



Justices of the Peace Act 1979 (repealed 19.6.1997)

1979 CHAPTER 55

PART II

ORGANISATION OF FUNCTIONS OF JUSTICES

Justices' clerks and their staffs

25 Appointment and removal of justices' clerks.

- (1) Justices' clerks shall be appointed by the magistrates' courts committee and shall hold office during the pleasure of the committee; and a magistrates' courts committee may appoint more than one justices' clerk for any area.
- (2) The approval of the Secretary of State 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;
 - (b) for any appointment of a justices' clerk;
 - (c) for the removal of the justices' clerk for a petty sessional division where the magistrates for the division do not consent to the removal.
- (3) A magistrates' courts committee shall consult the magistrates for any petty sessional division on the appointment or removal of a justices' clerk for the division; and the Secretary of State, before approving the appointment or removal of a justices' clerk for such a division, shall consider any representations made to him by the magistrates for the division, and before approving the removal of any such clerk shall consider any representations made to him by the clerk.
- (4) The magistrates' courts committee shall inform the Secretary of State of the age, qualification and experience of any person proposed to be appointed a justices' clerk and, if the Secretary of State so requires, of any other person offering himself for the appointment.

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(5) Subsections (1) to (4) above shall not apply to the inner London area.

26 Qualifications for appointment as justices' clerk.

- (1) Except as provided by this section, no person shall be appointed as justices' clerk of any class or description unless either—
- (a) at the time of appointment he ^{F1}has a 5 year magistrates' court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990, and is within any limit of age prescribed for appointments to a clerkship of that class or description, or
 - (b) he then is or has previously been a justices' clerk.
- (2) A lower as well as an upper limit of age may be prescribed under subsection (1) above for appointments to any class or description of clerkship.
- (3) A person not having the qualification as barrister or solicitor which is required by subsection (1)(a) above may be appointed a justices' clerk—
- (a) if at the time of appointment he is a barrister or solicitor and has served for not less than five years in service to which this subsection applies, or
 - (b) if before the 1st January 1960 he had served for not less than ten years in service to which this subsection applies and, in the opinion of the magistrates' courts committee and of the Secretary of State, there are special circumstances making the appointment a proper one.
- (4) Subsection (3) above applies to service in any one or more of the following capacities, that is to say, service as assistant to a justices' clerk and service before the 1st February 1969—
- (a) as clerk to a stipendiary magistrate;
 - (b) as clerk to a magistrates' court for the inner London area or as clerk to a metropolitan stipendiary court;
 - (c) as clerk at one of the justice rooms of the City of London; or
 - (d) as assistant to any such clerk as is mentioned in paragraphs (a) to (c) above.
- (5) A person may be appointed a justices' clerk notwithstanding that he is over the upper limit of age mentioned in subsection (1) of this section if he has served continuously in service to which subsection (3) above applies from a time when he was below that limit to the time of appointment.

Textual Amendments

F1 Words substituted by [Courts and Legal Services Act 1990 \(c.41, SIF 37\)](#), s. 71(2), [Sch. 10 para. 45](#)

VALID FROM 01/04/1995

^{F2}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

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- (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.]

Textual Amendments

F2 S. 26A inserted (1.4.1995) by 1994 c. 29, s.77; S.I. 1995/685, art.4(e)

27 Conditions of service and staff of justices' clerks.

- (1) A justices' clerk shall be paid a salary for his personal remuneration, and the salary shall be deemed to be remuneration for all business which he may by reason of his office as justices' clerk be called upon to perform, other than any duties as secretary to a licensing planning committee under Part VII of the ^{M1}Licensing Act 1964.
- (2) A justices' clerk may be paid a single salary in respect of two or more clerkships.
- (3) Subject to subsection (5) below, a justices' clerk shall be provided with the accommodation and staff, and the furniture, books and other things, proper to enable him to carry out his duties.
- (4) A justices' clerk shall, in addition to his salary, be paid the amount of any expenses of a description specified when his salary is determined, being expenses incurred by him with the general or special authority of the magistrates' courts committee.
- (5) Where a justices' clerk devotes part of his time to work other than the duties appertaining to his clerkship or clerkships, he may by arrangement with the magistrates' courts committee make use for the purpose of those duties of any accommodation, staff or equipment which he has for other purposes; and the sums payable to him under subsection (4) above may include payments for accommodation, staff or equipment so provided by him, whether or not he thereby incurs additional expense.
- (6) Any staff provided for a justices' clerk shall be employed by the magistrates' courts committee but shall work under the direction of the clerk, and subject to this Act the committee may make any arrangements they think fit for staff to be engaged and dismissed, and the terms of their employment fixed, on behalf of the committee.
- (7) Before any such staff are engaged or dismissed (otherwise than by the clerk himself on behalf of the committee) the clerk shall be consulted.
- (8) The power conferred by [^{F3}section 144 of the Magistrates' Courts Act 1980]to make rules for regulating and prescribing the procedure and practice to be followed by

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justices' clerks shall, without prejudice to the generality of subsection (1) of that section, include power to provide that, subject to any exceptions prescribed by the rules, persons shall not be employed to assist a justices' clerk in any capacity so prescribed, or shall not be permitted to do on behalf of a justices' clerk any such acts as may be so prescribed, unless those persons are qualified (any age limits apart) to be appointed justices' clerk or have such other qualifications as may for any purpose be allowed by the rules.

(9) Subsections (1) to (7) above shall not apply to the inner London area.

Textual Amendments

F3 Words substituted by [Magistrates' Courts Act 1980 \(c.43, SIF 82\)](#), s. 154(1), [Sch. 7 para. 193](#)

Marginal Citations

M1 [1964 c. 26.](#)

28 General powers and duties of justices' clerks.

(1) Rules made in accordance with [^{F4}section 144 of the Magistrates' Courts Act 1980] may (except in so far as any enactment passed after the 25th October 1968 otherwise directs) make provision enabling things authorised to be done by, to or before a single justice of the peace to be done instead by, to or before a justices' clerk.

[^{F5}(1A) Such rules may also make provision enabling things authorised to be done by, to or before a justices' clerk (whether by virtue of subsection (1) above or otherwise) to be done instead by, to or before—

- (a) a person appointed by a magistrates' courts committee to assist him;
- (b) where he is a part-time justices' clerk, any member of his staff who has been appointed by the magistrates' courts committee to assist him in his duties as such;
- (c) any officer appointed by the committee of magistrates to be his deputy or to assist him]

(2) Any enactment (including any enactment contained in this Act) or any rule of law regulating the exercise of any jurisdiction or powers of justices of the peace, or relating to things done in the exercise or purported exercise of any such jurisdiction or powers, shall apply in relation to the exercise or purported exercise thereof by virtue of subsection (1) above by the clerk to any justices as if he were one of those justices.

(3) It is hereby declared that the functions of a justices' clerk include the giving to the justices to whom he is clerk or any of them, at the request of the justices or justice, of advice about law, practice or procedure on questions arising in connection with the discharge of their or his functions, including questions arising when the clerk is not personally attending on the justices or justice, and that the clerk may, at any time when he thinks he should do so, bring to the attention of the justices or justice any point of law, practice or procedure that is or may be involved in any question so arising.

In this subsection the reference to the functions of justices or a justice is a reference to any of their or his functions as justices or a justice of the peace, other than functions as a judge of the Crown Court.

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- (4) The enactment of subsection (3) above shall not be taken as defining or in any respect limiting the powers and duties belonging to a justices' clerk or the matters on which justices may obtain assistance from their clerk.

Textual Amendments

- F4** Words substituted by [Magistrates' Courts Act 1980 \(c.43, SIF 82\), s. 154\(1\), Sch. 7 para. 194](#)
F5 [S. 28\(1A\)](#) inserted (*prosp.*) by [Courts and Legal Services Act 1990 \(c.41, SIF 76:1\)](#),ss. 117, 124

29 Functions of justices' clerk as collecting officer.

- (1) A justices' clerk shall by virtue of his office be collecting officer of any magistrates' court of which he is the clerk.
- (2) In his capacity as such a collecting officer, a justices' clerk—
- shall discharge all such functions as are conferred by any enactment on a collecting officer appointed by the justices for a petty sessions division under the ^{M2}Affiliation Orders Act 1914; and
 - shall act under any order directing the payment of money to him which was made by any court under section 30 of the ^{M3}Criminal Justice Administration Act 1914 (which provided for periodical payments under court orders to be made through an officer of the court or other third party) and which continues to have effect in accordance with the provisions of paragraph 14 of Schedule I to this Act.
- (3) Subsections (1) and (2) above shall have effect without prejudice to the provisions of [^{F6}section 59 of the Magistrates' Courts Act 1980](periodical payments through justices' clerk) or [^{F6}section 62 of that Act](relating to payments required to be made to a child).

Textual Amendments

- F6** Words substituted by [Magistrates' Courts Act 1980 \(c.43, SIF 82\), s. 154\(1\), Sch. 7 para. 195](#)

Marginal Citations

- M2** [1914 c. 6.](#)
M3 [1914 c. 58.](#)

30 Person acting as substitute clerk to justices.

- (1) The provisions of this section shall have effect where, in any petty sessions area outside the inner London area, a person who is not the justices' clerk or one of the justices' clerks appointed in that petty sessions area by the magistrates' courts committee acts as clerk to the justices for that petty sessions area.
- (2) Subject to any rules made under [^{F7}section 144 of the Magistrates' Courts Act 1980]and to subsection (3) below, the person so acting shall be treated as having acted as deputy to the justices' clerk appointed by the magistrates' courts committee in that petty sessions area, and shall make a return to the justices' clerk so appointed of all matters done before the justices and of all matters that the clerk to the justices is required to register or record.

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- (3) In relation to a petty sessions area in which there are two or more justices' clerks appointed by the magistrates' courts committee, any reference in subsection (2) above to the justices' clerk so appointed shall be construed as a reference to such one of them as may be designated for the purpose by the committee.

Textual Amendments

F7 Words substituted by [Magistrates' Courts Act 1980 \(c.43, SIF 82\)](#), s. 154(1), **Sch. 7 para. 196**

VALID FROM 01/11/1994

[^{F8}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 ^{M4}Magistrates' Courts Act 1980 by virtue of section 28(1) or (1A) of this Act.]

Textual Amendments

F8 [S. 30A](#) inserted (1.11.1994) by [1994 c. 29, s.78](#); [S.I. 1994/2594, art.3](#)

Marginal Citations

M4 [1980 c. 43](#).

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