



# Justices of the Peace Act 1949

## 1949 CHAPTER 101

### PART II

#### COMMISSION OF THE PEACE, CONSTITUTION OF COURTS AND RULES OF PROCEDURE

#### 10 Area of commission

- (1) Subject to the provisions of this Act, there shall be a separate commission of the peace for every county, for every county borough and for such non-county boroughs as satisfy one of the following conditions, that is to say—
  - (a) that at the end of December nineteen hundred and forty eight the borough had a separate commission of the peace and a population of thirty-five thousand or over ;
  - (b) that at the end of that month the borough had a separate commission of the peace and court of quarter sessions and a population of twenty thousand or over;
  - (c) that at the end of that month the borough had a separate commission of the peace and court of quarter sessions, and the Lord Chancellor makes an order under subsection (5) of this section saving the grant to the borough of its commission and quarter sessions;
  - (d) that after the passing of this Act His Majesty grants a separate commission of the peace to the borough under section one hundred and fifty-six of the Municipal Corporations Act, 1882, on a petition made by the council at a time when the borough has a population of sixty-five thousand or over,and there shall not be a commission of the peace or justices of the peace for any other area.
- (2) For the purposes of this section, the county shall be the administrative county except that, in the case of London, the county shall be the county of London as constituted under subsection (2) of section forty of the Local Government Act, 1888, unless the City of London is made subject to the jurisdiction of the county justices and court of quarter sessions under subsection (3) of that section.

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*Status: This is the original version (as it was originally enacted).*

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- (3) For the purposes of this section, an administrative county shall be deemed to include any area in a county borough not having a separate court of quarter sessions which forms part of the county for the purpose of the appointment of a coroner, but this shall not affect the commission of the peace or justices of the peace for the borough and 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 area did not form part of the county.
- (4) For the purposes of this section, the administrative county of Cornwall shall be deemed to include the Scilly Isles.
- (5) The Lord Chancellor may make an order saving for the purposes of subsection (1) of this section the grant to a borough of its commission and quarter sessions if—
- (a) the borough council applies for the order not later than two months after the date of the passing of this Act or within such further time as the Lord Chancellor may allow; and
  - (b) the Lord Chancellor is satisfied that it is desirable to save the grant to the borough of its commission and quarter sessions on account—
    - (i) of the assistance the borough court of quarter sessions has given or is likely to be able to give in the administration of justice in the county which includes the borough ; and
    - (ii) of historical or geographical reasons;
- and it shall be the duty of the recorder for the time being of any borough named in an order under this section, before he fixes the date for holding any quarter sessions for the borough, to consult the chairman of the court of quarter sessions of the county or quarter sessions division of a county in which the borough is situated or (failing the chairman) the deputy chairman or one of the deputy chairmen of that court.
- (6) The power of the Lord Chancellor to make an order under this section shall be exercisable by statutory instrument.
- (7) The Second Schedule to this Act shall have effect for the preservation and adaptation of existing commissions of the peace and other purposes consequential on the changes effected by the foregoing subsections.
- (8) Except as provided by that Schedule, any existing commission of the peace which is not in accordance with subsection (1) of this section, and any appointment in connection therewith of a recorder, deputy recorder, clerk or deputy clerk of the peace, justices' clerk, crier, or other officer shall become inoperative on the coming into force of this section.
- (9) For the purposes of this section, the population at any time of a borough shall be ascertained according to the estimates of the registrar-general and the population at the end of December nineteen hundred and forty-eight shall be ascertained to the nearest thousand.
- (10) The boroughs retaining their existing commissions of the peace by virtue of paragraphs (a) and (b) of subsection (1) of this section are those named in the Third Schedule to this Act.
- (11) For the purposes of this section, the expression " existing " means existing immediately before the coming into force of this section.

## 11 Justices and courts in London

- (1) Subsection (1) of the last foregoing section shall not affect the justices of the peace for the City of London or any power of His Majesty in relation to justices for the City.
- (2) At either of the justice rooms of the City of London the place of the Lord Mayor or alderman may, for the purposes of the exercise of any powers of a magistrates' court, be taken by the assistant judge of the Mayor's and City of London Court appointed under the Borough and Local Courts of Record Act, 1872, or any additional judge of that court appointed under the Mayor's and City of London Court Act, 1920.
- (3) At quarter sessions for the City of London the court may, for the purpose of hearing and determining any appeal from a court of summary jurisdiction or dealing with costs, recognisances and other matters preliminary to or arising out of any such appeal, consist of the recorder of the City of London (if appointed by His Majesty to exercise judicial functions) or the common serjeant of the City of London.
- (4) A court constituted in accordance with subsection (2) or (3) of this section shall have the same jurisdiction and powers as if constituted in the ordinary way.
- (5) The justices of the peace for the City of London shall not exercise any jurisdiction which is required to be exercised by a juvenile court, or any jurisdiction to hear and determine domestic proceedings ; and metropolitan stipendiary magistrates and other justices for the county of London may exercise in relation to the City of London—
  - (a) any jurisdiction which may be exercised by a juvenile court; and
  - (b) any jurisdiction under the Guardianship of Infants Acts, 1886 and 1925, the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, or subsection (3) of section four of the Family Allowances Act, 1945 ;as if the City were included in the county of London.
- (6) So much of Part III of the Children and Young Persons Act, 1933, and the Summary Procedure (Domestic Proceedings) Act, 1937, as relates specifically to courts of summary jurisdiction for the City of London shall cease to have effect, and references in the said Part III and the said Act of 1937 to the metropolitan stipendiary court area shall include the City.
- (7) In subsection (5) of this section the expression " domestic proceedings " means domestic proceedings within the meaning of the Summary Procedure (Domestic Proceedings) Act, 1937, and references to the City of London include any area forming part of the administrative county of London but not forming part of the county within the meaning of the last foregoing section.
- (8) Subsection (5) of this section shall not affect any jurisdiction of the justices of the peace for the City of London in relation to orders made by those justices before the coming into force of that subsection.
- (9) Section forty-two of the Metropolitan Police Courts Act, 1839 (which limits the cases in which fees may be taken in proceedings before justices in the metropolitan stipendiary court area), shall cease to have effect, but justices acting for any petty sessional division of the county of London (not being metropolitan stipendiary magistrates) shall comply with any order of the Secretary of State as to the classes of case which should or should not be taken by them.
- (10) Nothing done by any such justices shall be invalidated by reason of any non-compliance with an order under the last foregoing subsection.

- (11) Any such order shall be made by statutory instrument and may be varied or revoked by a subsequent order.

## **12 Licensing authorities for non-county boroughs**

- (1) For the purposes of the Licensing (Consolidation) Act, 1910, as respects licensing districts being non-county boroughs—
- (a) the licensing justices shall be for all purposes the borough licensing committee;
  - (b) the confirming authority shall be a committee of the borough justices; and
  - (c) the compensation authority shall be the county confirming and compensation committee of the county in which the borough is situated.
- (2) Section forty of the Licensing (Consolidation) Act, 1910, as set out in the Second Schedule to the Licensing Act, 1949 (which relates to the disqualification of justices), and section twelve of the Licensing Act, 1949 (which relates to the constitution and procedure of licensing authorities in county boroughs), shall apply in relation to a non-county borough having a separate commission of the peace and to the confirming authority in such a borough as they apply in relation to a county borough and the confirming and compensation committee in a county borough.
- (3) The justices of any non-county borough shall be entitled to appoint one of their number to act on the county confirming and compensation committee when the committee is discharging functions as compensation authority (whether for the county or for any borough situated therein), and for the purpose of those functions any justice so appointed shall be deemed to be an additional member of the committee.
- (4) Notwithstanding the foregoing provisions of this section the confirming authority in any borough mentioned in Part III of the Third Schedule to this Act or in an order of the Lord Chancellor under section ten thereof shall be a joint committee of the borough justices and justices for the county in which the borough is situated (constituted in accordance with section four of the Licensing (Consolidation) Act, 1910), if and so long as it appears to the borough justices expedient having regard to the small number of the borough justices available to act as members of a confirming authority constituted as provided by subsection (2) of this section.

## **13 Size and chairmanship of bench**

- (1) The number of county or borough justices sitting to deal with a case as a court of quarter sessions or as a magistrates' court shall not be greater than the number prescribed in that behalf by rules made under this section.
- (2) In any petty sessions area there shall be a chairman and one or more deputy chairmen of the justices chosen from amongst themselves by the magistrates for the area by secret ballot.
- (3) Subject to the next following subsection, at any meeting of justices for a petty sessions area the chairman or a deputy chairman of the justices shall preside, if present, and the mayor of a borough shall not as such have any right to preside at meetings of justices.
- (4) The last foregoing subsection shall not confer on the chairman and deputy chairmen of the justices as such any right to preside at quarter sessions or in a juvenile court, or

at meetings of a committee or other body of justices having its own chairman, or at meetings when any stipendiary magistrate is engaged as such in administering justice.

- (5) Rules made under this section may make provision as to the manner in which this section is to be administered and in particular—
- (a) as to the arrangements to be made for securing the presence on the bench of enough, but not more than enough, justices; and
  - (b) as to the term of office and the procedure at an election of the chairman and deputy chairmen of the justices in a petty sessions area, and the number of deputy chairmen to be elected in any such area.
- (6) Rules for the purposes of this section shall be made by the Lord Chancellor by statutory instrument, which shall be subject to annulment by resolution of either House of Parliament.

#### **14 Age of bench in juvenile courts**

- (1) The rules with respect to the formation and revision of juvenile court panels made under paragraph 1 of the Second Schedule to the Children and Young Persons Act, 1933, or section fifty-one of the Children and Young Persons (Scotland) Act, 1937, may include provision for securing that a justice shall not be a member of a panel after he has attained the retiring age prescribed by the rules.
- (2) Those rules may also include provision for securing that a justice is not appointed a member of a panel after he has attained such age as may be so prescribed.

#### **15 Rule committee and rules of procedure**

- (1) The Lord Chancellor may appoint a rule committee for magistrates' courts, and may on the advice of or after consultation with the rule committee make rules for regulating and prescribing the procedure and practice to be followed in magistrates' courts and by justices' clerks.
- (2) The rule committee shall consist of the Lord Chief Justice, the President of the Probate, Divorce and Admiralty Division of the High Court, the chief magistrate of the metropolitan stipendiary court at Bow Street and such number of other persons appointed by the Lord Chancellor as he may determine.
- (3) Among the members of the committee appointed by the Lord Chancellor there shall be at least one justices' clerk, one practising barrister and one practising solicitor of the Supreme Court.
- (4) The power to make rules conferred by this section shall (without prejudice to the generality of subsection (1) thereof) include power to make provision as to—
- (a) the practice and procedure of justices in exercising functions preliminary or incidental to proceedings before a magistrates' court;
  - (b) the service and execution of process issued by or for the purposes of a magistrates' court, including the service and execution in England and Wales of process issued in other parts of the United Kingdom ;
  - (c) the keeping of records of proceedings before magistrates' courts and the manner in which things done in the course of or as preliminary or incidental to, any such proceedings may be proved in any legal proceedings;

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- (d) the extent to which a justices' clerk may engage in practice as a solicitor or barrister;
  - (e) any other matters as to which immediately before the coming into force of this section provision is or can be made by virtue of the enactments and parts of enactments repealed by Part II of the Seventh Schedule to this Act.
- (5) After the establishment of the rule committee, no rules shall be made by the Lord Chancellor under section thirteen of this Act except on the advice of or after consultation with the committee and the reference in the last foregoing section to paragraph 1 of the Second Schedule to the Children and Young Persons Act, 1933, shall be taken as a reference to this section.
- (6) Any Act passed before this Act, in so far as that Act relates to matters about which rules may be made under this section, shall have effect subject to any rules so made and may be amended or repealed by the rules accordingly:
- Provided that nothing in this section shall authorise the rules to reduce the number of justices required for any purpose by any Act.
- (7) In subsection (4) of section thirty-three of the Criminal Justice Act, 1925, for the reference to section seventeen of that Act there shall be substituted a reference to this section, and in subsection (2) of section five of the Dogs Act, 1906, and in section thirteen of the Money Payments (Justices Procedure) Act, 1935, the reference to rules shall be taken as a reference to rules under this section.
- (8) Any rules, directions, forms or other instrument having effect under the enactments repealed by Part II of the Seventh Schedule to this Act shall have effect as if contained in rules made under this section.
- (9) The power to make rules conferred by this section shall be exercisable by statutory instrument which shall be subject to annulment by resolution of either House of Parliament.
- (10) 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.