14 para. 7(2))

[<sup>F27</sup>**43A** Specific powers of arbitrator exercisable by High Court.

In any cause or matter proceeding in the High Court in connection with any contract incorporating an arbitration agreement which confers specific powers upon the arbitrator, the High Court may, if all parties to the agreement agree, exercise any such powers.]

**Textual Amendments**

**F27** S. 43A inserted (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 5), ss. 100, 124(3)

**Status:**

Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

Senior Courts Act 1981, Cross Heading: Powers is up to date with all changes known to be in force on or before 19 April 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.