



Justices of the Peace Act 1997 (repealed)

1997 CHAPTER 25

PART IV

JUSTICES' CHIEF EXECUTIVES, JUSTICES' CLERKS AND STAFF

40 Appointment of justices' chief executive.

(1) Every magistrates' courts committee shall appoint a justices' chief executive.

[^{F1}(1A) The justices' chief executive appointed by a magistrates' courts committee is—

- (a) the justices' chief executive for every magistrates' court for the committee's area;
- (b) the justices' chief executive for every petty sessions area for which they are the committee; and
- (c) the chief executive to the justices acting for every such petty sessions area.]

(2) A person may not be appointed as justices' chief executive unless—

- (a) the magistrates' courts committee have submitted to the Lord Chancellor, in accordance with regulations, an application for approval of one or more persons offering themselves for appointment;
- (b) the Lord Chancellor has approved one or more of those persons; and
- (c) the person appointed is a person so approved.

(3) Where a person employed as a justices' chief executive under a contract for a fixed term is re-appointed on the expiry of that term, subsection (2) above does not apply in relation to the re-appointment.

(4) Where the Lord Chancellor declines to approve any person who is named in an application under subsection (2)(a) above, he shall inform the magistrates' courts committee of the reasons for his decision.

^{F2}(5)

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation: There are currently no known outstanding effects for the
 Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)*

- (6) A person may not be appointed both as justices’ chief executive and as justices’ clerk for a petty sessions area unless the Lord Chancellor has agreed that he may hold both appointments.
- (7) Where, in accordance with subsection (6) above, a person holds an appointment as justices’ chief executive with an appointment as justices’ clerk for a petty sessions area, he shall not exercise any functions as justices’ clerk for the petty sessions area unless authorised to do so (either generally or in any particular case) by the magistrates’ courts committee for the area which includes that petty sessions area.
- (8) In this section “regulations” means regulations made by the Lord Chancellor by statutory instrument [^{F3} which may make different provision in relation to the Greater London Magistrates’ Courts Authority and other magistrates’ courts committees]; and a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F1** S. 40(1A) inserted (27.9.1999) by 1999 c. 22, s. 88(3) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(c)(iii)
- F2** S. 40(5) repealed (27.9.1999) by 1999 c. 22, ss. 87, 106, 108(3)(c), Sch. 15 Pt. V(7) (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/2657, art. 2(d)(ii)(c)
- F3** Words in s. 40(8) inserted (27.9.1999 as relating to Sch. 12 para. 11 of the amending Act and 1.3.2000 as relating to Sch. 12 para. 9 of the amending Act) by 1999 c. 22, s. 83, Sch. 12 paras. 9, 11 (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(c)(ii); S.I. 1999/3344, art. 3(a)(ii) (with art. 4, Sch. 2)

Modifications etc. (not altering text)

- C1** S. 40(2)(a)(b) extended (30.6.1999) by S.I.1999/1609, arts. 1, 5, Sch. para. 7(2)
 S. 40(2)(a)(b) extended (12.7.1999) by S.I. 1999/1705, arts. 1, 5, Sch. para. 7(2)

[^{F4}41 Role of justices’ chief executive.

- (1) The justices’ chief executive appointed by any magistrates’ courts committee shall make arrangements for the efficient and effective administration of the magistrates’ courts for the area to which the committee relates.
- (2) For that purpose the administration of the magistrates’ courts for the area to which a magistrates’ courts committee relates includes—
- (a) the exercise of the function of acting as clerk to the committee; and
 - (b) the exercise of all of the functions conferred or imposed on justices’ chief executives by or under any other enactment so far as relating to any of those courts or that committee.
- (3) The duty imposed on a justices’ chief executive by subsection (1) above shall in particular require him—
- (a) to allocate responsibility for what falls to be done in the exercise of his functions among justices’ clerks and the staff of the committee; and
 - (b) to determine the administrative procedures to be followed by them.
- (4) The justices’ chief executive appointed by a magistrates’ courts committee shall make arrangements for discussions relating to matters of law (including procedure and

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)

practice) among the justices’ clerks appointed by the committee, in particular with a view to securing consistency in the advice given by them to justices about such matters.

(5) The justices’ chief executive appointed by a magistrates’ courts committee shall perform—

- (a) the duties imposed on him by this section; and
- (b) any other functions conferred or imposed on him by or under any other enactment,

in accordance with any directions given to him by the committee.

(6) Subject to section 48 below, the justices’ chief executive appointed by a magistrates’ courts committee may give directions to justices’ clerks and the staff of the committee as to the carrying out of their responsibilities (including the performance of any functions conferred or imposed on them by or under any enactment).]

Textual Amendments

F4 S. 41 and sidenote substituted (27.9.1999) by 1999 c. 22, s. 88(1) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(c)(iii)

VALID FROM 01/04/2001

[^{F5}41A Justices’ chief executive as collecting officer.

- (1) A justices’ chief executive shall, by virtue of his office, be collecting officer of each of the courts for the area of the magistrates’ courts committee which appointed him.
- (2) A justices’ chief executive shall act under any order made under section 30 of the ^{M1}Criminal Justice Administration Act 1914 (which provided for periodical payments under court orders to be made through an officer of the court or other third party) which, in accordance with the provisions of paragraph 16A of Schedule 4 to this Act, has effect to direct the payment of money to him.
- (3) This section is without prejudice to the provisions of—
 - (a) section 59 of the ^{M2}Magistrates’ Courts Act 1980 (periodical payments through justices’ chief executive); and
 - (b) sections 59A and 62 of that Act (proceedings by justices’ chief executive).]

Textual Amendments

F5 S. 41A and sidenote inserted (1.4.2001) by 1999 c. 22, s. 91(1) (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 2(a)(iii) (subject to transitional provisions in Sch. 2 para. 2)

Marginal Citations

M1 1914 c.58.
M2 1980 c.43.

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation: There are currently no known outstanding effects for the
 Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)*

42 Appointment and removal of justices’ clerks.

- (1) Justices’ clerks shall be appointed by the magistrates’ courts committee; and a magistrates’ courts committee may appoint more than one justices’ clerk for any petty sessions area.
- (2) A person may not be appointed as justices’ clerk unless—
 - (a) the magistrates’ courts committee have submitted to the Lord Chancellor, in accordance with regulations, an application for approval of one or more persons offering themselves for the appointment;
 - (b) the Lord Chancellor has approved one or more of those persons; and
 - (c) the person appointed is a person so approved.
- (3) Where a person employed as a justices’ clerk under a contract for a fixed term is re-appointed on the expiry of that term, subsection (2) above does not apply in relation to the re-appointment.
- (4) Where the Lord Chancellor declines to approve any person who is named in an application under subsection (2)(a) above, he shall inform the magistrates’ courts committee of the reasons for his decision.
- (5) The approval of the Lord Chancellor shall be required—
 - (a) for any decision to increase the number of justices’ clerks for a petty sessions area or to have more than one justices’ clerk for a new petty sessions area; or
 - (b) for the removal of the justices’ clerk for a petty sessions area where the magistrates for the area do not consent to the removal.
- (6) A magistrates’ courts committee shall consult the magistrates for any petty sessions area—
 - (a) on the appointment of a justices’ clerk for the area, except in the case of a re-appointment on the expiry of a fixed term; or
 - (b) on the removal of a justices’ clerk for the area.
- (7) Before—
 - (a) approving any person under subsection (2) above; or
 - (b) approving the removal of a justices’ clerk,
 the Lord Chancellor shall consider any representations made to him by the magistrates for the petty sessions area concerned; and before approving the removal of a justices’ clerk the Lord Chancellor shall also consider any representations made to him by the clerk.
- (8) Where a person is employed as a justices’ clerk under a contract for a fixed term, the expiry of that term without renewal shall be treated for the purposes of subsections (5) to (7) above as his removal as justices’ clerk, unless he has consented to the failure to renew.
- (9) In this section “regulations” means regulations made by the Lord Chancellor by statutory instrument; and a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

43 Qualifications for appointment as justices’ clerk.

No person shall be appointed as justices’ clerk unless either—

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)

- (a) at the time of appointment—
 - (i) he has a 5 year magistrates’ courts qualification (within the meaning of section 71 of the ^{M3}Courts and Legal Services Act 1990); or
 - (ii) he is a barrister or solicitor and has served for not less than five years as assistant to a justices’ clerk; or
- (b) he then is or has previously been a justices’ clerk.

Marginal Citations

M3 1990 c. 41.

44 Terms of employment of justices’ chief executives, justices’ clerks and staff.

- (1) Except as provided by this Act, a justices’ chief executive or justices’ clerk—
 - (a) shall be employed by the magistrates’ courts committee on such terms as they may determine; and
 - (b) shall hold and vacate office in accordance with the terms of his contract of service.
- (2) A magistrates’ courts committee may employ staff on such terms as they think fit.
- (3) Without prejudice to the generality of subsection (1) of section 144 of the ^{M4}Magistrates’ Courts Act 1980, the power conferred by that section to make rules for regulating and prescribing the procedure and practice to be followed by justices’ clerks includes power to provide that, subject to any exceptions prescribed by the rules, persons—
 - (a) shall not be employed to assist a justices’ clerk in any capacity so prescribed; or
 - (b) shall not be permitted to do on behalf of a justices’ clerk any such acts as may be so prescribed,unless those persons are qualified to be appointed justices’ clerk or have such other qualifications as may for any purpose be allowed by the rules or approved by the Lord Chancellor in accordance with the rules.

Marginal Citations

M4 1980 c. 43.

45 General powers and duties of justices’ clerks.

- (1) Rules made in accordance with section 144 of the ^{M5}Magistrates’ Courts Act 1980 may (except to the extent that any enactment passed after this Act otherwise directs) make provision enabling things authorised to be done by, to or before a single justice of the peace to be done instead by, to or before a justices’ clerk.
- (2) Such rules may also make provision enabling things authorised to be done by, to or before a justices’ clerk (whether by virtue of subsection (1) above or otherwise) to be done instead by, to or before a person appointed by a magistrates’ courts committee to assist him.

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation: There are currently no known outstanding effects for the
 Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)*

- (3) Any enactment (including any enactment contained in this Act) or any rule of law which—
- (a) regulates the exercise of any jurisdiction or powers of justices of the peace; or
 - (b) relates to things done in the exercise or purported exercise of any such jurisdiction or powers,
- shall apply in relation to the exercise or purported exercise of any such jurisdiction or powers by the clerk to any justices by virtue of subsection (1) above as if he were one of those justices.
- (4) The functions of a justices’ clerk include giving advice to the justices to whom he is clerk, at their request, about [^{F6}matters of law (including procedure and practice)] on questions arising in connection with the discharge of their functions, including questions arising when the clerk is not personally attending on them.
- (5) The powers of a justices’ clerk include, at any time when he thinks he should do so, bringing to the attention of those justices any point of [^{F7}law (including procedure and practice)] that is or may be involved in any question so arising.
- (6) For the purposes of subsections (4) and (5) above the functions of justices of the peace do not include functions as a judge of the Crown Court.
- (7) Subsections (4) and (5) above—
- (a) apply in relation to any of the justices to whom the justices’ clerk is clerk as they apply in relation to all of them; and
 - (b) do not define or in any respect limit—
 - (i) the powers and duties of a justices’ clerk; or
 - (ii) the matters on which justices may obtain assistance from their clerk.

Textual Amendments

F6 Words in s. 45(4) substituted (27.9.1999) by 1999 c. 22, s. 89(2)(a) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(c)(iii)

F7 Words in s. 45(5) substituted (27.9.1999) by 1999 c. 22, s. 89(2)(b) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(c)(iii)

Marginal Citations

M5 1980 c. 43.

46 Functions of justices’ clerk as collecting officer.

Without prejudice to the provisions of sections 59 and 59A of the Magistrates’ Courts Act 1980 (periodical payments through justices’ clerk and proceedings by the clerk etc.) or section 62 of that Act (payments required to be made to a child), a justices’ clerk—

- (a) shall, by virtue of his office, be collecting officer of any magistrates’ court of which he is the clerk; and
- (b) in that capacity shall act under any order directing the payment of money to him which was made by any court under section 30 of the ^{M6}Criminal Justice Administration Act 1914 (which provided for periodical payments under court orders to be made through an officer of the court or other third party) and

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)

which continues to have effect in accordance with the provisions of paragraph 18 of Schedule 4 to this Act.

Marginal Citations

M6 1914 c. 58.

47 Person acting as substitute clerk to justices.

- (1) Subject to any rules made under section 144 of the ^{M7}Magistrates’ Courts Act 1980, where a person who is not the justices’ clerk (or one of the justices’ clerks) for a petty sessions area acts as clerk to the justices for that petty sessions area—
 - (a) he shall be treated as acting as deputy to the justices’ clerk; and
 - (b) he shall make a return to the justices’ clerk of—
 - (i) all matters done before the justices; and
 - (ii) all matters that the clerk to the justices is required to register or record.
- (2) Where there are two or more justices’ clerks for the petty sessions area, any reference in subsection (1) above to the justices’ clerk is a reference to such one of them as may be designated for the purpose by the magistrates’ courts committee.

Marginal Citations

M7 1980 c. 43.

[^{F8}48 Independence of justices’ clerks and staff exercising legal functions.

- (1) When exercising any legal function—
 - (a) a justices’ clerk shall not be subject to the direction of the justices’ chief executive or any other person or body; and
 - (b) a member of the staff of a magistrates’ courts committee shall not be subject to the direction of any person or body other than a justices’ clerk.
- (2) In subsection (1) “legal function” means—
 - (a) any function exercisable by one or more justices of the peace; or
 - (b) a function specified in section 45(4) or (5) above.]

Textual Amendments

F8 S. 48 and sidenote substituted (27.9.1999) by 1999 c. 22, ss. 89(1) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(c)(iii)

^{F9}49

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation: There are currently no known outstanding effects for the
 Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)*

Textual Amendments

F9 S. 49 repealed (27.9.1999) by 1999 c. 22, ss. 106, 108(3)(f), **Sch. 15 Pt. V(5)** (with Sch. 14 paras. 7(2), 36(9)); S.I. 19992657, art. 2(d)(iii)

[^{F10}50 Pensions of employees of GLMCA.

- (1) The Lord Chancellor may, with the consent of the Minister for the Civil Service, make provision by order made by statutory instrument for section 1 of the ^{M8}Superannuation Act 1972 (pensions of civil servants etc.) to apply to persons employed by the Greater London Magistrates’ Courts Authority (and may make such provision by amendment of that Act).
- (2) An order under subsection (1) above may provide for the Authority to pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to such provision in the sums payable under the Superannuation Act 1972 out of money provided by Parliament.
- (3) Where an order under subsection (1) above is made, the Minister for the Civil Service may, to such extent and subject to such conditions as he thinks fit—
 - (a) delegate to any person the function of administering a scheme made under section 1 of the Superannuation Act 1972, so far as relating to employees of the Authority; or
 - (b) authorise the exercise of that function (so far as so relating) by, or by employees of, any person.
- (4) A person to whom the function of administering a scheme made under section 1 of the Superannuation Act 1972 is delegated under subsection (3)(a) above may, to such extent and subject to such conditions as he may determine, authorise the exercise of that function by, or by employees of, any person.
- (5) Where a person is authorised under subsection (3)(b) or (4) above to exercise the function of administering a scheme made under section 1 of the ^{M9}Superannuation Act 1972, anything done or omitted to be done by or in relation to him (or an employee of his) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by the person who authorised him.
- (6) Subsection (5) above does not apply for the purposes of—
 - (a) any criminal proceedings against the authorised person (or any employee of his); or
 - (b) any contract between him and the person who authorised him, so far as relating to the function.
- (7) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F10 S. 50 substituted (1.4.2001) by 1999 c. 22, s. 83, Sch. 12 paras. 9, 13 (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 2(a)(i) (subject to transitional provisions in Sch. 2 para. 2)

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)

Marginal Citations

M8 1972 c.11.

M9 1972 c.11.

50 Pensions etc. of justices’ chief executive, justices’ clerks and staff in inner London area. **E+W**

- (1) Schedule 3 to this Act (which re-enacts certain provisions relating to the functions of the Receiver for the Metropolitan Police District with respect to pensions etc. of court staff) shall have effect.
- (2) The Lord Chancellor may by order make provision with respect to pensions, allowances or gratuities payable to or in respect of inner London court staff, or any class of inner London court staff.
- (3) An order under subsection (2) above may—
 - (a) itself make provision with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the order, are to be or may be paid to or in respect of inner London court staff, or any class of inner London court staff; or
 - (b) provide that the civil service provisions are to have effect, with such modifications as may be prescribed by the order, in relation to the payment by such persons as may be so prescribed, out of such funds as may be so prescribed, of pensions, allowances and gratuities to or in respect of inner London court staff, or any class of inner London court staff.
- (4) Without prejudice to the generality of subsections (2) and (3) above, an order under subsection (2)—
 - (a) may include all or any of the provisions referred to in paragraphs 1 to 11 of Schedule 3 to the ^{M10}Superannuation Act 1972; and
 - (b) may make different provision as respects different classes of persons and different circumstances.
- (5) Paragraphs 1 to 11 of Schedule 3 to the Superannuation Act 1972 shall have effect, in their application for the purposes of this section, as if references to regulations were references to an order under this section and references to the Secretary of State were references to the Lord Chancellor.
- (6) Subsections (3) and (4) of section 7 of the ^{M11}Superannuation Act 1972 (which relate to increases under the Pensions (Increase) Act 1971) shall have effect in relation to an order under subsection (2) above as they have effect in relation to regulations under that section.
- (7) The Lord Chancellor may by order repeal or amend any of the relevant enactments, whether or not he makes provision under subsection (2) above.
- (8) An order under subsection (2) or (7) above may make such consequential, transitional, incidental or supplemental provision (including provision amending or repealing any provision of this Act or any other enactment) as the Lord Chancellor thinks necessary or expedient.
- (9) Before making an order under subsection (2) or (7) above the Lord Chancellor shall consult—

Status: Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the
Justices of the Peace Act 1997 (repealed), Part IV. (See end of Document for details)

- (a) the inner London magistrates’ courts committee;
 - (b) such local authorities as appear to him to be concerned;
 - (c) the Receiver for the Metropolitan Police District; and
 - (d) such representatives of other persons likely to be affected by the proposed order as appear to him to be appropriate.
- (10) An order under subsection (2) or (7) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In this section—
- “the civil service provisions” has the meaning given by section 15(1) of the ^{M12}Superannuation (Miscellaneous Provisions) Act 1967;
- “inner London court staff” means the justices’ chief executive employed by the inner London magistrates’ courts committee, any justices’ clerk for [^{F11}a petty sessions area which is included (wholly or partly) in]the inner London area and staff of the inner London magistrates’ courts committee;
- “the inner London magistrates’ courts committee” means the magistrates’ courts committee for an area consisting of or including the inner London area or, if there is no such committee, every magistrates’ courts committee for any area which consists of or includes any part of the inner London area; and
- “the relevant enactments” means—
- (a) Schedule 3 to this Act; and
 - (b) section 15 of the ^{M13}Superannuation (Miscellaneous Provisions) Act 1967 (superannuation of metropolitan civil staffs) so far as it relates to the persons mentioned in subsection (1)(a)(ii) of that section.

Textual Amendments

F11 Words in definition of “inner London court staff” inserted (27.9.1999) by 1999 c. 22, ss. 76, 108(3)(c), Sch. 10 paras. 47, **51** (with Sch. 14 paras. 7(2))

Marginal Citations

M10 1972 c. 11.
M11 1971 c. 56.
M12 1967 c. 28.
M13 1967 c. 28.

Status:

Point in time view as at 27/09/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Justices of the Peace Act 1997 (repealed), Part IV.