

## 1979 No. 570 (L.5)

## MAGISTRATES' COURTS

## The Justices' Clerks (Qualifications of Assistants) Rules 1979

*Made - - - - 21st May 1979*

*Laid before Parliament 30th May 1979*

*Coming into operation in accordance with Rule 1*

The Lord Chancellor, in exercise of the powers conferred on him by section 15 of the Justices of the Peace Act 1949(a), as extended by section 5(2) of the Justices of the Peace Act 1968(b), after consultation with the Rule Committee appointed under the said section 15, hereby makes the following Rules:—

1. These Rules may be cited as the Justices' Clerks (Qualifications of Assistants) Rules 1979 and shall come into operation on 1st October 1980 except that for the purposes of rule 4(2) below these Rules shall come into operation on 1st July 1979.

2.—(1) In these Rules—

“assistant” means a person employed to assist a justices' clerk;

“certificate of competence” means a certificate granted in accordance with the provisions of Schedule 1 to these Rules;

“employed as a clerk in court” means employed to assist a justices' clerk by acting in his place as a clerk in court in proceedings before a justice or justices;

“Joint Negotiating Committee” means the Joint Negotiating Committee for Justices' Clerks' Assistants;

“magistrates' courts committee” includes the committee of magistrates for the inner London area;

“preliminary professional examination” means—

(a) the Common Professional Examination recognised by the Council of Legal Education and the Law Society, or

(b) Part I of the Qualifying Examination of the Law Society, or

(c) Part I of the Bar Examinations of the Council of Legal Education;

“relevant course” means the course of an institution or body specified in Schedule 2 to these Rules leading to an examination designed to qualify persons for the purposes of these Rules;

“training certificate” means a certificate granted in accordance with the provisions of Schedule 3 to these Rules.

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(a) 1949 c. 101.

(b) 1968 c. 69.

(2) For the purposes of these Rules a person shall be deemed to have passed an examination if he has been granted an exemption in relation to it by the appropriate examining body.

3. Except as is provided by rule 5 or 6 below, a person shall not be employed as a clerk in court unless that person is—

- (a) qualified (any age limits apart) to be appointed a justices' clerk by virtue of section 20 of the Justices of the Peace Act 1949, or
- (b) qualified by virtue of the provisions of rule 4 below.

4.—(1) A person is qualified for the purposes of rule 3(b) above if he possesses one of the following qualifications, that is to say—

- (a) he is a barrister or solicitor of the Supreme Court or has passed the necessary examinations for either of those professions;
- (b) he has successfully completed a relevant course;
- (c) he has been employed as an assistant for not less than two years (whether or not continuously) and has passed a preliminary professional examination;
- (d) he has been granted a certificate of competence by a magistrates' courts committee.

(2) Schedule 1 to these Rules shall have effect in relation to the grant of a certificate of competence by a magistrates' courts committee.

5.—(1) An assistant who is not qualified for the purposes of rule 3 above may be employed as a clerk in court if he holds a valid training certificate granted by a magistrates' courts committee.

(2) Schedule 3 to these Rules shall have effect in relation to the grant of a training certificate by a magistrates' courts committee.

6. Notwithstanding the provisions of rules 3 to 5 above, the Secretary of State may grant authority for any such person as may be specified by him to be employed as a clerk in court for such period not exceeding six months as may be so specified if he is satisfied—

- (a) that the person so specified is, in the circumstances, a suitable person to be employed as a clerk in court, and
- (b) that no other arrangements can reasonably be made for the hearing of proceedings before the court.

*Hailsham of St. Marylebone, C*

Dated 21st May 1979.

*Rule 4(2)*

## SCHEDULE 1

## CERTIFICATES OF COMPETENCE

1.—(1) This Schedule applies to an assistant who—

- (a) is not qualified for the purposes of rule 3 of these Rules, and
- (b) was born on or before 31st May 1950, and
- (c) has, or if he continues to be employed as an assistant will have, been employed for five years (whether or not continuously) as an assistant prior to 1st January 1980.

(2) A magistrates' courts committee may not later than 31st December 1979 grant an assistant to whom this Schedule applies a certificate of competence if it is satisfied that such an assistant has, or will by that date have, had experience, employed as a clerk in court for not less than five years (whether or not continuously), of all types of proceedings in a magistrates' court (including proceedings in domestic and juvenile courts) and is competent to be employed as a clerk in court.

(3) Notification of the grant of a certificate of competence shall be sent by the magistrates' courts committee to the Secretary of State.

2. Before refusing to grant a certificate of competence a magistrates' courts committee shall give the assistant in question an opportunity of making representations in writing and orally to that committee.

3.—(1) An assistant who is refused the grant of a certificate of competence by a magistrates' courts committee may, within three months of that refusal, appeal against the refusal by notice in writing to the Joint Negotiating Committee who may determine the appeal.

(2) On an appeal under sub-paragraph (1) above the assistant and the magistrates' courts committee shall be given an opportunity to make representations in writing and orally to the Joint Negotiating Committee and may be represented at the hearing of the appeal.

(3) If an appeal by an assistant under sub-paragraph (1) above is allowed by the Joint Negotiating Committee, the magistrates' courts committee shall thereupon grant to that assistant a certificate of competence.

(4) In the case of an assistant employed in the inner London area this paragraph shall have effect as if for the references to the Joint Negotiating Committee there were substituted references to the Secretary of State.

*Rule 2(1)*

## SCHEDULE 2

## INSTITUTIONS AND BODIES WITH COURSES

Bristol Polytechnic.

Committee of Magistrates for the Inner London Area.

Manchester Polytechnic.

National Association of Justices' Clerks' Assistants.

Polytechnic of Central London.

*Rule 5(2)*

## SCHEDULE 3

## TRAINING CERTIFICATES

1. A magistrates' courts committee may, after consultation with the appropriate justices' clerk, grant a training certificate to any assistant who—

- (a) has passed a preliminary professional examination and has been employed as an assistant for not less than six months (whether or not continuously), or

- (b) is attending a course leading to a preliminary professional examination (or to an examination which exempts the assistant from the requirement to pass a preliminary professional examination), has successfully completed the first year thereof and has been employed as an assistant for not less than one year (whether or not continuously), or
- (c) is attending a relevant course and has successfully completed the first year thereof and has been employed as an assistant for not less than one year (whether or not continuously).

2.—(1) A training certificate granted by virtue of attendance at any such course as is mentioned in paragraph 1(b) or (c) above shall cease to be valid if the assistant ceases to attend the course or fails an examination to which the course leads, or any part thereof:

Provided that, if a magistrates' courts committee is satisfied that an assistant who has failed such an examination intends to re-take the examination or any part thereof, it may, after consultation with the appropriate justices' clerk, renew the certificate.

(2) A training certificate which has been renewed in pursuance of sub-paragraph (1) above shall be valid for a further period of 18 months from the date of the first examination which has been failed, except that it shall cease to be valid if the assistant fails the re-taken examination.

(3) A training certificate shall in any event cease to be valid if the assistant to whom it has been granted ceases, for any reason, to be employed by the magistrates' courts committee which granted him the certificate.

3. A magistrates' courts committee may withdraw the certificate, after consultation with the appropriate justices' clerk, if it considers that it should no longer be continued.

4. Before withdrawing, or refusing to grant or renew, a training certificate a magistrates' courts committee shall give the assistant in question an opportunity of making representations in writing and orally to the committee.

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#### EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules make provision (as from 1st October 1980) for the qualifications required, subject to certain exceptions, for a person to be employed to assist a justices' clerk as a clerk in a magistrates' court. The necessary qualifications are specified in rules 3 and 4. Rule 5 provides for an exception in the case of a person who has been granted a training certificate by a magistrates' courts committee in accordance with Schedule 3; and rule 6 provides a further exception in the case of a person temporarily authorised by the Secretary of State for this purpose.



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