

The Delegation of Powers by Justices' Clerks to Non Legally Qualified Staff in Magistrates' Courts in England and Wales.

A Consultation Paper

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This consultation will end on 01/12/2005

A consultation produced by Her Majesty's Courts Service,
part of the Department for Constitutional Affairs.

**The Delegation of Powers by Justices' Clerks to Non-Legally Qualified Staff in Magistrates'
Courts in England and Wales**

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Executive Summary

1. This consultation paper seeks views on whether justices' clerks should be given the power to delegate functions contained in the Justices' Clerks Rules 2005 to designated non legally qualified staff (as determined by justices' clerks) to assist in listing and case progression. The Justices' Clerks Rules 2005 set out certain powers exercisable by a single justice of the peace that may also be exercised by justices' clerks and assistant clerks.
2. The delegation of powers from justices' clerks to non legally qualified staff would be of the out of courtroom work applying to routine functions such as dealing with agreed adjournments and fixing of a later date for trial when such issues are non-contentious in a particular case. Such delegated functions would be carried out in the main by Case Progression Officers (CPOs) and listing officers out of court in administrative offices. The delegation proposed would not affect the responsibilities of the justices' clerk who will remain accountable for how these powers are exercised.
3. The issue of delegation discussed in this consultation paper will not affect the provision of legal advice to the lay bench or the exercise of those functions set out in the Justices' Clerks Rules 2005, undertaken in the courtroom. These will continue to be performed by a justices' clerk and assistant clerk as currently defined by the Courts Act 2003.
4. In recent years, there has been a drive throughout the criminal justice system to establish and foster effective trial management and tackle ineffective trials. One aspect of this has been the introduction of CPOs who, with listing officers in magistrates' courts, have responsibility for the effectiveness of trial preparation and the effective use of court time. The effectiveness of these officers is inhibited because justices' clerks are unable to delegate functions contained in the Justices' Clerks Rules 2005 to non legally qualified staff. Delegation of certain justices' clerks functions will support the duties of case progression and listing officers which will assist effective and efficient administration and lessen the burden on justices' clerks and assistants so that legally qualified staff can concentrate on supporting magistrates' sitting in court.

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5. These functions of CPOs and listing officers mainly centre upon powers contained in paragraphs 7 and 15 of the Schedule to the Justices' Clerks Rules 2005. Other powers relating to listing and case progression would be required to be exercised from time to time by non legally qualified members of staff with delegated responsibility. It would be the responsibility of the justices' clerk to set out whether or not this is permitted within a written delegation document that states which officers are permitted to conduct delegated functions. This replicates the position before 1 April 2005. The delegation discussed in this paper would be made at the discretion of the justices' clerk to meet local operational needs and would not be mandatory.
6. The current position is that a significant proportion of the work of these officers has to be referred to a justices' clerk or assistant justices' clerk for their endorsement of proposed actions and an audit trail maintained for such referrals.
7. Delegation of justices' clerks' functions to non legally qualified staff was a regular occurrence prior to the Courts Act 2003, and brought tangible benefits to case progression and the efficient administration of magistrates' courts. The purpose of this consultation is to seek views on whether it is appropriate to formalise this arrangement and permit this to continue on a clear legal basis.
8. A number of questions are listed at the end of the paper and your views are sought on these.
9. This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 28, have been followed.
10. An initial Regulatory Impact Assessment does not indicate that any groups are likely to be particularly affected. The proposals are unlikely to lead to additional costs and savings for businesses, charities or the voluntary sector, or on the public sector. However, they will generate efficiency savings for the public sector in reference to case progression and the efficient administration of magistrates' courts. Consequently, this paper does not contain a Partial

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Regulatory Impact Assessment. If you disagree with this conclusion, you are invited to send your reasons as part of your overall response to this paper.

11. Copies of the consultation paper are being sent to:

- Justices' Clerks' Society
- Justices' Clerks
- Magistrates' Association
- Home Office
- Police
- Office for Criminal Justice Reform
- Crown Prosecution Service
- Law Society
- Bar Council
- Senior Judiciary
- Bench Chairmen and Deputies
- Her Majesty's Court Service Regional and Area Directors
- Trade Unions

12. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Introduction

13. This paper sets out for consultation whether justices' clerks should be given the power to delegate functions contained in the Justices' Clerks Rules 2005 to designated non legally qualified staff. The consultation is aimed at those who have an interest in the administration of magistrates' courts in England and Wales. In particular, this will include lay justices, justices' clerks, administrative staff in magistrates' courts and other groups and representative bodies.
14. This paper begins by setting out the current position in terms of delegation of justices' clerks' powers including the legislative framework. The rationale for change is set out around the improvements it would bring to the administration in magistrates' courts. The ways of proceeding are set out in the options section followed by a list of questions upon which the Government seeks responses.
15. The impetus for consulting on this issue stems from the repeal of the Justices of the Peace Act 1997 and the commencement of Sections 27 and 28 of the Courts Act 2003, which came into effect on 1 April 2005. Section 28 (1) of the Courts Act 2003 permits the power of a single justice to be delegated, by rules, to a justices' clerk and subsection (2) in turn permits the powers of a justices' clerk to be delegated to an assistant clerk (see annexes).
16. Section 27(5) requires assistant clerks to be designated as such by the Lord Chancellor. Section 27(6) enables the Lord Chancellor to specify by regulations, the qualifications that a person must have before they can be designated as an assistant clerk.
17. During the passage of the Courts Bill in the House of Lords, Baroness Scotland of Asthal commented on what is now sections 28(2) of the Courts Act 2003:

“The wording in subsection (2) of Clause 23 already specifically states that these functions are authorised to be done by a justices' clerk or an assistant to a justices' clerk. There is no mention of any other person undertaking these functions. Again,

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I should make it clear that the subsection is very similar to the present statutory provision in Section 45(2) of the Justices of the Peace Act 1997” **[Hansard Column 498: 10 February 2003 House Of Lords]**.

18. It is evident that there was no intention at that time to permit any other person to perform justices' clerks' or assistant justices' clerks' powers. But that there might be a need to do so was not obviously in anybody's mind at the time. The Government does not consider that exchanges in Parliament during the Courts Bill were intended permanently to set the position in stone. Since 2003, understanding both of how the courts operate and of what is needed to make them operate more effectively has changed. These changes make it right to consult stakeholders on the proposal to allow the delegation of justices' clerks powers to non-legally qualified staff on a legitimate and open basis.
19. Since 1 April 2005, following the repeal of the Justices of the Peace Act 1997, the Justices' Clerks (Qualification of Assistants) Rules 1979 (“the 1979 Rules”) (see annexes) continue to have effect as if made under section 27(6) of the Courts Act 2003. The 1979 Rules require that an assistant clerk must i) be qualified to act as a justices' clerk; or ii) be a barrister or solicitor (or have passed the relevant professional exams to be a barrister or solicitor); or iii) have their employment registered with the Law Society as a training contract; or iv) possess a valid training certificate granted by a magistrates' courts' committee before 1 January 1999. The Lord Chancellor also has the power to authorise the employment of a non-qualified person for up to 6 months in certain specified circumstances. A copy of the 1979 Rules is set out in the Annexes. Those members of staff who are not qualified within the meaning of the 1979 Rules are referred to in this consultation paper as ‘non legally qualified staff’.
20. Prior to 1 April 2005 justices' clerks would delegate specific functions set out in the Justices' Clerks Rules 1999 (the predecessor to the 2005 Rules) to legally and non legally qualified staff. Section 45 of the Justices' of the Peace Act 1997 was relied upon for this delegation, although doubt has now been cast on the validity of this.

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21. In particular relevant functions were delegated to non legally qualified staff undertaking listing, case progression and fines enforcement functions.¹ In practice, such delegation would only be granted by a justices' clerk, for limited functions performed only where there was agreement between prosecution and defence. Justices' clerks would draw up documents which would include details of individual members of staff and which specific functions were delegated to them. The specific designation and control of the exercise of specific functions was therefore personally controlled by the justices' clerk. This included both grant and revocation of the ability to exercise the function. It is suggested that this system of personal delegation to non legally qualified staff from justices' clerks should continue to be used if such staff were permitted in principle to undertake certain justices' clerk functions.
22. Such delegation would be used to enable the efficient operation of a listing office and the case progression function. For example, it would allow a listing officer to take a case out of a list and fix a new date for hearing for good reason where all parties were agreed. If a listing or case progression officer was not in agreement with the parties that a good reason existed, the parties would make their application to the court.
23. The Department for Constitutional Affairs, working with colleagues in various criminal justice agencies, has contributed to the Effective Trial Management Programme (ETMP) which is designed to help local areas improve their ineffective trial rates. ETMP seeks to achieve this by providing much greater clarity of the roles and responsibilities of all those involved in the preparation and progression of criminal cases throughout the process. The programme introduces a case progression function embedded across key criminal justice agencies and services. Inter-agency groups of CPOs in the Crown Prosecution Service, police, magistrates' courts and Crown Court work closely with each other and with a nominated representative for the defence, actively preparing and progressing cases in and out of court. The programme also encourages

¹ The Courts Act 2003 introduces a new fines enforcement regime. In particular it provides for the position of Fines Officer who will have specific enforcement powers in their own right. This is the reason that this paper is not specifically focused on this area of work.

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the defendant's attendance at court hearings, for example, by ensuring early communication with the defendant. The programme works closely with the judiciary in shaping the proposals; particularly in relation to court based processes.

24. The *Criminal Case Management Framework* issued in July 2004 provides practitioners with operational guidance on how cases might be managed most effectively and efficiently from pre-charge through to conclusion. It describes case management procedures and the roles and responsibilities for operating them of administrative staff and of the defence. It also sets out the expectations of the judiciary. These detailed roles and responsibilities are consistent with the provisions of the new Criminal Procedure Rules, which came into force on 4 April 2005. In July 2005, a revised edition of the Framework was issued. The Framework describes in detail the role of CPOs and listing officers in supporting the effectiveness of the ETMP (and assisting in targeting ineffective trials).
25. Since 1 April 2005, in order for non legally qualified staff to undertake the limited day to day and uncontested functions of a justices' clerk, each decision of a non legally qualified person has to be individually sanctioned by a justices' clerk or a legally qualified assistant. This cumbersome practice creates duplication in effort and builds in delays, until such time as the justices' clerk or an assistant clerk can be made available. Justices' clerks and legally qualified assistants' duties often mean that they are unavailable to give such approval while they are tied up with their in court responsibilities. Arrangements of trials and agreed adjournments often need decisions to be made quickly and awaiting a confirmatory authorisation is creating delay and uncertainty, which is not in the interests of justice. Enabling CPOs and listing officers to undertake certain limited functions on delegated authority would assist in improving case progression. The pre-April 2005 experience demonstrated that, with proper delegation and supervision, CPOs and listing officers could exercise their functions, not only without detriment to justice, but in a way that contributes to achieving it.

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26. These issues are significant in large courts serving urban areas, for example, a large centre with approximately 600 cases listed each day, will on average have around 8-10 adjournments, 5 vacated trials and 2-4 remittals requests per day. This means the efficient and effective routine case progression of many cases currently undertaken by staff in listing offices throughout England and Wales is adversely affected. In addition, depending on the size and structure of a court, a justices' clerk or an assistant clerk might be required to work out of court on a daily basis to deal with the requests and decisions. In such circumstances, if delegation to non legally qualified staff was permitted a justices' clerk would have the power to delegate functions to meet local operational needs.

The Options

27. There are two possible options as set out below. One is to maintain the status quo under sections 27 and 28 of the Courts Act 2003. The second option is to take steps to put the delegation on a formal legal footing. There are two possible legislative routes (by primary or secondary legislation) to achieving this. A description of the benefits and drawbacks of each option is included with each option.

Option 1: Retain the Status Quo

28. There is an option to keep the present arrangements and not permit any direct delegation of justices' clerks' powers to non legally qualified staff. This would mean non legally qualified staff will have to continue to gain sanction for each case progression and listing decision in every individual case, and have evidence of such, from a justices' clerk or an assistant clerk. This is currently happening and results in a more lengthy and bureaucratic process with an extra layer to the decision-making process. All listing and case progression decisions outside of the courtroom would be authorised by justices' clerks or an assistant clerk. It may not be possible to get swift sanction because justices' clerks and assistant clerks are often inaccessible as a result of in court and

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other duties. When decisions are delayed, communicating them to parties and in particular victims and witnesses can result in victims and witnesses' turning up to court when a case has been vacated. Victims and witnesses find it difficult to attend hearings and such an outcome can be detrimental to their care and confidence in the court system. This position has also created uncertainty for staff, is an inefficient use of their time, and restricts their role, which is meant to be enhanced under new case management facilities.

29. Since 1 April 2005, when it became clear that only legally qualified staff were permitted to perform duties in the Justices' Clerks Rules 2005, additional pressures on legal staff time have mounted. This is not a preferred outcome given the emphasis by criminal justice agencies towards effective trial preparation, targeting ineffective trials and providing effective victim and witness support and is inconsistent with similar functions carried out by CPOs and listing officers in the Crown Court.

Option 2: Permitting Delegation to Non Legally Qualified Staff

Amend Primary Legislation

30. Section 28(2) of the Courts Act 2003, provides that 'rules may also make provision enabling things authorised to be done by, to or before a justices' clerk (whether by virtue of subsection (1) or otherwise) to be done instead by, to or before an assistant clerk.' This section could be amended to allow non legally qualified staff to perform functions contained in the Justices' Clerks Rules 2005 in addition to justices' clerks and assistant clerks. The justices' clerk would have power to delegate particular functions to persons whom he/she deemed suitable to assist him.
31. In order to give effect to such a change, sections 27, 28, 29, 31, 32, 33 and 34 of the Courts Act 2003 would need amending. Section 29 would need to be amended to ensure the independence of non legally qualified staff when exercising the functions of a single justice of the peace. Equally, sections 31 to 34 provide for the protection and indemnification of justices' clerks and

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assistant clerks when exercising the functions of a single justice of the peace. This protection would arguably need to be extended to non legally qualified staff. This approach would also require amendments to be made to the Justices' Clerks Rules 2005.

32. A Bill would need to be identified to take the change forward [and the likely outcome is that the amendments in the Bill would provide powers for non legally qualified persons to undertake certain functions of a justices' clerk]. A change by primary legislation as described, is likely to take around two years before the amendments would be in place.
33. The Government recognises that some stakeholders will consider that the division of responsibilities between magistrates, justices' clerks and their assistants was settled relatively recently by Parliament in the Courts Act 2003 and that a change to these arrangements ought to be made only with Parliament's sanction.
34. The Government invites consultees when responding to balance these arguments against consideration of the obstacles to speedy and effective justice in magistrates' courts which need prompt solutions. The pre-April 2005 experience of CPOs and listing officers exercising functions, demonstrated that, with appropriate selection, they can work effectively in a way that promotes just procedures and contributes to just outcomes.

Amend Secondary Legislation

35. Section 27(6) of the Courts Act provides that the Lord Chancellor may by regulations provide that a person may only be designated as an assistant justices' clerk if they have either a 5 year magistrates' court qualification or such qualifications as may be prescribed by, or approved by the Lord Chancellor, in accordance with the regulations. It also provides that the regulations may contain exceptions to the qualification requirements. A person who either meets the requirements specified in the regulations or falls within the terms of the exceptions may be designated as an 'assistant clerk' and therefore exercise powers in accordance with the Justices' Clerks Rules 2005.

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36. Regulation 6 of the 1979 Regulations currently contains an exception to the qualification requirements for assistant clerks; it enables the Lord Chancellor to appoint a suitable person to assist in court for up to 6 months. It would be possible to provide a further exception under s.27 (6) permit certain non legally qualified staff to perform the case progression functions discussed in this paper (as already noted, however, these functions do not include in-court work or the exercise of any discretion which is contentious in a particular case). If the government decided to pursue this solution, the relevant stakeholders would have the opportunity to provide comments on the draft regulations.
37. The effect of this solution would be to create a different category of assistant clerks depending on the qualifications held. Amendments to the Justices' Clerks Rules 2005 as well as to the Justices Clerks (Qualification of Assistants) Regulations 1979 would be required. This solution would enable justices' clerks to delegate limited functions, essentially those concerned with case progression and listing (see paragraphs 1, 2, 5 and 21), as they deem fit to non legally qualified staff. Legally qualified assistants can perform any of the justices' clerks duties if permitted whereas the non legally qualified assistants would be restricted by regulation as to what a justices' could delegate to them.
38. In terms of outcome and timing, the secondary route will achieve substantially the same result as primary legislation but much more quickly, probably by the beginning of 2006.
39. Following the completion of this consultation, if it is clear that in principle it is appropriate to place delegation of certain powers to non-legally qualified staff on a legal footing, then the government will decide on which legislative route to take.

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The Government welcomes views on any aspect of this paper. In particular it encourages feedback on the following questions: -

Questions

Q1. Should non legally qualified staff be able to carry out certain delegated functions under the Justices' Clerks Rules 2005 provided they have the relevant qualifications/experience as deemed fit by the justices' clerk (who would retain the overall responsibility for these functions)? If so, should the justices' clerk determine the parameters of delegation or should it be restricted by legislation to specific Rules?

Q2. Which non legally qualified staff should perform these functions (i.e. case progression officers and listing officers)? How will this be decided and by whom?

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Q3. Which option do you believe represents the best way to proceed?

- **Retain the status quo**
- **Make legislative changes so as to authorise the proposed delegations?**

If you favour the second option, please say whether the Government should-

- **Proceed by primary legislation**
- **Proceed by secondary legislation**

Q4. If you consider the Government should pursue primary legislation only, please say if possible how you consider the magistrates' courts should cope with the current difficulties of operating the present system of delegation.

Thank you for participating in this consultation exercise

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About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	
Address to which the acknowledgement should be sent, if different from above	
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 1 December 2005 to:

**David McIntosh
Her Majesty's Court Service
Criminal Justice Delivery Unit
6th Floor
Steel House
11 Tothill Street
London
SW1H 9LJ**

Tel: 020 7210 0414

Fax: 0870 739 4160

Email: david.mcintosh@hmcourts-service.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.dca.gov.uk/index.htm>

Publication of response

A paper summarising the responses to this consultation will be published in [insert publication date, which as far as possible should be within three months of the closing date of the consultation] months time. The response paper will be available on-line at <http://www.dca.gov.uk/index.htm>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

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Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

ANNEXES

SECTION 27 OF THE COURTS ACT 2003:

(1) *A justices' clerk is a person who is-*

- (a) appointed by the Lord Chancellor under section 2(1), and*
- (b) designated by the Lord Chancellor as a justices' clerk.*

(2) *A person may be designated as a justices' clerk only if he-*

- (a) has a 5 year magistrates' court qualification,*
- (b) is a barrister or solicitor who has served for not less than 5 years as an assistant to a justices' clerk, or*
- (c) has previously been a justices' clerk.*

(5) *An assistant to a justices' clerk is person who is-*

- (a) appointed by the Lord Chancellor under section 2(1) or provided under a contract made by virtue of section 2(4), and*
- (b) designated by the Lord Chancellor as an assistant to a justices' clerk.*

(6) *The Lord Chancellor may by regulation provide that, subject to such exceptions as may be prescribed by the regulations, a person may be designated as an assistant to a justices' clerk only if he-*

has a 5 year magistrates' court qualification, or

has such qualifications as may be prescribed by, or approved by the Lord Chancellor in accordance with, the regulations.

SECTION 28 OF THE COURTS ACT 2003:

(1) Rules may 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) Rules may also make provisions enabling things authorised to be done by, or before a justices' clerk (whether by virtue of subsection (1) or otherwise) to be done instead by, to or before an Assistant Clerk.

The Justices' Clerk Rules 2005

The Lord Chancellor, in exercise of the powers conferred upon him by section 28 of the Courts Act 2003⁽²⁾, after consulting the Criminal Procedure Rule Committee, the Family Procedure Rule Committee and the Magistrates' Courts Rule Committee in accordance with section 28(9) of that Act, makes the following Rules:

1. These Rules may be cited as the Justices' Clerks Rules 2005 and shall come into force on 1 April 2005.

2. The things specified in the Schedule to these Rules, being authorised to be done by, to or before a single justice of the peace, may be done by, to or before a justices' clerk.

3.—(1) The things specified in paragraphs 1 to 36 in the Schedule to these Rules, being authorised to be done by, to or before a justices' clerk, may be done by, to or before an assistant clerk, provided that that person has been specifically authorised by the justices' clerk for that purpose, and any reference in the Schedule to a justices' clerk shall be taken to include such a person.

(2) The powers authorised to be exercised by a justices' clerk at an early administrative hearing under section 50 of the Crime and Disorder Act 1998⁽³⁾ may be exercised instead by an assistant to a justices' clerk who has been specifically authorised by the justices' clerk for that purpose.

⁽²⁾ 2003 c.39.
⁽³⁾ 1998 c.37.

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(3) Any authorisation by the justices' clerk under paragraph (1) or (2) above shall be recorded in writing at the time the authority is given or as soon as practicable afterwards.

4. The Justices' Clerks Rules 1999⁽⁴⁾ are revoked.

Signed by authority of the Lord Chancellor

Date

Parliamentary Under Secretary of State
Department for

Constitutional Affairs

Rules 2 and 3

SCHEDULE

1. The laying of an information or the making of a complaint, other than an information or complaint substantiated on oath.

2. The issue of any summons, including a witness summons.

3. The issue of a warrant of arrest, whether or not endorsed for bail, for failure to surrender to the court, where there is no objection on behalf of the accused.

4. The marking of an information as withdrawn.

5. The dismissing of an information, or the discharging of an accused in respect of an information, or the discharging of an accused in respect of an information, where no evidence is offered by the prosecution.

6. The making of an order for the payment of defence costs out of central funds.

The adjournment of the hearing of a complaint if the parties to the complaint consent to the complaint being adjourned.

7. The extending of bail on the same conditions as those (if any) previously imposed, or, with the consent of the prosecutor and the accused, the imposing or varying of conditions of bail.

8. The further adjournment of criminal proceedings with the consent of the prosecutor and the accused, if,

(a) the accused, not having been remanded on the previous adjournment, is not remanded on the further adjournment; or

⁽⁴⁾ S.I. 1999/2784.

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(b) the accused, having been remanded on bail on the previous adjournment, is remanded on bail on the same terms and conditions, or, with the consent of the prosecutor and the accused, on other terms and conditions.

9.—(1) The further adjournment of criminal proceedings, where there has been no objection by the prosecutor, where the accused, having been remanded on bail on the previous adjournment, is remanded on bail on the same terms and conditions in his absence.

(2) The remand of the accused on bail is in his absence at the time of further adjourning the proceedings in pursuance of sub-paragraph (1) above.

10.—(1) The appointment of a later time at which a person, who has been granted bail under the Police and Criminal Evidence Act 1984⁽⁵⁾ subject to a duty to appear before a magistrates' court, is to appear, and the enlargement of any sureties for that person at that time, in accordance with section 43(1) of the Magistrates' Courts Act 1980⁽⁶⁾, provided there is no objection by the prosecutor.

(2) Where a person has been granted police bail to appear at a magistrates' court, the appointment of an earlier time for his appearance.

11. The committal of a person for trial on bail in accordance with section 6(2) and (3)(b) of the Magistrates' Courts Act 1980 where, having been remanded on bail on the previous adjournment, he is released on bail on the same terms and conditions.

12. [Where a case is to be tried on indictment, the granting of a representation order under Part V of the Legal Aid Act 1988⁽⁷⁾ for the purposes of the proceedings in the Crown Court.]

13. The asking of an accused whether he pleads guilty or not guilty to a charge, after having stated to him the substance of the information laid against him.

14. The fixing or setting aside of a date, time and place for the trial of an information.

15. The making of a direction in accordance with rule 93A(7) or (8) of the Magistrates' Courts Rules 1981⁽⁸⁾.

16. The giving, variation or revocation of directions for the conduct of a criminal trial, including directions as to the following –

the timetable for proceedings;

the attendance of the parties;

the service of documents (including summaries of any legal arguments relied on by the parties);

⁽⁵⁾ 1984 c.60.

⁽⁶⁾ 1980 c.43.

⁽⁷⁾ 1988 c.34.

⁽⁸⁾ S.I. 1981/552 as amended by S.I. 1982/245, 1983/523, 1984/1552, 1985/1695 and 1944, 1986/1332, 1988/2132, 1989/300 and 384, 1990/336, 1190 and 2260, 1991/1991, 1992/457, 729 and 2072, 1993/1183, 1994/1481 and 3154, 1995/585 and 2619, 1997/706 and 1998/2167.

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the manner in which evidence is to be given.

17. With the consent of the parties, the giving, variation or revocation of orders for separate or joint trials in the case of two or more accused or two or more informations.

18. The extension, with the consent of the accused, of an overall time limit under section 22 of the Prosecution of Offences Act 1985⁽⁹⁾.

Sentences etc.

19. The request of a pre-sentence report following a plea of guilty.

20. The request of a medical report and, for that purpose, the remand of an accused on bail on the same conditions as those (if any) previously imposed, or, with the consent of the prosecutor and the accused, on other conditions.

21. The remitting of an offender to another court for sentence.

22. Where an accused has been convicted of an offence, the making of an order for him to produce his driving licence.

23. The giving of consent for another magistrates' court to deal with an offender for an earlier offence in respect of which, after the offender had attained the age of seventeen years, a court had made a community rehabilitation order or an order for conditional discharge, where the justices' clerk is the clerk of the court which made the order, or in the case of a community rehabilitation order, of that court or the supervising court.

24. The amending, in accordance with paragraph 18 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000⁽¹⁰⁾, of a community rehabilitation order or community punishment order by substituting for [the local justice area] specified in the order the other area in which the offender proposes to reside or is residing.

25. The varying, in accordance with paragraph 5(1) of Schedule 5 to the Powers of Criminal Courts (Sentencing) Act 2000, of an attendance centre order by—

- (a) varying the day or hour specified in the order for the offender's first attendance at the relevant attendance centre; or
- (b) substituting for the relevant attendance centre an attendance centre which the justices' clerk is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances.

26. The signing of a certificate given to the Crown Court under paragraph 4(5) of the Powers of Criminal Courts (Sentencing) Act 2001 as to non-compliance with a community order.

27. The acceptance under section 14 of the Magistrates Courts Act 1980 of service of such a statutory declaration as is mentioned in subsection (3) of that section.

⁽⁹⁾ 1985 c.23.

⁽¹⁰⁾ 2000 c.6.

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Fines

28. The issue of a warrant of distress.

29. The allowing of further time for payment of a sum enforceable by a magistrates' court.

30. The varying of the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable where a magistrates' court has ordered that a sum adjudged to be paid shall be paid by instalments.

31. The making of a transfer of fine order under section 89 of the Magistrates' Courts Act 1980.

32. The making of an order before an enquiry into the means of a person under section 82 of the Magistrates' Courts Act 1980 that that person shall furnish to the court a statement of his means under section 84 of that Act.

33. The fixing under section 86(3) of the Magistrates' Courts Act 1980 of a later day in substitution for a day previously fixed for the appearance of an offender to enable an enquiry into his means to be made under section 82 of that Act or to enable a hearing required by section 82(5) of that Act to be held.

34. The making or withdrawal of an application to the Secretary of State, pursuant to the Fines (Deductions from Income Support) Regulations 1992⁽¹¹⁾, for deductions to be made from an offender's income support.

35. The doing of such other things as are required or permitted to be done by a magistrates' court under the Fines (Deduction from Income Support) Regulations 1992.

Family etc.

36. The transfer of proceedings in accordance with any order made by the Lord Chancellor under Part I of Schedule 11 to the Children Act 1989⁽¹²⁾.

37. The appointment of a children's guardian or solicitor for a child under section 41 of the Children Act 1989.

38. The giving, variation or revocation of directions in accordance with rule 6 of the Family Courts (Matrimonial Proceedings etc.) Rules 1991⁽¹³⁾ or rule 14 of the Family Proceedings Courts (Children Act 1989) Rules 1991⁽¹⁴⁾.

39. The making of an order, in accordance with rule 28 of the Family Proceedings Courts (Children Act 1989) Rules 1991, under sections 11(3) or 38(1) of the Children Act 1989.

(11) S.I. 1992/2182 as amended by S.I. 1993/495, 1996/2344, 1997/827 and 1998/563.

(12) 1989 c. 41.

(13) S.I. 1991/1991 as amended by S.I. 1992/2068, 1993/627, 1994/809 and 1997/1894.

(14) S.I. 1991/1395 as amended by S.I. 1991/1991, 1992/2068, 1993/627, 1994/809, 2166 and 3156 and 1997/1895.

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40. By virtue of rule 33 of the Family Proceedings Courts (Children Act 1989) Rules 1991, the issuing of a witness summons under section 97 of the Magistrates' Courts Act 1980 in relevant proceedings within the meaning of section 93(3) of the Children Act 1989.

41. The request for a welfare report under section 7 of the Children Act 1989.

42. By virtue of rule 16(2) of the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, the issuing of a witness summons under section 97 of the Magistrates' Courts Act 1980 in proceedings under the Domestic Proceedings and Magistrates' Courts Act 1978⁽¹⁵⁾.

Justices' Clerks (Qualifications of Assistants) Rules 1979

Continuation

Notwithstanding the repeal of the Justices of the Peace Act 1997 by the Courts Act 2003, s 6(4), these Rules shall continue in force and shall have effect as if made under the Courts Act 2003, s 27(6): see the Courts Act 2003 (Transitional Provisions, Savings and Consequential Provisions) Order 2005, SI 2005/911, art 6(a).

1

These Rules may be cited as the Justices' Clerks (Qualifications of Assistants) Rules 1979 and shall come into operation on 1st October 1980 except that for the purposes of rule 4(2) below these Rules shall come into operation on 1st July 1979.

2

(1) In these Rules—

“assistant” means a person employed to assist a justices' clerk”

⁽¹⁵⁾ 1978 c.22.

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“employed as a clerk in court” means employed to assist a justices' clerk by acting in his place as a clerk in court in proceedings before a justice or justices;

(2) For the purposes of these Rules a person shall be deemed to have passed an examination if he has been granted an exemption in relation to it by the appropriate examining body.

[2A]

[(1) For the purposes of these Rules and of the Justices' Clerks (Qualifications of Assistants) (Amendment) Rules 1998—

- (a) two or more periods of employment as a clerk in court, . . . , shall be treated as continuous
- (b) accordingly, if the first of those periods began before 1st January 1999, rule 4 as it stood immediately before that date shall apply in relation to all those periods.

3

Except as is provided by rule . . . 6 below, a person shall not be employed as a clerk in court unless that person is—

- (a) qualified (any age limits apart) to be appointed a justices' clerk by virtue of section 20 of the Justices of the Peace Act 1949, or
- (b) qualified by virtue of the provisions of rule 4 below.

4

(1) A person is qualified for the purposes of rule 3(b) above if he possesses one of the following qualifications, that is to say—

- a) he is a barrister or solicitor of the Supreme Court or has passed the necessary examinations for either of those professions;

[4A]

[(1) An assistant who is not qualified for the purposes of rule 3 above may be employed as a clerk in court if

- (a) he holds a valid training certificate granted by a magistrates' courts

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committee before 1st January 1999;

(b) his employment as an assistant is registered by the Law Society as a training contract under regulation 23 of the Training Regulations 1990.

(2) In this rule "training certificate" has the meaning assigned by rule 2(1) of these Rules as they stood immediately before 1st January 1999, and the validity and duration of a training certificate granted before that date shall be determined as if rule 5(2) of and Schedule 3 to these Rules had continued in force.]

5 ...

6

Notwithstanding the provisions of [rules 3 to 4 above], the Secretary of State may grant authority for any such person as may be specified by him to be employed as a clerk in court for such period not exceeding six months as may be so specified if he is satisfied—

(a) that the person so specified is, in the circumstances, a suitable person to be employed as a clerk in court, and

(b) that no other arrangements can reasonably be made for the hearing of proceedings before the court.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Consultation Co-ordinator Contact Details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at: consultation@dca.gsi.gov.uk

Alternatively, you may wish to write to the address below:

Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper.

