



Justices of the Peace Act 1997

1997 CHAPTER 25

PART IV

JUSTICES' CHIEF EXECUTIVES, JUSTICES' CLERKS AND STAFF

40 Appointment of justices' chief executive

- (1) Every magistrates' courts committee shall appoint a justices' chief executive.
- (2) A person may not be appointed as justices' chief executive 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 appointment;
 - (b) the Lord Chancellor has approved one or more of those persons; and
 - (c) the person appointed is a person so approved.
- (3) Where a person employed as a justices' chief executive under a contract for a fixed term is re-appointed on the expiry of that term, subsection (2) above does not apply in relation to the re-appointment.
- (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) A person may not be appointed as justices' chief executive unless he is eligible under section 43 below for appointment as justices' clerk.
- (6) A person may not be appointed both as justices' chief executive and as justices' clerk for a petty sessions area unless the Lord Chancellor has agreed that he may hold both appointments.
- (7) Where, in accordance with subsection (6) above, a person holds an appointment as justices' chief executive with an appointment as justices' clerk for a petty sessions area, he shall not exercise any functions as justices' clerk for the petty sessions area unless authorised to do so (either generally or in any particular case) by the magistrates' courts committee for the area which includes that petty sessions area.

Status: This is the original version (as it was originally enacted).

- (8) In this section “regulations” means regulations made by the Lord Chancellor by statutory instrument; and a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

41 Functions of justices' chief executive

- (1) The justices' chief executive in relation to any magistrates' courts committee shall—
- (a) act as clerk to the committee; and
 - (b) subject to and in accordance with any directions given by the committee, carry on the day to day administration of the magistrates' courts for the area to which the committee relates.
- (2) A justices' chief executive may arrange for his functions under subsection (1)(a) above to be exercised by any member of the staff of the magistrates' courts committee.
- (3) It shall be the duty of the justices' chief executive to make arrangements for discussions relating to law, practice and procedure among the justices' clerks for petty sessions areas within the area of the committee.

42 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) Where a person employed as a justices' clerk under a contract for a fixed term is re-appointed on the expiry of that term, subsection (2) above does not apply in relation to the re-appointment.
- (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 for a petty sessions area or to have more than one justices' clerk for a new petty sessions area; or
 - (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 person 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) Where a person is employed as a justices' clerk under a contract for a fixed term, the expiry of that term without renewal shall be treated for the purposes of subsections (5) to (7) above as his removal as justices' clerk, unless he has consented to the failure to renew.
- (9) In this section “regulations” means regulations made by the Lord Chancellor by statutory instrument; and a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

43 Qualifications for appointment as justices' clerk

No person shall be appointed as justices' clerk unless either—

- (a) at the time of appointment—
 - (i) he has a 5 year magistrates' courts qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990); or
 - (ii) he is a barrister or solicitor and has served for not less than five years as assistant to a justices' clerk; or
- (b) he then is or has previously been a justices' clerk.

44 Terms of employment of justices' chief executives, justices' clerks and staff

- (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) A magistrates' courts committee may employ staff on such terms as they think fit.
- (3) Without prejudice to the generality of subsection (1) of section 144 of the Magistrates' Courts Act 1980, the power conferred by that section to make rules for regulating and prescribing the procedure and practice to be followed by justices' clerks includes power to provide that, subject to any exceptions prescribed by the rules, persons—
- (a) shall not be employed to assist a justices' clerk in any capacity so prescribed; or
 - (b) 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 to be appointed justices' clerk or have such other qualifications as may for any purpose be allowed by the rules or approved by the Lord Chancellor in accordance with the rules.

45 General powers and duties of justices' clerks

- (1) Rules made in accordance with section 144 of the Magistrates' Courts Act 1980 may (except to the extent that any enactment passed after this Act 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.
- (2) 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 person appointed by a magistrates' courts committee to assist him.
- (3) Any enactment (including any enactment contained in this Act) or any rule of law which—
 - (a) regulates the exercise of any jurisdiction or powers of justices of the peace; or
 - (b) relates 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 of any such jurisdiction or powers by the clerk to any justices by virtue of subsection (1) above as if he were one of those justices.
- (4) The functions of a justices' clerk include giving advice to the justices to whom he is clerk, at their request, about law, practice or procedure on questions arising in connection with the discharge of their functions, including questions arising when the clerk is not personally attending on them.
- (5) The powers of a justices' clerk include, at any time when he thinks he should do so, bringing to the attention of those justices any point of law, practice or procedure that is or may be involved in any question so arising.
- (6) For the purposes of subsections (4) and (5) above the functions of justices of the peace do not include functions as a judge of the Crown Court.
- (7) Subsections (4) and (5) above—
 - (a) apply in relation to any of the justices to whom the justices' clerk is clerk as they apply in relation to all of them; and
 - (b) do not define or in any respect limit—
 - (i) the powers and duties of a justices' clerk; or
 - (ii) the matters on which justices may obtain assistance from their clerk.

46 Functions of justices' clerk as collecting officer

Without prejudice to the provisions of sections 59 and 59A of the Magistrates' Courts Act 1980 (periodical payments through justices' clerk and proceedings by the clerk etc.) or section 62 of that Act (payments required to be made to a child), a justices' clerk—

- (a) shall, by virtue of his office, be collecting officer of any magistrates' court of which he is the clerk; and
- (b) in that capacity shall act under any order directing the payment of money to him which was made by any court under section 30 of the 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 18 of Schedule 4 to this Act.

47 Person acting as substitute clerk to justices

- (1) Subject to any rules made under section 144 of the Magistrates' Courts Act 1980, where a person who is not the justices' clerk (or one of the justices' clerks) for a petty sessions area acts as clerk to the justices for that petty sessions area—
 - (a) he shall be treated as acting as deputy to the justices' clerk; and
 - (b) he shall make a return to the justices' clerk of—
 - (i) all matters done before the justices; and
 - (ii) all matters that the clerk to the justices is required to register or record.
- (2) Where there are two or more justices' clerks for the petty sessions area, any reference in subsection (1) above to the justices' clerk is a reference to such one of them as may be designated for the purpose by the magistrates' courts committee.

48 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 Magistrates' Courts Act 1980 by virtue of section 45(1) or (2) above.

49 Appointment of justices' clerks for youth courts and family proceedings courts

- (1) The inner London magistrates' courts committee shall appoint one or more justices' clerks for the youth courts and family proceedings courts for the metropolitan area.
- (2) Subsections (2) to (4), (5)(b), (6) and (7) of section 42 above apply to any justices' clerk appointed under subsection (1) above as they apply to a justices' clerk for a petty sessions area, but with the substitution for any reference to the magistrates for a petty sessions area of a reference to the justices of the peace who are members of the youth court panel for the metropolitan area or (as the case may be) of a family panel for that area, other than any such justice whose name is for the time being entered on the supplemental list.

- (3) In this section—

“the inner London magistrates' courts committee” means the magistrates' courts committee for an area consisting of or including the whole of the inner London area or, if there is no such committee, all the magistrates courts committees for areas which consist of or include any part of the inner London area acting jointly; and

“the metropolitan area” means the inner London area and the City of London.

Status: This is the original version (as it was originally enacted).

50 Pensions etc. of justices' chief executive, justices' clerks and staff in inner London area

- (1) Schedule 3 to this Act (which re-enacts certain provisions relating to the functions of the Receiver for the Metropolitan Police District with respect to pensions etc. of court staff) shall have effect.
- (2) The Lord Chancellor may by order make provision with respect to pensions, allowances or gratuities payable to or in respect of inner London court staff, or any class of inner London court staff.
- (3) An order under subsection (2) above may—
 - (a) itself make provision with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the order, are to be or may be paid to or in respect of inner London court staff, or any class of inner London court staff; or
 - (b) provide that the civil service provisions are to have effect, with such modifications as may be prescribed by the order, in relation to the payment by such persons as may be so prescribed, out of such funds as may be so prescribed, of pensions, allowances and gratuities to or in respect of inner London court staff, or any class of inner London court staff.
- (4) Without prejudice to the generality of subsections (2) and (3) above, an order under subsection (2)—
 - (a) may include all or any of the provisions referred to in paragraphs 1 to 11 of Schedule 3 to the Superannuation Act 1972; and
 - (b) may make different provision as respects different classes of persons and different circumstances.
- (5) Paragraphs 1 to 11 of Schedule 3 to the Superannuation Act 1972 shall have effect, in their application for the purposes of this section, as if references to regulations were references to an order under this section and references to the Secretary of State were references to the Lord Chancellor.
- (6) Subsections (3) and (4) of section 7 of the Superannuation Act 1972 (which relate to increases under the Pensions (Increase) Act 1971) shall have effect in relation to an order under subsection (2) above as they have effect in relation to regulations under that section.
- (7) The Lord Chancellor may by order repeal or amend any of the relevant enactments, whether or not he makes provision under subsection (2) above.
- (8) An order under subsection (2) or (7) above may make such consequential, transitional, incidental or supplemental provision (including provision amending or repealing any provision of this Act or any other enactment) as the Lord Chancellor thinks necessary or expedient.
- (9) Before making an order under subsection (2) or (7) above the Lord Chancellor shall consult—
 - (a) the inner London magistrates' courts committee;
 - (b) such local authorities as appear to him to be concerned;
 - (c) the Receiver for the Metropolitan Police District; and
 - (d) such representatives of other persons likely to be affected by the proposed order as appear to him to be appropriate.

(10) An order under subsection (2) or (7) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(11) In this section—

“the civil service provisions” has the meaning given by section 15(1) of the Superannuation (Miscellaneous Provisions) Act 1967;

“inner London court staff” means the justices' chief executive employed by the inner London magistrates' courts committee, any justices' clerk for the inner London area and staff of the inner London magistrates' courts committee;

“the inner London magistrates' courts committee” means the magistrates' courts committee for an area consisting of or including the inner London area or, if there is no such committee, every magistrates' courts committee for any area which consists of or includes any part of the inner London area; and

“the relevant enactments” means—

- (a) Schedule 3 to this Act; and
- (b) section 15 of the Superannuation (Miscellaneous Provisions) Act 1967 (superannuation of metropolitan civil staffs) so far as it relates to the persons mentioned in subsection (1)(a)(ii) of that section.