

Version No. 020
Judgment Debt Recovery Act 1984
No. 10063 of 1984

Version incorporating amendments as at 14 February 2008

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART I—PRELIMINARY	1
1 Short title	1
2 Commencement	1
3 Definitions	1
4 Application	3
PART II—INSTALMENT ORDERS	4
5 Initial instalment order	4
6 Judgment creditor or debtor may apply for instalment order	4
7 Instalment agreements	6
8 Judgment creditor or debtor may apply for variation or cancellation of instalment order	7
9 Instalment order to stay enforcement of judgment	8
10 Making of further instalment orders	8
11 Agreement outside this Act for payment of judgment debt	8
12 No instalment order if judgment debtor is pensioner etc.	9
PART III—EXAMINATIONS	10
13 Oral examination	10
14 Procedure for oral examinations	10
15 Conduct of oral examinations	11
16 Production of documents	12
PART IV—ENFORCEMENT OF INSTALMENT ORDERS	13
17 Default in payment of instalments	13
18 Instalment order may be confirmed, varied or cancelled	14
19 Persistent wilful default	14

<i>Section</i>	<i>Page</i>
PART V—GENERAL	16
20 Costs	16
21 Notices	16
22 <i>Repealed</i>	16
PART VI—AMENDMENTS AND TRANSITIONAL PROVISIONS	17
23 <i>Repealed</i>	17
24 Proceedings under the Imprisonment of Fraudulent Debtors Act 1958	17
25 Orders under the Imprisonment of Fraudulent Debtors Act 1958	18
26 Appeals under the Imprisonment of Fraudulent Debtors Act 1958	19
27, 28 <i>Repealed</i>	20
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	21
1. General Information	21
2. Table of Amendments	22
3. Explanatory Details	24

Version No. 020
Judgment Debt Recovery Act 1984
No. 10063 of 1984

Version incorporating amendments as at 14 February 2008

An Act to provide for the recovery of judgment debts by instalments, to amend the **Imprisonment of Fraudulent Debtors Act 1958**, the **Supreme Court Act 1958** and the **Magistrates (Summary Proceedings) Act 1975**, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I—PRELIMINARY

1 Short title

This Act may be cited as the **Judgment Debt Recovery Act 1984**.

2 Commencement

This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

3 Definitions

In this Act, unless inconsistent with the context or subject-matter—

action means a civil suit action or proceeding;

Judgment Debt Recovery Act 1984
No. 10063 of 1984
Part I—Preliminary

s. 3

S. 3 def. of
court
amended by
No. 57/1989
s. 3(Sch.
item 105.1(a)).

court means the Supreme Court, County Court or Magistrates' Court;

instalment order means an order made under this Act that a judgment debt be paid by instalments and where such an order has been varied under this Act means the order as so varied;

judgment means a judgment or order for the recovery or payment of money made or given by a court in an action;

judgment creditor means the person entitled to enforce or obtain execution of a judgment;

judgment debt means the amount of money recoverable or payable under and in respect of a judgment;

judgment debtor means the person liable under a judgment;

prescribed means prescribed by the rules of the relevant court;

¹*proper officer of the court* means—

S. 3 def. of
*proper officer
of the court*
amended by
Nos 19/1989
s. 16(Sch.
item 30),
57/1989
s. 3(Sch.
item 105.1(b)).

- (a) in relation to the Supreme Court, such officer or officers of the Supreme Court as is or are prescribed in relation to the provisions of this Act in question of the Supreme Court;
- (b) in relation to the County Court, the registrar or a deputy registrar of the County Court; and
- (c) in relation to the Magistrates' Court, the principal registrar, a registrar or a deputy registrar of the Magistrates' Court.

4 Application

This Act applies to and in relation to any judgment made or given before or after the commencement of this Act.

PART II—INSTALMENT ORDERS

5 Initial instalment order

- (1) A court, in giving judgment, may of its motion or on the application of a party order that the judgment debt be paid by instalments.
- (2) An order under subsection (1) shall specify the amount of each instalment payable and the times at which instalments shall be paid.

6 Judgment creditor or debtor may apply for instalment order

- (1) A judgment creditor or judgment debtor may at any time after judgment is given apply to the proper officer of the court—
 - (a) where an instalment order has not been made under section 5, for an order that the judgment debt or the balance of the judgment debt then owing to the judgment creditor be paid by instalments; or
 - (b) where an instalment order has been made under section 5, for another instalment order in substitution for the order under section 5.
- (2) An application under subsection (1) shall—
 - (a) be in or to the effect of the prescribed form;
 - (b) specify the amount of the judgment debt then owing to the judgment creditor; and
 - (c) specify the amount of each instalment proposed to be paid and the times at which instalments are proposed to be paid.

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- (3) Subject to and in accordance with the rules, the proper officer of the court may without notice to the judgment creditor or judgment debtor and whether or not the judgment creditor or judgment debtor is before the proper officer—
- (a) order that the judgment debt or the balance of the judgment debt then owing to the judgment creditor be paid by the instalments and at the times specified in the application; or
 - (b) refuse to make such an order.
- (4) The proper officer of the court shall cause the judgment debtor and judgment creditor to be notified of an order or refusal to make an order under subsection (3).
- (5) A judgment creditor or judgment debtor may within the prescribed period after receiving notice under subsection (4) file with the proper officer of the court notice of objection and the proper officer shall set the matter down for hearing by the court.
- (6) The proper officer of the court shall cause the judgment debtor and judgment creditor to be notified of the time and place of the hearing.
- (7) The court may—
- (a) where the proper officer has refused to make an order under subsection (3)—
 - (i) order that the judgment debt or the balance of the judgment debt then owing to the judgment creditor be paid by the instalments and at the times specified in the order; or
 - (ii) refuse to make such an order; or

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- (b) where notice of objection to the order under subsection (3)(a) has been filed under subsection (5), confirm vary or cancel the order of the proper officer of the court—
and shall cause the judgment creditor and the judgment debtor to be notified accordingly.
- (8) Where an application under subsection (1) is made—
- (a) the applicant shall serve a copy of the application on the judgment creditor or judgment debtor (as the case may be); and
- (b) from the time of service the application shall operate as a stay of enforcement or execution of the judgment in respect of which the application is made until the proper officer of the court or the court (as the case requires) deals with the matter.
- (9) Where a judgment debtor has applied under this section for an instalment order and the proper officer of the court or the court (as the case may be) has refused to make the instalment order, the judgment debtor may not make another application under this section within three months after that refusal.

7 Instalment agreements

- (1) A judgment debtor or a judgment creditor may at any time after judgment is given file with the proper officer of the court an instalment agreement entered into by the judgment debtor and the judgment creditor.
- (2) An instalment agreement shall—
- (a) be in or to the effect of the prescribed form;
- (b) be executed in the prescribed manner;

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- (c) specify the amount of the judgment debt then owing to the judgment creditor;
 - (d) specify the amount of each instalment proposed to be paid and the times at which the instalments are proposed to be paid in satisfaction of the amount of the judgment debt so specified; and
 - (e) contain an undertaking by the judgment debtor to pay the judgment creditor the amount of the judgment debt so specified by the instalments and at the times so specified.
- (3) The proper officer of the court upon receiving an instalment agreement shall order that the judgment debt or the balance of the judgment debt then owing to the judgment creditor be paid by the instalments and at the times specified in the agreement.
- (4) The proper officer of the court shall cause the judgment debtor and judgment creditor to be notified of an order under subsection (3).

8 Judgment creditor or debtor may apply for variation or cancellation of instalment order

- (1) A judgment creditor or judgment debtor may apply to the court for the variation or cancellation of an instalment order.
- (2) An application under subsection (1) may be made by a judgment creditor on either or both of the following grounds only:
- (a) That there has been a substantial increase in the property or means of the judgment debtor; or
 - (b) That any information given in support of the application for the instalment order or in the instalment agreement under section 7 (as the case may be) was inaccurate.
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- (3) An applicant under subsection (1) shall serve a copy of the application on the judgment creditor or judgment debtor (as the case may be).
 - (4) An application by a judgment creditor shall be supported by an affidavit as to the ground or grounds of the application.
 - (5) The court may—
 - (a) if it is satisfied as to the truth of the grounds of an application under subsection (1), vary or cancel the instalment order; or
 - (b) confirm the instalment order and dismiss the application.

9 Instalment order to stay enforcement of judgment

While an instalment order is in force and is being complied with, the instalment order shall operate as a stay of enforcement or execution of the judgment in respect of which the instalment order was made.

10 Making of further instalment orders

- (1) An instalment order may be made in respect of a judgment notwithstanding that an instalment order is already in force in respect of that judgment.
- (2) A subsequent instalment order supersedes a former instalment order.

11 Agreement outside this Act for payment of judgment debt

- (1) Nothing in this Act shall while there is no instalment order in force in respect of a judgment be taken to prevent the judgment creditor and judgment debtor entering into an agreement for the payment of the judgment debt.

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- (2) Notwithstanding that a judgment creditor and judgment debtor have entered into an agreement for the payment of a judgment debt an instalment order may be made under this Act.

12 No instalment order if judgment debtor is pensioner etc.

- (1) An instalment order shall not without the consent of the judgment debtor be made if the income of the judgment debtor is derived solely from a pension benefit allowance or other regular payment under the Commonwealth Social Security Act 1947 or section 24 of the **Children, Youth and Families Act 2005**.

S. 12(1)
amended by
Nos 16/1987
s. 4(3)(Sch. 1
item 12),
48/2006
s. 42(Sch.
item 19).

- (2) In subsection (1) *the Commonwealth Social Security Act 1947* means the Commonwealth Act known as the Social Security Act 1947 as amended and in force for the time being and, if the provisions of that Act are re-enacted, means those provisions as re-enacted and as subsequently amended and in force for the time being.
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PART III—EXAMINATIONS

13 Oral examination

- (1) Subject to subsection (2), an instalment order shall not be made, confirmed, varied or cancelled by a court unless the court after the application for the making or variation or cancellation of the instalment order is made—
 - (a) has orally examined the judgment debtor; or
 - (b) is otherwise satisfied that in the circumstances an instalment order should be made, confirmed, varied or cancelled.
- (2) This Part does not apply to or in relation to the making of an instalment order under section 6(3) or 7.

14 Procedure for oral examinations

- (1) Where the court is not satisfied as provided in section 13(1)(b) and the judgment debtor is not before the court, the court shall cause to be issued a summons requiring the judgment debtor to attend for an oral examination at the time and place specified in the summons.
 - (2) If the judgment debtor fails to attend as required by a summons under subsection (1), the court or the proper officer of the court may cause to be issued a warrant for the apprehension of the judgment debtor.
 - (3) A warrant under subsection (2) shall—
 - (a) be addressed to a member of the police force; and
 - (b) specify a time and place for the oral examination.
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- (4) A member of the police force who pursuant to a warrant under subsection (2) apprehends a judgment debtor may release the judgment debtor upon the judgment debtor's undertaking to attend for an oral examination at the time and place specified in the warrant.
 - (5) A judgment debtor may be examined on oath by the court.
 - (6) The proper officer of the court shall cause the judgment creditor to be notified of the time and place of the oral examination under the summons and the warrant (if any).
 - (7) Notwithstanding any Act or any regulation or rule made pursuant to any Act or any rule of law to the contrary, no fine shall be imposed upon a judgment debtor for failing to attend for an oral examination as required by a summons under subsection (1).
 - (8) Notwithstanding any Act or any regulation or rule made pursuant to any Act or any rule of law to the contrary, it shall not be necessary for a judgment debtor to be served with the judgment or a copy thereof before a summons is issued under subsection (1), but if the judgment debtor has not previously been served with the judgment or a copy thereof the judgment or a copy thereof shall be served together with the summons.

S. 14(7)
amended by
No. 74/2000
s. 3(Sch. 1
item 64).

15 Conduct of oral examinations

- (1) The court shall examine a judgment debtor as to the following matters—
 - (a) the amount and source of the income of the judgment debtor;
 - (b) the property and assets of the judgment debtor;

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- (c) the cash that is readily available to the judgment debtor or can be made so available;
 - (d) the debts liabilities and other financial obligations of the judgment debtor; and
 - (e) any prescribed matter—

and may examine a judgment debtor as to any other matter related to the financial circumstances generally of the judgment debtor and the judgment debtor's means and ability to satisfy the judgment debt.

- (2) A judgment creditor or the legal representative of a judgment creditor may by leave of the court put questions to the judgment debtor as to any of the matters referred to in subsection (1).
- (3) The court may if it considers any question proposed to be put to the judgment debtor to be oppressive or unfair in the circumstances forbid that question.

16 Production of documents

A summons under section 14 or 17 may require a judgment debtor to produce any documents relevant to the oral examination.

PART IV—ENFORCEMENT OF INSTALMENT ORDERS

17 Default in payment of instalments

- (1) Where a judgment debtor defaults in the payment of any instalment under an instalment order, the proper officer of the court may upon the application of the judgment creditor cause to be issued a summons requiring the judgment debtor to attend before the court at the time and place specified in the summons.
- (2) If a judgment debtor fails to attend as required by a summons under subsection (1), the court or the proper officer of the court may cause to be issued a warrant for the apprehension of the judgment debtor.
- (3) A warrant under subsection (2) shall—
 - (a) be addressed to a member of the police force; and
 - (b) specify a time and place at which the judgment debtor shall attend before the court.
- (4) A member of the police force who pursuant to a warrant under subsection (2) apprehends a judgment debtor may release the judgment debtor upon the judgment debtor's undertaking to appear before the court at the time and place specified in the warrant.
- (5) The proper officer of the court shall cause the judgment creditor to be notified of the time and place under the summons and warrant (if any).

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- (6) Notwithstanding any Act or any regulation or rule made pursuant to any Act or any rule of law to the contrary, no fine shall be imposed upon a judgment debtor for failing to attend before a court as required by a summons under subsection (1).

18 Instalment order may be confirmed, varied or cancelled

- (1) The court shall upon a judgment debtor attending before it pursuant to section 17—
- (a) examine the judgment debtor in accordance with section 15; and
 - (b) consider the circumstances of the default.
- (2) The court may confirm vary or cancel the instalment order and shall cause the judgment creditor and judgment debtor to be notified accordingly.

19 Persistent wilful default

- (1) A judgment debtor who has the means to pay the instalments under an instalment order and persistently and wilfully and without an honest and reasonable excuse defaults in the payment of the instalments under an instalment order shall be liable to be imprisoned by order of the court for not more than 40 days.
- (2) An order for the imprisonment of a judgment debtor shall not be made unless the judgment debtor is before the court.
- (3) Where an order for imprisonment is made and the judgment debtor pays the instalments of which default was made the judgment debtor shall be discharged out of custody upon a certificate of that payment signed by the proper officer of the court.

Judgment Debt Recovery Act 1984
No. 10063 of 1984
Part IV—Enforcement of Instalment Orders

s. 19

(4) A judgment debtor who is aggrieved by an order for imprisonment may appeal against that order—

(a) where that order was made by the Magistrates' Court, to the County Court; or

S. 19(4)(a)
amended by
No. 57/1989
s. 3(Sch.
item 105.2).

(b) ²where that order was made by the County Court or the Supreme Court, to the Court of Appeal.

S. 19(4)(b)
amended by
Nos 110/1986
s. 140(2)(Sch.),
109/1994
s. 34(8).

PART V—GENERAL

20 Costs

The court or the proper officer of the court (as the case may be) may in proceedings under this Act make such order as to costs as the court or the proper officer of the court thinks fit.

21 Notices

- (1) Where the court or the proper officer of the court is required by or under this Act to cause a judgment creditor or judgment debtor to be notified of any matter, it shall be sufficient compliance if the court or the proper officer of the court where one party to proceedings under this Act is before the court or the proper officer of the court orders that party to notify in the manner specified by the court or the proper officer or by the rules the other party to those proceedings of that matter.
- (2) No order under this Act against any person shall be binding on the person if that person has not been given notice in the manner required by or under this Act of the order.

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S. 22
repealed by
No. 57/1989
s. 3(Sch.
item 105.3).

**PART VI—AMENDMENTS AND TRANSITIONAL
PROVISIONS**

* * * * *

S. 23
repealed by
No. 28/2007
s. 3(Sch.
item 33).

**24 Proceedings under the Imprisonment of Fraudulent
Debtors Act 1958**

- (1) Where before the commencement of this Act a summons has been issued under section 4, 15 or 22 of the **Imprisonment of Fraudulent Debtors Act 1958** being a summons returnable after that commencement and upon the return of the summons the matters set out in section 5(2)(a), 16(2)(a) or 22(1)(a) (as the case may be) of that Act as in force before that commencement are alleged, the court shall proceed to deal with the matter as if it had come before the court under section 6(8) of this Act and may make an instalment order under this Act.
- (2) Where before the commencement of this Act a summons has been issued under section 4, 15 or 22 of the **Imprisonment of Fraudulent Debtors Act 1958** and—
 - (a) before that commencement the judge or court has been satisfied as to the matters set out in section 5(2)(a), 16(2)(a) or 22(1)(a) (as the case may be) of that Act as in force before that commencement but the judge or court has not made an order under that Act as so in force; or

(b) the judge or court having before that commencement commenced to deal with the matter, the judge or court is after that commencement satisfied as to the matters set out in section 5(2)(a), 16(2)(a) or 22(1)(a) (as the case may be) of that Act as in force before that commencement—

the judge or court shall not make an order under that Act but may make an instalment order under this Act.

(3) An instalment order made pursuant to this section shall be deemed to be an instalment order made under section 6(8) of this Act.

25 Orders under the Imprisonment of Fraudulent Debtors Act 1958

(1) In this section, *existing order* means an order for commitment in default of payment made before the commencement of this Act under the **Imprisonment of Fraudulent Debtors Act 1958** by a judge or court satisfied as to the matters set out in section 5(2)(a), 16(2)(a) or 22(1)(a) (as the case may be) of that Act as in force before that commencement.

(2) Subject to this section, an existing order shall notwithstanding the amendments made by this Act to the **Imprisonment of Fraudulent Debtors Act 1958** continue to have the same force and effect as it would have had if those amendments had not been made.

(3) Notwithstanding the **Imprisonment of Fraudulent Debtors Act 1958**, where any money interest and costs or any instalment thereof have not before the commencement of this Act been or are not after that commencement paid as required by an existing order, the judgment creditor in respect of the existing order shall be entitled to apply under section 17 of this Act in all respects

as if the existing order were an instalment order under this Act and the judgment debtor had defaulted in an instalment thereunder.

- (4) Notwithstanding the **Imprisonment of Fraudulent Debtors Act 1958**, a judgment creditor or judgment debtor in respect of an existing order may at any time make application under section 8 of this Act in all respects as if the existing order were an instalment order under this Act.
- (5) Notwithstanding the **Imprisonment of Fraudulent Debtors Act 1958**, no person shall be committed to prison under a warrant of commitment or warrant of commitment on an ex parte application issued under that Act in respect of an existing order.

26 Appeals under the Imprisonment of Fraudulent Debtors Act 1958

- (1) Where before the commencement of this section a person has pursuant to section 9 of the **Imprisonment of Fraudulent Debtors Act 1958** appealed to the Full Court of the Supreme Court in respect of an order for commitment in default of payment made by a judge satisfied as to the matters set out in section 5(2)(a) of that Act as in force before that commencement and the Full Court has not determined that appeal, the Full Court shall not under that Act confirm or vary the order appealed against, but may under that Act annul or discharge the order or make an instalment order under this Act.
- (2) An instalment order made pursuant to subsection (1) shall be deemed to be an instalment order made under section 6(8) of this Act.

Judgment Debt Recovery Act 1984
No. 10063 of 1984
Part VI—Amendments and Transitional Provisions

s. 27

Ss 27–28
repealed by
No. 28/2007
s. 3(Sch.
item 33).

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ENDNOTES

1. General Information

The **Judgement Debt Recovery Act 1984** was assented to on 15 May 1984 and came into operation on 1 May 1985: Government Gazette 17 April 1985 page 1102.

Judgment Debt Recovery Act 1984
No. 10063 of 1984

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Judgment Debt Recovery Act 1984** by Acts and subordinate instruments.

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Community Services Act 1987, No. 16/1987

Assent Date: 12.5.87
Commencement Date: Ss 1–6, 9–13, Sch. 1 on 22.2.89: Government Gazette 22.2.89 p. 386; Sch. 2 items 1–13 on 15.3.89: Government Gazette 15.3.89 p. 587; rest of Act on 25.6.92: Government Gazette 24.6.92 p. 1532
Current State: All of Act in operation

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 64) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Judgment Debt Recovery Act 1984**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 19) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Judgment Debt Recovery Act 1984**

Judgment Debt Recovery Act 1984
No. 10063 of 1984

Endnotes

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07

Commencement Date: S. 3(Sch. item 33) on 27.6.07: s. 2(1)

Current State: This information relates only to the provision/s
amending the **Judgment Debt Recovery Act 1984**

3. Explanatory Details

¹ S. 3 def. of *proper officer of the court*: Section 17 of the **County Court (Amendment) Act 1989**, No. 19/1989 reads as follows:

17 Transitional provision

- (1) The person who holds office as the registrar of the Court at Melbourne immediately before the commencement of this Act holds office as the registrar under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
- (2) Each person who holds office as a registrar of the Court (except the registrar of the Court at Melbourne) immediately before the commencement of this Act holds office as a deputy registrar under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
- (3) Each person who holds office as an assistant registrar of the Court immediately before the commencement of this Act holds office as a deputy registrar under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
- (4) Unless the context otherwise requires, any reference in this or any other Act or in any subordinate instrument or in any document or writing of any kind whatsoever to the registrar of the County Court is to be taken to refer to the registrar or any deputy registrar of the Court.

² S. 19(4)(b): Section 29 of the **Constitution (Court of Appeal) Act 1994**, No. 109/1994 reads as follows:

29 Proceedings before the Full Court

- (1) The **Constitution Act 1975**, the **Supreme Court Act 1986** and the **Crimes Act 1958** and any other Act amended by this Act as respectively in force immediately before the commencement of this section continue to apply, despite the enactment of this Act, to a proceeding the hearing of which by the Full Court of the Supreme Court commenced before the commencement of this section.
- (2) If the Court of Appeal so orders, anything required to be done by the Supreme Court in relation to or as a consequence of a proceeding after the Full Court has delivered judgment in that proceeding, may be done by the Court of Appeal.