



Police and Magistrates' Courts Act 1994

1994 CHAPTER 29

PART IV

MAGISTRATES' COURTS

Justices' chief executives, justices' clerks and staff

75 Appointment and functions of justices' chief executive

After section 24C of the 1979 Act there shall be inserted—

“Justices' chief executives, justices' clerks and staff

24D Appointment of justices' chief executive

- (1) Every magistrates' courts committee shall appoint a justices' chief executive.
- (2) A person may not be appointed as justices' chief executive unless—
 - (a) the magistrates' courts committee have submitted to the Lord Chancellor, in accordance with regulations, an application for approval of one or more persons offering themselves for the appointment,
 - (b) the Lord Chancellor has approved one or more of those persons, and
 - (c) the person appointed is a person so approved.
- (3) For the purposes of subsection (2) above, appointment as justices' chief executive does not include, in relation to a person employed as such under a contract for a fixed term, re-appointment on the expiry of that term.
- (4) Where the Lord Chancellor declines to approve any person who is named in an application under subsection (2)(a) above, he shall inform the magistrates' courts committee of the reasons for his decision.
- (5) A person may not be appointed as justices' chief executive unless he is eligible under section 26 of this Act for appointment as justices' clerk.

Status: This is the original version (as it was originally enacted).

- (6) A person may not be appointed both as justices' chief executive and as justices' clerk for a petty sessions area unless the Lord Chancellor has agreed that he may hold both appointments.
- (7) Where, in accordance with subsection (6) above, a person holds an appointment as justices' chief executive with an appointment as justices' clerk for a petty sessions area, he shall not exercise any functions as justices' clerk for the petty sessions area unless authorised to do so (either generally or in any particular case) by the magistrates' courts committee for the area which includes that petty sessions area.
- (8) In this section “regulations” means regulations made by the Lord Chancellor by statutory instrument.

24E Functions of justices' chief executive

- (1) The justices' chief executive in relation to any magistrates' courts committee shall—
 - (a) act as clerk to the committee, and
 - (b) subject to and in accordance with any directions given by the committee, carry on the day to day administration of the magistrates' courts for the area to which the committee relates.
- (2) A justices' chief executive may arrange for his functions under subsection (1) (a) above to be exercised by any member of the staff of the magistrates' courts committee.
- (3) It shall be the duty of the justices' chief executive to make arrangements for discussions relating to law, practice and procedure among the justices' clerks for petty sessions areas within the area of the committee.”

76 Appointment and removal of justices' clerks

For section 25 of the 1979 Act (and the heading “Justices' clerks and their staffs” immediately preceding it) there shall be substituted—

“25 Appointment and removal of justices' clerks

- (1) Justices' clerks shall be appointed by the magistrates' courts committee; and a magistrates' courts committee may appoint more than one justices' clerk for any petty sessions area.
- (2) A person may not be appointed as justices' clerk unless—
 - (a) the magistrates' courts committee have submitted to the Lord Chancellor, in accordance with regulations, an application for approval of one or more persons offering themselves for the appointment,
 - (b) the Lord Chancellor has approved one or more of those persons, and
 - (c) the person appointed is a person so approved.
- (3) For the purposes of subsection (2) above, appointment as justices' clerk does not include, in relation to a person employed as such under a contract for a fixed term, re-appointment on the expiry of that term.

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

- (4) Where the Lord Chancellor declines to approve any person who is named in an application under subsection (2)(a) above, he shall inform the magistrates' courts committee of the reasons for his decision.
- (5) The approval of the Lord Chancellor shall be required—
 - (a) for any decision to increase the number of justices' clerks in a petty sessions area or to have more than one justices' clerk in a new petty sessions area, or
 - (b) for the removal of the justices' clerk for a petty sessions area where the magistrates for the area do not consent to the removal.
- (6) A magistrates' courts committee shall consult the magistrates for any petty sessions area—
 - (a) on the appointment of a justices' clerk for the area, except in the case of a re-appointment on the expiry of a fixed term, or
 - (b) on the removal of a justices' clerk for the area.
- (7) Before—
 - (a) approving any persons under subsection (2) above, or
 - (b) approving the removal of a justices' clerk,the Lord Chancellor shall consider any representations made to him by the magistrates for the petty sessions area concerned; and before approving the removal of a justices' clerk the Lord Chancellor shall also consider any representations made to him by the clerk.
- (8) For the purposes of subsections (5) to (7) above, removal as justices' clerk shall be taken to include, in relation to a person employed as such under a contract for a fixed term, the expiry of that term without renewal in any case where the clerk has not consented to the failure to renew.
- (9) In this section “regulations” means regulations made by the Lord Chancellor by statutory instrument.”

77 Justices' chief executives and justices' clerks to be employed under contracts of service

After section 26 of the 1979 Act there shall be inserted—

“26A Justices' chief executives and justices' clerks to be employed under contracts of service

- (1) Except as provided by this Act, a justices' chief executive or justices' clerk—
 - (a) shall be employed by the magistrates' courts committee, on such terms as they may determine, and
 - (b) shall hold and vacate office in accordance with the terms of his contract of service.
- (2) Subsection (1) above shall not have effect in relation to any person appointed by a magistrates' courts committee before the commencement of this section as justices' clerk for a petty sessions area so long as he—
 - (a) continues to hold office as a justices' clerk for that area or for any one or more petty sessions areas including any part of that area, and

- (b) has not entered into a contract of service after the commencement of this section.
- (3) Any justices' clerk in relation to whom, by virtue of subsection (2) above, subsection (1) above does not have effect shall hold office during the pleasure of the magistrates' courts committee concerned.”

78 Independence of justices' clerk and staff in relation to legal functions

After section 30 of the 1979 Act there shall be inserted—

“30A Independence of justices' clerk and staff in relation to legal functions

- (1) When exercising the functions specified in subsection (2) below or giving advice to justices of the peace in an individual case—
 - (a) a justices' clerk shall not be subject to the direction of the magistrates' courts committee, the justices' chief executive or any other person, and
 - (b) any member of the staff of a magistrates' courts committee shall not be subject to the direction of that committee or of the justices' chief executive (when acting as such).
- (2) The functions referred to in subsection (1) above are functions conferred by rules made in accordance with section 144 of the Magistrates' Courts Act 1980 by virtue of section 28(1) or (1A) of this Act.”