

*These notes refer to the Access to Justice Act 1999
(c.22) which received Royal Assent on 27th July 1999*

ACCESS TO JUSTICE ACT 1999

EXPLANATORY NOTES

D.

MAGISTRATES AND MAGISTRATES' COURTS (PART V - SECTIONS 74-97)

Background

Organisation and management of the magistrates' courts service

Altering territorial units

243. The administration of the magistrates' courts service is based on three organisational units - the magistrates' courts committee (MCC) area, the commission area and the petty sessions area.
244. New powers to change organisational units reflect the Government's intention to develop a more coherent geographical structure for the criminal justice system as a whole. Common boundaries should enable the various criminal justice agencies to co-operate more effectively.
245. The **MCC area** is the unit on which the administration of the courts is based. MCCs are the bodies responsible for the administration of the magistrates' courts service. There are currently 84 MCCs in England and Wales. Each MCC appoints a justices' chief executive to manage the courts in its area.
246. The Justices of the Peace Act 1997 already provides power to change the boundaries of MCC areas. The Government believes that a structure with fewer and larger areas would be more efficient and effective. The number of MCCs has been reduced in recent years, and will continue to reduce as part of the policy of a greater alignment of boundaries between criminal justice agencies.
247. The **commission area** is the unit on which the appointment of magistrates and the jurisdiction of the magistrates' courts to hear summary cases is based. Magistrates are appointed to a particular commission area, on the basis of where they reside; and most summary offences must be tried in the commission area where the alleged offence took place.
248. Historically, MCC and commission areas have aligned with one another and with county and metropolitan county borders. However, most commission areas are defined in primary legislation, and can be changed by secondary legislation only to reflect changes in local government boundaries. Increasingly there are MCCs that cover two or more commission areas. These MCCs can only transfer magistrates or cases between those areas in strictly prescribed circumstances. The ability to change commission area boundaries is intended to enable MCCs to allocate cases and deploy magistrates between the courts in their MCC area more effectively and efficiently.

249. MCC areas consist of one or more petty sessions areas. Petty sessions areas are defined in terms of local authority boundaries, and some are broken down into smaller areas called petty sessional divisions. These are the benches, the basic unit of local court organisation. The definition of these areas in terms of local authority boundaries can limit an MCC's ability to organise its internal structure effectively, particularly where an amalgamation of MCCs has occurred. As a result, the full benefits of amalgamation may not be realised.
250. The Act redefines the basis of these units, to allow MCCs to decide the most appropriate and efficient structure for their area. It also removes the artificial distinction of terminology between a petty sessions area and a petty sessional division.

Constitution and funding of MCCs

251. Each MCC comprises up to 12 members and is composed primarily of lay magistrates, appointed by their peers, who undertake the task in addition to their magisterial duties. Individuals are appointed to the MCC on the basis of their skills and experience. Where an MCC believes that additional skills are required which cannot be found amongst the applicants for membership of the MCC, they may co-opt individuals who need not be magistrates. Currently the number of co-options is limited to two. These may be in addition to the maximum membership of twelve. In addition, the Lord Chancellor may appoint up to two individuals to an MCC. Neither lay magistrates nor co-opted and appointed non-magistrates receive remuneration for their committee work. The Act removes the limit on the number of co-opted and appointed members, and provides power for MCCs to remunerate those members.
252. Local authorities are responsible for providing the accommodation that an MCC requires for the magistrates' courts in its area and for paying the expenses the MCC incurs. Local authorities recoup up to 80% of the net cost from the Lord Chancellor's Department in the form of specific grant. In cases where an MCC area encompasses two or more authorities, the costs and accommodation are divided between the authorities, but a "lead" authority is appointed to receive the grant and pay the expenses.

A single authority for London

253. The Greater London area comprises a significantly larger number of MCCs (22) and local authorities (33) than any other area. The consequences of this for issues like funding and accommodation make amalgamation under the provisions of the Justices of the Peace 1997 impractical. The Act creates a Greater London Magistrates' Courts Authority, with special provision for its funding, accommodation, constitution and other necessary powers to enable the existing MCCs to be amalgamated effectively.

Justices' clerks and justices' chief executives

254. Most cases in magistrates' courts are heard by magistrates who are not qualified lawyers. They rely heavily on the legal advice of justices' clerks and their deputies, acting as court clerks. All justices' clerks are legally qualified and can exercise certain powers of magistrates. Some of these powers are conferred on them by particular statutes and some are delegated to them by rules. (Section 45 of the Justices of the Peace Act 1997 provides for rules to delegate functions exercisable by a magistrate acting alone to justices' clerks or staff appointed to assist them.)
255. The post of justices' chief executive (JCE) was introduced in 1994, since when every MCC has appointed a JCE. The JCE supports the MCC in planning and managing the efficient and effective administration of the courts within the area of the MCC. At present, however, justices' clerks continue to be responsible in statute for many administrative matters. In practice many of these tasks are delegated to other staff. Last year, the Government published a consultation paper about the functions of justices' clerks (*The Future Role of the Justices' Clerk*, Lord Chancellor's Department, September 1998).

256. The provisions in the Act about the qualifications and functions of justices' chief executives are intended to clarify their role and the lines of responsibility and accountability between the JCE, the MCC and the other staff of the MCC. In particular they facilitate a greater separation of the legal and administrative functions carried out by justices' clerks and JCEs. The primary function of justices' clerks will continue to be the giving of legal advice to lay magistrates. Under the new management structure, the JCE will be able to delegate any administrative function to any member of staff, including the justices' clerks, depending on local needs.

Unification of the stipendiary bench

257. Stipendiary magistrates are qualified lawyers who are appointed to sit as full-time professional judges in magistrates' courts. They support and complement the work of the lay magistracy, in particular helping to maintain consistency with respect to sentencing. Stipendiary magistrates usually sit alone, whereas lay magistrates sit in benches of at least two. There are currently 92 stipendiary magistrates in England and Wales, and some 30,000 lay magistrates.
258. Metropolitan stipendiary magistrates can sit in the London commission areas and the counties of Essex, Hertfordshire, Kent and Surrey. Provincial stipendiary magistrates are appointed to a particular commission area in the rest of England and Wales.
259. In April 1998, the Government published a Consultation Paper about creating a unified stipendiary bench with national jurisdiction (*Unification of the Stipendiary Bench: Consultation Paper*, Lord Chancellor's Department, April 1998) in order to increase the efficiency of the administration of justice at summary level.

Committals for sentence

260. Currently, cases committed to the Crown Court for sentence must be heard in the Crown Court by a bench composed of a High Court Judge, Circuit Judge or Recorder sitting with between two and four justices of the peace. In October 1997, a new procedure was implemented requiring defendants to indicate how they intend to plead *before* the decision is made about whether the case should be heard in the magistrates' court or the Crown Court (section 17A of the Magistrates' Courts Act 1980, as amended by section 49 of the Criminal Procedure and Investigations Act 1996). This has led to an increase in the number and seriousness of cases committed to the Crown Court solely for sentence. (Previously, all more serious cases were committed for trial, although many defendants subsequently pleaded guilty).
261. The change in procedure has meant that magistrates are dealing in the Crown Court with cases which are outside their normal range of experience. Last year, the Government issued a consultation paper (*Magistrates sitting as judges in the Crown Court*, Lord Chancellor's Department, August 1998) which examined the role of magistrates in the Crown Court. The majority of responses agreed that the requirement for magistrates to sit on committals for sentence should be removed.

Execution of warrants

262. Until now, the police have been primarily responsible for arresting fine defaulters and people who breach community sentences. Increasingly, however, some police forces have given this work a low priority. The Government therefore intends to transfer responsibility for the execution of warrants from the police to the magistrates' courts; and to enable the courts to obtain information from other Government agencies to help trace fine defaulters and those in breach of community sentences. Fines worth over £50 million were written off in 1997-98, and it is estimated that inability to trace the offender could account for as much as 30% of this total. The Government's objective is to ensure that fines and community sentences are seen as credible and effective punishments, by ensuring that they can be effectively enforced.

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263. A number of MCCs already employ civilian enforcement officers (CEOs), who work with the police under local arrangements. However, under current legislation, the powers of CEOs are unclear in certain respects. In order to enable the courts to take on this new function effectively, the Act contains provisions to clarify and extend the powers of appropriate civilians to execute certain kinds of warrant issued by a magistrates' court.
264. The Act will make it possible for a magistrates' court to issue a warrant in such terms that it can be executed by any constable within his own police area; any CEO employed by a prescribed authority for any area named in the warrant; any authorised employee of any company or firm authorised by the court's own MCC, or any other individual named in the warrant, without the warrant having to specify which. While it is not intended that courts should address warrants to the CEOs of other MCCs as a matter of routine, they will be able to do so where appropriate (e.g. two MCCs might reach an agreement to enforce one another's warrants, either in individual cases or on a continuing basis).