



# Justices of the Peace Act 1997

## 1997 CHAPTER 25

### PART I

#### COMMISSIONS OF THE PEACE AND PETTY SESSIONS AREAS

#### **1 Commission areas**

- (1) There shall in England be a commission of the peace for each of the following areas—
  - (a) every metropolitan county;
  - (b) every retained county;
  - (c) every London commission area; and
  - (d) the City of London.
- (2) There shall in Wales be a commission of the peace for each of the following areas—
  - (a) every commission area specified in Schedule 1 to this Act; and
  - (b) every retained county no part of which falls within a commission area so specified.
- (3) In this Act “commission area” means an area for which there is a commission of the peace.

#### **2 London commission areas**

- (1) In this Act “London commission area” means, subject to the provisions of subsections (3) to (5) below, any of the areas specified in Schedule 2 to this Act.
- (2) The area specified in Part I of that Schedule is the inner London area; and the areas whose names are listed in Part II of that Schedule are in this Act referred to as the “outer London areas”.
- (3) Her Majesty may by Order in Council substitute for any one or more of the areas specified in that Schedule any other area or areas comprising the whole or part of Greater London, or alter the boundaries of any area so specified; but the City of

London shall not by virtue of any such Order be included in a London commission area.

- (4) An Order in Council made under this section may contain such incidental, consequential, transitional or supplementary provisions as may be necessary or expedient for the purposes of the Order (including provisions amending this Act or any other enactment).
- (5) Any statutory instrument made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **3 General form of commissions of the peace**

The commission of the peace for any commission area shall be a commission under the Great Seal addressed generally, and not by name, to all such persons as may from time to time hold office as justices of the peace for the commission area.

### **4 Petty sessions areas**

- (1) The following areas are petty sessions areas—
  - (a) any specified area which is not divided into petty sessional divisions;
  - (b) any petty sessional division of a specified area; and
  - (c) the City of London.
- (2) For the purposes of subsection (1)(a) and (b) above “specified area” means—
  - (a) a retained county;
  - (b) a metropolitan district;
  - (c) the inner London area; or
  - (d) an outer London borough.

## **PART II**

### **JUSTICES OF THE PEACE**

#### *Justices other than stipendiary magistrates*

### **5 Appointment and removal of justices of the peace**

- (1) Subject to the following provisions of this Act, justices of the peace for any commission area shall be appointed by the Lord Chancellor by instrument on behalf and in the name of Her Majesty and a justice so appointed may be removed from office in like manner.
- (2) Subsection (1) above—
  - (a) does not apply to stipendiary magistrates; and
  - (b) is without prejudice to the position of the Lord Mayor and aldermen as justices for the City of London by virtue of the charters of the City.

## **6 Residence qualification**

- (1) Subject to the provisions of this section, a person shall not be appointed as a justice of the peace for a commission area in accordance with section 5 above, nor act as a justice of the peace by virtue of any such appointment, unless he resides in or within 15 miles of that area.
- (2) If the Lord Chancellor is of the opinion that it is in the public interest for a person to act as a justice of the peace for a particular area though not qualified to do so under subsection (1) above, he may direct that, so long as any conditions specified in the direction are satisfied, that subsection shall not apply in relation to that person's appointment as a justice of the peace for the area so specified.
- (3) Where a person appointed as a justice of the peace for a commission area in accordance with section 5 above is not qualified under the preceding provisions of this section to act by virtue of the appointment, he shall be removed from office as a justice of the peace in accordance with that section if the Lord Chancellor is of the opinion that the appointment ought not to continue having regard to the probable duration and other circumstances of the lack of qualification.
- (4) No act or appointment shall be invalidated by reason only of the disqualification or lack of qualification under this section of the person acting or appointed.

## **7 Supplemental list for England and Wales**

- (1) There shall be kept in the office of the Clerk of the Crown in Chancery a supplemental list for England and Wales as provided for by this Act (in this Act referred to as "the supplemental list").
- (2) Subject to the following provisions of this section, there shall be entered in the supplemental list—
  - (a) the name of any justice of the peace who has attained the age of 70 and neither holds nor has held high judicial office within the meaning of the Appellate Jurisdiction Act 1876; and
  - (b) the name of any justice of the peace who holds or has held such office and has attained the age of 75.
- (3) A person who, on the date when his name falls to be entered in the supplemental list in accordance with subsection (2) above, holds office as chairman of the justices for a petty sessions area (whether by an election under section 22 below, or, in the City of London, as Chief Magistrate or acting Chief Magistrate) shall have his name so entered on the expiry or earlier determination of the term for which he holds office on that date.
- (4) The Lord Chancellor may direct that the name of a justice of the peace for any area shall be entered in the supplemental list if the Lord Chancellor is satisfied either—
  - (a) that by reason of the justice's age or infirmity or other similar cause it is expedient that he should cease to exercise judicial functions as a justice for that area; or
  - (b) that the justice declines or neglects to take a proper part in the exercise of those functions.
- (5) On a person's appointment as a justice of the peace for any area the Lord Chancellor may direct that his name shall be entered in the supplemental list if that person is appointed a justice for that area on ceasing to be a justice for some other area.

- (6) The name of a justice of the peace shall be entered in the supplemental list if he applies for it to be so entered and the application is approved by the Lord Chancellor.
- (7) Nothing in this section applies to a person holding office as stipendiary magistrate.

## **8 Removal of name from supplemental list**

- (1) A person's name shall be removed from the supplemental list if—
- (a) he ceases to be a justice of the peace; or
  - (b) the Lord Chancellor so directs.
- (2) Subsection (1)(b) above does not apply where the person's name is required to be entered in the supplemental list by section 7(2) or (3) above.

## **9 Effect of entry of name in supplemental list**

- (1) Subject to the provisions of this section, a justice of the peace for any area, while his name is entered in the supplemental list, shall not by reason of being a justice for that area be qualified as a justice to do any act or to be a member of any committee or other body.
- (2) Subsection (1) above does not preclude a justice from doing all or any of the following acts as a justice, namely—
- (a) signing any document for the purpose of authenticating another person's signature;
  - (b) taking and authenticating by his signature any written declaration not made on oath; and
  - (c) giving a certificate of facts within his knowledge or of his opinion as to any matter.
- (3) The entry of a person's name in the supplemental list does not preclude him, if so authorised by the Lord Chancellor, from acting as a judge of the Crown Court so long as he has not attained the age of 72.
- (4) No act or appointment shall be invalidated by reason of the disqualification under this section of the person acting or appointed.

## **10 Travelling, subsistence and financial loss allowances**

- (1) Subject to the provisions of this section, a justice of the peace shall be entitled—
- (a) to receive payments by way of travelling allowance or subsistence allowance where expenditure on travelling or, as the case may be, on subsistence is necessarily incurred by him for the purpose of enabling him to perform any of his duties as a justice; and
  - (b) to receive payments by way of financial loss allowance where for that performance he incurs any other expenditure to which he would not otherwise be subject or he suffers any loss of earnings or of benefit under the enactments relating to social security which he would otherwise have made or received.
- (2) For the purposes of this section a justice following a training course under a scheme made in accordance with arrangements approved by the Lord Chancellor, or a training

course provided by the Lord Chancellor, shall be treated as acting in the performance of his duties as a justice.

- (3) A justice shall not be entitled to any payment under this section in respect of any duties if—
  - (a) in respect of those duties a payment of the like nature may be paid to him under arrangements made apart from this section; or
  - (b) regulations provide that this section shall not apply.
- (4) A stipendiary magistrate shall not be entitled to any payment under this section in respect of his duties as such.
- (5) Allowances payable under this section shall be paid at rates determined by the Lord Chancellor with the consent of the Treasury.
- (6) An allowance payable under this section shall be paid—
  - (a) in the case of an allowance payable in respect of duties as a justice in the Crown Court, by the Lord Chancellor; and
  - (b) in the case of an allowance otherwise payable to a justice for any commission area in respect of his duties as such, by the appropriate authority.
- (7) In subsection (6)(b) above, “the appropriate authority” means—
  - (a) in relation to a justice for the City of London, the Common Council;
  - (b) in relation to a justice for any of the outer London areas, the council of the outer London borough which is or includes the petty sessions area for which he acts;
  - (c) in relation to a justice for a metropolitan county, the council of the metropolitan district which is or includes the petty sessions area for which he acts;
  - (d) in relation to a justice for any other commission area—
    - (i) the council of the local government area which is or includes the petty sessions area for which he acts; or
    - (ii) where he acts for a petty sessions area which is partly included in two or more local government areas, the councils of those local government areas.
- (8) In subsection (7)(d) above, “local government area” means—
  - (a) in relation to the inner London area, an inner London borough;
  - (b) in relation to Wales, a county or a county borough; and
  - (c) otherwise, a county for which there is a council or a unitary district.
- (9) Where by virtue of subsection (7)(d)(ii) above an allowance under this section is payable jointly by two or more councils the manner in which it is to be borne by each of them shall be determined by agreement between them or, in default of agreement, by the Lord Chancellor.
- (10) Regulations may make provision as to the manner in which this section is to be administered, and in particular—
  - (a) for prescribing the forms to be used and the particulars to be provided for the purpose of claiming payment of allowances; and
  - (b) for avoiding duplication between payments under this section and under other arrangements where expenditure is incurred for more than one purpose, and otherwise for preventing abuses.

- (11) Regulations for the purposes of this section shall be made by the Lord Chancellor by statutory instrument.
- (12) A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### *Stipendiary magistrates*

## **11 Appointment and removal of stipendiary magistrates**

- (1) Her Majesty may appoint a person who has a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990) to be, during Her Majesty's pleasure, a whole-time stipendiary magistrate in any commission area or areas outside the inner London area and the City of London, and may appoint more than one such magistrate in the same area or areas.
- (2) A person so appointed to be a stipendiary magistrate in any commission area shall by virtue of his office be a justice of the peace for that area.
- (3) Any stipendiary magistrate appointed under this section—
  - (a) shall be a person recommended to Her Majesty by the Lord Chancellor; and
  - (b) shall not be removed from office except on the Lord Chancellor's recommendation.
- (4) The number of stipendiary magistrates appointed under this section shall not at any time exceed 50 or such other number (which is not less than 40) as Her Majesty may from time to time by Order in Council specify.
- (5) No Order in Council may be made under subsection (4) above unless a draft of the Order has been laid before Parliament and approved by resolution of each House.

## **12 Retirement of stipendiary magistrates**

- (1) A stipendiary magistrate appointed on or after 31st March 1995 shall vacate his office on the day on which he attains the age of 70.
- (2) A stipendiary magistrate appointed before 31st March 1995 shall vacate his office at the end of the completed year of service in the course of which he attains the age of 70.
- (3) Subsections (1) and (2) above are subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (Lord Chancellor's power to authorise continuance in office up to the age of 75) and to section 27 of that Act (completion of proceedings) and Schedule 7 to that Act (transitional provisions).

## **13 Acting stipendiary magistrate**

- (1) Where it appears to the Lord Chancellor that it is expedient to do so in order to avoid delays in the administration of justice in any commission area in which a stipendiary magistrate can be appointed under section 11 above, the Lord Chancellor—
  - (a) may authorise any person qualified to be so appointed to act as a stipendiary magistrate in that area during such period (not exceeding three months at one time) as the Lord Chancellor thinks fit; or

- (b) may require so to act any stipendiary magistrate appointed under that section in another commission area.
- (2) While acting as a stipendiary magistrate in any commission area under subsection (1) above, a person shall have the same jurisdiction, powers and duties as if he had been appointed stipendiary magistrate in that area and were a justice of the peace for that area.
- (3) Part V of this Act applies to a person acting as a stipendiary magistrate under subsection (1) above as it applies to a stipendiary magistrate.
- (4) The Lord Chancellor may pay to any person who is authorised to act under this section and is not a stipendiary magistrate such remuneration as he may, with the approval of the Treasury, determine.

#### **14 Place of sitting and powers of stipendiary magistrates**

- (1) A stipendiary magistrate appointed under section 11 above in any commission area shall sit at such court-houses in the area, on such days and at such times as may be determined by, or in accordance with, directions given by the Lord Chancellor from time to time.
- (2) A stipendiary magistrate appointed under section 11 above, sitting in a place appointed for the purpose, shall have power—
  - (a) to do any act; and
  - (b) to exercise alone any jurisdiction,which can be done or exercised by two justices, including any act or jurisdiction expressly required to be done or exercised by justices sitting or acting in petty sessions.
- (3) Subsection (2) above does not apply where the law under which the act or jurisdiction can be done or exercised was made after 2nd August 1858 and contains express provision contrary to that subsection.
- (4) Any statutory provision auxiliary to the jurisdiction exercisable by two justices of the peace shall apply also to the jurisdiction of such a stipendiary magistrate.
- (5) Subsections (2) and (4) above do not apply where the act or jurisdiction relates to the grant or transfer of any licence.
- (6) Any authority or requirement in any enactment for persons to be summoned or to appear at petty sessions in any case shall include authority or a requirement in such a case for persons to be summoned or to appear before such a stipendiary magistrate at the place appointed for his sitting.
- (7) Nothing in this section applies to the hearing or determination of family proceedings within the meaning of section 65 of the Magistrates' Courts Act 1980.

#### **15 Certain restrictions on magistrates' courts not to apply to stipendiary magistrates**

- (1) Subject to subsection (2) below, nothing in the Magistrates' Courts Act 1980—
  - (a) requiring a magistrates' court—
    - (i) to be composed of two or more justices; or
    - (ii) to sit in a petty sessional court-house or an occasional court-house; or

- (b) limiting the powers of a magistrates' court—
  - (i) when composed of a single justice; or
  - (ii) when sitting elsewhere than in a petty sessional court-house,shall apply to any stipendiary magistrate sitting in a place appointed for the purpose.
- (2) Subsection (1) above does not apply to the hearing or determination of family proceedings within the meaning of section 65 of the Magistrates' Courts Act 1980.

*Metropolitan stipendiary magistrates*

**16 Appointment, removal and retirement of metropolitan stipendiary magistrates**

- (1) Metropolitan stipendiary magistrates shall be appointed by Her Majesty, and Her Majesty shall from time to time appoint such number of persons as is necessary; but the number of metropolitan stipendiary magistrates shall not at any time exceed 60 or such larger number as Her Majesty may from time to time by Order in Council specify.
- (2) A person shall not be qualified to be appointed a metropolitan stipendiary magistrate unless he has a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990).
- (3) The Lord Chancellor shall designate one of the metropolitan stipendiary magistrates to be the chief metropolitan stipendiary magistrate.
- (4) Each metropolitan stipendiary magistrate—
  - (a) shall by virtue of his office be a justice of the peace for each of the London commission areas and for the retained counties of Essex, Hertfordshire, Kent and Surrey; and
  - (b) may be removed from office by the Lord Chancellor for inability or misbehaviour.
- (5) Section 12 above applies to metropolitan stipendiary magistrates as well as other stipendiary magistrates in England or Wales.
- (6) No Order in Council shall be made under subsection (1) above unless a draft of the Order has been laid before Parliament and approved by resolution of each House.

**17 Metropolitan stipendiary magistrates: allocation and sittings etc**

- (1) The Lord Chancellor may assign metropolitan stipendiary magistrates to petty sessional divisions of the inner London area and may alter any assignment under this subsection; but the assignment of a magistrate to a particular division shall not preclude him from exercising jurisdiction for any other division of the inner London area.
- (2) Metropolitan stipendiary magistrates shall sit at such court-houses provided for the inner London area under the following provisions of this Act on such days and at such times as may be determined by, or in accordance with, directions given by the Lord Chancellor from time to time.
- (3) The chief metropolitan stipendiary magistrate shall—



- (a) cause a meeting of all the metropolitan stipendiary magistrates (or such of them as are able to attend) to be held at least once in every three months; and
- (b) if present, preside over the meeting.

## **18 Jurisdiction of metropolitan stipendiary magistrates and lay justices for inner London area**

- (1) Metropolitan stipendiary magistrates shall hold magistrates' courts for the inner London area.
- (2) In the inner London area the jurisdiction conferred on justices of the peace by any enactment, by their commission or by the common law shall be exercisable both—
  - (a) by metropolitan stipendiary magistrates; and
  - (b) by justices of the peace for that area who are not metropolitan stipendiary magistrates (in this Part of this Act referred to as “lay justices”).
- (3) Subject to subsections (4) and (5) below, the jurisdiction conferred on metropolitan stipendiary magistrates as such by any enactment shall be exercisable both—
  - (a) by metropolitan stipendiary magistrates; and
  - (b) by lay justices for the inner London area.
- (4) Subsection (3)(b) above does not apply to the jurisdiction conferred on metropolitan stipendiary magistrates by—
  - (a) section 25 of the Children and Young Persons Act 1933 (restrictions on persons under 18 going abroad for the purpose of performing for profit); or
  - (b) the Extradition Act 1989.
- (5) A magistrates' court consisting of lay justices for the inner London area shall not by virtue of subsection (3) above try an information summarily or hear a complaint except when composed of at least two justices.
- (6) Without prejudice to subsection (2) above, subsections (2) to (7) of section 14 above apply to a metropolitan stipendiary magistrate as they apply to a stipendiary magistrate appointed under section 11 above.
- (7) Section 15 above applies to metropolitan stipendiary magistrates as well as other stipendiary magistrates in England or Wales.

## **19 Acting metropolitan stipendiary magistrate**

- (1) If it appears to the Lord Chancellor that it is expedient to do so in order to avoid delays in the administration of justice in the inner London area, he may authorise any person who has a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990) to act as a metropolitan stipendiary magistrate during such period (not exceeding three months at one time) as the Lord Chancellor thinks fit.
- (2) Anything required or authorised by law to be done by, to or before a metropolitan stipendiary magistrate may be done by, to or before any person acting as a metropolitan stipendiary magistrate under subsection (1) above.
- (3) Part V of this Act applies to a person acting as a metropolitan stipendiary magistrate under subsection (1) above as it applies to a metropolitan stipendiary magistrate.

- (4) The Lord Chancellor may pay to any person authorised to act under this section such remuneration as he may, with the approval of the Treasury, determine.

## **20 Division of work in inner London area**

- (1) There shall be a committee established for the purposes mentioned in subsection (6) below.
- (2) The committee shall consist of the following members—
- (a) the chief metropolitan stipendiary magistrate;
  - (b) six lay justices appointed by the chairmen of the petty sessional divisions of the inner London area; and
  - (c) six metropolitan stipendiary magistrates appointed by the chief metropolitan stipendiary magistrate.
- (3) The lay justices eligible for appointment under paragraph (b) of subsection (2) above include any of the chairmen referred to in that paragraph.
- (4) The members of the committee shall hold office for a period of twelve months, but shall be eligible for re-appointment.
- (5) The chief metropolitan stipendiary magistrate shall be the chairman of the committee.
- (6) It shall be the duty of the committee—
- (a) to keep under consideration the division of work in the inner London area between the metropolitan stipendiary magistrates and the lay justices; and
  - (b) to give general directions to any magistrates' courts committee for any area which consists of or includes the whole or any part of the inner London area as to the division of the work.

### *City of London magistrates*

## **21 Ex officio and appointed justices**

- (1) The Lord Mayor and aldermen of the City of London shall by virtue of the charter granted by His late Majesty King George II dated 25th August 1741 continue to be justices of the peace for the City but any of them may be excluded by the Lord Chancellor from the exercise of his functions as a justice.
- (2) The persons holding office as justices of the peace for the City shall constitute a single body of justices, without distinction between those holding office by virtue of the charter and those appointed; and the jurisdiction and powers of the Lord Mayor and aldermen as justices by virtue of the charter are the same in all respects as those of appointed justices.
- (3) The jurisdiction and powers of the justices of the peace for the City are in continuation of those which, before the issue of a commission of the peace for the City, belonged exclusively to the justices holding office by virtue of the charter.

### *General provisions*

## **22 Chairman and deputy chairmen of justices**

- (1) For any petty sessions area there shall be a chairman and one or more deputy chairmen of the justices chosen from amongst themselves by the magistrates for the area; and any contested election for the purpose of this section shall be held by secret ballot.
- (2) Subject to subsections (3) and (4) below, if the chairman or a deputy chairman of the justices for a petty sessions area is present at a meeting of those justices, he shall preside unless he requests another justice to preside in accordance with rules made under section 24 below.
- (3) Subsection (2) above does not confer on any chairman or deputy chairman of the justices the right to preside in court if, under rules made under section 24 below, he is ineligible to preside in court.
- (4) Subsection (2) above does not confer on any chairman or deputy chairman of the justices the right to preside—
  - (a) in a youth court or family proceedings court;
  - (b) at meetings of a committee or other body of justices having its own chairman; or
  - (c) at meetings when any stipendiary magistrate is engaged as such in administering justice.
- (5) A metropolitan stipendiary magistrate who is by virtue of his office a justice of the peace for any area mentioned in section 16(4) above shall not, by reason only of his being a justice of the peace for that area by virtue of that office, be qualified—
  - (a) to be chosen under subsection (1) above as chairman or deputy chairman of the justices for a petty sessional division of that area; or
  - (b) to vote under that subsection at the election of any such chairman or deputy chairman.

## **23 Chairman and deputy chairmen of justices in the City of London**

- (1) In the City of London, the Lord Mayor for the time being, if not disqualified, shall be chairman of the justices, with the style of Chief Magistrate, instead of a chairman being elected under section 22(1) above; and, subject to subsection (3) below, the aldermen who have been Lord Mayor and are not disqualified (or, if there are more than eight such aldermen, the eight who were last Lord Mayor) shall be deputy chairmen in addition to any deputy chairmen elected under section 22(1) above.
- (2) For the purposes of this section a Lord Mayor or alderman is disqualified at any time while his name is entered in the supplemental list.
- (3) If the Lord Mayor is disqualified, then during his mayoralty the senior of the aldermen designated as deputy chairmen in subsection (1) above shall, instead of being a deputy chairman, be chairman of the justices as acting Chief Magistrate.
- (4) Subsections (2) and (4) of section 22 above apply to any Lord Mayor or alderman as chairman or deputy chairman of the justices as they apply to a chairman or deputy chairman elected under subsection (1) of that section.

## **24 Rules as to chairmanship and size of bench**

- (1) The number of justices (other than metropolitan stipendiary magistrates) sitting to deal with a case as a magistrates' court shall not be greater than the number prescribed by rules made under this section.
- (2) Rules made under this section may make provision as to the manner in which section 22 above and this section are to be administered, and in particular—
  - (a) as to the arrangements to be made for securing the presence on the bench of enough, but not more than enough, justices;
  - (b) as to the term of office and the procedure at an election of the chairman or a deputy chairman of the justices for a petty sessions area (including any procedure for nominating candidates at any such election), and the number of deputy chairmen to be elected for any such area;
  - (c) as to training courses to be completed by justices before they may preside in court;
  - (d) as to the approval of justices, by committees of justices constituted in accordance with the rules, before they may preside in court, as to the justices who may be so approved and as to the courts to which the approval relates; and
  - (e) as to circumstances in which a justice may preside in court even though requirements imposed by virtue of paragraph (c) or (d) above are not satisfied in relation to him.
- (3) The right of magistrates to vote at an election of the chairman or a deputy chairman of the justices for a petty sessions area may, by rules made under this section, be restricted with a view to securing that the election is made by magistrates experienced as such in the area.
- (4) No rules shall be made under this section except on the advice of, or after consultation with, the rule committee established under section 144 of the Magistrates' Courts Act 1980.
- (5) Rules under this section shall be made by the Lord Chancellor by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **25 Records of justices of the peace**

- (1) In each commission area, other than the City of London, such one of the justices as may be designated by the Lord Chancellor shall be keeper of the rolls.
- (2) There shall be transmitted to the keeper of the rolls for each commission area, and be enrolled in the records of the justices for that area, a copy of any instrument appointing or removing a justice of the peace in that area in accordance with section 5 above; and the keeper of the rolls shall be notified, in such manner as the Lord Chancellor may direct, of any resignation or death of a justice so appointed, and shall cause to be kept, and from time to time rectified, a record of those for the time being holding office by virtue of any such appointment.
- (3) Subsection (2) above has effect in relation to the City of London as if for each reference to the keeper of the rolls there were substituted a reference to the Lord Mayor.
- (4) There shall be kept in the office of the Clerk of the Crown in Chancery a record of all persons for the time being holding office as justices of the peace by virtue of

appointments made in accordance with section 5 above, together with the instruments of appointment or removal.

## **26 Greater Manchester, Merseyside and Lancashire**

- (1) Sections 5(1), 6 and 25 above have effect in relation to the counties of Greater Manchester and Merseyside and the retained county of Lancashire with the substitution, for any reference to the Lord Chancellor, of a reference to the Chancellor of the Duchy of Lancaster.
- (2) In relation to the entry in or removal from the supplemental list of the name of a person who is a justice of the peace only for any of—
  - (a) the counties of Greater Manchester and Merseyside; and
  - (b) the retained county of Lancashire,sections 7(4) to (6) and 8 above have effect with the substitution, for any reference to the Lord Chancellor, of a reference to the Chancellor of the Duchy of Lancaster.

## **PART III**

### **MAGISTRATES' COURTS COMMITTEES**

## **27 General provisions as to magistrates' courts committees**

- (1) There shall be committees (known as “magistrates' courts committees”) set up in accordance with the provisions of this Part of this Act, with such functions as are or may be conferred on them by or under this or any other Act and such other functions relating to matters of an administrative character as they may be authorised by the Lord Chancellor to undertake.
- (2) Subject to section 32 below and to any order made under section 69 of the Police and Magistrates' Courts Act 1994 before the commencement of this Act, there shall in England be a magistrates' courts committee for each of the following areas—
  - (a) every retained county;
  - (b) every metropolitan district;
  - (c) every outer London borough;
  - (d) the inner London area; and
  - (e) the City of London.
- (3) Subject to section 32 below and to any order made under section 69 of the Police and Magistrates' Courts Act 1994 before the commencement of this Act, there shall in Wales be a magistrates' courts committee for every retained county.

## **28 Constitution of magistrates' courts committees**

- (1) A magistrates' courts committee shall, subject to subsections (2) to (4) below, be composed of magistrates for the area to which the committee relates, chosen in accordance with regulations under section 29 below.
- (2) Not more than two other members, who need not be justices of the peace, may be either—

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

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- (a) co-opted by a magistrates' courts committee to the committee with the approval of the Lord Chancellor; or
  - (b) appointed by the Lord Chancellor to the committee.
- (3) The chief metropolitan stipendiary magistrate shall by virtue of his office be a member of the inner London magistrates' courts committee.
- (4) Until such day as the Lord Chancellor may by order made by statutory instrument appoint, two members of the inner London magistrates' courts committee shall be other metropolitan stipendiary magistrates appointed by the chief metropolitan stipendiary magistrate.
- (5) In subsections (3) and (4) above “the inner London magistrates' courts committee” means the magistrates' courts committee for an area consisting of or including the whole of the inner London area or, if there is no such committee, every magistrates' courts committee for any area which consists of or includes any part of the inner London area.

## **29 Powers of Lord Chancellor in relation to magistrates' courts committees**

- (1) The Lord Chancellor may by statutory instrument make general regulations about the constitution, procedure and quorum of magistrates' courts committees; but any such regulations shall have effect subject to the provisions of section 28 above.
- (2) The regulations shall provide for the members referred to in section 28(1) above to be chosen by a selection panel constituted in accordance with the regulations.
- (3) The regulations may—
- (a) lay down an upper limit for the number of members of a magistrates' courts committee (inclusive of the members referred to in subsections (2), (3) and (4) of section 28 above); and
  - (b) enable the Lord Chancellor to direct that, in relation to any magistrates' courts committee to which the direction is given, any members co-opted or appointed under subsection (2) of that section are to be left out of account in applying the upper limit.
- (4) The regulations may also make different provision in relation to the magistrates' courts committees for areas which consist of or include the whole or any part of the inner London area from that made in relation to other committees.
- (5) The regulations may also make provision with respect to the persons (other than the members, clerks and officers of the committee) who may be entitled to attend the meetings of a magistrates' courts committee and the rights of such persons to make representations to the committee.
- (6) A statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The Lord Chancellor may give general or special directions with respect to convening the first meeting of magistrates' courts committees.

### **30 Supplementary provisions as to magistrates' courts committees**

- (1) Subject to subsection (2) below, a magistrates' courts committee shall appoint one of their members to be chairman of the committee.
- (2) Until such day as the Lord Chancellor may by order made by statutory instrument appoint, the chief metropolitan stipendiary magistrate shall by virtue of his office be the chairman of any magistrates' courts committee for an area which consists of or includes the whole of the inner London area.
- (3) Where the magistrates for a petty sessions area are required to meet for the purpose of carrying out any functions under section 29 above, a meeting shall be convened by the magistrates' courts committee or, if there is no such committee or the Lord Chancellor considers it appropriate, by the Lord Chancellor.
- (4) A magistrates' courts committee may act through sub-committees appointed by them which, if they include at least one member of the committee, may also include persons who are not members.
- (5) A magistrates' courts committee may also arrange for the discharge of any of their functions—
  - (a) by the chairman of the committee; or
  - (b) by the justices' chief executive.
- (6) Subject to the provisions of this Act, a magistrates' courts committee shall have power to regulate their own procedure, including quorum.
- (7) The proceedings of a magistrates' courts committee shall not be invalidated by reason of any vacancy among the members or of any defect in the appointment of a member.
- (8) A magistrates' courts committee shall be a body corporate.
- (9) A magistrates' courts committee shall, on at least one occasion in every calendar year, admit members of the public to a meeting of the committee.
- (10) The minutes of proceedings of every meeting of a magistrates' courts committee shall be open to inspection by members of the public at the offices of the committee, except to the extent that the committee determine that the minutes disclose information of a confidential nature.
- (11) Copies of any minutes which are open to inspection under subsection (10) above shall be made available to the public on payment of such reasonable fee as the magistrates' courts committee may in any case determine.
- (12) A magistrates' courts committee making a determination under subsection (10) above shall state their reasons for regarding the information in question as being of a confidential nature.

### **31 General powers and duties of magistrates' courts committees**

- (1) A magistrates' courts committee shall be responsible for the efficient and effective administration of the magistrates' courts for their area.
- (2) A magistrates' courts committee may, in particular—
  - (a) allocate administrative responsibilities among the justices' chief executive, the justices' clerks and the staff of the committee; and

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- (b) determine the administrative procedures to be followed by any of the persons mentioned in paragraph (a) above.
- (3) It shall be the duty of every magistrates' courts committee to provide training courses for justices' clerks and for staff of the committee.
- (4) The Lord Chancellor may give directions to magistrates' courts committees requiring each of them, in discharging their responsibilities under subsection (1) above, to meet specified standards of performance.
- (5) The Lord Chancellor may also give directions to magistrates' courts committees requiring each of them to take specified steps, at such intervals as may be specified—
  - (a) for the purpose of keeping the magistrates for their area informed as to the activities of the committee; or
  - (b) for the purpose of ascertaining the views of those magistrates on particular matters related to the functions of the committee.
- (6) In discharging their responsibilities under subsection (1) above, a magistrates' courts committee shall have regard to the needs of court users who are disabled; and so long as any direction under subsection (4) above is in force the standards of performance required under that subsection must include standards relating to the provision made for such court users.
- (7) A direction under this section may be given to all magistrates' courts committees or to one or more particular committees.
- (8) The Lord Chancellor shall arrange for any direction given under this section to be published in such manner as he thinks fit.

### **32 Alteration of magistrates' courts committee areas**

- (1) A magistrates' courts committee may at any time submit to the Lord Chancellor written proposals—
  - (a) for the replacement of two or more magistrates' courts committees (including the committee submitting the proposals) with a single magistrates' courts committee or with two or more magistrates' courts committees in relation to areas different from the existing magistrates' courts committee areas; or
  - (b) for the replacement of the committee submitting the proposals with two or more magistrates' courts committees.
- (2) Before submitting such proposals, the magistrates' courts committee shall consult—
  - (a) the magistrates for their area or any other existing magistrates' courts committee area to which the proposal relates;
  - (b) any other magistrates' courts committee to which the proposal relates; and
  - (c) every interested authority.
- (3) Whether or not proposals have been submitted to him under subsection (1) above, the Lord Chancellor may by order made by statutory instrument provide—
  - (a) for the replacement of two or more magistrates' courts committees with a single magistrates' courts committee or with two or more magistrates' courts committees relating to areas which are different from the existing magistrates' courts committee areas; or
  - (b) for the replacement of a magistrates' courts committee with two or more magistrates' courts committees.



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- (4) The Lord Chancellor shall not make an order under subsection (3) above unless he is satisfied that the making of the order is likely to contribute to an overall increase in the efficiency of the administration of the magistrates' courts for the magistrates' courts committee area or areas to which the order relates.
- (5) Before making an order under subsection (3) above, other than an order which implements proposals submitted to him under subsection (1) above, the Lord Chancellor shall consult—
- (a) the magistrates for each of the existing magistrates' courts committee areas to which the order relates;
  - (b) the magistrates' courts committees to which the proposal relates; and
  - (c) every interested authority.
- (6) For the purposes of subsection (5) above, an order shall be taken to implement proposals if it implements them without alteration or any departures from the proposals do not, in the opinion of the Lord Chancellor, effect important alterations in the proposals.
- (7) Where proposals under subsection (1) above or an order under subsection (3) above would (apart from this subsection) divide a petty sessions area between the areas of two or more magistrates' courts committees, the proposals or order shall provide for a consequential alteration of petty sessions areas.
- (8) An order under subsection (3) above may contain such consequential and transitional provisions as appear to the Lord Chancellor to be necessary or expedient, including—
- (a) provision for the transfer of property, rights and liabilities;
  - (b) provision for the management or custody of transferred property (whether real or personal); and
  - (c) provision for any magistrates' courts committee coming into existence by virtue of the order to be constituted under section 30 above as a body corporate, and to incur liabilities, before the date on which the functions of any existing magistrates' courts committee are transferred to it.
- (9) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this section—
- “existing magistrates' courts committee area” means a magistrates' courts committee area existing by virtue of—
    - (a) section 27(2) or (3) above;
    - (b) an order made under section 69 of the Police and Magistrates' Courts Act 1994 before the commencement of this Act; or
    - (c) a previous order under subsection (3) above;
  - “interested authority”, in relation to a proposal or order, means any relevant authority whose area includes all or any part of any of the existing magistrates' courts committee areas to which the proposal or order relates; and
  - “relevant authority” means—
    - (a) a county council;
    - (b) a county borough council;
    - (c) the council of a unitary district;
    - (d) a London borough council; or

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(e) the Common Council of the City of London.

### **33 Powers and duties of committee as to petty sessional divisions**

- (1) Subject to the provisions of this section and section 34 below, a magistrates' courts committee may at any time submit to the Lord Chancellor a draft order making such provision about the division of their area or any part of their area into petty sessional divisions as the committee think fit.
- (2) It shall be the duty of a magistrates' courts committee, if directed to do so by the Lord Chancellor, to review the division of their area or any part of their area into petty sessional divisions and, on completion of the review, to submit to the Lord Chancellor either a draft order under subsection (1) above or a report giving reasons for making no change.
- (3) Subject to the provisions of this section and section 34 below—
  - (a) where a magistrates' courts committee submit a draft order to the Lord Chancellor under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit; and
  - (b) where a magistrates' courts committee fail to comply within six months with a direction of the Lord Chancellor under subsection (2) above, or the Lord Chancellor is dissatisfied with the draft order or report submitted in pursuance of such a direction, he may by statutory instrument make such order as he thinks fit about the division into petty sessional divisions of the area to which the direction related.
- (4) An order under this section may provide for an area ceasing to be divided into petty sessional divisions, and a direction under subsection (2) above may be given with respect to the division of an area which is not for the time being so divided.
- (5) No order may be made under this section for the division of the City of London into petty sessional divisions.
- (6) Any order under this section may contain transitional and other consequential provisions.

### **34 Procedure relating to s. 33**

- (1) Before submitting to the Lord Chancellor a draft order or a report under section 33 above about any area, a magistrates' courts committee—
  - (a) shall consult—
    - (i) every relevant council; and
    - (ii) the magistrates for any existing petty sessional division in the area; and
  - (b) in the case of a draft order which relates to any district which is not a unitary district, after complying with paragraph (a) above, shall send a copy of their proposals to every relevant district council and take into consideration any objections made in the prescribed manner and within the prescribed time.
- (2) A magistrates' courts committee submitting to the Lord Chancellor a draft order or a report under section 33 above shall comply with such requirements (if any) as to notice as may be prescribed.

- (3) Before making an order under section 33 above about any area otherwise than in accordance with a draft submitted to him by the magistrates' courts committee, the Lord Chancellor shall send a copy of his proposals to—
  - (a) the magistrates' courts committee;
  - (b) every relevant council;
  - (c) the magistrates for any existing petty sessional division in the area; and
  - (d) if the proposals relate to any district which is not a unitary district, every relevant district council.
- (4) Before making any order under section 33 above the Lord Chancellor shall take into consideration any objections made in the prescribed manner and within the prescribed time, and may cause a local inquiry to be held.
- (5) For the purposes of this section—
  - (a) “relevant council”, in relation to an order, a draft order or a report, means any council of—
    - (i) a county;
    - (ii) a county borough;
    - (iii) a unitary district; or
    - (iv) a London borough,which includes all or part of the area to which the order, draft order or report relates;
  - (b) “relevant district council”, in relation to an order or draft order about any area, means any council of a district, other than a unitary district, which includes all or part of the area;
  - (c) “prescribed” means prescribed by regulations made by the Lord Chancellor by statutory instrument; and
  - (d) an order shall be taken to be made in accordance with a draft order if it is made in terms of the draft order or any departures from the draft order do not, in the opinion of the Lord Chancellor, effect important alterations in the draft order.

### **35 Alteration of names of petty sessions areas outside the City of London**

- (1) Subject to the provisions of this section and section 36 below, a magistrates' courts committee may at any time submit to the Lord Chancellor a draft order altering the name of the petty sessions area for which they are the committee or, if they are the committee for more than one petty sessions area, the name of any of those areas.
- (2) Subject to the provisions of this section and section 36 below, where a magistrates' courts committee submit a draft order to the Lord Chancellor under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit.
- (3) Nothing in this section authorises the name of the petty sessions area consisting of the City of London to be altered.
- (4) Any order under this section may contain transitional and other consequential provisions.

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### **36 Procedure relating to s. 35**

- (1) Before submitting to the Lord Chancellor a draft order under section 35 above, a magistrates' courts committee—
  - (a) shall consult—
    - (i) every relevant council; and
    - (ii) the magistrates for the petty sessions area to which their proposals relate; and
  - (b) if the order relates to any district which is not a unitary district, after complying with paragraph (a) above, shall send a copy of their proposals to every relevant district council and take into consideration any objections made in the prescribed manner and within the prescribed time.
- (2) A magistrates' courts committee submitting to the Lord Chancellor a draft order under section 35 above shall comply with such requirements (if any) as to notice as may be prescribed.
- (3) Before making an order under section 35 above otherwise than in accordance with a draft submitted to him by the magistrates' courts committee, the Lord Chancellor shall send a copy of his proposals to—
  - (a) the magistrates' courts committee;
  - (b) every relevant council; and
  - (c) if the proposals relate to any district which is not a unitary district, every relevant district council.
- (4) Before making any order under section 35 above the Lord Chancellor shall take into consideration any objections made in the prescribed manner and within the prescribed time, and may cause a local inquiry to be held.
- (5) For the purposes of this section—
  - (a) “relevant council”, in relation to an order or a draft order, means any council of—
    - (i) a county;
    - (ii) a county borough;
    - (iii) a unitary district; or
    - (iv) a London borough,which includes all or part of the petty sessions area to which the order or draft order relates;
  - (b) “relevant district council”, in relation to an order or draft order, means any council of a district, other than a unitary district, which includes all or part of the petty sessions area to which the order or draft order relates;
  - (c) “prescribed” means prescribed by regulations made by the Lord Chancellor by statutory instrument; and
  - (d) an order shall be taken to be made in accordance with a draft order if it is made in terms of the draft order or any departures from the draft order do not, in the opinion of the Lord Chancellor, effect important alterations in the draft order.

### **37 Reports and plans**

- (1) The Lord Chancellor may by regulations made by statutory instrument require magistrates' courts committees to submit to him such reports and plans, in relation to matters for which they are responsible, as may be prescribed.

- (2) Any report or plan required by regulations under this section—
  - (a) shall be prepared in the prescribed manner, after such consultation as may be prescribed, and within such time as may be prescribed;
  - (b) shall be in the prescribed form;
  - (c) shall be sent to such persons as may be prescribed; and
  - (d) shall be made available to the public on payment of such reasonable fee as the magistrates' courts committee may in any case determine.
- (3) The Lord Chancellor may direct any one or more magistrates' courts committees to produce such additional reports or plans in relation to matters for which they are responsible as may be specified in the direction.
- (4) In this section “prescribed” means prescribed by regulations made by the Lord Chancellor by statutory instrument; and a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **38 Default powers**

- (1) The Lord Chancellor may make an order under subsection (3) below if he is of the opinion that, without reasonable excuse, a magistrates' courts committee—
  - (a) are failing properly to discharge any duty imposed on them by or under any enactment; or
  - (b) have so failed and are likely to do so again.
- (2) Before making an order under subsection (3) below, the Lord Chancellor shall give a written warning to the magistrates' courts committee specifying the default or defaults to which the order relates.
- (3) An order under this subsection shall—
  - (a) state that the Lord Chancellor is of the opinion mentioned in subsection (1) above; and
  - (b) provide either or both of the following—
    - (i) that, on the making of the order, the chairman of the committee is to vacate his office as chairman; or
    - (ii) that, on the making of the order, one or more specified members of the committee (who may include the chairman but may not consist of all the members of the committee) are to vacate their office.
- (4) If, after making an order under subsection (3) above, the Lord Chancellor remains of the opinion mentioned in subsection (1) above, he may make an order—
  - (a) stating that he remains of that opinion; and
  - (b) providing—
    - (i) that all the members of the committee are to vacate their office on the making of the order; and
    - (ii) that for a specified period, not exceeding three months, beginning with the making of the order the committee is to consist of persons nominated by the Lord Chancellor (who need not be justices of the peace).

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- (5) An order under subsection (4) above shall provide for new members of the committee to be chosen, in accordance with regulations under section 29 above, to take office at the end of the specified period.
- (6) In relation to the magistrates' courts committee for an area which consists of or includes the whole or any part of the inner London area, the reference in subsection (3) (b)(ii) above to members of the committee does not include the chief metropolitan stipendiary magistrate; and where an order under subsection (4) above is made in relation to any such committee, section 28(3) and (4) above shall not apply in relation to the committee during the period specified in the order.

### **39 Studies by Audit Commission**

- (1) The Audit Commission may, at the request of a magistrates' courts committee, undertake or promote comparative and other studies—
  - (a) designed to enable the Commission to make recommendations for improving economy, efficiency and effectiveness in the performance of the committee's functions; and
  - (b) for improving the financial or other management of the committee.
- (2) Any magistrates' courts committee which has requested a study in accordance with subsection (1) above, and any officer or member of such a committee, shall provide the Audit Commission, or any person authorised by it, with such information as it or he may reasonably require for the carrying out of the study.
- (3) The Audit Commission shall charge the magistrates' courts committee concerned such fees for any study carried out under subsection (1) above as will cover the full cost of carrying it out.
- (4) In this section “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales.

## **PART IV**

### JUSTICES' CHIEF EXECUTIVES, JUSTICES' CLERKS AND STAFF

### **40 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 appointment;
  - (b) the Lord Chancellor has approved one or more of those persons; and
  - (c) the person appointed is a person so approved.
- (3) Where a person employed as a justices' chief executive under a contract for a fixed term is re-appointed on the expiry of that term, subsection (2) above does not apply in relation to the re-appointment.

- (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 43 below for appointment as justices' clerk.
- (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; and a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **41 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.

#### **42 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) Where a person employed as a justices' clerk under a contract for a fixed term is re-appointed on the expiry of that term, subsection (2) above does not apply in relation to the re-appointment.

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- (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 for a petty sessions area or to have more than one justices' clerk for 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 person 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) Where a person is employed as a justices' clerk under a contract for a fixed term, the expiry of that term without renewal shall be treated for the purposes of subsections (5) to (7) above as his removal as justices' clerk, unless he has consented to the failure to renew.
- (9) In this section “regulations” means regulations made by the Lord Chancellor by statutory instrument; and a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **43 Qualifications for appointment as justices' clerk**

No person shall be appointed as justices' clerk unless either—

- (a) at the time of appointment—
  - (i) he has a 5 year magistrates' courts qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990); or
  - (ii) he is a barrister or solicitor and has served for not less than five years as assistant to a justices' clerk; or
- (b) he then is or has previously been a justices' clerk.

#### **44 Terms of employment of justices' chief executives, justices' clerks and staff**

- (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) A magistrates' courts committee may employ staff on such terms as they think fit.
- (3) Without prejudice to the generality of subsection (1) of section 144 of the Magistrates' Courts Act 1980, the power conferred by that section to make rules for regulating and prescribing the procedure and practice to be followed by justices' clerks includes power to provide that, subject to any exceptions prescribed by the rules, persons—
  - (a) shall not be employed to assist a justices' clerk in any capacity so prescribed; or
  - (b) 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 to be appointed justices' clerk or have such other qualifications as may for any purpose be allowed by the rules or approved by the Lord Chancellor in accordance with the rules.

#### **45 General powers and duties of justices' clerks**

- (1) Rules made in accordance with section 144 of the Magistrates' Courts Act 1980 may (except to the extent that any enactment passed after this Act 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.
- (2) 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 person appointed by a magistrates' courts committee to assist him.
- (3) Any enactment (including any enactment contained in this Act) or any rule of law which—
  - (a) regulates the exercise of any jurisdiction or powers of justices of the peace; or
  - (b) relates 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 of any such jurisdiction or powers by the clerk to any justices by virtue of subsection (1) above as if he were one of those justices.
- (4) The functions of a justices' clerk include giving advice to the justices to whom he is clerk, at their request, about law, practice or procedure on questions arising in connection with the discharge of their functions, including questions arising when the clerk is not personally attending on them.
- (5) The powers of a justices' clerk include, at any time when he thinks he should do so, bringing to the attention of those justices any point of law, practice or procedure that is or may be involved in any question so arising.
- (6) For the purposes of subsections (4) and (5) above the functions of justices of the peace do not include functions as a judge of the Crown Court.
- (7) Subsections (4) and (5) above—
  - (a) apply in relation to any of the justices to whom the justices' clerk is clerk as they apply in relation to all of them; and
  - (b) do not define or in any respect limit—
    - (i) the powers and duties of a justices' clerk; or

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(ii) the matters on which justices may obtain assistance from their clerk.

#### **46 Functions of justices' clerk as collecting officer**

Without prejudice to the provisions of sections 59 and 59A of the Magistrates' Courts Act 1980 (periodical payments through justices' clerk and proceedings by the clerk etc.) or section 62 of that Act (payments required to be made to a child), a justices' clerk—

- (a) shall, by virtue of his office, be collecting officer of any magistrates' court of which he is the clerk; and
- (b) in that capacity shall act under any order directing the payment of money to him which was made by any court under section 30 of the 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 18 of Schedule 4 to this Act.

#### **47 Person acting as substitute clerk to justices**

- (1) Subject to any rules made under section 144 of the Magistrates' Courts Act 1980, where a person who is not the justices' clerk (or one of the justices' clerks) for a petty sessions area acts as clerk to the justices for that petty sessions area—
  - (a) he shall be treated as acting as deputy to the justices' clerk; and
  - (b) he shall make a return to the justices' clerk of—
    - (i) all matters done before the justices; and
    - (ii) all matters that the clerk to the justices is required to register or record.
- (2) Where there are two or more justices' clerks for the petty sessions area, any reference in subsection (1) above to the justices' clerk is a reference to such one of them as may be designated for the purpose by the magistrates' courts committee.

#### **48 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 45(1) or (2) above.

#### **49 Appointment of justices' clerks for youth courts and family proceedings courts**

- (1) The inner London magistrates' courts committee shall appoint one or more justices' clerks for the youth courts and family proceedings courts for the metropolitan area.
- (2) Subsections (2) to (4), (5)(b), (6) and (7) of section 42 above apply to any justices' clerk appointed under subsection (1) above as they apply to a justices' clerk for a petty

sessions area, but with the substitution for any reference to the magistrates for a petty sessions area of a reference to the justices of the peace who are members of the youth court panel for the metropolitan area or (as the case may be) of a family panel for that area, other than any such justice whose name is for the time being entered on the supplemental list.

(3) In this section—

“the inner London magistrates' courts committee” means the magistrates' courts committee for an area consisting of or including the whole of the inner London area or, if there is no such committee, all the magistrates courts' committees for areas which consist of or include any part of the inner London area acting jointly; and

“the metropolitan area” means the inner London area and the City of London.

## **50 Pensions etc. of justices' chief executive, justices' clerks and staff in inner London area**

- (1) Schedule 3 to this Act (which re-enacts certain provisions relating to the functions of the Receiver for the Metropolitan Police District with respect to pensions etc. of court staff) shall have effect.
- (2) The Lord Chancellor may by order make provision with respect to pensions, allowances or gratuities payable to or in respect of inner London court staff, or any class of inner London court staff.
- (3) An order under subsection (2) above may—
  - (a) itself make provision with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the order, are to be or may be paid to or in respect of inner London court staff, or any class of inner London court staff; or
  - (b) provide that the civil service provisions are to have effect, with such modifications as may be prescribed by the order, in relation to the payment by such persons as may be so prescribed, out of such funds as may be so prescribed, of pensions, allowances and gratuities to or in respect of inner London court staff, or any class of inner London court staff.
- (4) Without prejudice to the generality of subsections (2) and (3) above, an order under subsection (2)—
  - (a) may include all or any of the provisions referred to in paragraphs 1 to 11 of Schedule 3 to the Superannuation Act 1972; and
  - (b) may make different provision as respects different classes of persons and different circumstances.
- (5) Paragraphs 1 to 11 of Schedule 3 to the Superannuation Act 1972 shall have effect, in their application for the purposes of this section, as if references to regulations were references to an order under this section and references to the Secretary of State were references to the Lord Chancellor.
- (6) Subsections (3) and (4) of section 7 of the Superannuation Act 1972 (which relate to increases under the Pensions (Increase) Act 1971) shall have effect in relation to an order under subsection (2) above as they have effect in relation to regulations under that section.

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- (7) The Lord Chancellor may by order repeal or amend any of the relevant enactments, whether or not he makes provision under subsection (2) above.
- (8) An order under subsection (2) or (7) above may make such consequential, transitional, incidental or supplemental provision (including provision amending or repealing any provision of this Act or any other enactment) as the Lord Chancellor thinks necessary or expedient.
- (9) Before making an order under subsection (2) or (7) above the Lord Chancellor shall consult—
- (a) the inner London magistrates' courts committee;
  - (b) such local authorities as appear to him to be concerned;
  - (c) the Receiver for the Metropolitan Police District; and
  - (d) such representatives of other persons likely to be affected by the proposed order as appear to him to be appropriate.
- (10) An order under subsection (2) or (7) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In this section—
- “the civil service provisions” has the meaning given by section 15(1) of the Superannuation (Miscellaneous Provisions) Act 1967;
- “inner London court staff” means the justices' chief executive employed by the inner London magistrates' courts committee, any justices' clerk for the inner London area and staff of the inner London magistrates' courts committee;
- “the inner London magistrates' courts committee” means the magistrates' courts committee for an area consisting of or including the inner London area or, if there is no such committee, every magistrates' courts committee for any area which consists of or includes any part of the inner London area; and
- “the relevant enactments” means—
- (a) Schedule 3 to this Act; and
  - (b) section 15 of the Superannuation (Miscellaneous Provisions) Act 1967 (superannuation of metropolitan civil staffs) so far as it relates to the persons mentioned in subsection (1)(a)(ii) of that section.

## PART V

### PROTECTION AND INDEMNIFICATION OF JUSTICES AND JUSTICES' CLERKS

#### **51 Immunity for acts within jurisdiction**

No action shall lie against any justice of the peace or justices' clerk in respect of any act or omission of his—

- (a) in the execution of his duty—
  - (i) as such a justice; or
  - (ii) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice; and
- (b) with respect to any matter within his jurisdiction.

## **52 Immunity for certain acts beyond jurisdiction**

An action shall lie against any justice of the peace or justices' clerk in respect of any act or omission of his—

- (a) in the purported execution of his duty—
  - (i) as such a justice; or
  - (ii) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice; but
- (b) with respect to a matter which is not within his jurisdiction, if, but only if, it is proved that he acted in bad faith.

## **53 Where action prohibited, proceedings may be set aside**

If any action is brought in circumstances in which this Part of this Act provides that no action is to lie, a judge of the court in which the action is brought may, on the application of the defendant and upon an affidavit as to the facts, set aside the proceedings in the action, with or without costs, as the judge thinks fit.

## **54 Indemnification of justices and justices' clerks**

- (1) For the purposes of subsection (2) below, the following amounts are “relevant amounts” in relation to a justice of the peace or justices' clerk—
  - (a) any costs which he reasonably incurs—
    - (i) in or in connection with proceedings against him in respect of anything done or omitted in the exercise (or purported exercise) of his duty as a justice of the peace or justices' clerk; or
    - (ii) in taking steps to dispute any claim which might be made in such proceedings;
  - (b) any damages awarded against him or costs ordered to be paid by him in any such proceedings; and
  - (c) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim,and relevant amounts relate to criminal matters if the duty mentioned in paragraph (a) (i) above relates to criminal matters.
- (2) Subject to the provisions of this section, a justice of the peace or justices' clerk—
  - (a) shall be indemnified out of local funds in respect of relevant amounts which relate to criminal matters unless it is proved, in respect of the matters giving rise to the proceedings or claim, that he acted in bad faith; and
  - (b) in respect of other relevant amounts—
    - (i) may be indemnified out of local funds; and
    - (ii) shall be so indemnified if, in respect of the matters giving rise to the proceedings or claim, he acted reasonably and in good faith.
- (3) Any question whether, or to what extent, a person is to be indemnified under this section shall be determined by the magistrates' courts committee for the area for which he acted at the material time.
- (4) A determination under subsection (3) above with respect to any such costs or sums as are mentioned in subsection (1)(a) or (c) above may, if the person claiming to be

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indemnified so requests, be made in advance before those costs are incurred or the settlement made, as the case may be.

- (5) Any such determination in advance for indemnity in respect of costs to be incurred shall be subject to such limitations, if any, as the committee think proper and to the subsequent determination of the amount of the costs reasonably incurred and shall not affect any other determination which may fall to be made in connection with the proceedings or claim in question.
- (6) An appeal shall lie to a person appointed for the purpose by the Lord Chancellor—
- (a) on the part of the person claiming to be indemnified, from any decision of the magistrates' courts committee under subsection (3) or (4) above, other than a decision to postpone until after the conclusion of the proceedings any determination with respect to his own costs or to impose limitations on making a determination in advance for indemnity in respect of such costs;
  - (b) on the part of any paying authority, from any determination of the magistrates' courts committee under subsection (3) above other than a determination in advance for indemnity in respect of costs to be incurred by the person claiming to be indemnified.
- (7) Where there are two or more paying authorities in relation to any justice or justices' clerk, any question as to the extent to which the funds required to indemnify him are to be provided by each authority shall be determined by agreement between those authorities and the magistrates' courts committee concerned or, in default of such agreement, shall be determined by the Lord Chancellor.
- (8) The Lord Chancellor may by statutory instrument make rules prescribing the procedure to be followed in any appeal under subsection (6) above; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section—
- “justices' clerk” includes any person appointed by a magistrates' courts committee to assist a justices' clerk;
- “local funds”, in relation to a justice or justices' clerk, means funds out of which the expenses of the magistrates' courts committee for the area for which he acted at the material time are payable; and
- “paying authority”, in relation to a justice or justices' clerk, means any authority which is a paying authority for the purposes of section 55 below in relation to the magistrates' courts committee for the area for which he acted at the material time.

## PART VI

### ADMINISTRATIVE AND FINANCIAL ARRANGEMENTS

#### 55 Duties of local authorities

- (1) Subject to the provisions of this Act, the paying authority or authorities in relation to any magistrates' courts committee shall provide the petty sessional court-houses and other accommodation, and the goods and services, proper for the performance of the functions of—

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- (a) the magistrates for the magistrates' courts committee area;
  - (b) the magistrates' courts committee;
  - (c) any other committee of the magistrates for that area; or
  - (d) the justices' clerks for any part of the magistrates' courts committee area.
- (2) Subsection (1) above shall not require the paying authority or authorities to provide any current item or class of current items if the magistrates' courts committee have notified the authority or authorities that they intend to obtain that item or class of items otherwise than from that authority or any of those authorities.
- (3) For the purposes of subsection (2) above “current item” means any goods or services which are of such a kind that expenditure incurred by a paying authority on providing them would not be capital expenditure.
- (4) Where there is one paying authority in relation to a magistrates' courts committee, that authority shall pay the expenses of the committee.
- (5) Where there are two or more paying authorities in relation to a magistrates' courts committee, each of those authorities shall pay a proper proportion of those expenses.
- (6) For the purposes of subsections (4) and (5) above the expenses of a magistrates' courts committee shall be taken to include—
  - (a) expenses incurred by them in obtaining goods and services which are proper for the purposes mentioned in subsection (1) above but which by virtue of subsection (2) above the paying authority or authorities are not required to provide;
  - (b) the sums payable under Part IV of this Act on account of a person's salary or expenses as justices' chief executive or as justices' clerk for any part of the magistrates' courts committee area, the remuneration of any staff employed by the committee and the remuneration of any court security officers employed (whether by the committee or a paying authority) under section 76(2)(a) of the Criminal Justice Act 1991 in relation to petty sessions areas within the magistrates' courts committee area together with—
    - (i) secondary Class I contributions payable in respect of any such person, staff or officers under Part I of the Social Security Contributions and Benefits Act 1992; and
    - (ii) contributions equivalent premiums so payable under Chapter III of Part III of the Pension Schemes Act 1993;
  - (c) the sums payable under any contract entered into (whether by any such magistrates' courts committee or a paying authority) under section 76(2)(b) of the Criminal Justice Act 1991; and
  - (d) so far as they are not otherwise provided for, all other costs incurred, with the general or special authority of the magistrates' courts committee, by the justices for the magistrates' courts committee area.
- (7) Nothing in subsection (1), (4) or (5) above requires any paying authority to incur any expenditure or make any payment which would—
  - (a) cause the net cost to it in any year of the matters mentioned in subsection (1) of section 57 below to exceed the amount which, in relation to that authority and that year, is for the time being determined by the Lord Chancellor under subsection (3)(b) of that section; or
  - (b) cause its capital expenditure in any year in pursuance of functions under this Part of this Act to exceed the amount which, in relation to that authority

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and that year, is for the time being determined by the Lord Chancellor under subsection (4)(b) of that section;

and in determining any such net cost as is mentioned in paragraph (a) above there shall be disregarded any such capital expenditure as is mentioned in paragraph (b) above.

- (8) Subject to section 14(1) above, any accommodation provided under this section for any justice, justices' clerk or justices' chief executive may be outside the area for which the justices act and, in the case of a petty sessional court-house, shall be treated as being in that area for the purposes of the jurisdiction of the justices when acting in the court-house.
- (9) Two or more paying authorities may arrange for accommodation, goods or services provided for the purposes of this section by one of them to be used also as if provided for those purposes by the other or each of the others.
- (10) In this section—
- “paying authority” in relation to a magistrates' courts committee, means any responsible authority whose area comprises all or part of the area to which the committee relates; and
- “responsible authority” means any council of—
- (a) a county;
  - (b) a county borough;
  - (c) a unitary district; or
  - (d) a London borough,
- or the Common Council of the City of London.

## **56 Provisions supplementary to s. 55**

- (1) Subject to the provisions of this section—
- (a) the petty sessional court-houses and other accommodation, goods and services to be provided by the paying authority, or each of the paying authorities, under section 55 above;
  - (b) the salary to be paid to a justices' clerk or justices' chief executive and to staff of a magistrates' courts committee; and
  - (c) the nature and amount of the expenses which a magistrates' courts committee may incur in the discharge of any functions or may authorise to be incurred,
- shall be such as may from time to time be determined by the magistrates' courts committee after consultation with the paying authority or authorities.
- (2) Where the expenses of a magistrates' courts committee (including any sums which, by virtue of section 55(6) above, are to be taken to be such expenses) fall to be borne by more than one paying authority, any question as to the manner in which they are to be borne by the authorities concerned shall be determined by agreement between those authorities and the magistrates' courts committee concerned or, in default of such agreement, shall be determined by the Lord Chancellor.
- (3) Any paying authority which is aggrieved by a determination of a magistrates' courts committee under subsection (1) above may, within one month from the receipt by the authority of written notice of the determination, appeal to the Lord Chancellor, whose decision shall be binding upon the magistrates' courts committee and any authority concerned.



- (4) The approval of the Lord Chancellor shall be required for any determination under subsection (1) above reducing the salary of a justices' clerk or justices' chief executive, unless the justices' clerk or justices' chief executive concerned consents to the reduction.
- (5) In this section “paying authority” has the same meaning as in section 55 above.

## **57 Grants by Lord Chancellor to responsible authorities**

- (1) The Lord Chancellor may pay to the responsible authorities grants towards the net cost to them in any year—
- (a) of their functions under this Part of this Act;
  - (b) of their functions under any regulations made, or having effect as if made, under section 7 or 24 of the Superannuation Act 1972 with respect to court staff;
  - (c) of their functions under any regulations having effect by virtue of paragraph 20(1)(a) or (2) of Schedule 4 to this Act; and
  - (d) of making payments under section 10 or 54 above;
- and in determining any such net cost as is mentioned above there shall be disregarded any such capital expenditure as is mentioned in subsection (2) below.
- (2) The Lord Chancellor may also pay to the responsible authorities grants towards their capital expenditure in any year in pursuance of their functions under this Part of this Act.
- (3) The amount of any grant under subsection (1) above towards the net cost to a responsible authority in any year of the matters mentioned in that subsection shall not exceed 80 per cent of whichever of the following is the less—
- (a) that net cost; and
  - (b) the amount which, in relation to the authority and that year, is for the time being determined by the Lord Chancellor.
- (4) The amount of any grant under subsection (2) above towards the capital expenditure in any year of a responsible authority in pursuance of its functions under this Part of this Act shall not exceed 80 per cent of whichever of the following is the less—
- (a) that capital expenditure; and
  - (b) the amount which, in relation to the authority and that year, is for the time being determined by the Lord Chancellor.
- (5) The Lord Chancellor, with the concurrence of the Treasury, may by statutory instrument make regulations as to the manner in which—
- (a) income and expenditure of responsible authorities are to be taken into account in determining the net cost to them in any year of the matters mentioned in subsection (1) above; or
  - (b) expenditure of such authorities is to be taken into account in determining their capital expenditure in any year in pursuance of their functions under this Part of this Act;
- and for the purposes of this section any question as to that net cost or that capital expenditure shall (subject to the regulations) be determined by the Lord Chancellor.
- (6) The Lord Chancellor may direct that, in determining—

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- (a) the net cost to a responsible authority in any year of the matters mentioned in subsection (1) above; or
- (b) the capital expenditure of such an authority in any year in pursuance of its functions under this Part of this Act,

there shall be taken into account or disregarded, to such extent as may be specified in the direction, such items as may be so specified.

(7) Grants under this section shall be paid at such times, in such manner and subject to such conditions as the Lord Chancellor may with the approval of the Treasury determine.

(8) In this section—

“court staff” means justices' chief executives, justices' clerks and staff of magistrates' courts committees;

“responsible authority” has the same meaning as in section 55 above.

## **58 Local authority land appropriated to magistrates' courts purposes**

(1) Where on or after 1st April 1995 a responsible authority appropriate any land owned by them to magistrates' courts purposes, the authority shall be taken for the purposes of section 57(2) above to incur, in the year in which the appropriation is made, capital expenditure in pursuance of their functions under this Part of this Act of an amount equal to the open market value of the land at the time of the appropriation.

(2) In subsection (1) above—

“magistrates' courts purposes” means the purposes of being provided under section 55(1) above as a petty sessional court-house or other accommodation; and

“responsible authority” has the same meaning as in section 55 above.

## **59 Regulations as to accounts and audit**

(1) The Lord Chancellor may by regulations made by statutory instrument require magistrates' courts committees—

- (a) to keep prescribed accounts and prescribed records in relation to those accounts; and
- (b) to cause any such accounts to be audited in accordance with the regulations.

(2) In subsection (1) above “prescribed” means prescribed by the regulations; and a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **60 Application of fines and fees**

(1) Subject to paragraphs (a) and (b) of section 139 of the Magistrates Courts Act 1980 (which relates to the disposal of sums adjudged to be paid by a summary conviction) and to the following provisions of this section, there shall be paid to the Lord Chancellor—

- (a) all fines imposed by a magistrates' court and all sums which become payable by virtue of an order of such a court and are by any enactment made applicable as fines so imposed or any class or description of such fines; and
- (b) all other sums received by a justices' clerk by reason of his office except—

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- (i) sums to which a person other than the Lord Chancellor is by law entitled and which are paid to that person; and
  - (ii) sums paid into court in pursuance of orders under section 35 of the Powers of Criminal Courts Act 1973 (compensation orders).
- (2) The sums payable to the Lord Chancellor by virtue of subsection (1)(a) above do not include—
  - (a) any sums which by or in pursuance of any provision in the enactments relating to those sums are directed to be paid to the Commissioners of Customs and Excise or to any officer of theirs or person appointed by them;
  - (b) any sums which by or in pursuance of any such provision are directed to be paid—
    - (i) to or for the benefit of the party aggrieved, party injured or a person described in similar terms; or
    - (ii) to or for the benefit of the family or relatives of a person described in any such terms or of a person dying in consequence of an act or event which constituted or was the occasion of an offence;
  - (c) any sums which by or in pursuance of any such provision are directed to be applied in making good any default or repairing any damage or paying or reimbursing any expenses (other than those of the prosecution); or
  - (d) any sums which are directed to be paid to any person by or in pursuance of any such provision referring in terms to awarding or reimbursing a loss, or to damages, compensation or satisfaction for loss, damage, injury or wrong.
- (3) Paragraph (b) of subsection (1) above does not apply to sums received by a justices' clerk on account of his salary or expenses as such; and any sum paid to the Lord Chancellor by virtue of that paragraph shall be paid to him subject to its being repaid to any person establishing his title to it.
- (4) The Lord Chancellor, with the concurrence of the Treasury, may by statutory instrument make regulations as to the times at which, and the manner in which, justices' clerks shall account for and pay the sums payable to him under this section, and as to the keeping, inspection and audit of accounts of justices' clerks, whether for the purposes of this section or otherwise.
- (5) For the purposes of this section anything done by the Crown Court on appeal from a magistrates' court shall be treated as done by the magistrates' court.
- (6) In this section “fine” includes—
  - (a) any pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable under a conviction; and
  - (b) any non-pecuniary forfeiture on conviction by, or under any order of, a magistrates' court so far as the forfeiture is converted into or consists of money.

## **61 Defaults of justices' clerks etc**

The Lord Chancellor may, if he thinks fit, pay to any person any money due to that person which he has not received because of the default of a justices' clerk or of any staff of a magistrates' courts committee.

## PART VII

### INSPECTION OF MAGISTRATES' COURTS SERVICE

#### 62 Inspectors of the magistrates' courts service

- (1) The Lord Chancellor may appoint such number of inspectors of the magistrates' courts service (to be known collectively as “Her Majesty’s Magistrates' Courts Service Inspectorate”) as he may consider appropriate.
- (2) The Lord Chancellor shall appoint one of the persons so appointed to be Her Majesty’s Chief Inspector of the Magistrates' Courts Service.
- (3) It shall be the duty of inspectors of the magistrates' courts service—
  - (a) to inspect and report to the Lord Chancellor on the organisation and administration of magistrates' courts for each magistrates' courts committee area; and
  - (b) to discharge such other functions in connection with the organisation and administration of magistrates' courts as the Lord Chancellor may from time to time direct.
- (4) Her Majesty’s Chief Inspector of the Magistrates' Courts Service shall make an annual report to the Lord Chancellor as to the discharge of the functions of the Inspectorate; and the Lord Chancellor shall, within one month of receiving the report, lay a copy of it before each House of Parliament.
- (5) The Lord Chancellor shall make to or in respect of inspectors of the magistrates' courts service such payments by way of remuneration, allowances or otherwise as he may with the approval of the Treasury determine.

#### 63 Powers of inspectors

- (1) Subject to subsection (2) below, an inspector of the magistrates' courts service exercising his functions under section 62 above shall have at all reasonable times—
  - (a) a right of entry to any court-house or other premises occupied by a magistrates' courts committee; and
  - (b) a right to inspect, and take copies of, any records kept by a magistrates' courts committee, and any other documents containing information relating to the administration of the magistrates' courts for their area, which he considers relevant to the discharge of his functions.
- (2) Subsection (1) above does not entitle an inspector—
  - (a) to be present when a magistrates' court is hearing proceedings in private; or
  - (b) to attend any private deliberations of the justices of the peace.
- (3) The records referred to in paragraph (b) of subsection (1) above include records kept by means of a computer; and an inspector exercising the power to inspect records conferred by that subsection—
  - (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records in question; and
  - (b) may require—

- (i) the person by whom or on whose behalf the computer is or has been so used; or
  - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
- to afford him such reasonable assistance as he may require.

## PART VIII

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### **64 Training courses**

- (1) It shall be the duty of every magistrates' courts committee, in accordance with arrangements approved by the Lord Chancellor, to make and administer schemes providing for training courses for justices of the peace of their area.
- (2) If training courses are not provided for justices of the peace of any area as required by subsection (1) above, the Lord Chancellor may recover from the magistrates' courts committee in default any expenses which he incurs in providing training courses to make good the default.
- (3) The Lord Chancellor may provide training courses for justices' clerks and for staff of magistrates' courts committees.

#### **65 Disqualification in case of bankruptcy**

- (1) A person who is adjudged bankrupt shall be disqualified for being appointed or acting as a justice of the peace.
- (2) Where a person is disqualified under this section, the disqualification shall cease—
  - (a) on his discharge from bankruptcy; or
  - (b) if the bankruptcy order is previously annulled, on the date of its annulment.

#### **66 Disqualification in certain cases of justices who are members of local authorities**

- (1) A justice of the peace who is a member of a local authority shall not act as a member of the Crown Court or of a magistrates' court in any proceedings brought by or against, or by way of appeal from a decision of, the authority or any committee or officer of the authority.
- (2) For the purposes of subsection (1) above—
  - (a) any reference to a committee of a local authority includes a joint committee, joint board, joint authority or other combined body of which that authority is a member or on which it is represented; and
  - (b) any reference to an officer of a local authority refers to a person employed or appointed by the authority, or by a committee of the authority, in the capacity in which he is employed or appointed to act.
- (3) A justice of the peace who is a member of the Common Council of the City of London shall not act as a member of the Crown Court or of a magistrates' court in any proceedings brought by or against, or by way of appeal from a decision of, the

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Corporation of the City or the Common Council or any committee or officer of the Corporation or Common Council.

- (4) Subsection (2) above applies for the purposes of subsection (3) above with the substitution, for references to a local authority, of references to the Corporation or the Common Council.
- (5) Nothing in this section prevents a justice from acting in any proceedings by reason only of their being brought by a police officer.
- (6) No act shall be invalidated by reason only of the disqualification under this section of the person acting.
- (7) In this section “local authority” means—
  - (a) a local authority within the meaning of the Local Government Act 1972 or the Local Government (Scotland) Act 1973;
  - (b) a police authority established under section 3 of the Police Act 1996;
  - (c) a joint authority established by Part IV of the Local Government Act 1985;
  - (d) a housing action trust established under Part III of the Housing Act 1988;
  - (e) the Broads Authority; and
  - (f) a National Park authority.

#### **67 Justices not disqualified by reason of liability to local taxation**

A justice of the peace may perform any act in the execution of his office as such a justice in relation to the laws concerning—

- (a) rates leviable by a rating authority;
- (b) community charges of a charging authority;
- (c) council tax set by a billing authority; or
- (d) the non-domestic rate of a special authority within the meaning of section 144(6) of the Local Government Finance Act 1988,

even though he is rated to or chargeable with any rates falling within paragraph (a) above or is liable, or would but for any enactment or anything provided or done under any enactment be liable, to pay an amount in respect of any charge, tax or rate falling within paragraphs (b) to (d) above in the area affected by the act in question.

#### **68 Acts done by justices outside their commission area**

- (1) A justice of the peace for any commission area may act as a justice for that area in any commission area which adjoins the commission area for which he is a justice.
- (2) Justices for the retained county of Surrey or the retained county of Kent may hold special or petty sessions for any division of their retained county at any place in Greater London; and for all purposes relating to sessions so held the place at which they are held shall be treated as being within the retained county and the division for which the justices holding them are justices.

#### **69 Promissory oaths of certain justices**

- (1) Subject to the provisions of this section, any person who, under this Act, is a justice of the peace for any area by virtue of any other office held by him shall, before acting

as such a justice, take the oath of allegiance and judicial oath in accordance with the Promissory Oaths Acts.

- (2) A person shall not be required by virtue of subsection (1) above to take those oaths as a justice of the peace by reason only of his being appointed under this Act to act temporarily as deputy for, or as if he were, the holder of another office to which that subsection applies; but those oaths may be taken by and administered to any such person despite anything in the Promissory Oaths Acts or any other enactment.
- (3) A person shall not be required, on becoming a justice of the peace for any area, to take the oath of allegiance and judicial oath in accordance with the Promissory Oaths Acts if he has at any time done so as justice of the peace for that or any other area.
- (4) The oaths required by law to be taken by a metropolitan stipendiary magistrate may, in the case of a person authorised to act as such under section 19 above, be taken before any of the metropolitan stipendiary magistrates.
- (5) In this section “the Promissory Oaths Acts” means the Promissory Oaths Act 1868 and the Promissory Oaths Act 1871.

## **70 Application of enactments to the City of London**

- (1) Subject to the provisions of sections 21, 23, 25(3), 33(5) and 35(3) above, in any enactment relating to justices of the peace, magistrates' courts, justices' clerks or matters connected therewith (including, except to the extent that it otherwise expressly provides, any such enactment passed after the passing of this Act)—
  - (a) any reference to a county or to county justices shall be taken to include the City of London or justices for the City; and
  - (b) any reference to a county council shall be taken to include the Corporation of the City acting through the Common Council, and references to a county fund shall be taken to include the City fund;but in any such enactment which refers in the same context both to a non-metropolitan county and to a metropolitan district, the reference to a non-metropolitan county shall be taken to include the City.
- (2) Where any such enactment (including any enactment contained in this Act) expressly refers in the same context both—
  - (a) to a county or non-metropolitan county or to justices or magistrates for a county or non-metropolitan county; and
  - (b) to the City or to justices or magistrates for the City,the operation of that enactment shall not be affected by, and shall be without prejudice to the generality of, subsection (1) above.

## **71 Isles of Scilly**

For the purposes of this Act the Isles of Scilly shall be treated as forming part of the county and the retained county of Cornwall.

## **72 Interpretation**

- (1) In this Act, except to the extent that the context otherwise requires—

“capital expenditure” means expenditure for capital purposes (construed in accordance with section 40 of the Local Government and Housing Act 1989);

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

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- “commission area” has the meaning given by section 1 above;
- “justices' clerk” means a clerk to the justices for a petty sessions area;
- “London commission areas”, “inner London area” and “outer London areas” have the meanings given by section 2 above;
- “magistrate”—
- (a) in relation to a commission area, means a justice of the peace for the commission area, other than a justice whose name is for the time being entered in the supplemental list;
  - (b) in relation to a part of a commission area, means a person who (in accordance with paragraph (a) of this definition) is a magistrate for that area and ordinarily acts in and for that part of it; and
  - (c) in relation to a magistrates' courts committee area, means a person who (in accordance with paragraphs (a) and (b) of this definition) is a magistrate for that area or any part of that area;
- “magistrates' courts committee area” means the area to which a magistrates' courts committee relates;
- “officer” includes the holder of any place, situation or employment, and “office” shall be construed accordingly;
- “petty sessional court-house” means—
- (a) a court-house or place at which justices are accustomed to assemble for holding special or petty sessions or for the time being appointed as a substitute for such a court-house or place (including, where justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, any such court-house or place); or
  - (b) a court-house or place at which a stipendiary magistrate is authorised by law to do alone any act authorised to be done by more than one justice of the peace:
- “petty sessions area” has the meaning given by section 4 above;
- “preserved county” has the meaning given by section 64 of the Local Government (Wales) Act 1994;
- “retained county”—
- (a) in relation to England, means the area of a non-metropolitan county created by Part I of the Local Government Act 1972, as it stood immediately before 1st April 1995; and
  - (b) in relation to Wales, means preserved county;
- “stipendiary magistrate” includes a metropolitan stipendiary magistrate;
- “the supplemental list” has the meaning given by section 7 above; and
- “unitary district” means a district comprised in an area for which there is no county council.

- (2) Any reference in this Act to a retained county by name, where the name is that of a non-metropolitan county in England, is a reference to that county as it stood immediately before 1st April 1995.

### **73 Transitional provisions, consequential amendments and repeals**

- (1) The transitional provisions and savings in Schedule 4 to this Act shall have effect.



- (2) The enactments and instruments mentioned in Schedule 5 to this Act shall be amended in accordance with that Schedule.
- (3) The enactments mentioned in Schedule 6 to this Act shall be repealed, and the instruments mentioned in that Schedule shall be revoked, to the extent specified in the third column of that Schedule.

## **74 Commencement**

- (1) Subject to—
  - (a) subsection (2) below; and
  - (b) paragraphs 7(2)(f) and 8 of Schedule 4 to this Act,this Act shall come into force at the end of the period of three months beginning with the day on which it is passed (and any reference in this Act to the commencement of this Act is a reference to its coming into force at the end of that period).
- (2) If section 82 of and Schedule 7 to the Police and Magistrates' Courts Act 1994 have not come into force before the commencement of this Act, then section 50 of and Schedule 3 to this Act shall come into force on the relevant commencement date.
- (3) In subsection (2) above “relevant commencement date” means—
  - (a) if before the commencement of this Act a date on or after the date of that commencement has been appointed by an order under section 94 of the Police and Magistrates' Courts Act 1994 (commencement and transitional provisions) as the date on which section 82 of and Schedule 7 to that Act are to come into force, the date so appointed; and
  - (b) otherwise, such date as the Lord Chancellor may by order appoint.
- (4) Subsections (4), (5), (7) and (8) of section 94 of the Police and Magistrates' Courts Act 1994 shall apply to an order under subsection (3)(b) above as they would apply to an order under subsection (2) of that section.

## **75 Short title and extent**

- (1) This Act may be cited as the Justices of the Peace Act 1997.
- (2) Subject to subsections (3) and (4) below, any amendment, repeal or revocation contained in Schedule 5 or 6 to this Act has the same extent as the provision it amends, repeals or revokes.
- (3) In Schedule 5 to this Act—
  - (a) paragraphs 2 and 5 extend to England and Wales only; and
  - (b) paragraph 9 extends to the United Kingdom.
- (4) In Schedule 6 to this Act, the repeal of section 70 of the Criminal Procedure and Investigations Act 1996 extends to England and Wales only.
- (5) Subject to subsections (2) to (4) above, this Act extends to England and Wales only.