

COURTS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS: PART 2

The commission of the peace and local justice areas

Section 7: The commission of the peace for England and Wales

40. This section replaces the provision contained in sections 1 and 3 of the JPA 1997, for the issue of commissions of the peace to each commission area, but with changes to reflect the fact that commission areas are abolished by this Act. The section refers to a single commission of the peace, which will cover England and Wales, in place of the current 42 separate commissions.
41. The section restates the provision that the commission is to be issued under the Great Seal, and that it shall be addressed generally rather than to individual justices.

Section 8: Local justice areas

42. **Section 8** places a duty on the Lord Chancellor to divide England and Wales into areas to be known as local justice areas and gives him the power to make orders altering such areas. Before making such an order the Lord Chancellor must consult magistrates assigned to an area affected by the changes, and any local councils and courts boards similarly affected. This section, in effect, makes the same provision as parts of sections 4, 33 and 34 of the JPA 1997 (which is repealed by section 6(4)), but changes the name 'petty sessions areas' to local justice areas. The name 'local justice area' is considered to be a more modern and more appropriate title for these areas. An initial order setting up local justice areas will simply be laid in Parliament and will not be subject to the negative resolution procedure, on the basis that by virtue of Schedule 9, it will simply be renaming petty sessions areas as local justice areas and will not change any boundaries. Subsequent orders altering areas will be subject to negative resolution.
43. **Schedule 8** contains a number of consequential amendments. References to petty sessions and commission areas in existing legislation can have the effect of geographically linking particular cases to the area specified. Where possible this link is to be removed and instead where cases will be heard will be determined in accordance with directions issued by the Lord Chancellor, subject to the concurrence of the Lord Chief Justice. The directions, given under powers contained in section 30, are likely to reflect the policy that whilst in general cases will be heard in the local justice area in which the offence was committed, or where the defendant lives, other factors will also be liable to be taken into account. These considerations will include the availability of court resources and the whereabouts of victims or other interested parties, including defendants and witnesses.

Lay Justices

Section 9: Meaning of “lay justice”

44. The purpose of this section is to clarify, throughout the Act, the difference between references to justices of the peace and lay justices.
45. The title of justice of the peace still applies to lay justices; but technically it may refer equally to a lay justice and to a District Judge (Magistrates’ Courts). For clarity throughout this Act the term “lay justice” has been used in those sections where a District Judge (Magistrates’ Courts) is not meant to be included in the provision. Although existing legislation, and the Act, refers to lay justices, they are also popularly known as “lay magistrates”, the expression used in these notes.

Section 10: Appointment of lay justices etc

46. This section makes similar provision to section 5(1) of the JPA 1997. However, it lays a new duty on the Lord Chancellor to assign every lay justice to a local justice area (for purposes which, it is envisaged, will include local organisation, training, selection for specialist work, pastoral care and discipline). There is no equivalent to this new power of assignment. The existence of the bench is implicit in current statute in the provisions governing elections for bench chairmen and deputy chairmen. Justices could be assigned to more than one area if appropriate, and the Lord Chancellor would be able to transfer justices to other areas.
47. This section clarifies that assignment to a local justice area is not to limit jurisdiction to that area. However, the section also provides that if a justice is to act outside his normal place of sitting he is to do so in accordance with arrangements. It is envisaged that these would be informal in nature. In practice it would be unrealistic that a justice would sit in an unaccustomed area save by prior arrangement between courts and with his agreement.
48. As lay magistrates will no longer have a jurisdiction limited to a commission area, there will no longer be the statutory residence qualifications for assignment (section 6 of the JPA 1997). It is envisaged, however, that Advisory Committees (who advise the Lord Chancellor on appointments of lay magistrates) will continue, under guidance from the Lord Chancellor, to recommend that lay magistrates be assigned to the local justice area in which they reside unless there is good reason to do otherwise (for example, should an applicant find it easier to sit where he or she works rather than where he or she lives).
49. A further effect of the repeal of the JPA 1997, and the provision made by this section, is to transfer the current responsibilities of the Chancellor of the Duchy of Lancaster, in respect of the appointment of lay magistrates within the Duchy, to the Lord Chancellor.
50. The section also provides that the Lord Chancellor may make rules prescribing training courses that justices would complete before exercising such jurisdictions as may be specified. This provision is designed to clarify the Lord Chancellor’s power to prescribe training – this is felt to be advisable in the future context that MCCs will no longer have responsibility for training lay magistrates.
51. The section also brings the other jurisdictions of a lay magistrate into line with the family and youth jurisdictions, where there is an existing power for the Lord Chancellor to set out requirements for those jurisdictions in rules.

Section 11: Resignation and removal of lay justices

Section 12: The supplemental list

Section 13: Entry of names in the supplemental list

Section 14: Removal of names from the supplemental list

52. These sections replace sections 7 to 9, of the JPA 1997, together with the provision in section 5 relating to the removal of lay justices from office. They provide that a lay justice may resign, set out the grounds on which justices may be removed from office, and re-enact (with some changes) the provision that lay justices shall be entered onto a supplemental list on reaching the age of 70, and thereafter cease to exercise office as justices.
53. **Section 11** provides for the removal of justices from office specifying that they may be removed on the grounds of misbehaviour, incapacity, neglect of duty and persistent failure to meet prescribed competences. (There are currently competences laid down for lay magistrates, against which they are appraised, and it is envisaged that these competences will be formalised by direction.) At present there is no statutory restriction on the grounds on which they may be removed.
54. The function of the supplemental list under these sections is different from its functions under the JPA 1997: it has lost its disciplinary function, and is now intended to be simply a recognition of the service given by lay magistrates. For that reason it is no longer specified that the Lord Chancellor may place justices on the List on the ground of neglect of duty – this is now a ground for removal under section 11. The ability, however, for justices to be entered in the list after long service, even if they have not reached the age of 70, has been retained under section 13(4).
55. Additionally, these sections no longer provide statutory authority for supplemental list justices to perform certain acts (such as the signing of passport photographs), as the majority of the acts specified no longer require statutory authority. The sections also remove the provision that a retired lay magistrate may still act as a judge in the Crown Court (if authorised) until the age of 72.
56. Where a justice is in the middle of hearing a case, or still serving as bench chair, on reaching 70, his name need not go on the list until the end of the case or of his term as chair.
57. A further effect of the repeal of the JPA 1997, and the provision of this section, is to transfer the current responsibilities of the Chancellor of the Duchy of Lancaster, in respect of the supplemental list within the Duchy, to the Lord Chancellor.

Section 15: Lay Justices' Allowances

58. This section makes similar provision to section 10 of the JPA 1997, which allows the Lord Chancellor to determine and to pay allowances for lay magistrates, and to make regulations in respect of the administration of this section.

Section 16: Records of lay justices

59. This section makes similar provision to section 25 of the JPA 1997, that the Lord Chancellor appoint keepers of the rolls to keep records of local lay magistrates. The statute has been modified, however, to accord with the changes to geographical administrative boundaries brought about by this Act.
60. As this Act abolishes commission areas, a keeper of the rolls must be appointed for each local justice area rather than each commission area. The Lord Chancellor may (and it is envisaged that he will) appoint the same person to be keeper of the rolls for more than one local justice area.

61. The requirement that the appointee be a justice has been removed, as there are no longer any offices whose holders are ex-officio justices (traditionally appointees to these posts would have been ex-officio justices by virtue of holding high office).
62. A further effect of the repeal of the JPA 1997, and the provision of this section, is to transfer the current responsibilities of the Chancellor of the Duchy of Lancaster, in respect of keepers of the rolls within the Duchy, to the Lord Chancellor.

Chairman and deputy chairmen and the bench

Section 17: Chairman and deputy chairmen: selection

Section 18: Rights to preside and size of bench

63. These sections make similar provision to sections 22 and 24 of the JPA 1997.
64. [Section 17](#) provides for the lay magistrates of a local justice area to elect from their number a Chairman and one or more Deputy Chairmen, and confers a rule-making power as to how this will operate.
65. [Section 18](#) sets out the circumstances in which a Chairman or Deputy Chairman may have a right to preside in court, or to chair a meeting of justices, and when he may not. The section also provides the Lord Chancellor with a rule-making power as to the size of a bench of lay justices.

Supplementary provisions about the bench

Section 19: Training, development and appraisal of lay justices

66. The purpose of this section is to give statutory backing to the role of Bench Training and Development Committees (BTDCs) in the training, appraisal and development of lay justices.
67. The section provides that rules made by the Lord Chancellor may make provision about the training, development and appraisal of lay justices, and related matters. However, the main use which is currently envisaged of this rule-making power is to formalise the position of BTDCs.
68. Subsection (3) sets out a new statutory obligation on the Lord Chancellor to provide training and training materials for lay magistrates, where he requires them to undergo training; lay magistrates will have a new statutory assurance in this regard.

Section 20: Rules

69. [Section 20](#) provides that the Lord Chancellor must consult with the appropriate rule committees before making the rules relating to lay magistrates contained in Part 2 (i.e. pursuant to the powers under sections 10, 17, 18 and 19).

Section 21: Duty to consult lay justices on matters affecting them etc.

70. This section requires the Lord Chancellor to take all reasonable and practicable steps to ensure that lay justices are kept informed on matters that affect them in the performance of their duties in a local justice area, and that their views will be taken on such matters.

District Judges (Magistrates' Courts)

Section 22: Appointment etc.

71. This section makes similar provision to sections 10A(1), (3) and (4) of the JPA 1997 (as amended by the AJA 1999). These provide for the appointment by the Lord Chancellor of District Judges (Magistrates' Courts), qualification requirements,

payment of allowances, and removal from office. This section also replaces provisions in section 69 of the JPA 1997, which provides for the swearing-in of District Judges (Magistrates' Courts) – consequential amendments will require them to be sworn in by a Circuit Judge or High Court Judge.

Section 23: Senior District Judge (Chief Magistrate)

72. This section replaces section 10A(2) of the JPA 1997 (as amended by the AJA 1999) which deals with the appointment of a Senior District Judge and a Deputy Senior District Judge.
73. The section allows the Lord Chancellor to appoint one of the District Judges (Magistrates' Courts) to be the Senior District Judge, and if the Lord Chancellor decides to do this, he may appoint another District Judge (Magistrates' Courts) to be his or her deputy. The main function of the Senior District Judge is judicial administration.
74. This section differs from the current legislation in that the Lord Chancellor will have a discretion, rather than a duty, to appoint a Senior District Judge (Chief Magistrate) and Deputy. This is because the Government has accepted the Auld Review's recommendation that, the role of the Senior District Judge should be reviewed, both as to its functions and its necessity. However, it is envisaged that in the short term at least the Senior District Judge will continue to play an important role in the management of the District Judges (Magistrates' Courts).

Section 24: Deputy District Judges (Magistrates Courts)

75. Subsections (1), (3), (4) and (5) makes similar provision to section 10B of the JPA 1997 (as amended by the AJA 1999). This section provides for the appointment by the Lord Chancellor of Deputy District Judges (Magistrates' Courts), their qualification requirements, payment of allowances, removal from office, and their treatment as though full-time District Judges (Magistrates' Courts). Subsection (2) replaces provision in section 69 of the JPA 1997, which provides for the swearing-in of a Deputy District Judge (Magistrates' Courts) - consequential amendments will require them to be sworn in by a Circuit Judge or High Court Judge.

Section 25: District Judges (Magistrates' Courts) as justices of the peace

76. This section makes similar provision to section 10C(1) and (2) of the JPA 1997. Its purpose is to provide that the jurisdiction of a District Judge (Magistrates' Courts) includes the jurisdiction of a lay magistrate.

Section 26: District Judges (Magistrates' Courts) able to act alone

77. This section makes similar provision to section 10E of the JPA 1997, and makes clear that certain restrictions in the MCA 1980 do not apply to a District Judge (Magistrates' Courts) sitting alone.

Justices' clerks and assistant clerks

Section 27: Justices' clerks and assistant clerks

78. **Section 27** provides for the Lord Chancellor to appoint and designate staff of the new courts agency to be justices' clerks and assistants to justices' clerks. A person cannot be designated as a justices' clerk unless he or she meets the requirements of this section, which replicates section 43 of the JPA 1997. Section 27 empowers the Lord Chancellor to make regulations setting out the requirements that a person must fulfil if he or she is to be designated as an assistant to a justices' clerk. Section 27 also allows the Lord Chancellor to enter into contracts for the provision of assistant clerks. The work of assistant clerks provided under such contracts would be limited to advising lay justices and would not extend to exercising the powers of a single justice, for which the assistant

would require the specific authority of a justices' clerk. This reflects current practice in the magistrates' courts.

79. **Section 27** places a duty on the Lord Chancellor to assign justices' clerks to one or more local justice areas. It also empowers the Lord Chancellor to change a clerk's assignment and move him or her to another area. However, before changing a clerk's assignment, the Lord Chancellor must first consult the lay magistrates, via their bench chairman, assigned to the same local justice area as the clerk.

Section 28: Functions

80. **Section 28** re-models section 45 of the JPA 1997 on the functions and powers of justices' clerks and assistant clerks. Currently section 144 of the MCA 1980 allows the Lord Chancellor to make rules which, among other things, regulate and prescribe the procedure and practice to be followed by justices' clerks. The Lord Chancellor currently makes rules on the advice of, or after consultation with the Magistrates' Courts Rules Committee, but he will also now consult the Criminal Procedure Rule Committee and the Family Procedure Rule Committee before making rules about justices' clerks under this section.

Section 29: Independence

81. **Section 29** makes the provision corresponding to section 48 of the JPA, which provides for the independence of justices' clerks when giving legal advice or performing the functions of a single justice. It provides that when exercising such functions, justices' clerks shall not be subject to the direction of the Lord Chancellor, (rather than JCEs, as under the JPA) or any other person or body. The section gives the same guarantee of independence to assistant clerks.

Places, dates and times of sittings

Section 30: Places, dates and times of sittings

82. **Section 30** empowers the Lord Chancellor to direct where and when magistrates' courts are to sit. This would allow magistrates' courts' business to be conducted at any place in England and Wales. In making such directions he will be under a duty to have regard to the need to make court-houses accessible by persons resident in each local justice area. The places at which magistrates' courts sit and the days and times at which they sit would be determined in accordance with directions made by the Lord Chancellor. This would bring magistrates' courts into line with the Crown Court, High Court, Court of Appeal and county courts. The power to determine when magistrates' courts sit is likely to be used as an emergency measure only.
83. There is no longer to be a distinction between petty-sessional court-houses (section 150(1) MCA 1980), occasional court-houses (section 147 MCA 1980) and any other court-houses or places, which may be appointed as petty-sessional court-houses. Lay magistrates are to have full jurisdiction wherever they sit. The restriction on magistrates' courts and licensing justices sitting on licensed premises is removed by the Licensing Act 2003.
84. This section also allows the Lord Chancellor, with the concurrence of the Lord Chief Justice, to give directions as to the distribution and transfer of magistrates' courts business, excluding family proceedings. Such directions are necessary in light of the changes to the jurisdiction of lay justices and magistrates' courts and the provision allowing for the transfer of cases between magistrates' courts. Where a person is charged with an offence, the prosecuting authority will decide which court that person should appear before, in line with these directions. The directions may in particular say that the defendant should be taken to a court in a local justice area: where the offence is alleged to have been committed; where the person charged with the offence resides; where any witnesses reside; or where similar cases are dealt with.

Protection and indemnification of justices and justices' clerks

Section 31: Immunity for acts within jurisdiction

Section 32: Immunity for certain acts beyond jurisdiction

Section 33: Striking out proceedings where action prohibited

85. These sections make similar provision to sections 51, 52 and 53 of the JPA 1997. Section 31 provides immunity against action brought against justices of the peace in proceedings arising from the execution of their duty. It also gives immunity to justices' clerks and those appointed to assist a justices' clerk in proceedings which arise from their exercise, in accordance with rules made under section 28, of a function which could be exercised by a single justice of the peace. Section 32 excludes proceedings in which bad faith is proved and makes clear that the immunity does not apply where the justice, clerk or assistant himself is the subject of criminal proceedings. Section 33 provides that proceedings brought in circumstances where a justice or justices' clerk has immunity may be struck out.

Section 34: Costs in legal proceedings

86. Section 34 makes similar provision to section 53A of the JPA 1997, with minor amendments. This section gives justices of the peace and their clerks statutory immunity against being ordered to pay the costs of legal actions arising out of the conduct of their judicial functions, unless it is proved that they acted in bad faith. The section empowers the court to order the Lord Chancellor to pay any costs that, but for the provision of the section, it would have ordered against the justice or clerk. The section also provides for the Lord Chancellor to make regulations covering when the court is to exercise the power to award costs and how those costs are to be determined.

Section 35: Indemnity

87. Section 35 makes similar provision to section 54 of the JPA 1997 with some amendments. This section reflects the fact that in future the Lord Chancellor, rather than a magistrates' courts committee, may indemnify justices of the peace, justices' clerks and their assistants against costs orders in any proceedings, not only proceedings taken against them. The section also removes the right of appeal to a person appointed by the Lord Chancellor against a decision by a MCC to refuse to indemnify a person under this section. This is because in future the Lord Chancellor will decide whether a person should be indemnified. A person unhappy with a decision by the Lord Chancellor to refuse to indemnify them would, however, have recourse to judicial review proceedings.

Fines officers and designated officers

Section 36: Fines Officers

88. This section provides for the Lord Chancellor to designate fines officers who may be appointed or provided under contract by the Lord Chancellor and whose role will be to manage the collection and enforcement of fines. Fines officers will play a key role in the operation of the fine enforcement scheme in Schedule 5.

Section 37: Designated officers and magistrates' courts

89. Section 37 allows the Lord Chancellor to designate members of staff of the courts agency in order to perform certain statutory functions in relation to the business of the magistrates' courts. Many of these functions are currently assigned to JCEs and are administrative in nature. Schedule 8 makes appropriate consequential amendments to other Acts of Parliament.

Application of receipts of magistrates' courts etc.

Section 38: Application of receipts of designated officers

Section 39: Limits to requirements about application of receipts

Section 40: Regulations about payments, accounting and banking by designated officers

90. Sections 38 and 39 make similar provision to section 60 of the JPA 1997, amended to reflect the fact that the post of JCE will cease to exist. The sections instead make reference to sums received by a designated officer. Section 40 contains provisions similar to section 60A of the JPA and will allow the Lord Chancellor, with the concurrence of the Treasury, to make regulations about the payment, accounting for and banking of money paid to designated officers in the magistrates' courts.

Miscellaneous

Section 41: Disqualification of justices who are members of local authorities

91. This section makes similar provision to section 66 of the JPA 1997: which provides for the disqualification of lay magistrates who are members of local authorities from acting in cases involving the relevant local authority.

Section 42: Effect of Act of Settlement on existing justices of the peace

92. This section retrospectively validates the appointments of a number of foreign lay magistrates appointed before 31 January 2002 in unwitting breach of the nationality requirements of the Act of Settlement 1700, and allows them to resume their role as lay magistrates. Their actions as magistrates prior to this legislation are not invalidated. The section also ensures that the restrictions in the Act of Settlement do not apply to appointments made after this Act received the Royal Assent.
93. The Act of Settlement 1700 imposes restrictions as to who may be employed in the service of the Crown. Section 3 of this Act applied to lay magistrates, meaning that any non-UK, Eire or Commonwealth nationals sitting as lay magistrates were doing so in violation of this Act

Part 3: Magistrates' Courts

Summary

94. This Part makes a number of changes to the jurisdiction and procedures of magistrates' courts, designed to increase flexibility and efficiency in the disposal of the business of the courts.