

# ACCESS TO JUSTICE ACT 1999

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## EXPLANATORY NOTES

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

#### *Commentary*

#### *Magistrates' courts committees (MCCs)*

282. **Section 81: Areas outside Greater London.** This section removes the definition of MCC areas in terms of local government boundaries (and re-enacts the existing procedure for changing MCC areas outside Greater London as sections 27A & 27B of the JPA 1997). MCCs are currently based on local government areas, except where there have been changes in the interests of efficient administration under section 32 of the JPA 1997 (in which case they are based on the area defined in the order under that Act). In future, MCC areas will be as specified by the Lord Chancellor by order.
283. **Section 82: Constitution of committees outside Greater London.** This section replaces the existing provisions of the JPA 1997 about the constitution of MCCs. The new provisions differ in the following respects. They do not apply to Greater London (or re-enact the automatic right to reserved seats on the Inner London MCC for the Chief Stipendiary Magistrate and two other stipendiary magistrates). They do not re-enact the current limits (of 2) on the number of additional members who may be co-opted by an MCC or appointed by the Lord Chancellor. They provide power to remunerate co-opted or appointed members. They allow regulations to make different provisions for MCCs in different parts of the country.
284. The main purpose of these changes is to increase the ability of MCCs to determine their own membership and to assist in attracting and retaining co-opted and appointed members.
285. **Section 83: Greater London Magistrates' Courts Authority.** This section, which inserts seven new sections in the JPA 1997, creates a single body to administer all the Greater London magistrates' courts, replacing the existing 22 magistrates' courts committees. This new body will be known as the Greater London Magistrates' Courts Authority (GLMCA).
286. **Section 83(1)** establishes the GLMCA as the magistrates' courts committee for Greater London. It provides that, as with other MCCs, the Lord Chancellor will be able to make regulations about the GLMCA's membership, constitution and procedure. Unlike other MCCs, the GLMCA's membership is not defined in terms of local magistrates plus any co-opted or appointed members.
287. The GLMCA will have a significantly larger caseload (and consequently more staff and a larger budget) and be responsible for a wider range of functions (including accounting, pay-roll, pensions and property management). Its membership will therefore need a

different mix of skills, experience and representation. The regulations may also provide for any member of the GLMCA to be remunerated.

288. **Section 83(2)** provides for the GLMCA's different functions and financial arrangements. It will take on much of the "paying authority" role, i.e. it will be responsible for providing the accommodation and other resources needed by the magistrates' courts in Greater London, will receive grants directly from the Lord Chancellor's Department plus funding from the local authorities.
289. **Section 83(3)** gives effect to **Schedule 12 (Greater London Magistrates' Courts Authority)** which makes amendments to other Acts consequential on the creation of the GLMCA. Paragraph 5 of this Schedule enables the GLMCA (unlike other MCCs) to borrow money, by defining it as a local authority under Part IV of the Local Government and Housing Act 1989. Paragraph 11 allows regulations about the appointment of justices' chief executives (under section 40(8) of the JPA 1997) to be different for the GLMCA and other MCCs.
290. **Section 84: Standard goods and services.** This section allows the Lord Chancellor, if he considers that it would be in the interests of the efficiency and effectiveness of the magistrates' courts generally, to make regulations to require all (or specified) MCCs to obtain specified goods or services, or goods or services of a specified description. Section 84 does not apply to petty sessions court-houses and other accommodation, as these are not goods or services.
291. The intention is to underpin the national framework (see paragraph 242 above) which requires magistrates' courts to work to national standards and co-operate with other criminal justice agencies. This may be promoted by ensuring that MCCs adopt the same systems and services. Also, better value for money may be achieved by procuring goods and services from the same source. Local management will remain responsible for deploying goods and services to best effect and managing the providers of those goods and services.
292. Subsections (3) and (4) of section 84 make consequential amendments. Subsection (3) makes clear that regulations under the new power may relieve the paying authority (usually the local authority) of the obligation to provide goods and services affected by regulations under this section. Subsection (4) makes clear that such regulations may supersede the power of the MCC to determine what goods and services the paying authority should provide.
293. **Section 85: Power to direct implementation of inspectors' recommendations.** This section adds a new section 62(4A) to the JPA 1997. This gives the Lord Chancellor power to direct an MCC to implement a recommendation made by Her Majesty's Magistrates' Courts Inspectorate
294. MCCs are subject to inspection by the Magistrates' Courts Service Inspectorate. The Inspectorate's reports include recommendations for improvement. Most MCCs take steps to implement them. Section 85 gives the Lord Chancellor a means of dealing with failure to respond adequately to Inspectorate recommendations. It is not intended that it should be used as a matter of routine. It will be used, for example, to require the implementation of important recommendations where an MCC has had the opportunity to take action but has failed to do so.
295. A failure to comply with a direction would, in certain circumstances, permit the Lord Chancellor to exercise the default powers contained in section 38 of the JPA 1997 which may lead to the removal of one or more members of the MCC.
296. **Section 86: Code of conduct.** This section inserts two new sections in the JPA 1997. New section 39A empowers the Lord Chancellor, subject to appropriate consultation and Parliamentary approval, to promulgate a code of practice for members of magistrates' courts committees and the panels that select them. New section 39B empowers the Lord Chancellor to suspend or dismiss members of committees or panels

*These notes refer to the Access to Justice Act 1999  
(c.22) which received Royal Assent on 27th July 1999*

who fail to comply with the code, and to provide that a dismissed person may not be re-appointed for a specified period or ever.

297. **Part V of Schedule 14** makes transitional provisions about MCCs.

- Paragraph 29 requires the first order specifying MCC areas to list all such areas in England and Wales (see also paragraph 274 above).
- Paragraphs 30-31 provide for the constitution of the MCCs in Greater London in the period before the establishment of the GLMCA. Paragraphs 30(2)(c) & 31 preserve, for that period, the reserved places for stipendiary magistrates (or District Judges (Magistrates' Courts)) on the Inner London MCC, but not the automatic right of the Chief Stipendiary Magistrate to chair that MCC.
- Paragraph 32 gives the Lord Chancellor power, by order, to make transitional arrangements for establishing the GLMCA, including arrangements to enable the GLMCA to incur expenditure and exercise functions before it takes on its full role as the MCC for London.
- Paragraph 33 allows the Lord Chancellor to provide for the transfer of property, rights and liabilities to the GLMCA. The transfer of court property from the local authorities is intended to enable the GLMCA to manage property strategically across the whole of London. Sub-paragraph (7) preserves the employment rights of staff affected by the transfer of rights and liabilities.