

COURTS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS: PART 3

Criminal jurisdiction and procedure

Section 43: Summons or warrant for suspected offender

Section 44: Trial of summary offences

104. Sections 43 and 44 change the basic jurisdictional provisions on issuing process and dealing with charges, set out in sections 1 and 2 of the MCA 1980. Section 43 will allow any justice to issue a summons requiring a person to appear before a magistrates' court or a warrant to arrest a person and bring him before a magistrates' court. In the case of a summons, the summons will state which "court" the person is to appear before. The prosecutor will decide the court in accordance with the directions given by the Lord Chancellor with the concurrence of the Lord Chief Justice, issued under section 30. In the case of a warrant, the person may be brought to whichever court the person arresting the accused considers convenient. Under section 44 a magistrates' court will have jurisdiction to try any summary offence.
105. In addition to giving lay magistrates national jurisdiction in respect of the great majority of criminal cases, the policy of flexibility in the deployment of magistrates is to be implemented by removing many of the statutory provisions limiting their jurisdiction to the particular petty sessions area with which the case has a connection. Nevertheless, it is expected that the Lord Chancellor's directions will frequently retain the local link in practice. There will also be situations, notably in cases which have already begun, in which the local link will continue to be a requirement.

Section 45: Power to make rulings at pre-trial hearings

Schedule 3: Pre-trial hearings in magistrates' courts

106. This section provides the power for judges and lay magistrates to make binding rulings and directions at pre-trial hearings in criminal cases that are to be tried in the magistrates' courts, where it is in the interests of justice to do so. It will only be possible to make binding rulings in the magistrates' courts, once a not-guilty plea has been entered. This means that the primary disclosure provisions set out in Part 1 of the CPIA 1996 will apply.
107. Schedule 3 inserts a new section 8A, "Power to make rulings at pre-trial hearing" and section 8B, "Effect of rulings at pre-trial hearing" into the MCA 1980. The new sections largely follow sections 40 and 41 of Part 4 of the CPIA 1996, which sets out the Crown Court's power to make binding rulings in pre-trial hearings.
108. Before making a binding ruling, a magistrates' court must give the parties an opportunity to be heard and, when the accused is unrepresented but wishes to be represented, must consider whether to grant legal representation at public expense. A pre-trial ruling made by a magistrates' court will remain binding until the case is disposed of or is sent to the Crown Court.

109. There is no specific right of appeal against a pre-trial ruling. An accused may appeal to the Crown Court against a ruling (if convicted) once the case is concluded, in the normal manner. The magistrates' court may also discharge or vary a pre-trial ruling on application by a party to the case (where there has been a material change of circumstances) or, where it is in the interests of justice, of its own motion.
110. Provision is made for restrictions on reporting of pre-trial hearings in order to avoid prejudicing the right to a fair trial, should the case (or linked proceedings) ultimately be tried in the Crown Court. The publishing of anything other than basic factual matters is prohibited in England and Wales, unless the court orders that reporting restrictions should not apply, until such time as the case against the accused is disposed of. The definition includes electronic methods of communication and, where an offence is committed by a body corporate, liability to prosecution for contravention of reporting restrictions may also extend to the company's officers.

Section 46: Power to transfer criminal cases

111. **Section 46** gives magistrates' courts the power to transfer criminal cases to other magistrates' courts at any stage in the proceedings, whether on the application of a party or of their own motion. The parties would have a right to be heard in the latter case. There is to be no appeal from a decision on transfer. In deciding whether to transfer a case, the court or justices' clerk will be required to take account of the directions made by the Lord Chancellor under section 30.

Civil jurisdiction and procedure

Section 47: Jurisdiction to issue summons and deal with complaints

112. **Section 47** amends sections 51 and 52 of the MCA 1980. This changes the civil jurisdiction of magistrates' courts so that a complaint can be made to any justice of the peace. As with criminal proceedings, the justice may issue a summons directed to the person named in it to appear before a magistrates' court named in the summons.

Section 48: Power to transfer civil proceedings (other than family proceedings)

113. **Section 48** inserts new section 57A into the MCA 1980. This will give magistrates' courts the power to transfer civil cases to other magistrates' courts at any stage of proceedings. This mirrors the power in section 46 for criminal cases. A similar provision is not considered necessary for family proceedings as the power to transfer such cases already exists, for example under the Children (Allocation of Proceedings) Order 1991 and the Family Proceedings Courts (Children Act 1989) Rules 1991.

Family proceedings courts and youth courts

Section 49: Family proceedings courts

114. This section sets out the framework whereby lay magistrates and District Judges (Magistrates' Courts) are to be authorised to hear family proceedings. Section 66 also gives the higher judiciary the ability to exercise the justices' jurisdiction, although there is no current expectation that there will be widespread use of these powers in family proceedings.
115. Currently, in areas apart from Greater London, lay magistrates are voted on to a specialist "panel" by other members of the bench.
116. Under this section, the "panel" system would be abolished. The Lord Chancellor will have to authorise a justice of the peace before he or she can sit as a member of a family proceedings court. These personal authorisations will be valid throughout England and Wales. The Lord Chancellor will have power to make rules regarding (a) the allocation and removal of authorisations for justices to sit as members of family proceedings courts

(b) the appointment of chairmen of family proceedings court and (c) the composition of such family proceedings courts.

117. It is envisaged that new rules, which provide for a more transparent selection procedure, will be published for comment. Because of the sensitive nature of family cases, and the specific knowledge and understanding that is required, these rules would help to ensure that only trained and suitable magistrates sit in family proceedings. District Judges (Magistrates' Courts) are in practice required to be "ticketed" for this work.

Section 50: Youth courts

118. This section sets out the framework whereby lay magistrates and District Judges (Magistrates' Court) are to be authorised to hear youth cases. The Act also enables the higher judiciary including circuit judges and recorders to hear these cases, without particular authorisation, in consequence of the extension of their jurisdiction to include that of a District Judge (Magistrates' Courts) by section 66.
119. Currently, in areas other than Greater London, lay magistrates are voted on to a specialist "panel" by other members of the bench.
120. Under this section, the "panel" system would be abolished. The Lord Chancellor will have to authorise a lay justice or District Judge (Magistrates' Courts) before he or she can sit as a member of a youth court. These personal authorisations will be valid throughout England and Wales. The Lord Chancellor will have power to make rules regarding (a) the allocation and removal of authorisations for justices and District Judges (Magistrates' Courts) to sit as members of youth courts (b) the appointment of chairmen of youth courts and (c) the composition of such youth courts.
121. It is envisaged that new rules, which provide for a more transparent selection procedure, will be published for comment. Because of the often sensitive nature of youth cases, and the specific knowledge and understanding that is required, these rules would help to ensure that only trained and suitable magistrates (or District Judges (Magistrates' Courts)) sit on youth courts.
122. District Judges (Magistrates' Courts) are in practice required to be "ticketed" for this work; that requirement is being made explicit in statute to reflect the increasing acceptance that the youth court is a specialist jurisdiction.

Part 4: Court Security

Summary

123. **Part 4** of the Act contains the legislative proposals regarded as necessary to improve the provision of security in court buildings. It contains provisions to ensure that designated "court security officers" will have the same powers in all courts. It specifies certain powers of search, exclusion, removal and restraint that security personnel will be able to exercise in the execution of their duty. These powers are to be exercised subject to the limitations prescribed in Part 4. Court security officers will also have a power to temporarily retain articles they reasonably believe ought to be surrendered because possession of the article may jeopardise the maintenance of order in the court building, or risk the safety of a person in that building or because the article may be evidence of or in relation to an offence. This power is supplemented by a power to seize an article where a person refuses the officer's request for surrender of the article. These powers are based upon, but go slightly further than, the current powers of court security officers in the magistrates' courts: currently officers may only request the surrender of an article in limited circumstances and cannot seize articles. To minimise the interference with a person's property there are limits on how long an article may be retained and there will be provision to ensure that a person from whom an article is taken is adequately informed, in particular, that if the article is to be treated as unclaimed then it will be disposed of.