

EXPLANATORY MEMORANDUM

THE JUSTICES OF THE PEACE (SIZE AND CHAIRMANSHIP OF BENCH) (AMENDMENT) RULES 2004 No.1514

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

Department responsible

1. The Department for Constitutional Affairs.

Description

2. These rules amend the procedure for the appointment of Bench Chairs and Deputy Chairs contained in the Justices of the Peace (Size and Chairmanship of Bench) Rules 2002 (SI 2002/193).
3. The rules are subject to negative resolution procedure.

Matters of special interest to Joint Committee on Statutory Instruments/select Committee on Statutory Instruments

4. None.

Legislative Background

5. The rules are made under section 24 of the Justices of the Peace Act 1997. The Department has made these rules in response to concerns expressed by the magistrates' courts community about the complexity of the existing rules for determining the results of bench elections and about unintended consequences which the rules can produce (see Policy Background below).

Extent

7. This Order extends to England and Wales.

[European Convention on Human Rights

8. There are no human rights implications.

Policy Background

9. Each year, the justices for each Petty Sessions Area must elect a chairman and one or more deputy chairmen from among their number. However, the current

system established by the 2002 rules has unintended and undesirable consequences. This system operates on the basis of voters ranking candidates nominated for election in order of preference, i.e. first, second, third choice vote etc, where the exercise is for the selection of 1 chairman and 1 deputy chairman. Where a clear winner does not emerge, there is a complex system of eliminating candidates with the fewest votes and redistributing their first choice votes to the second choice candidates of the magistrates who voted for them. This can allow a less popular candidate to be elected on just one first choice vote, over a more popular candidate who may have received a number of second choice votes but no first choice votes. The amending rules are aimed at redressing this unintended consequence.

10. The current system has similar unintended consequences where more than one deputy chairman is to be chosen. Rule 8 of the 2002 rules provides for this to be determined solely on the number of the first choice votes cast.
11. The amending rules provide for one vote per vacancy for all elections of bench chairman and deputy chairmen. This will apply in the 2004 bench elections. Voting magistrates will be able to cast as many votes as there are vacancies (one per candidate). This is similar to the system currently used for filling vacancies at parish elections in 'single' ward electoral areas. This will prevent less popular candidates being elected on the basis of a single first-preference vote while others, with a number of second-choice votes, are passed over.
12. The amending rules also remove the existing ban on notifying candidates of the result of a postal ballot before the annual election meeting.

Impact

13. No Regulatory Impact Assessment has been prepared because there is no regulatory impact on any part of the private or voluntary sector. There are no implications for the Exchequer.
14. There will be no interest in the amendments outside the magistrates' courts community. Consultation (which includes mandatory consultation with the Magistrates Courts Rule Committee constituted under section 144 of the Magistrates' Courts Act 1980) has indicated that the majority of that community would support the changes. The main doubt expressed was whether it was worth changing the rules now when they will have to be reviewed again to take account of the implementation of provisions of the Courts Act 2003 next April. But no objections of principle or substance were expressed.

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