



Justices of the Peace Act 1949

1949 CHAPTER 101

PART III

MAGISTRATES' COURTS COMMITTEES AND JUSTICES' CLERKS

16 Establishment of magistrates' courts committees

(1) Committees (to be called magistrates' courts committees) shall be set up in accordance with the following provisions of this section with such functions in relation to justices' clerks, to the division of counties into petty sessional divisions, to the provision of courses of instruction for justices and to other matters of an administrative character as are or may be provided by or under this Act or as they may be authorised to undertake by the Secretary of State.

(2) There shall be a magistrates' courts committee for each county and for each county borough:

Provided that—

- (a) there may be a single magistrates' courts committee for an area (in this Act referred to as " a joint committee area ") consisting of two or more counties, or of two or more county boroughs, or of one or more counties and one or more county boroughs ; and
- (b) a quarter sessions division of a county may be treated for the purposes of this section as a separate county; and
- (c) there may be a separate magistrates' courts committee for a non-county borough having a separate commission of the peace, if at the time of the establishment of the committee the borough has a population of sixty-five thousand or over.

(3) Where a non-county borough has for the time being a separate magistrates' courts committee, the jurisdiction of the borough justices as respects matters within their commission shall be exclusive of that of the justices for the county to the same extent as if the borough did not form part of the county.

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- (4) The Fourth Schedule to this Act shall have effect with respect to the procedure for establishing magistrates' courts committees and with respect to the constitution and procedure of and other matters relating to those committees.
- (5) For the purpose of the provisions of this Act relating to magistrates' courts committees, the expression " county" in the case of London has the same meaning as it has for the purposes of section ten of this Act, and in any other case means the administrative county exclusive of any area in a county borough included in the county for the purposes of that section, and the administrative county of Cornwall shall be deemed to include the Scilly Isles, so, however, that references to a county, except in so far as the context otherwise requires, shall include a quarter sessions division of a county which is for the time being to be treated for the purposes of this section as a separate county.
- (6) For the purposes of this section,—
 - (a) the expression " quarter sessions division " means part of a county, being a part for which (with or without the whole or part of one or more county boroughs) quarter sessions are ordinarily held separately by adjournment or otherwise ; and
 - (b) the population at any time of a borough shall be determined according to the estimates of the registrar-general.

17 Provision of courses of instruction

It shall be the duty of every magistrates' courts committee, in accordance with arrangements approved by the Lord Chancellor, to make and administer schemes providing for courses of instruction for justices of their area.

18 Powers and duties of committee as to petty sessional divisions

- (1) Subject to the provisions of this section, a magistrates' courts committee acting for a county may at any time submit to the Secretary of State a draft order making such provision about the division of the county or any part thereof into petty sessional divisions as the committee think fit.
- (2) It shall be the duty of such a committee, if directed to do so by the Secretary of State, to review the division of the county or any part thereof into petty sessional divisions and on completion of the review to submit to the Secretary of State either a draft order under the foregoing subsection or a report giving reasons for making no change.
- (3) Subject to the provisions of this section—
 - (a) where such a committee submit a draft order to the Secretary of State under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit; and
 - (b) where such a committee fail to comply within six months with a direction of the Secretary of State under the last foregoing subsection, or the Secretary of State is dissatisfied with the draft order or report submitted in pursuance of such a direction, he may by statutory instrument make such order as he thinks fit about the division into petty sessional divisions of the area to which the direction related.
- (4) Any order under this section—
 - (a) may contain transitional and other consequential provisions; and

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- (b) may be revoked or varied by a subsequent order thereunder.
- (5) Before submitting to the Secretary of State a draft order or a report under this section about any area, a magistrates' courts committee—
 - (a) shall consult the county council and the magistrates for any existing petty sessional division in the area ; and
 - (b) in the case of a draft order, after complying with the foregoing paragraph shall send a copy of their proposals to every interested authority and take into consideration any objections made in the prescribed manner and within the prescribed time.
- (6) A magistrates' courts committee submitting to the Secretary of State a draft order or a report under this section shall comply with such requirements (if any) as to notice as may be prescribed, and the Secretary of State before making an order under this section about any area otherwise than in accordance with a draft submitted to him by the magistrates' courts committee shall send a copy of his proposals to the committee, to the county council, to the magistrates for any existing petty sessional division in the area and to every interested authority.
- (7) Before making any order under this section the Secretary of State shall take into consideration any objections made in the prescribed manner and within the prescribed time and may cause a local inquiry to be held.
- (8) An order under this section may provide for a county ceasing to be divided into petty sessional divisions, and a direction under subsection (2) thereof may be given with respect to the division of a county which is not for the time being so divided.
- (9) For the purposes of this section—
 - (a) the expression " interested authority " means, in relation to any order or draft order, the council of any borough, metropolitan borough or urban or rural district which includes the whole or any part of the area to which the order relates; and
 - (b) an order shall be deemed to be made in accordance with a draft order if it is made in terms of the draft order or the departures from the draft order do not, in the opinion of the Secretary of State, effect important alterations in the draft order.
- (10) The powers conferred by this section shall be in substitution for any other power to create or alter petty sessional divisions in a county, except powers conferred by any other provision of this Act or by section one hundred and forty-eight of the Local Government Act, 1933.

19 Appointment and conditions of service of justices' clerks

- (1) Justices' clerks shall be appointed by the magistrates' courts committee and shall hold office during the pleasure of the committee, and the committee may appoint more than one justices' clerk for any area.
- (2) A justices' clerk shall be paid a salary for his personal remuneration, and the salary shall be deemed to be remuneration for all business which he may by reason of his office as justices' clerk be called upon to perform, other than any duties as secretary to a licensing planning committee under the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946.

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- (3) A justices' clerk may be paid a single salary in respect of two or more clerkships.
- (4) Subject to subsection (6) of this section, a justices' clerk shall be provided with the accommodation and staff, and the furniture, books and other things, proper to enable him to carry out his duties.
- (5) A justices' clerk shall, in addition to his salary, be paid the amount of any expenses of a description specified when his salary is determined, being expenses incurred by him with the general or special authority of the magistrates' courts committee.
- (6) Where a justices' clerk devotes part of his time to work other than the duties appertaining to his clerkship or clerkships, he may by arrangement with the magistrates' courts committee make use for the purpose of those duties of any accommodation, staff or equipment which he has for other purposes, and the sums payable to him under the last foregoing subsection may include payments for accommodation, staff or equipment so provided by him, whether or not he thereby incurs additional expense.
- (7) Any staff provided for a justices' clerk shall be employed by the magistrates' courts committee but shall work under the direction of the clerk, and subject to this Act the committee may make any arrangements they think fit for staff to be engaged and dismissed, and the terms of their employment fixed, on behalf of the committee.

Before any such staff are engaged or dismissed (otherwise than by the clerk himself on behalf of the committee), the clerk shall be consulted.
- (8) The approval of the Secretary of State 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;
 - (b) for any appointment of a justices' clerk;
 - (c) for the removal of the justices' clerk for a petty sessional division of a county where the magistrates for the division do not consent to the removal.
- (9) A magistrates' courts committee shall consult the magistrates for any petty sessional division of a county on the appointment or removal of a justices' clerk for the division, and the Secretary of State before approving the appointment or removal of a justices' clerk for such a division shall consider any representations made to him by the magistrates for the division, and before approving the removal of any such clerk shall consider any representations made to him by the clerk.
- (10) The two last foregoing subsections shall apply to a non-county borough having a separate commission of the peace but not a separate magistrates' courts committee, and to a county borough or county not divided into petty sessional divisions which is included in a joint committee area, as if it were a petty sessional division of a county.
- (11) The magistrates' courts committee shall inform the Secretary of State of the age, qualification and experience of any person proposed to be appointed a justices' clerk and, if the Secretary of State so requires, of any other person offering himself for the appointment.
- (12) Section forty-eight of the Summary Jurisdiction Act, 1879 (which provides that in a petty sessional division the duties of the clerk of a court of summary jurisdiction shall belong to the justices' clerk), shall apply in relation to any petty sessions area as it applies in relation to a petty sessional division, and references in that section to the

Justices Clerks Act, 1877, or section five thereof shall be taken as including references to this section.

- (13) Subsection (1) of section forty-nine of the Licensing (Consolidation) Act, 1910 (which prohibits clerks to licensing justices from acting professionally in connection with proceedings at licensing sessions), shall apply to a clerk appointed after the coming into force of this section in relation to the general annual licensing meeting, transfer sessions and petty sessions held for any district as it applies in relation to those held for the clerk's district, and the words excepting the preparation of notices and forms from the operation of the subsection shall not have effect in the application of the subsection to a clerk appointed after the coming into force of this section.

20 Qualification of justices' clerk

- (1) Except as provided by this section, no person shall be appointed a justices' clerk unless either at the time of appointment he is a barrister of not less than five years' standing or solicitor of the Supreme Court of the like standing and is within any limit of age prescribed for appointments to a clerkship of that class or description, or he then is or has previously been a justices' clerk.
- (2) A lower as well as an upper limit of age may be prescribed under the foregoing subsection for appointments to any class or description of clerkship.
- (3) A person who has not been bound by and served under articles as required by paragraph (a) of section fourteen of the Solicitors Act, 1932, but has served as assistant to a justices' clerk, may be admitted a solicitor of the Supreme Court, subject to the following provisions—
- (a) the person to be admitted shall have had not less than ten years' service as such an assistant and, out of that service, not less than five years shall have been before the first day of January, nineteen hundred and sixty, and not less than the required number of years shall have been approved service ;
 - (b) for the purpose of the foregoing paragraph " approved service " means service either—
 - (i) as an articulated clerk ; or
 - (ii) with respect to which the person to be admitted has obtained from the Law Society a certificate under this section on an application made after he has had five years' service as such an assistant and before the said first day of January,
and the required number of years of approved service is the number which that person would, apart from this subsection, be required by the said Act to serve under articles entered into at the date of that application ;
 - (c) the Law Society may grant a person a certificate with respect to service in any employment as assistant to a justices' clerk if they are satisfied that at the time of granting the certificate it is not practicable for him to serve as an articulated clerk in that employment, and the certificate shall relate to any service by him in that employment after that time ;
 - (d) subject to the foregoing paragraphs, the Solicitors Acts, 1932 to 1941, shall apply, with any necessary modifications, in relation to a person's certificate under this section and a person applying for or obtaining such a certificate as if the certificate were articles of clerkship and the service to which it relates were service under those articles.

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- (4) A person not having the qualification as barrister or solicitor which is required by subsection (1) of this section may be appointed a justices' clerk—
- (a) if at the time of appointment he is a solicitor of the Supreme Court and has served for not less than five years in one or more of the following capacities, that is to say, clerk to a stipendiary magistrate, clerk to a metropolitan stipendiary court, clerk at one of the justice rooms of the City of London, assistant to any such clerk as aforesaid and assistant to a justices' clerk ; or
 - (b) if before the time of appointment or the first day of January, nineteen hundred and sixty, whichever is the earlier, he has served for not less than ten years in one or more of the said capacities and, in the opinion of the magistrates' courts committee and of the Secretary of State, there are special circumstances making the appointment a proper one.
- (5) A person may be appointed a justices' clerk notwithstanding that he is over the upper limit of age mentioned in subsection (1) of this section if he has served in one or more of the capacities mentioned in the last foregoing subsection continuously from a time when he was below that limit to the time of appointment.
- (6) A person shall not be justices' clerk for any area wholly or partly comprised in an area in which he or a partner of his holds any of the following offices, namely, clerk of the peace, town clerk, clerk to the urban district council and deputy of any such clerk:
- Provided that a person shall not be disqualified under this subsection for holding any justices' clerkship by reason of his or his partner's holding any of the said offices where neither appointment is made after the coming into force of this subsection.
- (7) Subsection (2) of section one hundred and fifty-nine of the Municipal Corporations Act, 1882 (which relates to the qualification for being clerk to borough justices), shall cease to have effect.

21 Functions of justices' clerk as collecting officer

- (1) As from the date when section nineteen of this Act comes into force, a justices' clerk shall by virtue of his office be collecting officer of any court of summary jurisdiction of which he is the clerk, and as such—
- (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 or a borough under the Affiliation Orders Act, 1914;
 - (b) shall act under any order directing the payment of money to him made by any court under section thirty of the Criminal Justice Administration Act, 1914 (which provides for periodical payments under court orders to be made through an officer of the court or other third person);
- and section four of the Married Women (Maintenance) Act, 1949, shall apply to orders under any enactment directing payment to a justices' clerk as collecting officer on behalf of any person as it applies in relation to orders under the enactments mentioned in that section directing payment to him on behalf of a married woman.
- (2) Any order of a court of summary jurisdiction under subsection (1) or (2) of the said section thirty shall direct payment to be made to the collecting officer of that or some other court.
- (3) Where a court of summary jurisdiction makes an order for the periodical payment of money under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to

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1949, or the Guardianship of Infants Acts, 1886 and 1925, the court shall, unless upon representations expressly made in that behalf by the applicant for the order they are satisfied that it is undesirable so to do, exercise their power to direct payment to the collecting officer of that or some other court:

Provided that, in relation to an order made under section five of the Licensing Act, 1902, on the application of the husband, there shall be substituted for the reference in this subsection to the applicant for the order a reference to his wife.

- (4) Any order made before the coming into force of this section in pursuance of the powers exercisable under the said section thirty or under section one of the Affiliation Orders Act, 1914—
 - (a) if it directs payments to be made to any officer of a court of summary jurisdiction shall have effect as if it directed them to be made to the clerk of that court in his capacity as collecting officer; and
 - (b) if it directs payments to be made to a person who is not an officer of a court of summary jurisdiction shall have effect as if it directed them to be made to the clerk of the court making the order in his capacity as collecting officer.
- (5) The last foregoing subsection shall apply in relation to payments due at the coming into force of this section as well as to those becoming due thereafter, but until the person liable to make payments under an order to which that subsection applies has been given in the prescribed manner the prescribed notice of the effect of that subsection, he shall be deemed to have complied with the order if he makes payments in accordance with the terms thereof.
- (6) This section shall apply in relation to an order made under paragraph (c) of section five of the Summary Jurisdiction (Married Women) Act, 1895, and not directing payment to the applicant personally and in relation to an order made under paragraph (c) of subsection (2) of section five of the Licensing Act, 1902, and not directing payment to the applicant's wife personally as it applies in relation to an order made under subsection (1) of section thirty of the Criminal Justice Administration Act, 1914.
- (7) In this section the expression " justices' clerk " includes a clerk to a stipendiary magistrate, a clerk to a metropolitan stipendiary court and a clerk at either of the justice rooms of the City of London.
- (8) Subsection (4) of section thirty of the Criminal Justice Administration Act, 1914 (which provides for the payment of remuneration to a person through whom money is paid under that section), shall cease to have effect.

22 Superannuation of justices' clerks and their staff

- (1) Subject to this Act, a justices' clerk appointed by a magistrates' courts committee, or person employed by a magistrates' courts committee to assist a justices' clerk, shall be superannuate in accordance with this section ; and section twenty of the Local Government Superannuation Act, 1937 (in this and the next following section referred to as " the 1937 Act") shall cease to have effect.
- (2) The 1937 Act shall have effect in relation to any such clerk or person as if magistrates' courts committees were local authorities mentioned in Part I of the First Schedule to the 1937 Act and, in the case of a clerk, as if he were employed by the committee appointing him.

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- (3) For the purposes of the 1937 Act a magistrates' courts committee shall be deemed to be a local Act authority in relation to any such clerk or person if the council paying his remuneration is a local Act authority.
- (4) Without prejudice to subsection (3) of section forty of the 1937 Act (which treats employments under one authority as distinct where one can be given up without the other), a person who holds two or more clerkships under a magistrates' courts committee, or is employed by a magistrates' courts committee to assist a justices' clerk or clerks in two or more clerkships, shall be deemed for the purposes of this section to be in separate employments under separate authorities as respects any clerkships for which the remuneration is paid by different councils.
- (5) Part I of the Fifth Schedule to this Act shall have effect for the purpose of adapting the 1937 Act in relation to any such clerk or person as is mentioned in subsection (1) of this section.
- (6) A magistrates' courts committee shall not be deemed to be a local Act authority for the purposes of section twenty-six of the 1937 Act (which relates to the modification or replacement of local Act superannuation schemes) but the Minister of Health shall by order modify any local Act scheme within the meaning of the 1937 Act in such manner as he thinks appropriate to secure that the scheme shall operate in relation to any such clerk or person as is mentioned in subsection (1) of this section whose remuneration or any part thereof is paid by the local Act authority as it operates in relation to employees of the local Act authority, subject however to such adaptations (including any increase in the age of compulsory retirement) as may be provided by the order.
- (7) Where by a local Act or otherwise provision is made for a county or borough council to make, outside the 1937 Act or any local Act scheme, payments to or in respect of their employees in the event of injury, disease or death, then, in relation to any person who is by virtue of this section a contributory employee or local Act contributor in respect of an employment for which his remuneration is paid by the council, that provision shall apply as if in that employment he were an employee of the council, subject however to such adaptations as may be provided by order of the Minister of Health.
- (8) Any order under this section or under Part I of the Fifth Schedule to this Act—
 - (a) shall be made by statutory instrument;
 - (b) may be varied or revoked by a subsequent order there under ;
 - (c) in so far as it varies or revokes a previous order, may have retrospective effect.
- (9) For the purposes of this section, any reference to a person employed by a magistrates' courts committee shall apply whether the employment is permanent or temporary, but not where it is of a casual nature.

23 Existing and former justices' clerks, etc.

- (1) A justices' clerk holding office immediately before the date of the coming into force of section nineteen of this Act shall be deemed for the purposes of this Act to have been appointed by the magistrates' courts committee and, subject to the provisions of this section, any persons then employed by him to assist him in the performance of the duties appertaining to that clerkship shall be transferred to the employment of the committee on the said date.
- (2) The salary payable under the said section nineteen to a justices' clerk to whom the foregoing subsection applies shall be fixed with due regard to any additional duties

imposed on him as justices' clerk by section twenty-one of this Act and to any remuneration formerly payable in respect of the duties so imposed on him.

- (3) Subsection (1) of this section shall not transfer to the employment of the magistrates' courts committee from that of a justices' clerk a person who immediately before the said date is employed by the clerk for purposes not connected with any clerkship to justices held by him, and a person employed by a justices' clerk shall not be transferred by that subsection to the employment of the committee as respects his employment by the clerk in connection with a clerkship to justices outside the area of the committee.
- (4) Where immediately before the said date a person is justices' clerk and collecting officer at the same court, subsections (1) and (3) of this section shall apply in relation to persons then employed by him as if his duties as collecting officer of that court had been duties appertaining to the clerkship.
- (5) Where immediately before the said date a person to whom subsection (1) of this section does not apply is collecting officer of any court and devotes substantially the whole of his time to his duties as collecting officer of that court, he shall be transferred on the said date to the employment of the magistrates' courts committee as a member of the staff provided for the clerk of that court.
- (6) Where the collecting officer of any court is transferred as mentioned in the last foregoing subsection, any person who immediately before the said date is employed by him to assist him in the performance of his duties as collecting officer of that court, and who devotes substantially the whole of his time to that employment, shall also be so transferred.
- (7) Where a person who immediately before the said date is employed by a justices' clerk or collecting officer is transferred by this section to the employment of a magistrates' courts committee, the terms and conditions on which he is then employed by the justices' clerk or collecting officer, so far as they remain applicable, shall apply to his employment by the committee; and the terms and conditions on which a person is transferred to the employment of a magistrates' courts committee by subsection (5) of this section shall be such as in the opinion of the magistrates' courts committee are on the whole not less beneficial to him than those on which he held office as collecting officer.
- (8) In relation to any person to whom the 1937 Act applies by virtue of the last foregoing section, being either—
 - (a) a person who before the said date has been a justices' clerk or employed by such a clerk in connection with the clerkship; or
 - (b) a person who on the said date is transferred to the employment of a magistrates' courts committee by subsection (5) or (6) of this section;the provisions set out in Part II of the Fifth Schedule to this Act shall have effect as well as those set out in Part I thereof.
- (9) Paragraph (g) of Part III of the Second Schedule to the 1937 Act shall continue, notwithstanding the repeal of section twenty of that Act, to apply to a person who has been a contributory employee by virtue of the said section twenty; and in the case of such a person any rules made under section one of the Superannuation (Miscellaneous Provisions) Act, 1948 (which relates to national service), so far as they refer to an employment in which, immediately before he left it, he was a contributory employee by virtue of the said section twenty, shall have effect as if that section had continued in force and the foregoing provisions of this Part of this Act had not been passed.

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- (10) Provision corresponding to subsections (8) and (9) of this section may, in relation to any local Act scheme, be made by any order modifying the scheme under the last foregoing section.
- (11) For the purposes of this section, a person's employment by any justices or by the Middlesex standing joint committee to assist a justices' clerk shall be deemed employment by that clerk ; and in relation to a person who has been a contributory employee by virtue of section four hundred and eighteen of the Middlesex County Council Act, 1944, subsection (9) of this section shall apply with the substitution of references to that section for references to section twenty of the 1937 Act and of a reference to paragraph (f) of the Fifth Schedule to the said Act of 1944 for the reference to paragraph (g) of Part III of the Second Schedule to the 1937 Act.
- (12) For the purposes of this section, the expression " collecting officer " means collecting officer of a court of summary jurisdiction appointed under the Affiliation Orders Act, 1914.

24 Clerk in proceedings for rates in London

The provisions of section seven of the Vestries Act, 1850, relating to the recovery of rates shall not require or authorise the town clerk of a metropolitan borough to attend on or advise any justices as their clerk.