

2005 No. 553

JUSTICES OF THE PEACE, ENGLAND AND WALES

**The Justices of the Peace (Size and Chairmanship of Bench)
Rules 2005**

<i>Made</i> - - - -	<i>8th March 2005</i>
<i>Laid before Parliament</i>	<i>9th March 2005</i>
<i>Coming into force</i> - -	<i>1st April 2005</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 17 of the Courts Act 2003(a) and after consultation with the Criminal Procedure Rule Committee, the Family Procedure Rule Committee, and the Magistrates' Courts Rule Committee, in accordance with section 20(2) of the Courts Act 2003 hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Justices of the Peace (Size and Chairmanship of Bench) Rules 2005 and shall come into force on 1 April 2005.

Interpretation

2. In these Rules—

- (a) “election meeting” means a meeting held in accordance with rule 11;
- “justice” means, in relation to a local justice area, a justice who is assigned to that area;
- “justices’ clerk” in relation to a local justice area, means a justices’ clerk assigned to that area and includes any person acting as such;
- “reserve vote” means a vote cast in accordance with rule 7(6);
- “the schedule” means the Schedule to these Rules;
- references to a ballot are references to a ballot conducted under these Rules;
- references to a postal ballot are references to a postal ballot conducted under rule 7.

Size of bench

3.—(1) Subject to paragraph (2), the number of justices sitting to deal with a case as a magistrates’ court shall not be greater than three.

(2) Paragraph (1) shall not apply to a magistrates’ court sitting as a youth court, a family proceedings court or a licensing or betting licensing committee.

(a) 2003 c.39.

Presiding justices

4.—(1) A justice may preside before he has been included on a list of approved court chairmen only if—

- (a) he is under the supervision of a justice who is on the list of approved court chairmen; and
- (b) he has completed the chairman training courses prescribed by the BTDC.

(2) In this rule, “list of approved court chairmen” means a list kept by a Bench Training and Development Committee in accordance with rule 13 of the Justices of the Peace (Training and Appraisal) Rules 2005(a).

Elections

5.—(1) The justices for each local justice area shall each year elect from among themselves a chairman and one or more deputy chairmen.

(2) Subject to paragraph (3), a secret ballot shall be held in accordance with these Rules for the election of a chairman and for the election of deputy chairmen.

(3) Paragraph (2) shall not apply where, as the case may be, the chairman or all the deputy chairmen required to fill the number of offices available have been elected under rule 6(8).

(4) A justice is eligible to vote in an election if—

- (a) in the case of an election by postal ballot, the justice is assigned to that local justice area at the date the notices seeking nominations are posted; and
- (b) in the case of an election held at an election meeting, the justice is assigned to that local justice area at the date of the meeting.

Nomination procedure

6.—(1) The justices’ clerk shall give written notice, in accordance with paragraph (2), to each justice eligible to vote in a postal ballot.

(2) The notice shall—

- (a) notify the recipient that he may submit to the justices’ clerk nominations in writing for the offices of chairman and deputy chairman, the number of which will have been determined under rule 11(2)(b);
- (b) specify a closing date for receipt of nominations;
- (c) specify the date, time and place of the election meeting;
- (d) be posted by first class post at least 28 days before the closing date for receipt of nominations (including the date of posting but excluding the closing date for receipt of nominations); and
- (e) not be posted earlier than 12 weeks, nor later than 9 weeks, before the date of the election meeting (including the date of posting but excluding the date of the election meeting).

(3) A justice may not be nominated without his consent.

(4) Each nomination must be proposed and seconded by justices eligible to vote in a postal ballot and shall contain the full names and signatures of the proposer, seconder and justice nominated.

(5) The justices’ clerk shall satisfy himself that each nomination received fulfils the requirements of paragraph (4) but shall not disclose the names of proposers and seconders.

(6) If a justice nominated for election as chairman wishes, should he not be elected chairman, to be nominated for election as deputy chairman, his nomination shall contain a statement to that effect signed by the proposer, seconder and justice nominated.

(a) S.I. 2005/*.

(7) If the statement referred to in paragraph (6) is included in a nomination for chairman, that nomination shall be treated as a nomination for the office of chairman and for the office of deputy chairman (but a justice may not hold both offices at the same time).

(8) Where—

- (a) only one justice is nominated for election as chairman, that justice shall be elected chairman (and his nomination, if any, to the office of deputy chairman shall be treated as having been withdrawn);
- (b) the number of justices nominated to the office of deputy chairman equals or is less than the number of offices available, those justices shall be elected to the office of deputy chairman.

(9) Nominations withdrawn before the date of posting the ballot papers shall be disregarded when determining the number of nominations for the purposes of paragraph (8).

(10) If a justice is elected to the office of deputy chairman under paragraph (8)(b) and is subsequently elected chairman, he shall not take up the office of deputy chairman and his nomination for that office shall be treated as having been withdrawn before the closing date for receipt of completed ballot papers.

(11) If a chairman or deputy chairman is elected under paragraph (8), the justices' clerk shall give written notice, in accordance with paragraph (12), to each justice eligible to vote in a postal ballot of the name of the justice or justices elected.

(12) The notice under paragraph (11) shall be sent by first class post at least 28 days before the date of the election meeting (including the date of posting but excluding the date of the election meeting).

(13) Where a justice who has been nominated for election to the office of chairman or deputy chairman ceases to be a justice at any time after nomination up to (and including) the closing date for receipt of completed ballot papers, his nomination shall be treated as having been withdrawn when he ceased to be a justice.

(14) A nomination cannot be withdrawn after the closing date for receipt of completed ballot papers.

Conduct of postal ballot

7.—(1) Where nominations are received under rule 6 and have not been withdrawn before the date of posting the ballot papers, the secret ballot held under rule 5(2) shall be a postal ballot held in accordance with this rule.

(2) The justices' clerk shall—

- (a) where there is to be an election of a chairman, prepare ballot papers which contain a list in alphabetical order of the justices nominated as chairman;
- (b) where there is to be an election of a deputy chairman or deputy chairmen, prepare ballot papers which contain a list in alphabetical order of the justices nominated as deputy chairman; and
- (c) send by first class post to each justice eligible to vote in a postal ballot one ballot paper for each election.

(3) There must be—

- (a) at least 21 days between the date of posting the ballot papers and the closing date for receipt of completed ballot papers (including the date of posting but excluding the closing date for receipt of completed ballot papers); and
- (b) at least 7 days between the closing date for receipt of completed ballot papers and the date of the election meeting (including the closing date for receipt of completed ballot papers but excluding the date of the election meeting).

(4) Each justice who votes shall write "X" on the appropriate ballot paper—

- (a) against the name of the justice who is his choice to be chairman,

- (b) where a single deputy chairman is to be elected, against the name of the justice who is his choice to be deputy chairman, and
 - (c) where more than one deputy chairman is to be elected, against the names of as many justices as are his choice to be deputy chairmen, provided that the number of votes so cast does not exceed the number of deputy chairmen to be elected.
- (5) Paragraph (6) applies in the case of a justice who votes, where—
- (a) the nomination of a candidate has, by virtue of rule 6(7), been treated as a nomination for the office of chairman and for the office of deputy chairman,
 - (b) the justice has voted for that person as a candidate for the office of deputy chairman,
 - (c) the justice has cast the maximum number of votes for the office of deputy chairman permitted under paragraph (4) above, and
 - (d) there remain candidates for the office of deputy chairman for whom the justice has not voted.
- (6) In a case to which this paragraph applies, a justice may, in addition to the votes he has already cast, cast a reserve vote by writing “R” on the appropriate ballot paper against the name of the justice who is his choice to be deputy chairman in the event that any other justice for whom he has voted as his choice to be deputy chairman is elected to be chairman.
- (7) A justice who votes shall return his ballot paper to the justices’ clerk by post or by hand.
- (8) A ballot shall not be invalidated by reason of—
- (a) a ballot paper not being received by a justice eligible to vote in a postal ballot; or
 - (b) a completed ballot paper not being received by the justices’ clerk.
- (9) As soon as practicable after the closing date for receipt of the completed ballot papers, the justices’ clerk shall—
- (a) determine the result of the postal ballot for election as chairman; and
 - (b) then, subject to paragraph (10), determine the result of the postal ballot for election to the office of deputy chairman.
- (10) Where a chairman is not elected before the election meeting, the result of the postal ballot for the election to the office of deputy chairman shall not be determined until after a chairman has been elected at the election meeting.
- (11) When the result of the postal ballot has been determined, the justices’ clerk shall—
- (a) immediately notify the candidates of the result, and
 - (b) either give the justices written notice of the result before the election meeting or announce it at the meeting.

Determining result of postal ballot for election of chairman

8.—(1) This rule applies for determining the result of the postal ballot for the election of chairman.

(2) Subject to paragraph (3), the justice who has received the highest number of the votes cast shall be elected chairman.

(3) If two or more justices have received equally the highest number of votes, the justices’ clerk shall, at the election meeting, decide between them by lot and paragraph (4) applies.

(4) Where this paragraph applies—

- (a) the justice on whom the lot falls shall be elected chairman; and
- (b) the justices’ clerk shall, at the election meeting, announce the name of the justice so elected.

Determining result of postal ballot for election of deputy chairmen

9.—(1) This rule applies for determining the result of the postal ballot for the election of one or more deputy chairmen.

(2) In this rule, “requisite number” means the number of deputy chairmen to be elected.

(3) Except as provided by paragraph (8), reserve votes are not to be counted for the purposes of this rule.

(4) The requisite number of justices who have received the highest numbers of votes cast shall be elected deputy chairmen.

(5) If—

(a) two or more justices have received an equal number of votes (the “tied candidates”); and

(b) taking into account the election of any justice who has received a higher number of votes than the tied candidates -

(i) the election of one or more of the tied candidates is necessary to make up the requisite number, but

(ii) the election of all of the tied candidates would exceed the requisite number, the justices’ clerk shall, at the election meeting, decide by lot which of the tied candidates is to be elected, and paragraph (6) applies.

(6) A justice on whom the lot falls shall be elected deputy chairman and the justices’ clerk shall, at the election meeting, announce the name of any justice so elected.

(7) If a justice has been elected chairman and his name was included on a ballot paper for the election of deputy chairman, all the votes for him as deputy chairman shall be disregarded and shall no longer be counted as votes.

(8) Where a justice has—

(a) cast a vote for a candidate which has been disregarded under paragraph (7) or under rule 12(1), and

(b) cast a reserve vote for any other candidate,

the reserve vote shall be counted as a vote for the purposes of this rule.

(9) If any deputy chairmen remain to be elected, the justices shall elect them at the election meeting in accordance with the provisions of the schedule.

(10) The election referred to in paragraph (9) shall be by secret ballot unless paragraph 3 of the schedule applies.

Election where no or insufficient nominations

10. Where—

(a) no nomination for the office of chairman is received under rule 6 or where all nominations for that office are withdrawn at any time up to (and including) the closing date for receipt of completed ballot papers; or

(b) fewer nominations for the office of deputy chairman are received under rule 6 than the number of deputy chairmen to be elected; or

(c) one or more nominations for the office of deputy chairman are withdrawn at any time up to (and including) the closing date for receipt of completed ballot papers with the result that the remaining number of nominations for that office falls below the number of deputy chairmen to be elected,

the justices shall by secret ballot elect the chairman or the number of deputy chairmen that have still to be elected at the election meeting in accordance with the provisions of the schedule.

Election meeting

11.—(1) The justices for each local justice area shall hold an election meeting in October every year.

(2) At the election meeting—

- (a) where rule 7(10) applies, the justices' clerk shall determine the result of the postal ballot for the election to the office of deputy chairman and shall announce the name of the justice or justices who has or have been elected to that office; and
- (b) the justices shall decide the number of deputy chairmen to be elected to take office in the year commencing on 1st January after the next election meeting.

(3) Where a chairman and one or more deputy chairmen are to be elected at the election meeting, the result of the election to the office of chairman shall be announced before the election to the office of deputy chairman.

Miscellaneous provisions about ballots

12.—(1) If a justice withdraws his nomination on the date of posting the ballot papers or at any time after that date up to (and including) the closing date for receipt of completed ballot papers, all the votes for that justice shall be disregarded and shall no longer be counted as votes.

(2) Where a ballot paper—

- (a) is returned unmarked; or
- (b) in a postal ballot is marked—
 - (i) by writing otherwise than as indicated by rule 7(4) or 7(6), or
 - (ii) in such a manner that there is doubt as to the intention of the voter; or
- (c) in a ballot held at a meeting, is marked in such a manner that there is doubt as to the identity of the justice or justices for whom the vote is cast,

the ballot paper or the vote (as the case may be) shall be rejected when the votes are counted.

(3) There shall be no disclosure as to how any justice voted in any ballot.

(4) The justices' clerk shall —

- (a) keep a note of the date that a ballot paper was received by him; and
- (b) keep the ballot papers received for a period of 12 months commencing with the date of the election meeting.

Period of office and eligibility for re-election

13.—(1) A chairman or (as the case may be) deputy chairman elected under these Rules shall, subject to rule 14(3) and (9), hold office for one year beginning on 1st January after his election and shall, subject to paragraphs (3), (4) and (5), be eligible for re-election.

(2) In paragraphs (3) and (4) “previous chairman” means a justice who has held office as chairman of the justices.

(3) A previous chairman shall not be eligible for re-election as chairman if, on 1st January after the election, he will have held such office for periods totalling more than two years unless at least six years have elapsed since he last held office.

(4) In any event, a previous chairman shall not be eligible for re-election as chairman if, on the 1st January after the election, he will have held such office for periods totalling more than five years.

(5) A justice who has held office as deputy chairman shall not be eligible for re-election as deputy chairman if on 1st January after the election he will have held such office for periods totalling more than five years.

(6) Any period served as chairman or deputy chairman, as the case may be, before 1 April 2005 shall not count towards the maximum periods of service permitted by paragraphs (3), (4) and (5).

Vacancy in office

14.—(1) If the office of chairman or deputy chairman becomes or is about to become vacant for any reason, the justices' clerk shall give written notice sent by first class post as soon as practicable to each justice eligible to vote in a postal ballot that he may submit nominations in writing to the justices' clerk for another chairman or deputy chairman (as the case may be).

(2) Rule 6(3), (4) and (5) shall apply to a nomination made under this rule as it applies to a nomination made under rule 5.

(3) If only one nomination is received, the justice nominated shall hold office for the remainder of the term of the appointment of the justice whom he replaces.

(4) If more than one nomination is received, the justices shall by secret ballot elect another chairman or deputy chairman (as the case may be).

(5) The ballot shall be a postal ballot except that—

- (a) the ballot papers shall be posted by first class post as soon as practicable;
- (b) there shall be at least 7 days between the date of posting the ballot papers and the closing date for receipt of completed ballot papers (including the date of posting but excluding the closing date for receipt of completed ballot papers);
- (c) rule 7(1), (3), (9) and (10) shall not apply;
- (d) as soon as practicable after the closing date for receipt of completed ballot papers, the justices' clerk shall determine the result of the ballot;
- (e) rules 8(3), 9(5) and 9(6) shall be read as if the decision by lot shall take place before at least 3 justices (instead of at the election meeting) and the names of the justice or justices elected shall be notified to the justices by post as soon as practicable (instead of being announced at the election meeting).

(6) Where no nomination for a vacancy is received, the justices' clerk shall as soon as practicable, convene a meeting of the justices for the local justice area.

(7) At that meeting, the justices shall by secret ballot elect another chairman or deputy chairman (as the case may be).

(8) The provisions of the schedule shall apply to the election with the following modifications—

- (a) the list of justices shall comprise the names of all the justices for the local justice area on the date of the meeting (excluding, in the case of an election to the office of deputy chairman, the name of any justice who holds office as chairman or deputy chairman);
- (b) references to the election meeting in the schedule shall be read as references to the meeting held under this rule.

(9) Any justice elected under this rule shall hold office for the remainder of the term of the appointment of the justice whom he replaces.

(10) Any period served as chairman or deputy chairman by virtue of this rule shall not count towards the maximum period of service permitted by rule 13(3), (4) and (5).

Absence of justice entitled to preside

15. The justices present may appoint one of their number to preside in court to deal with any case in the absence of a justice entitled to preside under rule 4, if—

- (a) before making such an appointment, the justices present are satisfied as to the suitability for this purpose of the justice proposed; and
- (b) the justice proposed has completed or is undergoing a chairman training course in accordance with rules made under section 18 of the Courts Act 2003, unless by reason of illness, circumstances unforeseen when the justices to sit were chosen, or other emergency no such justice is present.

Transitional provisions

16. Appointments made under the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002^(a) shall continue for the term specified in those Rules, as if they were still in force.

Signed by the authority of the Lord Chancellor

8th March 2005

Christopher Leslie
Parliamentary Under Secretary of State
Department for Constitutional Affairs

^(a) S.I. 2002/193, as amended by S.I. 2004/1514.

SCHEDULE 1

Rule 9(9)

Procedure for Elections

List of justices

1. The justices' clerk shall compile a list of justices as specified in paragraphs 2,4 and 5.
2. Where rule 9(7) applies, the list shall comprise the names of the justices who were nominated for the office of deputy chairman excluding the name of any justices who have been elected chairman or deputy chairman.
3. If the number of justices whose names are on the list described in paragraph 2 equals or is less than the number of offices available, the justices whose names are on the list shall be elected to the office of deputy chairman without a ballot.
4. Where rule 10 (a) applies, the list shall comprise the names of all the justices for the local justice area on the date of the election meeting.
5. Where rule 10(b) or (c) applies, the list shall comprise the names of all the justices for the local justice area on the date of the election meeting excluding the name of any justice or justices who have been elected chairman or deputy chairman.

Conduct of ballot

6. The justices' clerk shall—
 - (a) prepare ballot papers containing the list of justices in alphabetical order; and
 - (b) hand to each justice present at the election meeting and eligible to vote in a postal ballot—
 - (i) where there is to be an election of a chairman, one ballot paper for the election of chairman;
 - (ii) where there is to be an election of a deputy chairman or deputy chairman, one ballot paper for that election.
7. Each justice who votes shall write X on the appropriate ballot paper against the name of the justice he wishes to be chairman and the name of the justice or justices he wishes to be deputy chairman or deputy chairmen (as the case may be).
8. Immediately after the ballot has been closed, the justices' clerk shall collect the ballot papers and count the votes.

Election of chairman

9. Except as mentioned below, the justice who has received a majority of the votes cast shall be elected chairman.
10. Where no justice receives a majority after the first ballot, up to two further ballots shall be held.
11. If, following two further ballots, no justice has obtained a majority, the justice who has received the most votes in aggregate in the three ballots shall be elected chairman.
12. If, after three ballots, two or more justices have received the same number of votes in aggregate, so that the addition of a vote to those cast would entitle one of them to be elected, the

justices' clerk shall immediately decide between them by lot and shall proceed as if the justice on whom the lot falls had received an additional vote.

13. Where a ballot (other than the third ballot) has been inconclusive the justices' clerk shall announce the fact and state the names of the justices for whom votes have been cast and the number of votes each justice received.

14. Where a ballot has been conclusive the justices' clerk shall announce the result.

Election of deputy chairman

15. The result of the ballot for the election to the office of deputy chairman shall be ascertained by counting the votes given to each justice. The justice or justices (if there is to be more than one deputy chairman) who has or have received the most votes shall be elected to the office of deputy chairman.

16. If—

- (a) two or more justices obtain an equal number of votes; and
- (b) the addition of a vote to those cast for any one or more of those justices would entitle him or them to be elected,

the justices' clerk shall immediately decide between those justices by lot and proceed as if any justice on whom the lot falls had received an additional vote.

Explanatory Note

(This note is not part of the Rules)

These Rules replace, with minor changes, the provisions for the elections of bench chairmen and deputy chairmen contained in the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002 (SI 2002/193) (“the 2002 Rules”) as amended.

The 2002 Rules lapse as a result of the repeal of the Justices of the Peace Act 1997 under which they were made.

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JUSTICES OF THE PEACE, ENGLAND AND WALES

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Rules 2005**

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