

## 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*

##### *Territorial organisation*

265. **Section 74: Commission areas.** This section enables the boundaries of *all* commission areas to be changed by secondary legislation. It empowers the Lord Chancellor of his own volition, or following a proposal from a relevant magistrates' courts committee, to combine commission areas or parts of commission areas or otherwise adjust commission area boundaries, after consulting the parties concerned. It also establishes the procedural framework for changing commission areas by secondary legislation. The new power replaces Her Majesty's power under section 2(3) of the Justices of the Peace Act 1997 ("JPA 1997") to alter, by an Order in Council, the boundaries of commission areas in Greater London (apart from the City of London).
266. **Section 74** is concerned exclusively with changes to commission areas instigated for magistrates' courts purposes, not as a consequence of local government re-organisation. Changes to commission areas to reflect local government boundary changes will continue to be made under sections 19 and 26 of the Local Government Act 1992 or sections 55 and 63 of the Local Government (Wales) Act 1994 as necessary.
267. **Section 75: Petty sessions areas.** This section redefines petty sessions areas in terms of commission areas, and removes the unnecessary distinction between petty sessions areas and petty sessional divisions (see paragraphs 149-150 above). It also makes consequential amendments to the procedural framework for changing petty sessions areas by secondary legislation and incorporates a power to amend the names of petty sessions areas within the general order-making power, but does not change the way in which these procedures operate.
268. The principal purpose of section 75 is to provide MCCs with greater flexibility to change their petty sessions areas. This flexibility is currently restricted by the use of local government boundaries as the basis for defining petty sessions areas.
269. **Section 76/Schedule 10: Areas: consequential provision.** **Section 76** and Schedule 10 make further changes consequential on the changes relating to commission areas and petty sessions areas.
270. **Section 76(1)** removes the automatic right of the Lord Mayor and the aldermen of the City of London to be magistrates by virtue of their office. The Lord Mayor and the aldermen currently have special rights originally granted to them in a charter of 1741 by King George II. They are the only people in the country who have the right to be magistrates through election as aldermen.

271. In future, the Lord Mayor and the aldermen will only become justices of the peace after passing through the selection procedure that applies to all other magistrates in England and Wales.
272. **Section 77: Youth courts.** This section provides a common statutory framework, applicable throughout the country, for the establishment of panels of magistrates to sit in youth courts. Detailed provisions for the appointment of youth panels and the constitution of youth courts will be contained in rules.
273. At present, the second Schedule to the Children and Young Persons Act 1933 provides different arrangements for the “metropolitan area” (the City of London and the Inner London boroughs) and the rest of the country. In the metropolitan area, members of youth panels and youth court chairmen are nominated by the Lord Chancellor. Elsewhere, they are appointed by the local bench. The Government believes there should be a uniform approach, and intends to consult on the arrangements to be preferred. The new provisions allow for different arrangements to continue for different areas for the interim period.
274. **Part V of Schedule 14** contains transitional provisions about territorial organisation. Paragraphs 19 and 20 require the first orders specifying commission areas and petty sessions areas to list all such areas in England and Wales. This ensures that, for the first time, these will all be listed in the same place. Paragraph 21 allows the current Lord Mayor and aldermen to remain justices as if they had been appointed under the existing arrangements. Paragraph 28 preserves for the time being the existing combined youth court panel for the metropolitan area.

### **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.

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- 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 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.

### ***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.

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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 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.

### ***Justices' chief executives, justices' clerks and staff***

298. **Section 87: Qualification for appointment as chief executive.** This section, by repealing section 40(5) of the JPA 1997, removes the requirement for a justices' chief executive (JCE) to be a qualified barrister or solicitor. The intention is to enable MCCs to attract the best possible applicants, including specialists in management and administration. The provision does not compel MCCs to appoint a person who is not a qualified lawyer.
299. **Section 88: Role of chief executives.** This section substitutes a new section 41 of the JPA 1997. The new section 41 clarifies the role and responsibilities of JCEs in ensuring the effective and efficient administration of the magistrates' courts within the area of their MCC, and the lines of accountability between the MCC, JCE and other employees of the MCC.

300. The JCE is responsible for making arrangements for the effective and efficient administration of the magistrates' courts in an MCC area. He or she will allocate responsibilities to staff and determine administrative procedures. The allocation of duties and determination of procedures has previously been the duty of the MCC itself (under section 31(2) of the JPA 1997, repealed by section 88(2) of this Act). The JCE will be required to carry out his or her functions in accordance with any directions given by the MCC. The JCE will be able to give directions to justices' clerks and other staff about how they should carry out their administrative functions; but this power does not extend to legal functions (see the commentary below on section 89).
301. **Section 88** also amends two other sections of the JPA 1997. Subsection (3) amends section 40 to clarify certain expressions used in relation to JCEs in Schedule 13 of this Act. Subsection (4) amends section 61 to allow the Lord Chancellor to pay compensation in cases of default by a JCE.
302. **Section 89: Independence of clerks and staff exercising legal functions.** This section confirms the independence of justices' clerks in the exercise of their legal and judicial functions.
303. **Section 89(1)** substitutes a new section 48 of the JPA 1997 to clarify the range of functions in respect of which the justices' clerks are not subject to direction by the JCE or anyone else. The new section 48 applies to:
- any function also exercisable by magistrates (see paragraph 254 above); and
  - the function of advising magistrates about the law.
304. The new provision is wider than the original section 48 in two respects. First, it covers judicial functions conferred on justices' clerks directly by statute, while the current section applies only to functions exercisable by a single justice delegated to justices' clerks or other staff by rules. Second, it is not limited to legal advice about individual cases.
305. **Section 89(2)** amends sections 45(4) & (5) of the JPA 1997 to make clear that advice about the law includes matters of legal procedure and practice.
306. **Section 90/Schedule 13: Transfer of clerks' functions to chief executives.** **Section 90** gives effect to Schedule 13 which amends a large number of earlier Acts so as to transfer to JCEs administrative functions imposed by those Acts on justices' clerks. Section 90 also empowers the Lord Chancellor to transfer to JCEs, by order, any other administrative functions that may be identified in future. The intention is to facilitate the greater separation of responsibilities for legal and administrative functions in magistrates' courts, enabling justices' clerks to concentrate on their legal and judicial functions.
307. **Section 91: Accounting etc. functions of chief executives.** This section deals with the collection, banking and disposal of, and accounting for, monies received by JCEs. It introduces a new section 41A to the JPA 1997, so as to transfer the functions of justices' clerks as "collecting officers" to JCEs. In future, JCEs will be accountable for the collection of fines and fees.
308. In order to raise the standards of accounting practice and financial management in magistrates' courts, section 91 introduces new accounting requirements in respect of all monies passing through magistrates' courts, irrespective of to whom they are payable. It adds a new section 60A to the JPA 1997, giving the Lord Chancellor power to make regulations in three areas. The first relates to the times and manner in which JCEs must pay monies, due to the Lord Chancellor or anyone else. The second relates to the keeping, production, inspection and audit of the accounts of JCEs in respect of any money they receive (apart from their salaries and expenses). The third relates to the banking arrangements which may be used by JCEs.

### **Execution of warrants**

309. **Section 92: Civilian enforcement officers.** This section extends the range of warrants issued by a magistrates' court which may be executed by civilian enforcement officers (CEOs) employed by MCCs, local authorities or police authorities. At present, CEOs may only execute warrants relating to the enforcement of money adjudged to be paid under a court order. Section 92 also removes the present geographical restrictions which limit the areas in which CEOs may execute warrants.
310. In future, the types of warrant that CEOs may execute will be listed in an order made jointly by the Lord Chancellor and the Home Secretary. It is intended that the list should include warrants of distress, commitment, arrest or detention in connection with the payment of any sum, and also warrants of arrest issued in connection with breaches of a range of non-financial penalties. A list of the warrants that the Government intends CEOs to be able to execute is at Annex B to these Notes.
311. **Section 93: Approved enforcement agencies.** This section allows MCCs to approve and appoint private enforcement agencies to execute certain kinds of warrant (to be defined by order made under section 92).
312. Some MCCs already use private enforcement agencies or bailiffs to execute distress warrants. However, it is unclear at present whether warrants can be executed by employees of enforcement agencies who are not personally named on the warrant. Section 93 is designed to clarify the law, so that warrants can be addressed to approved agencies for the area concerned, rather than just to a named bailiff. In future, the authorised employees of approved enforcement agencies will be able to execute the same range of warrants as CEOs anywhere in England and Wales.
313. **Section 93** also provides for the Lord Chancellor to make regulations governing the conditions which must be satisfied by a person or body in order to qualify as an approved enforcement agency, and the procedure by which a MCC may grant approval. Each MCC will be required to keep a register of all the enforcement agencies it authorises, and make this available for public inspection at every magistrates' court within the MCC's area. An enforcement agency listed in an MCC's register will be able to issue its employees with written authority to execute warrants issued by any magistrates' court in the area for which the authorising MCC is responsible. If necessary, the MCC will be able to remove an enforcement agency from the register without giving reasons for the decision.
314. **Sections 92 and 93** require a CEO or authorised employee seeking to execute a warrant to have with them, and show on demand, a written statement saying (in essence) who they are and by whom they are authorised.
315. **Section 94: Disclosure of information for enforcing warrants.** This section allows the courts to check whether other Government agencies hold a more recent address in their records for fine defaulters and those in breach of community sentences.
316. **Section 94** empowers the Lord Chancellor to designate by order relevant public authorities from whom the courts may request this information. These are likely to include the police, the Department of Social Security, Inland Revenue, local authorities, the Passport Agency, the Home Office Immigration and Nationality Directorate and HM Customs and Excise.
317. The information that may be obtained in this way is limited to those details that will allow the offender's whereabouts to be traced. That is: name, address, date of birth and National Insurance number. The information may only be disclosed to court employees and employees of an approved enforcement agency, and it may only be used for the purpose of enforcing the warrant. It will be an offence to disclose the information, whether intentionally or recklessly, to any other person or for any other purpose. Punishment will be by fine, subject to the statutory maximum (currently £5,000) if the fine is imposed by a magistrates' court.

318. **Sections 95 & 97: Warrants of detention; cessation of warrants.** These sections will enable changes to be made to the Magistrates' Courts Rules 1981 to clarify the circumstances in which a warrant for the enforcement of a sum adjudged to be paid shall cease to have effect. The intention is to ensure that these warrants will cease to have effect when payment or tender of payment of the sum due is made, or when a receipt for the sum due given by the court issuing the warrant is produced to any person authorised to execute the warrant.
319. **Section 96: Execution by person not in possession of warrant.** This section will empower CEOs and the authorised employees of approved enforcement agencies to execute the full range of warrants to be defined by order under section 92, without necessarily having to have the warrant in their possession at the time. The section also extends the powers of the police to execute warrants in this way.
320. At present, civilian enforcement officers and bailiffs may only execute a warrant if they have it in their possession at the time. Police constables may execute certain types of warrants without having them in their possession, provided the warrant is shown to the person concerned as soon practicable.
321. The Government also intends to change the Magistrates' Courts Rules 1981 to oblige anyone seeking to execute an arrest warrant without having it in his possession to inform the person being arrested promptly, in a language which he understands, of the reasons for his arrest and the charges against him.