

ACCESS TO JUSTICE ACT 1999

EXPLANATORY NOTES

D.

MAGISTRATES AND MAGISTRATES' COURTS (PART V - SECTIONS 74-97)

Commentary

Justices

275. **Section 78/Schedule 11: Unification and renaming of stipendiary bench.** This section establishes a unified bench of professional judges to sit in magistrates' courts. It also creates a new judicial title for stipendiary magistrates, who will in future be called District Judge (Magistrates' Courts). It gives effect to Schedule 11 which makes consequential changes to other Acts, including providing for District Judges (Magistrates' Courts) to sit alone in a youth court.
276. The purpose of section 78 is to create a unified national bench which can be deployed anywhere in the country to deal with fluctuations in workload or particularly complex cases. The new title is intended to recognise more fully the status of stipendiary magistrates as members of the professional judiciary.
277. **Section 78** replaces sections 11-20 of the JPA 1997, which contain separate provisions for metropolitan and provincial stipendiary magistrates. The main differences from the existing provisions are as follows.
- A District Judge (Magistrates' Courts) has jurisdiction for every commission area (new section 10C(1)).
 - A Senior District Judge (Chief Magistrate) will be appointed as a national head of all District Judges (Magistrates' Courts) (section 10A(2)). Currently, there is a Chief Metropolitan Stipendiary Magistrate, but no equivalent head of the provincial stipendiary bench.
 - The Lord Chancellor will be able to remove a District Judge (Magistrates' Courts) from office on the grounds of "incapacity or misbehaviour" (section 10A(3)). Currently, the Lord Chancellor can remove a metropolitan stipendiary from office on the grounds of "inability or misbehaviour". Provincial stipendiary magistrates can only be removed from office on the Lord Chancellor's recommendation, but no criteria are specified in statute (section 11(3)(b) of the JPA 1997). The test and procedure for removal have been unified to remove this inconsistency. The word "incapacity" has replaced "inability" to bring the language into line with that which applies to circuit judges.
 - The Lord Chancellor may appoint Deputy District Judges (Magistrates' Courts) (new section 10B(1)). Unlike the appointment of acting stipendiary magistrates under the current provisions, these appointments are not limited to 3 months

*These notes refer to the Access to Justice Act 1999
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duration, or permitted solely for the purpose of avoiding delays in the administration of justice.

- Section 10A(1): a *7 year general qualification* is defined in the Courts and Legal Services Act 1990 as “a right of audience in any class of proceedings in the county courts or magistrates’ courts”.

Section 10D(2): The Stipendiary Magistrates Act 1858 allowed a single stipendiary to exercise the jurisdiction of two lay justices. Any express provision to the contrary made after the date that Act came into force survives by virtue of this subsection.

278. **Section 79: Justices not to sit on committals for sentence.** This section enables a case committed to the Crown Court for sentence to be heard by a High Court Judge, Circuit Judge or Recorder sitting alone.
279. **Section 80: Jurisdiction over offences outside area.** This section enables either the prosecution or the defence to apply to have a summary case transferred to a magistrates’ court in another commission area. It gives the Lord Chancellor powers to make regulations setting out the criteria which should be considered by a court in determining an application and specifying circumstances in which a court must grant or refuse an application.
280. At present, apart from a few exceptions (e.g. where several defendants are to be tried together), all summary offences must be tried by a magistrates’ court in the commission area where the alleged offence was committed. Section 80 allows for a case to be transferred to a more convenient or appropriate magistrates’ court that is outside the commission area. Reasons for such a transfer might include the security or convenience of witnesses, the circumstances of the defendant or the facilities of the court-house.
281. **Part V of Schedule 14** makes transitional provisions about justices. Paragraphs 22-23 provide for existing stipendiary magistrates to become District Judges (Magistrates’ Courts) automatically and for acting stipendiary magistrates to become Deputy District Judges (Magistrates’ Courts) for the remainder of the period for which they are authorised to act. Paragraphs 24-25 preserve their pension rights. Paragraph 27 provides that section 79 (Justices not to sit on committals for sentence) does not apply to any proceedings that have already begun when that section comes into force.