



Justices of the Peace Act 1979 (repealed 19.6.1997)

1979 CHAPTER 55

PART II

ORGANISATION OF FUNCTIONS OF JUSTICES

Justices' clerks and their staffs

[^{F1}25] **Appointment and removal of justices' clerks.**

- (1) Justices' clerks shall be appointed by the magistrates' courts committee; and a magistrates' courts committee may appoint more than one justices' clerk for any petty sessions area.
- (2) A person may not be appointed as justices' clerk unless—
 - (a) the magistrates' courts committee have submitted to the Lord Chancellor, in accordance with regulations, an application for approval of one or more persons offering themselves for the appointment,
 - (b) the Lord Chancellor has approved one or more of those persons, and
 - (c) the person appointed is a person so approved.
- (3) For the purposes of subsection (2) above, appointment as justices' clerk does not include, in relation to a person employed as such under a contract for a fixed term, re-appointment on the expiry of that term.
- (4) Where the Lord Chancellor declines to approve any person who is named in an application under subsection (2)(a) above, he shall inform the magistrates' courts committee of the reasons for his decision.
- (5) The approval of the Lord Chancellor shall be required—
 - (a) for any decision to increase the number of justices' clerks in a petty sessions area or to have more than one justices' clerk in a new petty sessions area, or

Status: Point in time view as at 01/04/1995.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1979 (repealed 19.6.1997), Cross Heading: Justices’ clerks and their staffs. (See end of Document for details)

- (b) for the removal of the justices’ clerk for a petty sessions area where the magistrates for the area do not consent to the removal.
- (6) A magistrates’ courts committee shall consult the magistrates for any petty sessions area—
 - (a) on the appointment of a justices’ clerk for the area, except in the case of a re-appointment on the expiry of a fixed term, or
 - (b) on the removal of a justices’ clerk for the area.
- (7) Before—
 - (a) approving any persons under subsection (2) above, or
 - (b) approving the removal of a justices’ clerk,
 the Lord Chancellor shall consider any representations made to him by the magistrates for the petty sessions area concerned; and before approving the removal of a justices’ clerk the Lord Chancellor shall also consider any representations made to him by the clerk.
- (8) For the purposes of subsections (5) to (7) above, removal as justices’ clerk shall be taken to include, in relation to a person employed as such under a contract for a fixed term, the expiry of that term without renewal in any case where the clerk has not consented to the failure to renew.
- (9) In this section “regulations” means regulations made by the Lord Chancellor by statutory instrument.]

<p>Textual Amendments</p> <p>F1 S. 25 substituted (1.4.1995) by 1994 c. 29, s.76; S.I. 1995/685, art.4(d)</p> <hr/> <p>Modifications etc. (not altering text)</p> <p>C2 S. 25 modified (1.4.1995) by 1994 c. 29, s. 80(3); S.I. 1995/685, art.4(f)</p>
--

26 Qualifications for appointment as justices’ clerk.

- (1) Except as provided by this section, no person shall be appointed as justices’ clerk ^{F2}. . . unless either—
 - (a) at the time of appointment he [^{F3}has a 5 year magistrates’ court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990,]. . ., or
 - (b) he then is or has previously been a justices’ clerk.

^{F4}(2)

[^{F5}(3) A person not having the qualification which is required by subsection (1)(a) above may be appointed as justices’ clerk if at the time of the appointment he is a barrister or solicitor and has served for not less than five years as assistant to a justices’ clerk.]

^{F4}(4)

^{F4}(5)

Status: Point in time view as at 01/04/1995.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1979 (repealed 19.6.1997), Cross Heading: Justices' clerks and their staffs. (See end of Document for details)

Textual Amendments

- F2** Words in s. 26(1) repealed (1.4.1995) by 1994 c. 29, ss. 91, 93, Sch. 8 Pt. I para. 10(2), **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 7(1)(b)**,8(f)
- F3** Words substituted by Courts and Legal Services Act 1990 (c.41, SIF 37), s. 71(2), **Sch. 10 para. 45**
- F4** S. 26(2)(4)(5) repealed (1.4.1995) by 1994 c. 29, ss. 91, 93, Sch. 8 Pt. I para. 10(4), **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 7(1)(b)**,8(f)
- F5** S. 26(3) substituted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. I para. 10(3)**; S.I. 1995/685, **art.7(1)(b)**

[^{F6}26A Justices' chief executives and justices' clerks to be employed under contracts of service.

- (1) Except as provided by this Act, a justices' chief executive or justices' clerk—
 - (a) shall be employed by the magistrates' courts committee, on such terms as they may determine, and
 - (b) shall hold and vacate office in accordance with the terms of his contract of service.
- (2) Subsection (1) above shall not have effect in relation to any person appointed by a magistrates' courts committee before the commencement of this section as justices' clerk for a petty sessions area so long as he—
 - (a) continues to hold office as a justices' clerk for that area or for any one or more petty sessions areas including any part of that area, and
 - (b) has not entered into a contract of service after the commencement of this section.
- (3) Any justices' clerk in relation to whom, by virtue of subsection (2) above, subsection (1) above does not have effect shall hold office during the pleasure of the magistrates' courts committee concerned.]

Textual Amendments

- F6** S. 26A inserted (1.4.1995) by 1994 c. 29, s.77; S.I. 1995/685, **art.4(e)**

27 Conditions of service and staff of justices' clerks.

- ^{F7}(1)
- ^{F7}(2)
- ^{F7}(3)
- ^{F7}(4)
- ^{F7}(5)

[^{F8}(6) A magistrates' courts committee may employ staff on such terms as they think fit.]

- ^{F7}(7)

(8) The power conferred by [^{F9}section 144 of the Magistrates' Courts Act 1980] to make rules for regulating and prescribing the procedure and practice to be followed by justices' clerks shall, without prejudice to the generality of subsection (1) of that

Status: Point in time view as at 01/04/1995.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1979 (repealed 19.6.1997), Cross Heading: Justices' clerks and their staffs. (See end of Document for details)

section, include power to provide that, subject to any exceptions prescribed by the rules, persons shall not be employed to assist a justices' clerk in any capacity so prescribed, or shall not be permitted to do on behalf of a justices' clerk any such acts as may be so prescribed, unless those persons are qualified (any age limits apart) to be appointed justices' clerk or have such other qualifications as may for any purpose be allowed by the rules [^{F10}or approved by the Lord Chancellor in accordance with the rules].

^{F7}(9)

Textual Amendments

F7 S. 27(1)-(5)(7)(9) repealed (1.4.1995) by 1994 c. 29, ss. 91, 93, Sch. 8 Pt. I para. 11(2), **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 7(1)(c),8(g)**

F8 S. 27(6) substituted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. I para. 11(3)**; S.I. 1995/685, **art.7(l)(c)**

F9 Words substituted by **Magistrates' Courts Act 1980 (c.43, SIF 82)**, s. 154(1), **Sch. 7 para. 193**

F10 Words in s. 27(8) inserted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. I para. 11(4)**; S.I. 1994/685, **art.7(l)(c)**

28 General powers and duties of justices' clerks.

(1) Rules made in accordance with [^{F11}section 144 of the Magistrates' Courts Act 1980] may (except in so far as any enactment passed after the 25th October 1968 otherwise directs) make provision enabling things authorised to be done by, to or before a single justice of the peace to be done instead by, to or before a justices' clerk.

[^{F12}(1A) Such rules may also make provision enabling things authorised to be done by, to or before a justices' clerk (whether by virtue of subsection (1) above or otherwise) to be done instead by, to or before—

(a) a person appointed by a magistrates' courts committee to assist him;

^{F13}(b)

^{F13}(c)]

(2) Any enactment (including any enactment contained in this Act) or any rule of law regulating the exercise of any jurisdiction or powers of justices of the peace, or relating to things done in the exercise or purported exercise of any such jurisdiction or powers, shall apply in relation to the exercise or purported exercise thereof by virtue of subsection (1) above by the clerk to any justices as if he were one of those justices.

(3) It is hereby declared that the functions of a justices' clerk include the giving to the justices to whom he is clerk or any of them, at the request of the justices or justice, of advice about law, practice or procedure on questions arising in connection with the discharge of their or his functions, including questions arising when the clerk is not personally attending on the justices or justice, and that the clerk may, at any time when he thinks he should do so, bring to the attention of the justices or justice any point of law, practice or procedure that is or may be involved in any question so arising.

In this subsection the reference to the functions of justices or a justice is a reference to any of their or his functions as justices or a justice of the peace, other than functions as a judge of the Crown Court.

Status: Point in time view as at 01/04/1995.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1979 (repealed 19.6.1997), Cross Heading: Justices' clerks and their staffs. (See end of Document for details)

- (4) The enactment of subsection (3) above shall not be taken as defining or in any respect limiting the powers and duties belonging to a justices' clerk or the matters on which justices may obtain assistance from their clerk.

Textual Amendments

- F11** Words in s. 28(1) substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154(1), **Sch. 7 para. 194**
- F12** S. 28(1A) inserted (1.7.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 117; S.I. 1991/1364, art. 2, **Sch.**
- F13** S. 28(1A)(b)(c) repealed (1.4.1995) by 1994 c. 29, ss. 91, 93, Sch. 8 Pt. I para. 12, **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 7(1)(d), 8(h)**

29 Functions of justices' clerk as collecting officer.

- (1) A justices' clerk shall by virtue of his office be collecting officer of any magistrates' court of which he is the clerk.
- (2) In his capacity as such a collecting officer, a justices' clerk—
- (a) shall discharge all such functions as are conferred by any enactment on a collecting officer appointed by the justices for a petty sessional division under the ^{M1}Affiliation Orders Act 1914; and
- (b) shall act under any order directing the payment of money to him which was made by any court under section 30 of the ^{M2}Criminal Justice Administration Act 1914 (which provided for periodical payments under court orders to be made through an officer of the court or other third party) and which continues to have effect in accordance with the provisions of paragraph 14 of Schedule I to this Act.
- (3) Subsections (1) and (2) above shall have effect without prejudice to the provisions of [^{F14}[^{F15}sections 59 and 59A] of the Magistrates' Courts Act 1980](periodical payments through justices' clerk [^{F16}and proceedings by the clerk, etc.]) or [^{F14}section 62 of that Act](relating to payments required to be made to a child).

Textual Amendments

- F14** Words in s. 29(3) substituted by Magistrates' Courts Act 1980 (c.43, SIF 82), s. 154(1), **Sch. 7 para. 195**
- F15** Words in s. 29(3) substituted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 11(1), **Sch. 2 para. 4(a)**; S.I. 1992/455, **art.2**
- F16** Words in s. 29(3) inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 11(1), **Sch. 2 para. 4(b)**; S.I. 1992/455, **art.2**

Marginal Citations

- M1** 1914 c. 6.
- M2** 1914 c. 58.

Status: Point in time view as at 01/04/1995.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1979 (repealed 19.6.1997), Cross Heading: Justices' clerks and their staffs. (See end of Document for details)

30 Person acting as substitute clerk to justices.

- (1) The provisions of this section shall have effect where, in any petty sessions area^{F17} . . . , a person who is not the justices' clerk or one of the justices' clerks appointed in that petty sessions area by the magistrates' courts committee acts as clerk to the justices for that petty sessions area.
- (2) Subject to any rules made under [^{F18}section 144 of the Magistrates' Courts Act 1980]and to subsection (3) below, the person so acting shall be treated as having acted as deputy to the justices' clerk appointed by the magistrates' courts committee in that petty sessions area, and shall make a return to the justices' clerk so appointed of all matters done before the justices and of all matters that the clerk to the justices is required to register or record.
- (3) In relation to a petty sessions area in which there are two or more justices' clerks appointed by the magistrates' courts committee, any reference in subsection (2) above to the justices' clerk so appointed shall be construed as a reference to such one of them as may be designated for the purpose by the committee.

Textual Amendments

- F17** Words in s. 30(1) repealed (1.4.1995) by 1994 c. 29, ss. 91, 93, Sch. 8 Pt. I para. 13, **Sch. 9 Pt. II**; S.I. 1995/685, **arts. 7(1)(e), 8(i)**
- F18** Words substituted by **Magistrates' Courts Act 1980 (c.43, SIF 82)**, s. 154(1), **Sch. 7 para. 196**

[^{F19}30A Independence of justices' clerk and staff in relation to legal functions.

- (1) When exercising the functions specified in subsection (2) below or giving advice to justices of the peace in an individual case—
 - (a) a justices' clerk shall not be subject to the direction of the magistrates' courts committee, the justices' chief executive or any other person, and
 - (b) any member of the staff of a magistrates' courts committee shall not be subject to the direction of that committee or of the justices' chief executive (when acting as such).
- (2) The functions referred to in subsection (1) above are functions conferred by rules made in accordance with section 144 of the ^{M3}Magistrates' Courts Act 1980 by virtue of section 28(1) or (1A) of this Act.]

Textual Amendments

- F19** S. 30A inserted (1.11.1994) by 1994 c. 29, s.78; S.I. 1994/2594, **art.3**

Marginal Citations

- M3** 1980 c. 43.

Status:

Point in time view as at 01/04/1995.

Changes to legislation:

There are currently no known outstanding effects for the Justices of the Peace Act 1979 (repealed 19.6.1997), Cross Heading: Justices' clerks and their staffs.