

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

ACCESS TO JUSTICE ACT 1999

EXPLANATORY NOTES

E.

IMMUNITY AND INDEMNITY (PART VI - SECTIONS 98-104)

Summary

322. The Act contains provisions that change the circumstances in which costs can be awarded against justices of the peace, justices' clerks and their assistants, General Commissioners of income tax and their clerks, and coroners.
323. The purpose of these provisions is to provide justices of the peace, General Commissioners of income tax and coroners, in the exercise of their duties, with statutory protection against personal liability for costs as a result of legal proceedings.
324. The Act will:
- provide General Commissioners of income tax with immunity against legal action in respect of any act or omission arising out of the execution of their duties;
 - extend the immunity against legal action currently enjoyed by justices of the peace and justices' clerks to justices' clerks' assistants exercising the function of a single justice;
 - provide justices of the peace, justices' clerks and their assistants, and General Commissioners of income tax, statutory immunity against being ordered to pay costs in legal proceedings about the exercise of their judicial functions, except where it is proved that they acted in bad faith;
 - provide for the costs of other parties in such cases, which would have been awarded against a judicial officer but for the immunity described above, to be paid by the Lord Chancellor, or in the case of General Commissioners in Scotland, the Secretary of State; and
 - provide for justices of the peace, justices' clerks and their assistants, General Commissioners of income tax and their clerks, and coroners, to be indemnified for any costs that they reasonably incur in legal proceedings arising out of the exercise of their judicial functions.
325. The provisions relating to General Commissioners and their clerks extend to the United Kingdom. The Act makes equivalent provisions for Northern Ireland in respect of immunity from costs for justices and their clerks, and indemnity for coroners.

Background

326. There are just over 30,000 lay magistrates who are unpaid volunteers, and there are presently 94 stipendiary magistrates who are qualified lawyers. Justices' clerks are qualified lawyers appointed by magistrates' courts committees. They give advice to

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

justices about the law, and they and their assistants may exercise the powers of a single justice of the peace (see paragraph 302 above).

327. General Commissioners of income tax are unpaid lay volunteers appointed by the Lord Chancellor, (or the Secretary of State in Scotland). There are approximately 3,500 General Commissioners and they sit in Divisions throughout the United Kingdom to determine appeals and other matters in respect of decisions of the Inland Revenue on a variety of tax matters. General Commissioners appoint a clerk in each Division who provides administrative support to the Commissioners, arranges appeal meetings and advises the Commissioners on points of law and procedure.
328. Coroners are appointed by local authorities in England and Wales. Most are part-time appointments of appropriately qualified lawyers or doctors. In accordance with the Coroners Act 1988, they conduct inquests into deaths (and treasure finds) in prescribed circumstances and deal with certain related matters.
329. At present, like all other judges, justices of the peace, and justices' clerks exercising the functions of a single justice, cannot be sued in relation to anything they say or decide when exercising their judicial functions. The Act will extend this protection to General Commissioners of income tax and justices' clerks' assistants.
330. However, there are certain circumstances in which judicial officers may become involved in legal proceedings, not brought against them directly, but nonetheless arising out of their judicial decisions. These include judicial review proceedings, where the judicial officer appears or is represented as a respondent; appeals to the High Court by way of case stated; and applications to the High Court made by or under the authority of the Attorney General for an inquest or a fresh inquest. At present, justices of the peace, justices' clerks and their assistants, General Commissioners and their clerks, and coroners, may personally be ordered to pay the costs of other parties in these proceedings.
331. When this happens, under current legislation, justices of the peace, justices' clerks and their assistants may be indemnified, and in certain circumstances must be indemnified, against costs from the funds of their magistrates' courts committee. There is currently no equivalent statutory protection for General Commissioners and their clerks or coroners. In practice, General Commissioners may be indemnified on a non-statutory basis from central Government funds (the formal position is that they are treated in the same way as members of non-departmental public bodies). Similarly, coroners may in practice be indemnified by their paying local authority.
332. The Act provides that in future justices of the peace, justices' clerks and their assistants, and General Commissioners should have immunity from being ordered to pay another party's costs in any legal proceedings arising out of the exercise of their judicial functions; except where it is proved that they acted in bad faith, or they are themselves subject to criminal proceedings. The Act also provides that where the court could have made a costs order but is prevented from doing so, it can instead order the costs of a party to be paid by the Lord Chancellor (or the Secretary of State in the case of General Commissioners in Scotland).
333. The Act also includes provisions relating to the indemnification of judicial officers for costs reasonably incurred in legal proceedings arising out of the exercise of their judicial functions. In the case of those judicial officers who will be given immunity against costs orders, this indemnity will mainly be relevant in respect of their own costs. The Act:
 - amends the existing provision for magistrates' courts committees to indemnify justices of the peace, justices' clerks and their assistants, to provide that they shall not be indemnified if they are proved to have acted in bad faith;
 - provides for General Commissioners and their clerks to be indemnified by the Lord Chancellor (or, in Scotland, the Secretary of State) against costs reasonably incurred, unless it is proved that they acted in bad faith; and

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

- provides for coroners to be indemnified by their paying local authority against costs reasonably incurred.
334. In the case of General Commissioners' clerks and coroners, the indemnity will be relevant to costs orders as well as other costs incurred. Coroners, who are funded by local authorities, will be indemnified, rather than given immunity, in order to avoid the need to make separate new funding arrangements to meet other parties' costs.
335. The provisions in this part of the Act follow the consultation paper *Liability of judicial officers and others for costs in court proceedings*, Lord Chancellor's Department, August 1996.

Commentary

Justices and their clerks

336. **Section 98: Justices and clerks: immunity from costs.** This section inserts a new section 53A in the Justices of the Peace Act 1997 ("JPA 1997") to give immunity against costs orders to justices of the peace in proceedings arising from the execution of their duty. New section 53A also gives immunity to justices' clerks (and those appointed to assist a justices' clerk) in proceedings which arise from their exercise of a function which could be exercised by a single justice of the peace. It excludes proceedings in which bad faith is proved and makes clear that the immunity does not apply where the justice, clerk or assistant is the subject of criminal proceedings. The new section also provides for the court to order the payment by the Lord Chancellor of the costs of any party to proceedings against a justice of the peace or clerk where, but for the provisions of the section, it would order the costs to be paid by the justice or clerk. It provides for the Lord Chancellor to make regulations, subject to the affirmative resolution procedure, covering how the court is to exercise the power to award costs and how those costs are to be determined
337. Under the provisions of section 54 of the JPA 1997, a justice or justices' clerk may be indemnified by their magistrates' courts committee against any costs order, and in certain circumstances must be indemnified. Nevertheless the possibility remains that an individual could be faced with a costs order. This section will remove the fear of costs orders by putting the position beyond doubt.
338. **Section 98(2)** makes a similar change for Northern Ireland.
339. **Section 99: Justices and clerks: indemnity.** This section amends section 54 of the JPA 1997, so that justices of the peace, justices' clerks and their assistants may be indemnified by the magistrates' courts committee against costs orders in any proceedings, not only proceedings taken against them. It also removes the discretion to grant indemnity in non-criminal matters where bad faith is proved.
340. Despite the new immunity which will be provided by section 98, there will be circumstances in which indemnification continues to be appropriate. These are: where justices or clerks incurs costs themselves (as opposed to being ordered to pay the costs of other parties); where costs have been incurred before the new immunity takes effect; and where costs ordered against a justices' clerk or assistant are not covered by the immunity provisions (that is where the proceedings do not arise from the exercise of a function of a single justice).
341. **Section 100: Assistant justices' clerks: immunity from action.** This section amends sections 51 and 52 of the JPA 1997 in order to extend the immunity against action which is given to justices of the peace and justices' clerks to those appointed to assist a justices' clerk. Justices' clerks' assistants may, like justices' clerks, perform functions which are authorised to be performed by a single justice of the peace. The amendment made by this section will provide consistency of treatment.

General Commissioners of income tax and their clerks

342. **Section 101: General Commissioners: immunity from action.** This section provides General Commissioners of income tax with immunity from action in respect of any act or omission in the execution of their duty. It brings the position of General Commissioners into line with that of justices.
343. **Section 102: General Commissioners: immunity from costs and expenses.** This section provide General Commissioners of income tax with immunity against costs orders in cases arising from the execution of their duties, unless bad faith is proved. It also provides for the court to order the payment by the Lord Chancellor, or in Scotland the Secretary of State, of the costs of any party to proceedings against a General Commissioner where, but for the provisions of the section, it would order the costs to be paid by the General Commissioner. It provides for the Lord Chancellor (or the Secretary of State) to make regulations, subject to the affirmative resolution procedure, covering how the court is to exercise the power to award costs and how those costs are to be determined.
344. **Section 103: General Commissioners and clerks: indemnity.** This section provides for General Commissioners and their clerks to be indemnified in relation to costs or expenses which they reasonably incur, or are ordered to pay, in legal proceedings arising out of the execution of their duties, unless they are proved to have acted in bad faith. General Commissioners' clerks are not covered by the immunity against costs orders provided by section 102. General Commissioners may have to be indemnified in respect of their own costs. The Lord Chancellor will indemnify the General Commissioners and their clerks, except in Scotland where it will be the Secretary of State.

Coroners

345. **Section 104: Indemnity.** This section inserts a new section in the Coroners Act 1988 to require the councils responsible for appointing coroners to indemnify them against certain costs which coroners, in their official capacity, may reasonably incur, or which they are ordered to pay, in the course of legal proceedings. There is a similar change for Northern Ireland.

Commencement

Funding of legal services

346. The provisions of Part I of the Act (The Legal Services Commission) will come into force on a day or days appointed by the Lord Chancellor by order. It is the Government's current intention to bring all or as many as is possible of the provisions into force by April 2000.
347. In Part II, sections 27 to 31 (Conditional fee agreements etc.) will come into force on a day appointed by the Lord Chancellor by order. The Government intends to bring these provisions into force in January 2000 or as soon as possible after that.
348. **Sections 32-34** (Legal aid in Scotland) will come into force two months after Royal Assent.

Provision of legal services

349. **Sections 35-44** and **46-53** will come into force on a day or days appointed by the Lord Chancellor by order.
- The Government currently intends to bring the following sections into force two months after Royal Assent: sections 36 (Barristers and solicitors), 40 (Rights to conduct litigation), 42 (Overriding duties of advocates and litigators), 46 (Bar practising certificates), 48 (Law Society's powers), 49 (Powers of Ombudsman) and 53 (abolition of scriveners' monopoly).

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

- Section 35 (Replacement of ACLEC by Consultative Panel) will probably be brought into force at the beginning of January 2000.
 - Section 41 and Schedule 5 (Authorised bodies: designation and regulations and rules) will also be brought into force in January 2000. The Government intends to work with the professional bodies on the implementation of those sections which require changes to their rules (under the revised procedures in Schedule 5). These sections – 37 (Rights of audience: employed advocates); 38 (Employees of Legal Services Commission); 39 (Rights of audience: change of authorised body) and 44 (Barristers employed by solicitors) – will be brought into force in April 2000 or as soon as possible thereafter. This will provide an opportunity for the Legal Services Consultative Panel to advise on the rule changes.
 - Sections 47 (Fees for solicitors' practising certificates) and 50-52 (Funding of Ombudsman; Legal Services Complaints Commissioner) will not be brought into force until at least 18 months after Royal Assent.
350. **Section 45** (Fees on application for appointment as Queen's Counsel) came into force on Royal Assent, allowing fees to be charged for this year's round of appointments.

Appeals, courts, judges and court proceedings

351. With three exceptions, Part IV of the Act (sections 54-73) will come into force two months after Royal Assent. The exceptions are section 66 and Schedule 9 (Enforcement of community orders), section 67(2) (Time limits where accused sent for trial) and section 71 (Adjournment of inquests). These provisions will come into force on a day or days appointed by the Lord Chancellor by order.
- Section 66 and Schedule 9 will be brought into force as soon as possible after Royal Assent.
 - Section 67(2) will be brought into force as soon as possible for those areas where the new procedures introduced by the Crime and Disorder Act 1998 are being piloted; it will be extended to other areas when the 1998 Act is implemented nation wide.
 - Section 71 will be brought into force as soon as the necessary changes to the Coroners Rules 1984 can be made.

Magistrates and magistrates' courts

352. The following provisions of Part V will be brought into force on a day or days appointed by the Lord Chancellor by order.
- Section 77 (Youth courts) and section 78 (Unification and renaming of stipendiary bench). The Government's current intention is to bring these provisions into force during Spring 2000, following consultation on youth court rules (see paragraph 272 above) and consideration of various practical issues relating to the unified bench (e.g. the procedures for deploying District Judges (Magistrates' Courts) to different areas in response to fluctuations in workload).
 - Section 79 (Justices not to sit on committals for sentence) and section 80 (Jurisdiction over offences outside area). It is intended to bring these changes into force as soon as the necessary secondary legislation can be made.
 - Section 83 (Greater London Magistrates' Courts Authority). It is intended that the Authority will commence with a period of preparatory running, prior to taking up its full role as the MCC for London in April 2001.
 - Section 85 (Power to direct implementation of inspectors' reports). It is intended to bring this provision into force before the end of 1999, following consultation with the Inspectorate and the magistrates' courts service.

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

- Sections 88-89 (Role of justices' chief executives and independence of justices' clerks). It is intended that these changes will be brought into effect in Autumn 1999.
 - Sections 90-91 (Transfer of functions from justices' clerks to justices' chief executive). It is intended that these changes will be brought into effect on 1 April 2000.
 - Sections 92-97 (Execution of warrants). It is intended that magistrates' courts should assume full responsibility for the enforcement of financial warrants on 1 October 2000. The transfer of responsibility for the enforcement of arrest warrants in connection with non-financial penalties could be brought into effect at the same time, or a later date.
353. The other provisions of Part V (Territorial organisation; areas and constitution of magistrates' courts committees outside Greater London; standard goods and services; code of conduct for MCC members etc., qualification of justices' chief executives) will come into force two months after Royal Assent.

Immunity and indemnity

354. [Sections 98-103](#) (Justices of the peace, justices' clerks and their assistants; General Commissioners of income tax and their clerks) will be brought into force on a day or days appointed by the Lord Chancellor by order. It is the Government's intention to bring these provisions into force in early 2000.
355. [Section 104](#) (Coroners) will come into force two months after Royal Assent.

Parliamentary Progress

356. The Access to Justice Bill was introduced in the House of Lords on 2 December 1998. It received its Second Reading on 14 December 1998 (Official Report, cols. 1107-1127 & 1140-1201). The Committee Stage took place on 19 January 1999 (cols. 475-572); 21 January 1999 (cols. 701-752 & 771-792); 26 January 1999 (cols. 878-935 & 951-1008); and 28 January 1999 (cols. 1137-1193 & 1210-1278). The Report Stage took place on 11 February 1999 (cols. 329-384 & 390-456) and 16 February 1999 (cols. 551-571, 580-619 & 627-672). The Third Reading was on 16 March 1999 (cols. 611-628 & 646-693).
357. The Bill was brought to the House of Commons on 17 March 1999. It received its Second Reading on 14 April 1999 (Official Report, cols. 230-332). The Bill was considered by Standing Committee E in 8 sittings from 27 April to 13 May. Report Stage and Third Reading took place on 22 June 1999 (cols. 980-1079).
358. The House of Lords considered the amendments made by the Commons on 14 July 1999 (Official Report, cols. 398-538) and disagreed with certain of them. The Commons considered the Lords' reasons for disagreement on 21 July 1999 (cols. 1201-1243) and proposed alternative amendments. The Lords considered and approved these on 26 July 1999 (cols. 1295-1312). The Access to Justice Act received the Royal Assent on 27 July 1999.