

COURTS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS: PART 1

The general duty

Section 1: The general duty

13. This section places the Lord Chancellor under a statutory duty to secure an efficient and effective administrative system, and other services (such as security or enforcement services), to support Supreme Court, county court and magistrates' court business, referred to in the Act as the general duty. The Supreme Court is defined in the Supreme Court Act 1981 (SCA 1981), section 1(1), as the Court of Appeal, the High Court of Justice and the Crown Court. The day to day responsibility for the administration of the courts will be delegated to a new executive agency of the Department for Constitutional Affairs, headed by a Chief Executive.
14. **Section 1** also provides that within 18 months of this section coming into force, and annually thereafter, the Lord Chancellor must prepare and lay before both Houses of Parliament a report on the way he has discharged his general duty in relation to the courts, staff and accommodation. This will include information on the operations of the Agency itself.

Court staff and accommodation

Section 2: Court officers, staff and services

15. **Section 2** re-models section 27 of the Courts Act 1971 (1971 Act), but covers staff for magistrates' courts as well as the Supreme Court and the county courts. It allows the Lord Chancellor to employ civil servants as court staff, so that he can discharge his duty of administering the courts and providing support services. Persons appointed under this section would be eligible to join the principal civil service pension scheme and would be eligible for other superannuation benefits in the same way as other civil servants
16. This section also allows the Lord Chancellor to enter into contracts with self-employed people or independent contractors, as appropriate, for the purpose of discharging his general duty in relation to the courts. However, under section 2 (6), contracting out in respect of officers and staff carrying out administrative work will only take place after the making of an enabling order (that is, a statutory instrument), and subject to prior consultation with the Heads of Division (the Lord Chief Justice, Master of the Rolls, President of the Family Division and Vice-Chancellor). While this section does not permit the provision of persons to make judicial decisions or exercise a judicial discretion, it does extend to those assisting such persons. Taken together with section 27, this will allow the Lord Chancellor to enter into arrangements for the provision of assistants to justices' clerks.

Section 3: Provision of accommodation

17. **Section 3** re-models section 28 of the 1971 Act and reflects the Lord Chancellor's additional responsibility for magistrates' courts. Subsection (1) gives the Lord Chancellor power to provide, equip, maintain and manage court accommodation. Subsection (2) allows the Lord Chancellor to enter into arrangements with others. Court land will, in practice, be held by the First Secretary of State (Deputy Prime Minister) (who already holds court land, other than for magistrates' courts), with whom the Lord Chancellor will enter into appropriate arrangements. The Lord Chancellor's powers will be exercised on his behalf by the new executive agency. Subsection (4) defines the term "court-house".

Courts boards

Section 4: Establishment of courts boards

18. **Section 4** requires the Lord Chancellor to set up courts boards (the functions of which are set out in section 5). The section obliges the Lord Chancellor to define the geographical area for which they are responsible by order. It obliges him, in defining the areas, to have regard to the desirability of ensuring coterminosity with CJS areas, which are based on areas defined in the Police Act 1996. It provides that the names of each courts board area will be specified in the order. It allows the Lord Chancellor to make orders altering the areas, but it requires that the Lord Chancellor consult an affected courts board before an amending order is made. It provides for a Schedule that sets out the constitution and procedure of courts boards, including the categories of membership of the courts boards.

Schedule 1: Constitution and Procedure of courts boards

19. This Schedule provides for the constitution and procedure of courts boards. Members are to be appointed by the Lord Chancellor. Minimum membership will consist of at least one judge; at least two lay magistrates; at least two other members who appear to have knowledge or experience of the work of the courts in the area; and at least two members who appear to be representative of local people in the area. It provides for regulations to be made by the Lord Chancellor in relation to the appointment of members, in particular the appointments procedure; the selection of a chairman from among the board members; the term of office of board members and their resignation, suspension or removal; the procedure of boards, including quorum; and the validation of proceedings in the event of removal, a vacancy or defect in appointment.
20. This Schedule also enables the Lord Chancellor to make payments in respect of expenses and remuneration.

Section 5: Functions of Courts Boards

21. **Section 5** requires each courts board to scrutinise, review and make recommendations about how the Lord Chancellor is fulfilling his general duty. It specifies that courts boards will, in particular, consider draft and final business plans for their area. It requires the Lord Chancellor to issue the courts boards with guidance about how they should carry out their functions, including the procedures to be followed in considering draft and final business plans. This guidance must be laid before both Houses of Parliament. The Lord Chancellor must give due consideration to their recommendations. If the Lord Chancellor rejects a courts board's recommendations on its final business plan he must give to them his reasons for doing so in writing. Subsection (4) makes clear that courts boards are not concerned with the Court of Appeal or High Court.

Abolition of magistrates' courts committees

Section 6: Abolition of magistrates' courts committees etc.

22. Since the Lord Chancellor will take over responsibility for the magistrates' courts, there will no longer be a need for the MCCs, which perform this function at the moment. Section 6 provides for their abolition. It also abolishes the Greater London Magistrates' Courts Authority, which is the MCC for Greater London. Section 6 also gives effect to Schedule 2, which provides for the transfer of MCC staff and property.

Schedule 2: Abolition of magistrates' courts committees: transfers

23. [Schedule 2](#) sets out the arrangements for the transfer of staff from MCCs and local authorities to the employment of the Lord Chancellor. It also enables the Lord Chancellor to make schemes transferring property, rights or liabilities from MCCs, local authorities and others to him or another Minister of the Crown.
24. [Paragraph 11](#) applies the [Transfer of Undertakings \(Protection of Employment\) Regulations 1981 \(SI 1981/1794\)](#) (TUPE) without restriction to MCCs and will effect the transfer of MCC employees into the employment of the Lord Chancellor. [Paragraph 12](#) applies to local authority staff. Under [paragraph 12\(2\)\(b\)](#) local authority staff who spend "a substantial part" of their time on MCC duties during the course of a year, can be transferred to the Lord Chancellor's employment; however, the ultimate decision as to whether to transfer such an employee is for the Lord Chancellor. It is intended that in practice any transfer would be subject to consultation with the individuals affected. [Paragraph 14](#) provides that any MCC or local authority staff who are regarded as 'aliens' will still be eligible to transfer into the employment of the Lord Chancellor. An 'alien' in this context can be defined as a person who is precluded from employment in the civil service by existing legislation i.e. nationals of non-EC or non-EFTA states.

Part 2: Justices of the Peace

Summary

25. [Part 2](#) of the Act contains a range of provisions relating to lay justices, District Judges (Magistrates' Courts), justices' clerks and administrative staff working in the magistrates' courts. The most significant change is to give lay magistrates a national jurisdiction. In order to achieve the main changes, this Part rewrites existing provisions in the JPA 1997 with various adjustments.