



Justices of the Peace Act 1949

1949 CHAPTER 101

PART V

STIPENDIARY MAGISTRATES

29 Appointments outside London

- (1) It shall be lawful for His Majesty to appoint a barrister of not less than seven years' standing or a solicitor of the Supreme Court of the like standing to be a stipendiary magistrate for any of the following areas—
 - (a) any borough having a separate commission of the peace ;
 - (b) the whole or part of any county exclusive of any such borough as aforesaid;
 - (c) a district (in this section referred to as a " joint district ") comprising two or more areas for which separate appointments might be made under the foregoing paragraphs.
- (2) A stipendiary magistrate appointed under this section shall hold office during His Majesty's pleasure and shall by virtue of his office be a justice of the peace for any county, and for any borough having a separate commission of the peace, which includes his area or any part of it.
- (3) Any appointment of a stipendiary magistrate under this section shall be of a person recommended to His Majesty by the Lord Chancellor, and a stipendiary magistrate appointed under this section shall not be removed from office except on the Lord Chancellor's recommendation.
- (4) No appointment (whether original or on a vacancy) of a stipendiary magistrate under this section—
 - (a) shall be made for a borough having a separate commission of the peace except on a petition presented to the Secretary of State by the borough council; or
 - (b) shall be made for the whole or part of a county exclusive of any such borough except on a petition so presented by the county council; or

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- (c) shall be made for a joint district except on a joint petition so presented by the borough and county councils who might present separate petitions under the foregoing paragraphs for the several parts of the joint district.
- (5) The salary of a stipendiary magistrate appointed under this section shall be paid by the council or councils on whose petition he was appointed; and, where he was appointed on a joint petition, each of the councils shall be liable to him for the whole salary but it shall be borne by them in the shares from time to time agreed, and the joint petition shall specify the shares agreed at the time of its presentation.
- (6) Before presenting a petition under this section a council shall consult the magistrates' courts committee acting for their area, and the Secretary of State before submitting the petition to His Majesty shall take into account any representations made to him by the committee.
- (7) Where a stipendiary magistrate is appointed under this section on a petition presented by a county council (whether alone or jointly with other councils), the Secretary of State shall (where necessary) by statutory instrument make an order constituting the area for which he is appointed, or that part in which the county justices have jurisdiction, a petty sessional division or divisions of the county and making consequential provisions as to the remainder of the county, and subsections (4), (6) and (7) of section eighteen of this Act shall apply as if the order were an order under that section.
- (8) A stipendiary magistrate appointed under this section for an area consisting of or including the whole or part of a county shall not act as a member of any court of quarter sessions for the county, nor act for any petty sessional division of the county other than the division or divisions in his area.
- (9) The grant of a commission of the peace to a borough forming part of an area for which a stipendiary magistrate has been appointed under this section shall not affect the appointment of the magistrate or the liability for his salary of the council of the county which includes that borough.
- (10) More than one magistrate may be appointed under this section for the same area.
- (11) The foregoing provisions of this section shall not apply to the City of London or the county of London.
- (12) Section one hundred and sixty-one of the Municipal Corporations Act, 1882, shall cease to have effect and this section shall apply to any magistrate appointed on a petition under that section who is in office at the coming into force of this section as if the petition had been a petition under this section.

30 Local Act stipendiaries

- (1) Nothing in the foregoing provisions of this Act shall affect the continuance in office or a new appointment of a stipendiary magistrate under any of the following enactments, namely,—
 - (a) the Staffordshire Potteries Stipendiary Justice Acts, 1839 to 1895;
 - (b) the South Staffordshire Stipendiary Justice Act, 1899;
 - (c) the Merthyr Tydfil Stipendiary Justice Acts, 1843 to 1907 ;
 - (d) the Pontypridd Stipendiary Magistrate Act, 1920 ;

(e) Part II (which relates to the county borough of Salford) of the Manchester Division and Borough of Salford (Stipendiary Justices) Act, 1878 ;
but no new appointment of a stipendiary magistrate shall be made under the Chatham and Sheerness Stipendiary Magistrate Act, 1867.

(2) The consequential and other provisions set out in the Sixth Schedule to this Act shall have effect in relation to the enactments referred to in paragraphs (a) to (e) of the foregoing subsection and stipendiary magistrates thereunder.

31 Appointments under previous Acts

- (1) A solicitor of the Supreme Court of not less than seven years' standing may be appointed stipendiary magistrate under any Act passed before this Act.
- (2) A barrister of not less than seven years' standing may be appointed a metropolitan stipendiary magistrate notwithstanding that he has not practised as a barrister during the seven years immediately preceding his appointment as required by section three of the Metropolitan Police Courts Act, 1839.
- (3) A person may be appointed a magistrate's deputy under section two of the Stipendiary Magistrates Act, 1869, if he has the qualification required by law for appointment to the magistrate's office, notwithstanding that he is not a person who has practised as a barrister for at least seven years.
- (4) Any appointment of a stipendiary magistrate under any Act passed before this Act except the Manchester Division and Borough of Salford (Stipendiary Justices) Act, 1878, shall be of a person recommended to His Majesty by the Lord Chancellor and a stipendiary magistrate appointed under any Act so passed shall hold office during His Majesty's pleasure but shall not be removed from office except on the recommendation of the Lord Chancellor or, in the case of a magistrate appointed under the said Act of 1878, the recommendation of the Chancellor of the Duchy of Lancaster.

32 Salary of stipendiary magistrates

- (1) Subject to the following provisions of this section, a stipendiary magistrate other than a metropolitan stipendiary magistrate shall be paid a salary of such amount as the Secretary of State may from time to time direct after consultation with the authority or authorities liable to pay the salary.
- (2) The amount of the salary shall not be greater than that of the salary for the time being payable to a metropolitan stipendiary magistrate other than the chief magistrate.
- (3) The amount of the salary shall not at any time be reduced without the consent of the stipendiary magistrate.
- (4) A stipendiary magistrate in office at the coming into force of this section shall, until the Secretary of State otherwise directs under subsection (1) of this section, continue to receive the salary to which he is then entitled.

33 Compulsory retirement and superannuation

- (1) Subject to the provisions of this section, a stipendiary magistrate—
 - (a) shall vacate his office at the end of the completed year of service in the course of which he attains the age of seventy-two; but

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- (b) shall, from the date on which he ceases to serve as a stipendiary magistrate, be entitled to be paid an annual sum by way of pension by the authority paying his salary in the office or last office in which he so served.
- (2) Where the Secretary of State considers it desirable in the public interest to retain a stipendiary magistrate in office after the time for the magistrate's office to be vacated under the foregoing subsection, he may from time to time authorise the magistrate to continue in office up to such age (not exceeding seventy-five years) as the Secretary of State thinks fit.
- (3) A person shall not be entitled to a pension under this section on ceasing to serve as a stipendiary magistrate unless—
- (a) his office is vacated under this section ; or
 - (b) he retires from the office after five years' service as a stipendiary magistrate, whether in that or any other office, and either—
 - (i) at the time of retirement he has attained the age of sixty-five years ; or
 - (ii) the authority liable for his pension are satisfied by means of a medical certificate that, by reason of infirmity of mind or body, he is incapable of discharging the duties of the office, and that the incapacity is likely to be permanent.
- (4) The pension payable to any person under this section on ceasing to serve in any office shall be of an amount equal to fifteen-sixtieths of his salary in that office, together with an addition for each complete year of his service as a stipendiary magistrate (as well in any other office as in that office) after the first five years equal to one-sixtieth or, in the case of any year of service after the first ten years, two-sixtieths of that salary ; but the pension shall in no case exceed two-thirds of that salary.
- (5) The pension payable to any person under this section shall be calculated on the salary he was receiving in the office in question immediately before ceasing to serve therein, except that where he had been in receipt of that salary for less than three years it shall be calculated on the average rate of the salary received by him in that office during the three years immediately preceding that date or during the part of those three years for which he served therein.
- (6) Where the amount of a person's pension under this section is calculated by reference to his service in more than one office, the authority liable for the pension shall be entitled to such contributions as may be just in respect of the service in any office other than his last office, and the contribution in respect of service in any office shall be paid by the same authority as his salary in that office.
- (7) The pension payable to any person under this section shall cease on his resuming service as a stipendiary magistrate ; and a person who becomes entitled to such a pension on his retirement on a medical certificate shall until he attains the age of sixty-five years be liable to be called on to serve as a stipendiary magistrate at a salary not less than that on which his pension is calculated, and if when called on he declines so to do, or declines or neglects to execute the duties of a stipendiary magistrate satisfactorily, being in a competent state of health, he shall forfeit any right to pension in respect of service as a stipendiary magistrate.
- (8) Any question whether a pension is payable under this section, or as to the amount of any such pension or any contribution in respect thereof, shall be determined by the Secretary of State.

- (9) Subsection (1) of this section shall not apply to a stipendiary magistrate who held office before the coming into force of this section unless he is serving at the coming into force thereof and within six months thereafter gives notice in writing to the authority paying his salary of his desire that the subsection should apply to him.
- (10) Where subsection (1) of this section applies to a stipendiary magistrate by virtue of a notice given under the last foregoing subsection, half only of his service before the coming into force of this section shall be taken into account for the purpose of calculating the amount of any pension under this section, and if he has attained the age of seventy-two before giving the notice the said subsection (1) shall apply to him with the substitution of a reference to the year of service in the course of which he gives the notice for the reference to that in the course of which he attains the said age:

Provided that this subsection so far as it relates to the extent to which any service is to be taken into account shall have effect subject to any determination under the next following subsection that the whole of the service or a part of it larger than a half shall be taken into account.

- (11) A determination for the purposes of the last foregoing subsection with respect to the stipendiary magistrate serving in any office at the date when this section comes into force may be given—
- (a) at any time on or after the said date and before he ceases to serve in that office, by the authority paying his salary in that office ; or
 - (b) on his ceasing to serve as a stipendiary magistrate, by the authority liable for any pension payable to him under this section ;
- and a determination under paragraph (a) of this subsection may be varied by a subsequent determination (whether under that paragraph or under paragraph (b) of this subsection) so as to increase, but not so as to reduce, the extent to which any service is to be taken into account.
- (12) Where a stipendiary magistrate has held office in a joint district within the meaning of section twenty-nine of this Act, then—
- (a) each of the authorities paying his salary in that office shall be liable for any pension payable to him on his retirement therefrom or for any contributions in respect of his service therein to a pension payable to him on his retirement from any other office as a stipendiary magistrate; and
 - (b) where they are liable for his pension,—
 - (i) they shall together determine anything which under this section is a matter for the decision of the authority so liable;
 - (ii) they, or the one paying the pension, shall be entitled to contributions thereto under subsection (6) of this section in respect of his service in any previous office; and
 - (c) they shall share among themselves the net liability for the pension (after allowing for any contributions received under the said subsection (6)), or the liability for contributions payable under that subsection, as the case may be, in such manner as they may agree or as in default of agreement may be determined by the Secretary of State.
- (13) Subsection (1) of this section shall not apply to a metropolitan stipendiary magistrate, but for the purposes of the Police Magistrates (Superannuation) Acts, 1915 and 1929, in their application to any such magistrate retiring after the coming into force of this section any service as a stipendiary magistrate shall be taken into account as

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if it were service as a metropolitan stipendiary magistrate, and contributions to his superannuation allowance under those Acts shall be payable in respect of that service under subsection (6) of this section as in the case of a pension under this section:

Provided that half only of any service before the coming into force of this section shall be taken into account by virtue of this subsection and, in the case of a metropolitan stipendiary magistrate appointed before the coming into force thereof, no contributions shall be payable in respect of that service.

- (14) A stipendiary magistrate to whom subsection (1) of this section applies shall not be entitled to any payment under any other enactment providing for the superannuation of stipendiary magistrates or be a contributory employee under the Local Government Superannuation Act, 1937, as applied by any local Act or other instrument; and, where a stipendiary magistrate holding office at the coming into force of this section gives notice of his desire that subsection (1) thereof should apply to him, any contributions previously paid by him as stipendiary magistrate under the said Act of 1937 as so applied shall be returned to him.

34 Sittings of stipendiary magistrates

- (1) A stipendiary magistrate shall sit at such petty sessional court houses, on such days and at such times as may be determined by or in accordance with directions given by the Secretary of State from time to time:

Provided that the number of days in a week on which a stipendiary magistrate may be required to attend shall not, without the consent of the magistrate, be increased beyond that determined by the directions given on his appointment.

- (2) In the case of a stipendiary magistrate appointed under a local Act, the foregoing subsection shall be subject to any provision in any such Act limiting the number of days in a week on which he may be required to attend.
- (3) This section shall not apply to a stipendiary magistrate appointed before the coming into force thereof or to any metropolitan stipendiary magistrate.

35 Remuneration of deputies

- (1) Subject to subsection (2) of section one of the Recorders, Stipendiary Magistrates, and Clerks of the Peace Act, 1906 (which relates to deputies continuing to act after the death of the office holder), any deputy appointed by a magistrate under the Stipendiary Magistrates Act, 1869, shall be paid such remuneration as the Secretary of State may assign in approving the appointment.
- (2) Any remuneration of a magistrate's deputy, whether appointed as aforesaid or by the Secretary of State instead of the magistrate under subsection (1) of section one of the said Act of 1906, shall be paid by the authority paying the magistrate's salary and not by the magistrate or out of his salary ; and accordingly in subsection (1) of section one of the said Act of 1906, the words " out of his salary or stipend " shall not apply in the case of a magistrate's deputy.
- (3) Where a stipendiary magistrate has been appointed for a joint district within the meaning of section twenty-nine of this Act, each of the authorities paying his salary in that office shall be liable under the last foregoing subsection for the remuneration of the magistrates' deputy, but it shall be borne by them in the shares agreed or last agreed for the magistrate's salary.