



# Administration of Justice Act 1964

## 1964 CHAPTER 42

### PART II

#### GENERAL PROVISIONS

##### *Indemnification of justices and clerks*

#### **27 General provision for indemnity**

- (1) Subject to the provisions of this section and of section 28 of this Act, a justice of the peace or justices' clerk may be indemnified out of local funds in respect of—
- (a) any costs reasonably incurred by him in or in connection with proceedings against him in respect of anything done or omitted in the exercise or purported exercise of the duty of his office, or in taking steps to dispute any claim which might be made in such proceedings;
  - (b) any damages awarded against him or costs ordered to be paid by him in any such proceedings ;
  - (c) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim ;

and shall be entitled to be so indemnified if, in respect of the matters giving rise to the proceedings or claim, he acted reasonably and in good faith.

- (2) Any question whether or to what extent a person is to be indemnified under this section shall be determined by the magistrates' courts committee for the area for which he acted at the material time; and a determination under this subsection with respect to any such costs or sums as are mentioned in paragraph (a) or paragraph (c) of subsection (1) of this section may, if the person claiming to be indemnified so requests, be made in advance before those costs are incurred or the settlement made, as the case may be:

Provided that any such determination in advance for indemnity in respect of costs to be incurred shall be subject to such limitations, if any, as the committee think proper and to the subsequent determination of the amount of the costs reasonably incurred,

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and shall not affect any other determination which may fall to be made in connection with the proceedings or claim in question.

- (3) An appeal shall lie to a person appointed for the purpose by the Lord Chancellor—
  - (a) on the part of the person claiming to be indemnified, from any decision of the magistrates' courts committee under subsection (2) of this section, other than a decision to postpone until after the conclusion of the proceedings any determination with respect to his own costs or to impose limitations on making a determination in advance for indemnity in respect of such costs ;
  - (b) on the part of the local authority, from any determination of the magistrates' courts committee under that subsection, other than a determination in advance for indemnity in respect of costs to be incurred by the person claiming to be indemnified.
- (4) The Lord Chancellor may make rules prescribing the procedure to be followed in any appeal under this section; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section "justices' clerk" includes a clerk to a stipendiary magistrate, a person appointed by a magistrates' courts committee to assist a justices' clerk and any member of the staff of a part-time justices' clerk assisting the clerk in his duties as such; " local funds", in relation to a justice or a justices' clerk, means the fund out of which any salary or allowance to which he is entitled (or, if he is entitled to more than one, is entitled in the relevant capacity) is payable; and " local authority " means the authority responsible for the payment of any such salary or allowance.
- (6) Subsection (5) of this section shall not apply to the inner London area, but in the application of the other provisions of this section to that area for any reference to local funds there shall be substituted a reference to the metropolitan police fund, for any reference to a magistrates' courts committee there shall be substituted a reference to the committee of magistrates set up under section 13 of this Act, for any reference to the local authority there shall be substituted a reference to the Receiver, and " justices' clerk " includes any officer employed by the committee of magistrates.

## **28 Prerogative proceedings and acts done in quarter sessions**

- (1) Section 27 of this Act shall not apply to proceedings for an order of prohibition, mandamus or certiorari, or to proceedings arising out of anything done or omitted by any person in his capacity as or as a member of a court of quarter sessions.
- (2) The Lord Chancellor may, if he thinks fit, defray out of moneys provided by Parliament—
  - (a) any costs awarded against a justice, justices' clerk or clerk of the peace in proceedings for an order of prohibition, mandamus or certiorari, or any part of such costs;
  - (b) any such costs, damages or other sums as could be the subject of indemnity under section 27 of this Act if that section applied to proceedings in respect of things done or omitted in quarter sessions and the persons qualified for indemnity thereunder included (as well as a recorder) any deputy or assistant recorder and any clerk of the peace.

- (3) In this section " justices' clerk " has the same meaning as in section 27 of this Act and " clerk of the peace " includes a deputy clerk of the peace and a member of the staff of a clerk of the peace.

*Miscellaneous*

**29 Administrative provisions relating to quarter sessions and their staff**

- (1) The existing functions of the standing joint committee of the court of quarter sessions and the council of any county, except functions exercisable by the committee as police authority, shall cease to be exercisable by the committee and shall be exercisable in accordance with the following provisions of this section.
- (2) Subject to the following provisions of this section, the county council shall provide such courthouses and other accommodation, whether in the county or elsewhere, and such furniture, books and other things, as the council may determine to be proper for the due transaction of the business, and convenient keeping of the records and documents, of the court of quarter sessions for the county or any committee of quarter sessions; and the functions of the county council under this subsection shall include the functions of managing, controlling and maintaining any such accommodation which by virtue of section 30(3) of the Local Government Act 1888 were exercisable immediately before the commencement of this Act by the standing joint committee.
- (3) The county council shall consult with the court of quarter sessions before making any determination under subsection (2) of this section and, without prejudice to the foregoing provision, shall consider and determine any matter which they have been requested by the court to consider and determine.
- (4) If a court of quarter sessions are aggrieved by any determination of a county council under this section they may appeal to the Secretary of State.
- (5) Any functions to which subsection (1) of this section applies, other than functions relating to the matters mentioned in subsection (2) of this section, shall be exercisable by the court of quarter sessions for the county.
- (6) The court of quarter sessions for a county where the offices of clerk of the county council and clerk of the peace are held by different persons shall appoint such officers (in addition to a deputy clerk of the peace) or provide such other assistance as they may, after consultation with the county council, determine to be necessary for the purpose of assisting the clerk of the peace in carrying out his duties as such, and—
- (a) the salary and other terms and conditions of service of any officer appointed under this subsection and the terms on which other assistance is provided thereunder shall be such as may from time to time be determined by the court after consultation with the county council; and
- (b) section 60 of the Local Government Act 1958 (transfer and compensation of officers) shall apply to officers affected by the fact of the clerk of the county council's becoming or, as the case may be, ceasing to be clerk of the peace for the county as it applies to officers affected by an order under Part II of that Act, subject, however, to the following modifications—
- (i) a reference to the aforesaid fact shall be substituted for the reference in subsection (2) of that section to the provisions of any such order; and

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- (ii) the provisions mentioned in subsection (1) of that section shall, instead of being contained in any such order, be contained in regulations made by such Minister as may be determined by the Treasury to be appropriate in relation to the officers affected and those regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Section 8(8) and (9) of this Act shall apply to the following officers of a court of quarter sessions as they apply to officers of the court of quarter sessions for a London commission area, that is to say—
  - (a) a clerk of the peace who is not also clerk of the county council;
  - (b) a deputy clerk of the peace who does not fall within paragraph C of Part II of Schedule 2 to the Local Government Superannuation Act 1937 ;
  - (c) an officer appointed under subsection (6) of this section.
- (8) The provisions of subsections (6) and (7) of this section, except such of those provisions as are adopted by a resolution of the county council, shall not apply to any county for which provision for purposes corresponding to any of the purposes of those subsections is made by any local Act passed before, or in the same session as, this Act.
- (9) The following expenditure of a court of quarter sessions, that is to say.—
  - (a) any expenditure incurred by them in exercising their functions under subsection (5) of this section ; and
  - (b) the sums payable by way of salary or expenses to officers appointed under subsection (6) of this section, together with any employer's contributions payable in respect of them under the National Insurance Acts 1946 to 1963, and any expenditure on any other assistance provided for the clerk of the peace under that subsection ;shall be defrayed by the county council.
- (10) If a county council are aggrieved—
  - (a) by the incurring of any expenditure by a court of quarter sessions in the exercise of their functions under subsection (5) of this section; or
  - (b) by any determination of a court of quarter sessions under subsection (6) of this section ;the council may appeal to the Secretary of State.
- (11) Any functions of a court of quarter sessions with respect to the appointment of, and other matters relating to, the clerk of the peace, deputy clerk of the peace and other officers of the court shall, except so far as the court otherwise resolves, be exercised by a committee consisting of the chairman of the court and such other justices as may be appointed by the court, and any other administrative functions of a court of quarter sessions may, if the court so resolves, be exercised by a committee so constituted; and section 96 of the Local Government Act 1933 (proceedings of committees) shall apply to any such committee with the substitution of references to the court of quarter sessions for references to a local authority.
- (12) The foregoing provisions of this section, except subsections (6) to (8), shall apply to a London commission area as they apply to a county with the substitution of references to the Greater London Council for references to a county council.
- (13) The Secretary of State may by order make such amendments of or repeals in any local Act, including an Act confirming a provisional order, or any instrument in the

nature of a local enactment made under any Act, as appear to him to be appropriate in consequence of the foregoing provisions of this section or of a resolution under subsection (8) of this section; and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **30 Promissory oaths of justices of the peace**

- (1) Subject to the provisions of this section, any person who under this Act or any other enactment is a justice of the peace for any area by virtue of any other office held by him shall, before acting as such a justice, take the oath of allegiance and judicial oath in accordance with the Promissory Oaths Acts.
- (2) A person shall not be required by virtue of this section to take the said oaths as a justice of the peace by reason only of his being appointed under this Act or any other enactment to act temporarily as deputy for, or as if he were, the holder of any office to which subsection (1) of this section applies; but those oaths may be taken by and administered to any such person notwithstanding anything in the Promissory Oaths Acts or any other enactment.
- (3) A person shall not be required by virtue of this section to take the said oaths as a justice of the peace for any area if, at the time of his appointment or election to the office in question, he is already a justice of the peace for that area and has taken those oaths as such.
- (4) A person who is a justice of the peace for any of the London commission areas (including a person who is such a justice by virtue of any other office held by him) shall not be required to take the said oaths as such if, being a justice of the peace for any other of those areas, he takes or has taken those oaths as such.
- (5) In this section " the Promissory Oaths Acts " means the Promissory Oaths Act 1868 and the Promissory Oaths Act 1871.

### **31 Allowances of justices and members of committees**

- (1) Section 8 of the Justices of the Peace Act 1949 (travelling and lodging allowances of justices of the peace) and section 36 of that Act (travelling and lodging allowances of members of probation and case committees) shall be amended as follows:—
  - (a) for the words "lodging allowance", wherever those words occur, there shall be substituted the words " subsistence allowance ";
  - (b) for the words " on accommodation for the night" in subsection (1) of each of those sections, there shall be substituted the words " on subsistence ".
- (2) This section extends to Scotland.

### **32 Compensation under Justices of the Peace Act 1949, s. 42**

Regulations under section 42 of the Justices of the Peace Act 1949 (compensation for loss of office) may, so far as they provide for compensation in consequence of anything done under Part II or Part III of that Act, apply to persons who are or were at any time qualified under paragraphs (a) to (c) of subsection (2) of that section, notwithstanding that they were not so qualified at the date of the passing of that Act.

**33 Chairmanship of bench of magistrates**

A person who, under the Local Government Act 1933, is a justice of the peace for any area by virtue of his office as mayor of a borough or chairman of the council of a county or county district or of the Greater London Council shall not, by reason only of his being a justice of the peace by virtue of that office, be qualified to be chosen under section 13(2) of the Justices of the Peace Act 1949 as chairman or deputy chairman of the justices for that area (or any petty sessional division of that area) or to vote under that subsection at the election of any such chairman or deputy chairman.

**34 Assessors in Lancashire Crown Courts in juvenile cases**

Section 19 of the Children and Young Persons Act 1963 (assessors for recorders in appeals and committals from juvenile courts) shall apply to the Crown Court at Liverpool and the Crown Court at Manchester as it applies to the court of quarter sessions for Liverpool or Manchester, as the case may be, but as if any reference therein to the recorder included a reference to any judge of the Court.