

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

COURTS ACT 2003

EXPLANATORY NOTES

BACKGROUND

Justices' clerks

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