

COURTS ACT 2003

EXPLANATORY NOTES

BACKGROUND

The commission of the peace and local justice areas

26. England and Wales are currently divided into commission areas and petty sessions areas (under sections 1-5 of JPA 1997). The **commission area** is the unit on which the appointment of lay magistrates and the jurisdiction of the magistrates' courts to hear summary cases is based. Lay magistrates are appointed to a particular commission area, on the basis of the place where they reside; and most summary offences must be tried in the commission area where the alleged offence took place. Commission areas are divided into one or more **petty sessions areas**. Petty sessions areas are the areas to which lay magistrates are assigned by the Lord Chancellor (although this currently happens outside the statute). These are the "benches", the basic unit of local magistrates' court organisation.
27. This Act abolishes commission areas and petty sessions areas and replaces them with local justice areas. Lay magistrates will be appointed for England and Wales. This, coupled with changes in Part 3 of the Act, will have the effect of giving lay magistrates a national jurisdiction. The Lord Chancellor will, however, be placed under a statutory duty to assign lay magistrates to a local justice area. This will preserve the bench system in statute. By virtue of paragraph 3 of Schedule 9, when the Act comes into effect, the local justice areas will be the same as petty sessions areas were immediately previously. Subsequently, the pattern of areas may be varied by order, following suitable consultation.

Places, dates and times of sittings

28. Section 153 of the Magistrates' Courts Act 1980 (MCA 1980) declares that a magistrates' court may sit on any day of the year, including a Sunday, Good Friday and Christmas Day.
29. It is for the magistrates' court to decide when it shall sit, although in practice, magistrates' courts do not normally sit on Sundays. There are restrictions on where magistrates' courts can sit and the powers of magistrates can vary depending on whether they are sitting in a petty sessional courthouse (section 150(1) MCA 1980) or an occasional courthouse (section 147 MCA 1980). This Act permits the Lord Chancellor to determine when and where magistrates' courts are to sit. This will introduce greater flexibility than the current arrangements and give magistrates full powers wherever they sit.

Justices' clerks

30. Most cases in magistrates' courts are heard by lay magistrates who are not qualified lawyers. They rely on the legal advice of justices' clerks and their assistants, often known as "legal advisers". Justices' clerks and their assistants can also exercise the powers of a single justice of the peace in certain circumstances. Justices' clerks are vital to the administration of justice in magistrates' courts.

*These notes refer to the Courts Act 2003 (c.39)
which received Royal Assent on 20 November 2003*

31. At present, under section 42 of the JPA 1997, justices' clerks are appointed by an MCC to a particular petty sessions area, following the approval of the Lord Chancellor. MCCs are required by section 42(6) to consult local lay magistrates on the appointment or removal of justices' clerks in certain circumstances. MCCs also have the power to designate assistants to justices' clerks under section 44(3) of the JPA 1997.
32. When exercising any legal function, justices' clerks are not subject to the directions of a justices' chief executive (JCE) or any other person or body, by virtue of section 48 of the JPA 1997. Assistant clerks may only be subject to the directions of justices' clerks.
33. This Act provides that in future the Lord Chancellor will have the power to employ appropriate court staff, including justices' clerks and their assistants who must be specifically designated as such. The Act retains the statutory qualifications for justices' clerks and assistants and confirms their independence when exercising any legal function. It also places a duty on the Lord Chancellor to assign justices' clerks to one or more local justice areas.

Fines Officers

34. The Act includes provisions to create the role of fines officer who may be appointed or provided under contract by the Lord Chancellor.
35. The Act creates the role of "a fines officer" to take enforcement action in certain circumstances, thus removing the need for all enforcement decisions to be taken by a court. A fines collection system (Schedule 5) has been set up which introduces financial incentives to offenders to pay their fines, as well as providing a range of new disincentives for fine default, including wider powers to make attachments of earnings orders (AOE) and deductions from benefits (DFB). The system is designed to encourage payment but will include new penalties for those who have the means and will not pay. The Act also introduces new sanctions for failing to provide information necessary to make AOE orders and DFB applications. For those who are unable to pay a fine, the Act introduces (in Schedule 6) a system for discharging fines by unpaid work.
36. The Act provides for the new system to be piloted and, if necessary, modified before a permanent scheme is introduced. The intention is to ensure that fines are seen as credible and effective punishments.

Designated officers and magistrates' courts

37. Currently each MCC must appoint a JCE with the approval of the Lord Chancellor, to manage the magistrates' courts in its area. The primary function of JCEs is to make arrangements for the efficient and effective administration of the magistrates' courts. JCEs must perform all of their statutory duties in accordance with directions given by the relevant MCC.
38. JCEs are responsible for a wide range of administrative matters. Section 90 of the Access to Justice Act 1999 (AJA 1999) amended a large number of earlier Acts so as to transfer to JCEs administrative functions previously assigned to justices' clerks. As there will be no equivalent statutory post to the JCE in the new courts agency, this Act provides for former JCE functions to be carried out by an officer designated by the Lord Chancellor.

Application of receipts of magistrates' courts etc.

39. Magistrates' courts are responsible for collecting fines, fees and other financial orders on behalf of central Government and compensation orders on behalf of victims of crime. Section 60 of the JPA 1997 makes provision for the application of receipts by JCEs. This Act reproduces section 60 with changes to reflect the fact that the designated officer, rather than the JCE, will be responsible for collecting such sums.