



Justices of the Peace Act 1968

1968 CHAPTER 69

1 Appointment of justices, oaths of office, etc.

- (1) Subject to subsection (2) below, no person shall be justice of the peace for any area unless either—
 - (a) he is appointed by name (and not by office) to be a justice for the area by a commission of the peace for the area; or
 - (b) he is made a justice of the peace for the area by or under any of the enactments mentioned in Schedule 1 to this Act (which relate to the offices specified in column 2 of the Schedule), and the area is one specified in relation to the enactment in column 3 (which excludes county court judges in London from being justices *ex officio* unless appointed deputy chairmen of quarter sessions for a period, but otherwise reproduces the effect of those enactments).
- (2) The Lord Mayor and aldermen of the City of London shall by virtue of the charter granted by His late Majesty King George II dated the 25th August 1741 continue to be justices of the peace for the City of London ; but notwithstanding anything in the charters of the City or in section 10(1) of the Justices of the Peace Act 1949 a commission of the peace may be issued for the City as a county of itself, and—
 - (a) Schedule 2 to this Act shall have effect to regulate the position as justices in the City of those holding the office by virtue of the charter and under the commission respectively; and
 - (b) Parts I and III of Schedule 3 to this Act shall have effect for the adaptation or clarification of the law and other transitional purposes relating to justices of the peace for the City.
- (3) A person shall not be required, on becoming a justice of the peace for any area, to take the oath of allegiance and judicial oath in accordance with the Promissory Oaths Act 1868 and the Promissory Oaths Act 1871, if he has at any time done so as justice of the peace for whatever area; and in the Municipal Corporations Act 1882 there shall cease to have effect so much of section 157(2) or 163(4) as requires a borough justice or recorder of a borough to make a declaration before the mayor or two other members of the council.

- (4) A person's appointment as justice of the peace shall not be affected by his promotion to any dignity, nor shall proceedings before justices of the peace or process of justices of the peace be affected by the issue of a new commission of the peace or any alteration of the names of the justices; and the justices of the peace for the time being named in the commission of the peace for any area may proceed in all respects as if they had at all material times been so named.
- (5) There shall continue to be in counties a keeper of the rolls for the county appointed by Her Majesty's letters patent; but the holder of the office need not be a justice of the peace, and shall not by virtue of the office be a member of a magistrates' courts committee or, in the inner London area, of the committee of magistrates.
- (6) Any act which by virtue of section 4(3) of the Justices of the Peace Act 1949 may be done by a person as justice of the peace notwithstanding that his name is entered in the supplemental list, that is—
- (a) signing any document for the purpose of authenticating another person's signature;
 - (b) taking and authenticating by his signature any written declaration not made on oath ; and
 - (c) giving a certificate of facts within his knowledge or of his opinion as to any matter;

may, subject to any express provision made to the contrary by any enactment or instrument relating to that act, be done also by any person who is mayor of any borough (including a borough included in a rural district), chairman of the Greater London Council or chairman of a county council or district council (within the meaning of the Local Government Act 1933).

- (7) It is hereby declared that any court of record having a criminal jurisdiction has, as ancillary to that jurisdiction, the power to bind over to keep the peace, and power to bind over to be of good behaviour, a person who or whose case is before the court, by requiring him to enter into his own recognisances or to find sureties or both, and committing him to prison if he does not comply; but there is hereby abolished any power to commit to prison, or to issue warrants of arrest or search warrants, which may have been exercisable at common law by the Sovereign in person, or by the Privy Council, members of the Privy Council or the Secretary of State, whether on their or his own authority or on the special direction of the Sovereign.
- (8) A person who at the coming into force of this section holds any office as a stipendiary magistrate not referred to in Schedule 1 to this Act shall continue in office as if he had, on the appropriate petition, been duly appointed under section 29 of the Justices of the Peace Act 1949, and references to the council or councils on whose petition he was appointed shall be construed accordingly; but—
- (a) Parts II and III of Schedule 3 to this Act shall have effect to allow the reduction or adjustment of the area for which a magistrate is to continue in office by virtue of this subsection, and for other transitional purposes in connection with this subsection; and
 - (b) section 29(8) of the Justices of the Peace Act 1949 shall cease to have effect in so far as it precludes a stipendiary magistrate appointed under that section from acting as a member of a court of quarter sessions.

2 Age for transfer of justice to supplemental list, or for retirement of stipendiary magistrate

- (1) Subject to subsections (3) and (4) below, rules made under section 4 of the Justices of the Peace Act 1949 shall provide for entering in the supplemental list the names of persons—
- (a) who are of the age of seventy years or over and neither—
 - (i) on attaining the age of seventy years hold or held office as chairman or deputy chairman of a court of quarter sessions or as recorder of a borough ; nor
 - (ii) hold or have held high judicial office within the meaning of the Appellate Jurisdiction Act 1876 ; or
 - (b) who, after attaining the age of seventy years while holding an office mentioned in paragraph (a)(i) above, no longer hold any such office and who neither hold nor have held high judicial office ; or
 - (c) who are of the age of seventy-five years or over.
- (2) A stipendiary magistrate, if appointed after the passing of this Act, shall vacate his office at the end of the completed year of service in the course of which he attains the age of seventy ; and accordingly—
- (a) in the case of a metropolitan stipendiary magistrate so appointed section 13(4) of the Criminal Justice Administration Act 1956 shall not apply ; and
 - (b) in the case of any other stipendiary magistrate so appointed, section 33(1) of the Justices of the Peace Act 1949 shall have effect as if in subsection (1)(a) for the words " the age of seventy-two " there were substituted the words " the age of seventy " and as if subsection (2) (under which a magistrate may be authorised to continue in office after the age of seventy-two but not after the age of seventy-five) were omitted.
- (3) Subsection (1) above shall not come into force until the year 1969, and as regards that and the three following years shall apply as if the references in paragraphs (a) and (b) to the age of seventy years were references for 1969 to an age of seventy-four years, for 1970 to an age of seventy-three years, for 1971 to an age of seventy-two years and for 1972 to an age of seventy-one years ; and if at the beginning of any of those years or of the year 1973 a person is of or over the age relevant for that year to those paragraphs, he shall be treated for purposes of those paragraphs as having held since attaining that age any office mentioned in paragraph (a)(i) which he holds at the beginning of that year.
- (4) A person who holds office as chairman of the justices in a petty sessions area on the date when his name falls to be entered in the supplemental list in accordance with the foregoing provisions of this section shall have his name so entered on the expiration or sooner determination of the term for which he holds office on that date.

3 Election to chairmanship of bench

In section 13 of the Justices of the Peace Act 1949 after subsection (5) there shall be inserted as subsection (5A)—

- “(5A) The right of magistrates to vote at an election of the chairman or a deputy chairman of the justices in a petty sessions area may, by rules made under this section, be restricted with a view to securing that the election is made by magistrates experienced as such in the area.”.

4 Travelling, subsistence and financial loss allowances

- (1) Section 8(1) to (4) of the Justices of the Peace Act 1949 shall be amended in accordance with subsections (2) to (4) below, and shall accordingly have effect (subject to the other provisions of that section) as set out in Schedule 4 to this Act with the amendments made by this Act and section 31 of the Administration of Justice Act 1964.
- (2) In section 8(1) there shall be added at the end the words " and to receive payments at the prescribed rate by way of financial loss allowance where for that purpose there is incurred by him any other expenditure to which he would not otherwise be subject or there is suffered by him any loss of earnings or of benefit under the National Insurance Acts 1965 to 1967 which he would otherwise have made or received "; and in section 8(3)(b), as amended by section 31 of the Administration of Justice Act 1964, for the words " a travelling or subsistence allowance " there shall be substituted the words " a payment of the like nature ".
- (3) There shall be omitted section 8(3)(a) (which, as so amended, excludes payment of subsistence allowances in respect of duties performed not more than three miles from the justice's usual place of residence).
- (4) In section 8(4) there shall be omitted the words " at the time when his salary is determined ",
and there shall be added at the end the words " nor in any event to a payment by way of financial loss allowance ".
- (5) In section 36 of the Justices of the Peace Act 1949 (which, as amended by section 31 of the Administration of Justice Act 1964, provides for the payment of travelling and subsistence allowances to members of probation and after-care committees or case committees)—
 - (a) there shall be added at the end of subsection (1) the same words as under subsection (2) above are to be added to section 8(1); and
 - (b) there shall be omitted subsection (2) (which corresponds to section 8(3)(a)).
- (6) There shall be defrayed out of moneys provided by Parliament any increase attributable to this section in the sums which under any other enactment are payable out of moneys so provided.

5 Justices' clerks

- (1) Rules made in accordance with section 15 of the Justices of the Peace Act 1949 may, except in so far as any enactment passed after this Act directs otherwise, 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; and any enactment or rule of law regulating the exercise of any jurisdiction or powers of justices of the peace, or relating to things done in the exercise or purported exercise thereof, shall apply in relation to the exercise or purported exercise thereof by virtue of this subsection by the clerk to any justices as if he were one of those justices.
- (2) The power conferred by section 15 of the Justices of the Peace Act 1949 to make rules for regulating and prescribing the procedure and practice to be followed by justices' clerks shall, without prejudice to the generality of section 15(1), include power to provide that, subject to any exceptions prescribed by the rules, persons shall not be employed to assist a justices' clerk in any capacity so prescribed, or 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 (any age limits apart) to be appointed justices' clerk or have such other qualifications as may for any purpose be allowed by the rules.

- (3) It is hereby declared that the functions of a justices' clerk include the giving to the justices to whom he is clerk or any of them, at the request of the justices or justice, of advice about law, practice or procedure on questions arising in connection with the discharge out of sessions of their or his functions as justices, including questions arising when the clerk is not personally attending on the justices or justice, and that the clerk may, at any time when he thinks he should do so, bring to the attention of the justices or justice any point of law, practice or procedure that is or may be involved in any question so arising ; but the enactment of this subsection shall not be taken as defining or in any respect limiting the powers and duties belonging to a justices' clerk or the matters on which justices may obtain assistance from their clerk.

6 Provisions applying to Scotland

- (1) Section 4 of this Act, except subsection (5), shall have effect in relation to Scotland as well as in relation to England and Wales ; but otherwise the foregoing sections of this Act shall not extend to Scotland.

- (2) In relation to Scotland section 4 (supplemental list) of the Justices of the Peace Act 1949 shall have effect with the substitution in subsection (4)(a) of a reference to seventy years of age for the reference to seventy-five years of age:

Provided that this subsection shall not come into force until the year 1969, and as regards that and the three following years shall apply as if the reference to an age of seventy years were a reference for 1969 to an age of seventy-four years, for 1970 to an age of seventy-three years, for 1971 to an age of seventy-two years and for 1972 to an age of seventy-one years.

- (3) The following enactments are hereby repealed in relation to Scotland to the extent mentioned (but only from the coming into force of section 4 above), that is to say—
- (a) the Justices of the Peace Act 1949, section 8(3)(a) and in section 8(4) the words " at the time his salary is determined " ;
 - (b) the Public Authorities (Allowances) Act 1961, section 7.

7 Commencement, and power to provide for transitional matters

- (1) The provisions of section 1 of this Act and Schedules 1 to 3 shall not come into force until such day as Her Majesty may by Order in Council appoint, and a different day may be appointed for different provisions or for different purposes of the same provision.
- (2) An Order in Council under subsection (1) above may include such provision as appears to Her Majesty to be expedient for supplementing, as regards transitional matters, the provisions of this Act and in particular for avoiding interruption or inconvenience in the administration of justice or the discharge of other functions of justices in consequence of any change made by section 1 in the persons who are to be justices or the area for which any justice is to act; and any provision included in an Order in Council by virtue of this subsection may be varied or revoked by a further Order in Council.

- (3) Without prejudice to the generality of subsection (2) above, an Order in Council may by virtue of that subsection include—
- (a) provision as to the effect of process issued, orders made, appeals brought, cases stated, licences granted and other things done before the time when a provision of this Act comes into force for any purpose, and as to the preservation and custody of writs, processes, records and documents; and
 - (b) provision for enabling any justice to continue for such period as may be specified in the order to act in the exercise of a particular jurisdiction or in relation to particular cases as if section 1 of this Act had not been passed, and for any purpose incidental or supplementary thereto.
- (4) The provisions of section 4 of this Act shall not come into force until such day as the Secretary of State may by order (to be made by statutory instrument) appoint, and a different day may be appointed for Scotland from the day appointed for England and Wales.
- (5) Any statutory instrument containing an Order in Council or order under this section shall be laid before Parliament after being made.

8 Supplementary

- (1) This Act may be cited as the Justices of the Peace Act 1968.
- (2) The enactments specified in Schedule 5 to this Act (which include in Part I certain enactments which are obsolete or redundant apart from this Act) are hereby repealed to the extent specified in column 3 of that Schedule:
- Provided that the repeals made by Part II of the Schedule shall extend only to England and Wales and, except as otherwise specified in Part II, shall have effect from such day as may be appointed by Order in Council under section 7(1) above.
- (3) This Act does not extend to Northern Ireland, except as regards any repeal made by Part I of Schedule 5 of an enactment which does extend to Northern Ireland and except that there is hereby abolished for Northern Ireland any power to commit to prison or to issue warrants of arrest or search warrants, corresponding to the powers abolished for England and Wales by section 1(7) above.