

## ACCESS TO JUSTICE ACT 1999

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### EXPLANATORY NOTES

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#### IMMUNITY AND INDEMNITY (PART VI - SECTIONS 98-104)

##### *Commentary*

##### *Justices and their clerks*

336. **Section 98: Justices and clerks: immunity from costs.** This section inserts a new section 53A in the Justices of the Peace Act 1997 (“JPA 1997”) to give immunity against costs orders to justices of the peace in proceedings arising from the execution of their duty. New section 53A also gives immunity to justices’ clerks (and those appointed to assist a justices’ clerk) in proceedings which arise from their exercise of a function which could be exercised by a single justice of the peace. It excludes proceedings in which bad faith is proved and makes clear that the immunity does not apply where the justice, clerk or assistant is the subject of criminal proceedings. The new section also provides for the court to order the payment by the Lord Chancellor of the costs of any party to proceedings against a justice of the peace or clerk where, but for the provisions of the section, it would order the costs to be paid by the justice or clerk. It provides for the Lord Chancellor to make regulations, subject to the affirmative resolution procedure, covering how the court is to exercise the power to award costs and how those costs are to be determined
337. Under the provisions of section 54 of the JPA 1997, a justice or justices’ clerk may be indemnified by their magistrates’ courts committee against any costs order, and in certain circumstances must be indemnified. Nevertheless the possibility remains that an individual could be faced with a costs order. This section will remove the fear of costs orders by putting the position beyond doubt.
338. **Section 98(2)** makes a similar change for Northern Ireland.
339. **Section 99: Justices and clerks: indemnity.** This section amends section 54 of the JPA 1997, so that justices of the peace, justices’ clerks and their assistants may be indemnified by the magistrates’ courts committee against costs orders in any proceedings, not only proceedings taken against them. It also removes the discretion to grant indemnity in non-criminal matters where bad faith is proved.
340. Despite the new immunity which will be provided by section 98, there will be circumstances in which indemnification continues to be appropriate. These are: where justices or clerks incurs costs themselves (as opposed to being ordered to pay the costs of other parties); where costs have been incurred before the new immunity takes effect; and where costs ordered against a justices’ clerk or assistant are not covered by the immunity provisions (that is where the proceedings do not arise from the exercise of a function of a single justice).
341. **Section 100: Assistant justices’ clerks: immunity from action.** This section amends sections 51 and 52 of the JPA 1997 in order to extend the immunity against action

which is given to justices of the peace and justices' clerks to those appointed to assist a justices' clerk. Justices' clerks' assistants may, like justices' clerks, perform functions which are authorised to be performed by a single justice of the peace. The amendment made by this section will provide consistency of treatment.

### ***General Commissioners of income tax and their clerks***

342. **Section 101: General Commissioners: immunity from action.** This section provides General Commissioners of income tax with immunity from action in respect of any act or omission in the execution of their duty. It brings the position of General Commissioners into line with that of justices.
343. **Section 102: General Commissioners: immunity from costs and expenses.** This section provide General Commissioners of income tax with immunity against costs orders in cases arising from the execution of their duties, unless bad faith is proved. It also provides for the court to order the payment by the Lord Chancellor, or in Scotland the Secretary of State, of the costs of any party to proceedings against a General Commissioner where, but for the provisions of the section, it would order the costs to be paid by the General Commissioner. It provides for the Lord Chancellor (or the Secretary of State) to make regulations, subject to the affirmative resolution procedure, covering how the court is to exercise the power to award costs and how those costs are to be determined.
344. **Section 103: General Commissioners and clerks: indemnity.** This section provides for General Commissioners and their clerks to be indemnified in relation to costs or expenses which they reasonably incur, or are ordered to pay, in legal proceedings arising out of the execution of their duties, unless they are proved to have acted in bad faith. General Commissioners' clerks are not covered by the immunity against costs orders provided by section 102. General Commissioners may have to be indemnified in respect of their own costs. The Lord Chancellor will indemnify the General Commissioners and their clerks, except in Scotland where it will be the Secretary of State.

### ***Coroners***

345. **Section 104: Indemnity.** This section inserts a new section in the Coroners Act 1988 to require the councils responsible for appointing coroners to indemnify them against certain costs which coroners, in their official capacity, may reasonably incur, or which they are ordered to pay, in the course of legal proceedings. There is a similar change for Northern Ireland.