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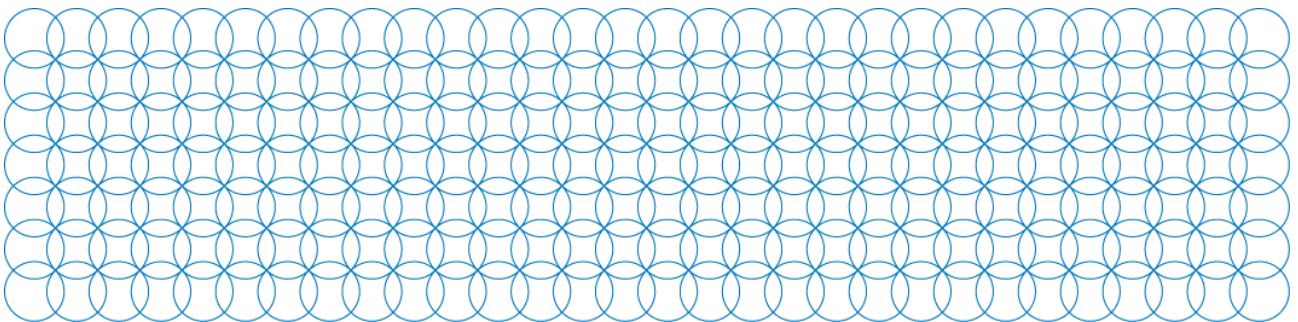


HM Courts &
Tribunals Service

A consultation on changes to Rules relating to the composition of magistrates' courts, bench officers, elections and justices' training and authorisations

This consultation begins on 07/03/2016

This consultation ends on 29/04/2016





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Tribunals Service**

**A consultation on changes to Rules relating to the
composition of magistrates' courts, bench officers,
elections and justices' training and authorisations**

**A consultation produced by HM Courts & Tribunals Service,
part of the Ministry of Justice.**

About this consultation

- To:** The consultation is aimed at the Magistracy, Family Proceedings Rule Committee, Criminal Procedure Rule Committee and Justices' Clerks.
- Duration:** From 07/03/2016 to 29/04/2016
- Enquiries (including requests for the paper in an alternative format) to:** Jane Wignall
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- How to respond:** Please send your response by 29/04/2016 to:
Jane Wignall
HM Courts & Tribunals Service
102 Petty France
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Email: deregulation.consultation@hmcts.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published by 29/05/2016

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Introduction

This paper sets out for consultation proposed new arrangements for the governance and administration of magistrates' benches and their training and development. A copy of the draft Statutory Instrument is available at Annex A. It is important to note that the Statutory Instrument is a draft only and remains subject to change as a result of this consultation process and legal checks.

The Constitutional Reform Act 2005 amended sections 10, 17, 19 and 20 of the Courts Act 2003 so that they provide for the Lord Chief Justice, after consultation with the Lord Chancellor, the Criminal Procedure Rule Committee and the Family Procedure Rule Committee, to issue Rules relating to the management of benches of magistrates and the training and development of magistrates.

The consultation is aimed at magistrates, justices' clerks and advisory committees in England and Wales. The Lord Chief Justice has a duty under section 21 Courts Act 2003 to consult lay magistrates on matters affecting them in the performance of their duties, and the proposed changes also require consultation with the Lord Chancellor, Criminal Procedure Rule Committee and the Family Procedure Rule Committee. It is proposed to consult with magistrates via the National Bench Chairman's Forum and Magistrates' Association who were represented on the working group.

Copies of the consultation paper are being sent to:

Magistrates

Justices' Clerks

Lord Chancellor

Family Procedure Rule Committee

Criminal Procedure Rule Committee

NBCF

MA

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.

The proposals

Background

Arrangements for the governance and administration of magistrates' benches and training can be found in various forms, such as in:

- primary legislation, in particular the Courts Act 2003 (the Act);
- secondary legislation, in particular the Justices of the Peace (Size and Chairmanship of Bench) Rules 2005, Justices of the Peace (Training and Development Committee) Rules 2007, Youth Courts (Constitution of Committees and Right to Preside) Rules 2007, and The Family Court (Constitution of Committees: Family Panels) Rules 2014;
- prescribed processes as to how delegated functions are to be carried out, such as authorisations to sit as judges in the family court or as justices in the youth court (section 7 of the Training and Development Committee Guidance issued by the Judicial College);
- protocols issued by the Senior Presiding Judge (such as those relating to Governance and Probation Liaison);

Many of the rules have developed over time, and do not support modern ways of working. Nor do they reflect changes to bench and HMCTS structures. For example, the rules relating to elections of bench chairmen and deputy chairmen require the use of first class post and, thus, preclude the use of electronic means of communication. Moreover, the timetable for bench appointments does not support the creation of benches other than on 1 January each year, or permit elections to be rerun in the event of an irregularity.

The rules about training have also developed over time and raise legitimate and significant doubts over the necessity for two separate training committees with overlapping responsibilities. Additionally, maintaining two sets of committees involves avoidable costs since both have to be serviced and administered.

In order to review the existing provisions, a working group was established to consider (without seeking a change to the primary legislation):

- whether the provisions can be simplified and modernised;
- whether the provisions can be consolidated into a single set (or at least a reduced number) of rules or guidance;
- how to provide flexibility to allow different ways of working.

The working group included:

- Stephen Abbott (Deputy Justices' Clerk)
- Graham Hooper (Justices' Clerks Society)

- Siân Jones (Justices' Clerk, Criminal Procedure Rule Committee)
- Richard Monkhouse JP (Chairman, Magistrates' Association)
- Nicholas Moss JP
- Yvonne Powell JP (Chairman, National Bench Chairman's Forum)
- Helen Pustam (Judicial College)
- Tom Ring / Preeya Sahni / Jane Wignall (HMCTS Crime Directorate)
- Samantha Vaughan (MoJ Legal)

Summary of proposed changes; The key changes would:

- consolidate the main Rules into one new set of Rules the “Justices of the Peace Rules 2016”;
- provide a consistent and simplified process for elections to bench offices, which is separated from the need for magistrates to attend meetings, and allows for flexibility in the timetable and the procedures to be followed (and in particular would allow for electronic elections);
- allow the chairman to decide the number of deputy chairmen s/he wishes to work with. This change also requires the deputy chairmen to be elected subsequent to the chairman (eliminating the need for reserve votes);
- consolidate the two existing training committees (Training and Development Committees; Magistrates' Area Training Committees) into a single committee to deal with approvals, authorisations, training and appraisals of justices;
- abolish the legislative requirement to have family and youth panels, and bench and panel meetings.

Consolidation of main rules into one

The main rule provisions relating to the arrangements for the magistrates courts are:

- Justices of the Peace (Size and Chairmanship of Bench) Rules 2005;
- Justices of the Peace (Training and Development Committee) Rules 2007;
- Youth Courts (Constitution of Committees and Right to Preside) Rules 2007;
- Family Court (Constitution of Committees: Family Panels) Rules 2014.

In addition, the Family Court (Composition and Distribution of Business) Rules 2014 deal with the composition of the family courts (at all levels of the judiciary). One of the issues the group considered was whether rules relating to justices sitting in the family courts should be included in rules relating to magistrates' courts, or to family courts. The conclusion was that:

- as the family court was a separate jurisdiction, the jurisdictional rules relating to composition of family courts consisting of justices should remain within the “family rules” rather than be incorporated into the “magistrates' rules”;
- the rules governing approvals (to preside), authorisations (to sit), appraisal and training for such justices should (as now) be included in the “magistrates' rules”.

In relation to the Rules identified in bullet points above, one option is to de-regulate completely (i.e. to revoke the rules and have no rules at all). However, the group felt that the relevant statutes clearly envisage a framework to be established by secondary legislation. It would not therefore be appropriate to rely solely on guidance. Nevertheless, there was an acceptance that the existing rules are overly prescriptive and inflexible and do not allow for changes to ways of working to reflect current and possible future HMCTS structures or technology.

The group's view was that the Rules identified in bullet points above should be revoked and replaced by a single set of Rules, which, while maintaining a statutory framework, would be less prescriptive than the existing rules. The Rules would cover:

- composition of courts (adult and youth);
- elections and bench officers ;
- justices' approvals, authorisations, training and appraisal (all jurisdictions).

Composition of courts

The draft rules provide that:

- the maximum number of justices permitted to sit as a magistrates' court is three (note: the minimum (as opposed to maximum) number of justices required is dealt with by primary legislation);
- a magistrates' court (i.e. adult and youth courts) is presided over by a District Judge (Magistrates' Court) or by a justice who has been approved to preside in court under these rules (with provision for training and emergencies).

There are no significant changes to the existing position, although for clarity and consistency the draft rules now make the same provision in both adult and youth courts.

However, it is also now necessary to deal with the position under the single justice procedure. The working group felt that the skills required to preside in an open court were not required when dealing with cases other than in open court; and the draft rule indicates that the rules requiring a justice to be approved to preside do not apply to the single justice procedure.

Question 1 – Do you agree with the proposals regarding the composition of magistrates' courts? If not, please explain.

Bench officers and elections

The draft rules cover:

- election procedure
- chairmen and deputy chairmen

There is a requirement in the Courts Act 2003 (s17) for benches to elect a chairman and deputy chairman or chairmen. The draft rules make provision for a single election procedure to apply to the bench officers dealt with in the rules.

Currently the rules differ as to elections for bench and panel chairmen and deputies, as well as providing for either election or selection for Training and Development Committee (TDC) members. The rules are prescriptive, both in respect of timing and process. This is unhelpful, as the rules do not facilitate, for example, bench mergers part-way through the year, differing notice periods, and would not permit a ballot by electronic means (the rules still require the use of first class post). These are neither effective nor cost efficient. They are also out of tune with modern methods of communication.

The group has therefore proposed that there should be a single process dealing with all bench elections (uncontested and contested), which would be flexible enough to allow electronic voting. By not specifying the process, it would also allow the contracting out of the voting process, for example by the Electoral Reform Society, should this be thought to be more efficient and effective. The draft rules therefore provide for:

- the justices' clerk to manage the election process and determine the timetable for the elections;
- a procedure that enables candidates to submit notices of candidacy themselves, without a requirement for proposers and seconders;
- provision for automatic election if the number of candidates does not exceed the number of vacancies (as now);
- a ballot procedure in the event that there are more candidates than vacancies. The new rules do not prescribe how the ballot is to be carried out, save that it must be secret; and that numbers of votes cast for each candidate in a contested election must be published to the bench.
- removing the requirement that the announcement (or confirmation) of the result must be made at a meeting;
- provisions dealing with withdrawals of notices of candidacy at various stages in the process;
- provisions dealing with the situation where there are no, or insufficient, candidates;
- a new provision allowing a re-run of the election process in the event of a material irregularity (the decision being that of the justices' clerk, but subject to the possibility of review by a judge).

Effectively, under these proposals, the justices' clerk has a returning officer role, ensuring a fair and secret election and ballot where an election is contested. However, in respect of a ballot, the rules do not specify how the election procedure is to be carried out, providing flexibility to allow the process to be undertaken by HMCTS staff or by an outside body.

The proposals do not specifically provide for election statements or any other form of canvassing, but neither do they preclude them. It would be necessary to allow flexibility to include modern methods should this be thought to be appropriate (for example, if the process was largely electronic, a video statement could be permitted). It would be the

intention to supplement the rules with guidance to deal with these aspects (there is already guidance issued by the JCS and MA).

The group could not see a need to retain a requirement that there should be a proposer and seconder as this adds no value to the election process. The requirement (particularly where, as in the current rules, the names are not disclosed) is unlikely to prevent nominations, as it is likely that anyone wishing to put him/herself forward for election would be able to find at least two supporters. If however, it is felt that proposers and seconders should be retained, the group was firmly of the view that their names should be published.

Currently, there is no provision allowing for the re-run of an election, even where there was a self-evident and accepted defect. Moreover, the requirement for a process ending in a meeting in October effectively precludes it. Whilst it is not anticipated that this provision would be widely used, the group felt that it was appropriate to allow the re-run of an election in the event of a material defect, but which would not automatically include individual justices not receiving papers that had been sent out procedurally soundly. As the justices' clerk has overall responsibility for the election, it was felt appropriate for him/her to decide whether there was a material irregularity, but to allow for that decision to be reviewed by a judge in the event of disagreement.

Question 2 – Do you agree with the proposals for elections of bench chairmen and deputy chairmen? If not, please explain.

It should be noted that under these proposals, there would be no statutory requirement for bench or panel meetings, but clearly this is not intended to preclude meetings where they add value, principally to deliver training and to explain new initiatives, and to discuss key issues. The lack of an election meeting however means that provision must be made for justices to decide election issues in another way.

The working group felt that a decision on the number of deputy chairmen should not be a bench decision, and that, as the bench chairman is responsible for working effectively with the deputy/ies, s/he was best placed to decide the number. This simplifies the election process by avoiding the need for the complicated "reserve vote" procedure, although it would require consecutive elections where the number of candidates was greater than the posts vacant: firstly for chairman and then for deputy/ies.

Question 3 – Do you agree with the proposal that the number of deputy chairmen should be decided by the incoming bench chairman? If not, please explain.

The group felt that a usual term of office for a year continues to be appropriate, but felt that the year should normally begin on 1 April (as this ties in better with training, sittings, reporting and rota years). However, there is a need for flexibility to allow for terms of office starting at other times if appropriate (for example the creation of a new bench on a different date) and to avoid the need for elections for short terms. The draft rules allow this flexibility by providing:

- for different start dates where necessary;
- that where a chairman has been elected within three months of the end of a term of office to fill a casual vacancy his /her term of office shall be that short period plus the following year (to avoid re-elections within a short period);

- that the chairman may dispense with the need to fill a casual vacancy for a deputy chairman: it is envisaged that this might be used where the casual vacancy arises shortly before the end of a term of office and so avoids the requirement for an election.

The proposals for eligibility for election broadly follow the existing provisions, save that previous terms of office are counted by the number of terms rather than just years. This allows short periods not to be counted towards the maximum terms permitted.

Question 4 – Do you agree with the proposals as to terms of office for chairmen and deputy chairmen? If not, please explain.

Justices' Authorisations, Approvals, Training and Appraisals

The draft rules repeat the existing requirements for compulsory training before sitting as a justice in the adult, youth or family courts, or to preside in those courts.

The current Rules provide for two committees to deal with issues relating to Justices' training: the Magistrates' Area Training Committee (MATC) and the Training and Development Committee (TDC). Depending on local arrangements, an area may have an MATC, one or more Bench TDCs (BTDC) and one or more Family TDCs (FTDC). Broadly, the MATC deals with justices' training at a strategic level, whereas TDCs deal with the identification of training needs, authorisations (to sit in youth and family courts), approvals (to act as presiding judges in court) and the justices' appraisal system.

MATC areas are defined in the existing secondary legislation (the Justices of the Peace (Training and Development Committee) Rules 2007) based on former HMCS areas, and in reality much of this is out of date as justices' clerkships are larger than the old areas and many (but not all) MATCs have combined. This proposed change reflects the need to ensure a large enough area to allow effective decision-making and a strategic fit with budgetary responsibilities. TDCs tend to be linked to their benches/panels, but again there is not a consistent approach: some have combined with nearby areas.

The group felt also that over time the distinction between the two committees had become blurred and they had overlapping responsibilities for promoting and enabling performance improvement in court on the day.

Overall, the group felt that there was no need for a two-tier system, and that the work of all of the TDCs and MATCs in areas should be combined into a single area committee. It was accepted that there may be concern at about breaking the link between benches and TDCs, but the group felt that removing the direct link would improve the fairness and objectivity of the decision-making, especially appraisals. The new body would still be constituted from justices from the benches in the new committee's area.

Question 5 – Do you agree with the proposal to create a single committee to undertake the functions currently carried out by the training and development and magistrates' area training committee? If not, please explain.

JAATAC

Accordingly, the proposal is to create a single committee, the Justices' Authorisations, Approvals, Training and Appraisals Committee (JAATAC) to carry out the tasks previously undertaken by the two committees.

Under the existing HMCTS arrangements, it was felt that the best way to define the geographic area covered by the committee would be to align the area with that to which Justices' Clerks are assigned. Justices' Clerks are assigned under the Courts Act to specific local justice areas (as are justices). They are responsible for training delivery in their areas and this fits appropriately with the training responsibilities of the proposed JAATAC. However, as the current Justices' Clerks assignments can be altered, it is necessary to allow an option to remove that alignment if necessary. Hence the proposal is that the Lord Chancellor may specify a different area on application by the JAATAC. There would be a requirement on the Lord Chancellor to consult with justices under section 21 of the Courts Act 2003.

Membership of the committee would be:

- between six and twelve justices appointed from the local justice areas in the JAATAC area;
- the justices' clerk (or an assistant clerk delegated by him/her);
- one justice nominated by the Magistrates' Association.

The group considered what requirement there should be regarding membership of youth and family justices. JAATACs would be responsible for training and recruitment of youth and family members, and it was felt important to ensure that there should be at least one youth and one family justice as members of the committee. The draft rules therefore make provision for the appointment of such a member to the committee. It is not necessary for members to be youth or family magistrates in order to review appraisal forms - the expert knowledge will be provided by the appraiser. This reflects the current position in respect of youth justices, and that for family justices where there is no FTDC.

The group reviewed the need for the salaried judiciary to serve on the JAATAC. The consensus was that this was unnecessary in relation to training as there are other effective means of communication between the magistrates' bench and the professional judiciary, principally through JBGs and JLGs, which can recommend training where appropriate. At present members of the salaried judiciary are not involved in the approval and authorisation of justices, and justices are not involved in the appointment and ticketing of judges; the working group felt that this separation was appropriate and should continue. Judges would continue to deliver training to justices where appropriate.

The draft rules also include provision for the attendance of the HMCTS designated officer (Delivery Director – who has overall budgetary responsibility), Bench Chairmen and any other person specifically invited (although it is anticipated that such invitations would not be issued on a continuing basis). Those invited would not be members. Moreover, their attendance would be excluded from those parts of meetings which dealt with approvals, authorisations or competence of individual justices. Furthermore, the draft rules provide

that the role of the Justices' Clerk would be limited to providing advice when such decisions are made.

JAATAC meetings would be quorate with three justice members present, but the rules also specifically allow decisions to be made other than at formal meetings. The draft rules also allow the committee to form sub-committees to carry out its functions.

One concern was whether, in dealing with appraisals, the workload of the committee would be manageable. The group felt that the ability to form subcommittees and to make decisions outside formal meetings would provide the committee with the flexibility it needs to manage its workload effectively, without creating an undue burden for its members.

The draft rules provide for terms of office for the members of the committee and for a method of appointing the six to twelve appointed justices. This would be by selection by a selection panel elected from the local justice area(s) falling within the JAATAC area.

Question 6 – If there is to be a single committee, do you agree with the proposals as to composition of the committee? If not, please explain.

The JAATAC has five main functions specified in the draft rules:

- to select justices for chairmanship training;
- to grant and revoke approvals for justices to preside in the magistrates' and family courts;
- to grant authorisations on behalf of the Lord Chief Justice, and recommend revocations of authorisations, for justices to sit as youth and family justices;
- to establish and operate a scheme for appraising the performance of justices;
- responsibility for justices training.

Training

The draft rules require a training plan to be prepared and published, and require the JAATAC to monitor justices' training. Further details would be included in Judicial College guidance (as now).

Appraisals

The draft rules require the JAATAC to establish and operate an appraisal scheme. Further details would be included in Judicial College guidance (as now)

Approvals and authorisations

The draft rules require the JAATAC to determine annually the number of justices required to sit as youth and family justices, and to preside in each court. Where there is a need to approve or authorise (as the case may be), the committee may do so, provided that the justice:

- meets any criteria set out by the Lord Chief Justice;
- (in respect of youth or family justices) is suitable for such role(s);

- (in respect of justices approved to preside) has completed the required training and has been appraised as competent.

The terminology used in the draft rules follows that of the primary legislation. Principally, this was done as a matter of proper drafting, but it reflects also the fact that there are differences in the approvals and authorisations processes:

- for authorisations, (as for appointments of new justices), the authorisation occurs before training and appraisal - the order is authorisation, training, appraisal;
- for approvals, training and appraisal occur first - the order is selection, training, appraisal and approval.

Question 7 – Should the JAATAC be the body that determines the number of justices required for each of the various rules?

Review of competence

In reality, there are three distinct areas (each with potentially different outcomes and procedures) in which the competence of a justice may need to be reviewed:

- competence as a justice in the adult court;
- authorisation to sit as a judge in the family court or as a youth justice;
- approval to sit as a justice approved to preside in court in the adult, youth or family courts.

The draft rules attempt to simplify the process for reviewing competence and improve the flexibility in respect of outcomes, by prescribing that the authorisation or approval or finding of competence (as the case may be) must be reviewed by the JAATAC in specified circumstances. The draft rules require the JAATAC to review a justice's competence to sit as a justice in the adult court:

- where the justice has not completed compulsory or essential training;
- following an appraisal under an appraisal scheme;
- where, having investigated a complaint about competence, the JAATAC is satisfied that the justice has failed to demonstrate the necessary competence;
- following a referral from the Advisory Committee under the Conduct Rules.

In addition, the JAATAC may review competence in the adult court following a justice's return from an absence of six months or more.

At each review, the committee may take such action as it thinks fit, including:

- requiring training;

- requiring one or more appraisal;
- reporting the matter to the Advisory Committee.

Review of approvals or authorisations

Similarly, the committee must review an approval of a justice to preside in court, or authorisation to sit as a family or youth justice:

- at the request of the justice;
- where a minimum sitting requirement has been laid down by the Lord Chief Justice, if the justice has not met those requirements;
- where no minimum sitting requirement has been laid down, if the justice has not sat in the role for which s/he is approved or authorised for a continuous period of 12 months preceding the date of the review;
- where the circumstances of a justice change such that s/he may no longer be able to meet the suitability criteria laid down for the role for which the approval or authorisation relates;
- if the justice has not completed one or more compulsory or essential training requirements for a function;
- following an appraisal in a function carried out in accordance with the appraisal scheme;
- where, following a complaint about a justices' competence in a function, the JAATAC is satisfied that the justice has failed to demonstrate the necessary competence in the role to which the authorisation relates.

At a review of an authorisation, the JATAC may:

- confirm the approval or authorisation;
- require the justice to undertake training;
- arrange one or more appraisals of his/her performance;
- revoke the approval or recommend the revocation of the authorisation, as the case may be;
- refer the matter to the Advisory Committee.

Revocations

The draft rules specify the grounds on which the JAATAC may revoke an approval or recommend an authorisation to be revoked. These broadly follow the existing (mandatory) guidance issued by the Lord Chief Justice, save that

- grounds are specified for both approvals and authorisations (previously, this was in guidance);

- the grounds include a failure to undertake essential as well as compulsory training;
- a failure to comply with a training requirement required by the JAATAC following a review would amount to a ground; and
- a failure to demonstrate competence (as opposed to “persistent” failure in the current guidance) could justify revocation. The group felt that a single act, if serious enough, should be sufficient to allow a revocation.

Reconsideration and appeals procedure

The draft rules provide for a magistrate who is dissatisfied by the decision of the JAATAC to ask for a review. It also provides for the Lord Chief Justice to prescribe a procedure for an appeal to the bench chairman, which is already dealt with in prescribed guidance. However since the power to revoke is contained in the rules, it is felt appropriate to refer to an appeal against such a decision in the rules also. The Rule follows the current guidance by empowering the Chairman either to confirm the decision or refer it back to the Committee.

Review of excess authorisations

The draft rules explicitly allow the JAATAC to review authorisations where there is an excess (such that justices are unable to fulfil their minimum sitting obligations). If need be, it allows authorisations to be withdrawn by lot. This addresses one key weakness of the current regime, which did not exist prior to 2007: that it is impossible to control the number of youth or family justices in response to changes in caseload. That has led to concerns in recent years that in some areas youth justices may be unable to achieve sufficient experience to maintain competence.

Question 8 – Do you agree with the proposals as to approvals and authorisations? In particular, do you agree with the proposals as to review and revocation? If not, please explain.

Bench meetings

Under these proposals, and as noted above, there is no requirement to hold bench meetings. Previously, the need for bench meetings was linked to the election process. If that link is broken, there is no statutory purpose for the meetings. That would not preclude them from taking place as it is recognised that there will be legitimate reasons to hold them to discuss important issues and to deliver training.

Youth / family panels

There is no statutory requirement to have panels, and the group recommend that that requirement should be abolished. In reality, panels are left over from previous arrangements. Under the legislation prior to 2003, justices elected colleagues to panels, and their authority to act in the family or youth courts came from their membership of the panel. This has now been overtaken by the authorisation regime, and justices’ jurisdiction to act in the family or youth court arises through their authorisations rather their membership of a panel.

As with bench meetings, the abolition of panels does not prevent meetings of authorised justices for training and to meet with other agencies, and to discuss matters of importance

to the work of the courts. One of the key functions of the youth and family justices on the JAATAC is to provide an assessment of recruitment needs.

Question 9 – Do you believe there should be a statutory committee/panel of youth and family magistrates? If so what should its functions be?

Initially the working group proposed a change to the requirement in respect of genders in the Youth Court to reflect the more flexible wording used in relation to Family Courts (i.e. that the requirement should simply be for there to be, “as far as practicable”, both a man and a woman). Ultimately however, since the Youth Court now deals solely with crime and associated civil matters (such as ASBIs), the group concluded that there was no rational justification for maintaining the historical requirement for a mixed gender bench at all, so this requirement is omitted from the draft rules.

Question 10 – Should there continue to be a requirement that a youth court consisting of justices should include, as far as practicable, at least one man and at least one woman?

The group recognised that there may be different issues in relation to family courts, but felt the same question should be addressed in consultation.

Question 11 – Should there continue to be a requirement that a family court consisting of justices should include, as far as practicable, at least one man and at least one woman?

Questionnaire

Responses are sought to any issue raised by this consultation or the draft rules, but in particular to the following questions:

Question 1

Do you agree with the proposals regarding the composition of magistrates' courts? If not, please explain?

Question 2

Do you agree with the proposals for elections of bench officers? If not, please explain?

Question 3

Do you agree with the proposal that the number of deputy chairmen should be decided by the incoming bench chairman? If not, please explain

Question 4

Do you agree with the proposals as to terms of office for chairmen and deputy chairmen? If not, please explain.

Question 5

Do you agree with the proposal to create a single committee to undertake the functions currently carried out by the training and development and magistrates' area training committee? If not, please explain

Question 6

If there is to be a single committee, do you agree with the proposals as to composition of the committee? If not, please explain.

Question 7

Should the JAATAC be the body that determines the number of justices required for each of the various roles?

Question 8

Do you agree with the proposals as to approvals and authorisations? In particular, do you agree with the proposals as to review and revocation? If not, please explain.

Question 9

Do you believe that there should be a statutory committee/panel of youth/family magistrates? If so what should its functions be?

Question 10

Should there continue to be a requirement that a youth court consisting of justices should include, as far as practicable, at least one man and at least one woman?

Question 11

Should there continue to be a requirement that a family court consisting of justices should include, as far as practicable, at least one man and at least one woman?

Thank you for participating in this consultation exercise.

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 | |
| | |
| | |

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.

Contact details/How to respond

Please send your response by 29/04/2016:

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Legal Operations Team
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London SW1H 9AJ

Email: deregulation.consultation@hmcts.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact HM Courts & Tribunals Service at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address.

Alternative format versions of this publication can be requested from deregulation.consultation@hmcts.gsi.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in May 2016.

Representative groups

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

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.

Impact Assessment

An impact assessment is not required in this instance as the proposals are inward facing and the public sector costs are unlikely to be above the threshold of 5 million pound per annum

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Annex A

STATUTORY INSTRUMENTS

2016 No.

JUSTICES OF THE PEACE, ENGLAND AND WALES

The Justices of the Peace Rules 2016

| | |
|--------------------------------|-----|
| <i>Made</i> - - - - - | ** |
| <i>Laid before Parliament</i> | *** |
| <i>Coming into force</i> - - - | *** |

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The Senior Presiding Judge, as a nominee of the Lord Chief Justice under section 20(3) of the Courts Act 2003(1) makes the following Rules, in exercise of the powers conferred on him by:

sections 10(4), 17(2) and (5), 18(6) and (7), 19(1) and (2), and 108(6) of the Courts Act 2003(2), and after consultation with the Lord Chancellor, the Criminal Procedure Rule Committee and the Family Procedure Rule Committee, in accordance with section 20(2) of that Act; and

section 45(4) of the Children and Young Persons Act 1933(3) with the concurrence of the Lord Chancellor and after consultation with the Criminal Procedure Rule Committee in accordance with section 45(6) of that Act:

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Rules may be cited as the Justices of the Peace Rules 2016.

(2) These Rules come into force on 1st July 2016 for the purposes of—

- (a) Part 1 (introductory provisions);
- (b) Part 2 (composition of magistrates' courts);
- (c) Part 3 (elections);
- (d) Part 4, Chapter 1 (compulsory training); and
- (e) Rule 21.

(3) These Rules come into force on 1st April 2017 for the purposes of Part 4, Chapter 2 (JAATAC), other than Rule 21.

Revocations and transitional provision

2.—(1) Subject to paragraph (2)—

- (a) the Justices of the Peace (Size and Chairmanship of Bench) Rules 2005 (“the 2005 Rules”)(4);

(1) 2003 c. 39. Section 20(3) was inserted by paragraph 321 of Schedule 4 to the Constitutional Reform Act 2005 c. 4.

(2) 2003 c. 39. Section 17 has been amended by paragraph 319(2) of Schedule 4(1) to the Constitutional Reform Act 2005 c. 4. Section 19 has been amended by paragraph 320(2) of Schedule 4 to the Constitutional Reform Act 2005 c. 4, and by paragraph 86 of Schedule 10 to the Crime and Courts Act 2013 c. 22. Section 108(6) has been amended by paragraph 348 of Schedule 4 to the Constitutional Reform Act 2005 c. 4.

(3) 1933 c. 12. Section 45 was substituted by the Courts Act 2003, section 50(1) and amended by the Constitutional Reform Act 2005, Schedule 4, paragraph 20.

- (b) the Family Court (Constitution of Committees: Family Panels) Rules 2014 (“the 2014 Rules”)(5); and
- (c) the Youth Courts (Constitution of Committees and Right to Preside) Rules 2007 (“the Youth Courts Rules 2007”)(6)

are revoked.

(2) Appointments made under the 2005 Rules continue until 31st March 2017 as if those Rules were still in force.

(3) The Justices of the Peace (Training and Development Committee) Rules 2007 (“the TDC Rules 2007”)(7) remain in force until 31st March 2017.

Interpretation

3. In these Rules—

“adult court” means a magistrates’ court other than a youth court;

“appraisal” means the determination of whether a justice is competent by means of an assessment of performance;

“eligible justice” means a justice who is eligible to stand for election and to vote in the election procedure, being assigned to a local justice area to which the election relates on the date following the date on which justices’ clerk informs the eligible justices under Rule 8;

“family justice” means a justice who is authorised by the President of the Family Division to conduct business in the family court;

“JAATAC” means a Justices’ Approvals, Authorisations, Training and Appraisals Committee; and references to justices in relation to a JAATAC mean justices assigned to the local justice area or areas in the JAATAC area;

“JAATAC area” means the area comprising the local justice area or areas to which a justices’ clerk is assigned; or, where the Lord Chancellor has granted an application under Rule 19(2), the area comprising the local justice area or areas so specified;

“JAATAC selection panel” means the selection panel for each JAATAC area, elected to appoint the members of the relevant JAATAC;

“justice” means a justice of the peace who is not a District Judge (Magistrates’ Court) and, in relation to a local justice area, means a justice who is assigned to that area;

“justices’ clerk” in relation to a local justice area, means a justices’ clerk assigned to that area;

“justice member” has the meaning given in Rule 20(1)(a);

“magistrates’ court” means any court in which a justice is authorised to sit, other than a family court or a Crown Court;

“youth justice” means a justice who is authorised by or on behalf of the Lord Chief Justice to sit as a member of a youth court.

(4) S.I. 2005/553, as amended by S.I. 2014/879.

(5) S.I. 2014/842.

(6) S.I. 2007/1611, as amended by S.I. 2007/2622 and 2011/1494.

(7) S.I. 2007/1609, as amended by S.I. 2011/1493 and 2014/879.

PART 2

Composition of magistrates' courts

Size of bench

4.—(1) The number of justices sitting to deal with a case as a magistrates' court must not be greater than three.

Presiding justices

5.—(1) This Rule does not apply to any justice sitting in a magistrates' court in accordance with section 16A of the Magistrates' Courts Act 1980.

(2) Subject to paragraph (3), a magistrates' court must be presided over by—

- (a) a District Judge (Magistrates' Courts);
- (b) a justice who has been approved in accordance with these Rules; or
- (c) a justice who has completed or is undertaking approved training courses in accordance with Rules 18(1)(b) or (d) (as applicable), and is under the supervision of a justice who has been approved to preside in that court.

(3) The justices present may, in the absence of a justice entitled to preside under paragraph (2), appoint one of their number to preside in a magistrates' court to deal with any case if—

- (a) before making such an appointment, the justices present are satisfied as to the suitability for this purpose of the justice proposed; and
- (b) except as mentioned in paragraph (4), the justice proposed has completed or is undertaking training courses in accordance with Rule 18(1) to enable that justice, if approved, to preside in that court.

(4) The condition in paragraph (3)(b) does not apply if by reason of illness, circumstances unforeseen when the justices to sit were chosen, or other emergency, no justice who complies with that condition is present.

PART 3

Elections

CHAPTER 1

Procedure

General provision

6.—(1) This Part sets out the election procedure for —

- (a) the offices of chairman and deputy chairman for each local justice area, and
- (b) membership of the JAATAC selection panel for each JAATAC area.

Procedure for elections

7.—(1) The election procedure consists of a notice of candidacy procedure, and, except as provided in paragraph (2), a secret ballot.

(2) A secret ballot is not required where the justices required to fill the available vacancies are elected under Rule 8(6)(a) or (b).

(3) The timetable for the election procedure must be determined by the justices' clerk and published before or at the start of the procedure.

(4) Any timetable must allow sufficient time for receipt of notices of candidacy and a secret ballot where required.

Notice of candidacy procedure

8.—(1) Eligible justices who want to be elected in respect of a vacancy must complete a notice of candidacy.

(2) The justices' clerk must inform eligible justices that they may submit a notice of candidacy, in accordance with paragraph (3).

(3) The justices' clerk must determine and specify:

- (a) the manner in which notices are to be submitted;
- (b) the method or methods by which notices can be submitted; and
- (c) a closing date for receipt of notices.

(4) The justices' clerk, or anyone nominated to act on their behalf, must be satisfied that each notice has been submitted in accordance with the specifications in paragraph (3).

(5) A notice that has not been submitted in accordance with the specifications in paragraph (3) must not be treated as a valid notice.

(6) Subject to Rule 12, where—

- (a) a single valid notice of candidacy is received for a vacancy, the candidate who submitted that notice is elected;
- (b) the number of valid notices of candidacy submitted is less than or equal to the number of vacancies applied for, those candidates are elected.

(7) As soon as practicable after an election under paragraph 6, the justices' clerk must notify the candidates as to the result.

(8) As soon as practicable after notifying the candidates under paragraph 7, the justices' clerk must notify the eligible justices as to the result.

Secret ballot

9.—(1) Where the valid notices of candidacy exceed the number of vacancies, the justices' clerk must arrange a secret ballot.

(2) The justices' clerk must inform the eligible justices that they may vote in the secret ballot in accordance with paragraph (3) below.

(3) The justices' clerk must —

- (a) determine and specify the procedure to be followed for the ballot;
- (b) provide a ballot form or access to a ballot form containing the names of the candidates in alphabetical order; and
- (c) specify a closing date by which votes must be cast.

(4) Where the election is for a single vacancy, each eligible justice may cast one vote in accordance with the specified procedure.

(5) Where the election is for more than one vacancy, each eligible justice may cast one or more votes (up to but not exceeding the number of vacancies) for the relevant vacancies in accordance with the specified procedure.

Determining result of secret ballot

10.—(1) Where there is a single vacancy, the candidate who receives the highest number of votes cast is elected.

(2) Where there is more than one vacancy, the requisite number of candidates (being the number equal to the number of vacancies) who have received the highest number of votes, are elected.

(3) If—

- (a) two or more candidates have received an equal number of votes for a vacancy (the “tied candidates”); and
- (b) taking into account the election of any candidate who has received a higher number of votes than the tied candidates—
 - (i) the election of one or more of the tied candidates is necessary to make up the requisite number, but
 - (ii) the election of all of the tied candidates would exceed the requisite number,

the justices’ clerk must decide between them by lot, and paragraph (4) applies.

(4) Where this paragraph applies, the candidate or candidates (as applicable) on whom the lot falls is elected.

(5) As soon as practicable after an election under this Rule, the justices’ clerk must notify first candidates, as to—

- (a) the result;
- (b) the number of votes cast for each candidate; and
- (c) where relevant, if a lot was required.

(6) As soon as practicable after notifying the candidates under paragraph (5), the justices’ clerk must notify the eligible justices as to—

- (a) the result;
- (b) the number of votes cast for each candidate; and
- (c) where relevant, if a lot was required.

Miscellaneous provisions about ballots

11.—(1) Unless otherwise determined in accordance with Rule 14, the justices’ clerk must treat a ballot as valid where—

- (a) an eligible justice did not receive a notice or ballot form; or
- (b) a completed ballot form or votes were not received.

(2) Where an eligible justice does not follow the specified procedure, any vote by that eligible justice must not be taken into account when the votes are counted.

(3) The justices’ clerk and any other person carrying out the ballot procedure must not disclose how any justice voted in any ballot.

Withdrawal of notices of candidacy

12.—(1) A candidate may withdraw their notice of candidacy—

- (a) before the closing date for receipt of notices;
- (b) where, after the closing date, there is (or otherwise would be) a need for a ballot, before the ballot forms are issued; or
- (c) where there has been a ballot and an equality of votes require the drawing of lots, before the lots are drawn.

(2) Where a candidate has withdrawn their notice of candidacy after the closing date for receipt of notices but before the issue of the ballot forms, the name of that candidate must be omitted from the ballot documentation, save that—

- (a) where (after the withdrawal of the notice) there is only one candidate for a single vacancy, that candidate is elected; and
- (b) where (after the withdrawal of the notice) the number of candidates equals or is less than the number of vacancies, those candidates are elected.

(3) Where a candidate has withdrawn their notice after there has been a ballot and an equality of votes require the drawing of lots, that candidate's name must not be included in the drawing of lots, save that—

- (a) where (after the withdrawal of the notice) there remains only one candidate for a single vacancy, that candidate is elected;
- (b) where (after the withdrawal of the notice) the number of candidates for the relevant vacancy equals or is less than the number of vacancies, those candidates are elected.

Absence or insufficiency of notices of candidacy

13.—(1) Where no notices of candidacy have been received within the relevant timetable, or all notices submitted are withdrawn, the justices' clerk must inform the eligible justices of that fact and inform them that they may further submit notices by a date specified by the justices' clerk.

(2) Where notices are received in accordance with paragraph (1), the procedure set out at Rules 7 to 12 must be followed.

(3) If no notices are received in accordance with paragraph (1) for the office of chairman, the justices' clerk must arrange a secret ballot, following the procedure in Rule 9, save that the ballot form must contain the names of all the eligible justices in alphabetical order.

(4) If no notices are received in accordance with paragraph (1) for the office of deputy chairman, the vacancy must remain for the duration of the term.

(5) Where candidates are elected under Rule 8(6)(b) to the office of deputy chairman, then the number of deputy chairmen required for the relevant term is deemed to be equal to the number of candidates so elected.

(6) In respect of a local justice area, if either—

- (a) no notices are received in accordance with paragraph (1) for election to a JAATAC selection panel; or
 - (b) insufficient notices are received for members of a JAATAC selection panel,
- the chairman of that local justice area must select the requisite number of justices to act in that regard.

Material irregularity in election procedure

14.—(1) Where the justices' clerk is satisfied (either of their own motion or following representation from an eligible justice) that a material irregularity has occurred in the election procedure, the justices' clerk may revoke the result of the election and repeat the election procedure, or a part of it, in respect of the relevant vacancy or vacancies.

(2) An eligible justice must make a representation as to any material irregularity to the justices' clerk within 14 days of the notification of the result of the election.

(3) The justices' clerk must notify the eligible justice who made the representation of their decision within 14 days of receipt of the representation.

(4) If the justices' clerk does not repeat the election procedure, an eligible justice may, within 14 days of notice of such decision, request a judicial office holder, nominated for this purpose by the Lord Chief Justice, to revoke the result of the election and repeat the election procedure, or a part of it.

- (5) The eligible justice making a request under paragraph (4) must—
- (a) make the request in writing to the justices' clerk; and
 - (b) specify the grounds on which the request is made.
- (6) The nominated judicial office holder may—
- (a) confirm the result of the election; or
 - (b) if satisfied that a material irregularity has occurred in the election procedure, revoke the result of the election and require the justices' clerk to repeat the election procedure, or a part of it.
- (7) The justices' clerk or nominated judicial office holder must give candidates and any eligible justice who has made representations under paragraph (2), the opportunity to make representations before determining whether to repeat the election procedure, or any part of it.

CHAPTER 2

Provisions specific to chairman and deputy chairmen

Deputy chairmen

15.—(1) The election procedure in respect of a deputy chairman must commence after the election of the chairman has been completed and declared.

(2) The number of deputy chairmen is determined by the justice elected as chairman for the duration of the term in which the deputy chairman or chairmen will serve.

Duration of term in office and vacancies

16.—(1) Subject to paragraphs 16(2), (5) and (6), a chairman and deputy chairman elected under Rules 7 to 14 inclusive will serve a term of one year commencing on 1st April following their election and ending on 31st March of the following year (the “normal term”).

(2) The term may be less than one year if:

- (a) the chairman or deputy chairman cease to act as such, whether by ceasing to be a justice, resignation or for any other reason, in which case the term finishes on the date the person ceases to act; or
- (b) the relevant local justice area ceases to exist, in which case the term finishes on the date the local justice area ceases to exist.

(3) Where a vacancy arises during the normal term under paragraph (2) above, the justices' clerk must, as soon as possible, commence the election procedure in respect of the vacancy.

(4) Paragraph (3) does not apply if the vacancy is that of a deputy chairman and the chairman determines that the vacancy should not be filled.

(5) The term may commence on a date other than 1st April if—

- (a) there has been an election under paragraph (3) above, in which case the term commences on the date of the election or such other date as may have been specified in the election information or notified by the justices' clerk; or
- (b) a new local justice area is created, in which case a new term commences on the date that the new local justice area comes into existence.

(6) Subject to paragraph (7), in respect of a justice elected to a vacancy under paragraph (5), the term is until the end date of the normal term.

(7) If a justice is elected under Rule 16(5) in respect of a term commencing on a date between 1st January and 31st March in any given year, the term is until 31st March of the following year.

Eligibility for re-election

17. (1) A justice is not eligible to be elected as chairman for a local justice area for more than three terms in that local justice area, unless at least six years have elapsed since the justice last filled that vacancy.

(2) In any event, a justice is not eligible to be elected as chairman for a local justice area for more than six terms in total in any one local justice area.

(3) A justice is not eligible to be elected as a deputy chairman for a local justice area for more than five terms in any one local justice area.

PART 4

Approvals, Authorisations, Training and Appraisals

CHAPTER 1

Compulsory Training

Training provision for justices

18.—(1) A justice must not perform any of the following functions unless that justice has completed a training course approved by the Lord Chief Justice in respect of that function—

- (a) sitting as a justice in the adult court;
- (b) presiding in the adult court;
- (c) sitting as a justice in the youth court;
- (d) presiding in the youth court;
- (e) sitting as a family justice; or
- (f) presiding in the family court.

CHAPTER 2

JAATAC

Formation of a JAATAC

19.— (1) There must be one JAATAC for each JAATAC area.

(2) A JAATAC may apply to the Lord Chancellor to alter a JAATAC area, including to dissolve an existing area and to create a new area.

(3) Before making a decision on an application made under paragraph (2), the Lord Chancellor must consult the Lord Chief Justice.

(4) If, after consulting the Lord Chief Justice, the Lord Chancellor grants an application under paragraph (2), the Lord Chancellor may—

- (a) specify the local justice areas that will form the new JAATAC area; and
- (b) determine the membership of the JAATAC and the duration of the term of its members having regard, as far as practicable, to the requirements of Rules 20 and 22.

Membership of a JAATAC

20.—(1) Each JAATAC must consist of:

- (a) between 6 and 12 justices from the relevant local justice areas appointed in accordance with Rule 21 (the “justice members”);
- (b) one justice nominated by the Magistrates’ Association;
- (c) the justices’ clerk or an assistant to the justices’ clerk nominated by him.

(2) The following justices must not be members of a JAATAC—

- (a) a member of the JAATAC selection panel;
- (b) a chairman of the justices within the JAATAC area; or
- (c) a justice who is a member of a Lord Chancellor’s advisory committee on Justices of the Peace in the JAATAC area.

(3) The following may attend meetings of a JAATAC, although they must not attend any part of a meeting at which the JAATAC considers matters relating to approvals, authorisations or competences of individual justices—

- (a) either—
 - (i) the designated officer (being the person designated under section 37 of the Courts Act 2003) in the JAATAC area; or
 - (ii) where there is more than one designated officer, one of them; or
 - (iii) a person delegated by him or them (as the case may be);
- (b) the chairmen of the justices in the JAATAC area; and
- (c) any additional persons invited to attend by the JAATAC.

Selection panel

21.—(1) A JAATAC selection panel must appoint the justice members.

(2) A chairman of the justices within the JAATAC area must not be a member of the JAATAC selection panel.

(3) The JAATAC selection panel must be elected in accordance with the election procedure set out in Part 3, Chapter 1 of these Rules.

(4) Subject to paragraphs (4) and (5), the JAATAC selection panel must consist of a justice from each local justice areas comprising the JAATAC area.

(5) Where there is only one local justice area in the JAATAC area, the JAATAC selection panel must consist of three justices from that area.

(6) Where there are two local justice areas in the JAATAC area, the JAATAC selection panel must consist of two justices from each of those areas.

(7) A justice who wants to be appointed as a justice member must submit a written application to the selection panel.

(8) The JAATAC selection panel must, having regard to guidance from the Lord Chief Justice—

- (a) determine the number of justice members;
- (b) consider the written applications and—
 - (i) appoint the number of justice members required; and
 - (ii) determine the duration of the terms of members so appointed.

(9) The JAATAC selection panel must appoint at least one family justice and one youth justice to the JAATAC. If no family justice or youth justice has applied, the JAATAC selection panel must appoint a family justice or youth justice (as applicable) with their agreement.

(10) The JAATAC selection panel may, at any time, change the number of justice members.

(11) If the JAATAC selection panel changes the number of justice members under paragraph (9), it may amend the terms of existing justice members.

Miscellaneous provisions about JAATACs

22.—(1) A justice member—

- (a) may serve for between one and three years, as determined by the selection panel; and
- (b) must not serve on a JAATAC for more than a total of nine years.

(2) The justice nominated by the Magistrates' Association—

- (a) may serve for a three year renewable term; and
- (b) must not serve on a JAATAC for more than a total of six years.

(3) At the first meeting of a JAATAC following 1st April each year, a chairman of the JAATAC must be chosen from one of its justice members.

(4) The justice chosen must not serve as chairman of the JAATAC for more than three consecutive years.

JAATAC decisions

23.—(1) A JAATAC may form sub-committees of at least three members.

(2) A JAATAC or a sub-committee of the JAATAC may make decisions with the participation of at least three of its members.

(3) If—

- (a) A JAATAC member leaves a meeting because that JAATAC member is the subject of discussion at the meeting, and
- (b) by reason of that JAATAC member's absence there are then fewer than three members present, the meeting is quorate in relation to that discussion and any subsequent decision relating to that discussion.

(4) When a JAATAC considers matters relating to approvals, authorisations or competences of individual justices, the justices' clerk (or nominated assistant) may act in an advisory capacity only.

Functions of JAATAC

24.—(1) Each JAATAC must, as appropriate—

- (a) select justices to undertake training courses in relation to the functions set out at Rule 18(1)(b) (d) and (f);
- (b) grant and revoke approvals for justices to preside in the magistrates' and family courts;
- (c) grant authorisations on behalf of the Lord Chief Justice, and recommend revocations of authorisations, for justices to sit as youth justices and family justices; and
- (d) establish and operate a scheme for appraising the performance of justices within each JAATAC area so as to satisfy itself that each justice demonstrates or continues to demonstrate the necessary competence in the role in which performance is being appraised.

(2) Each JAATAC must, as appropriate—

- (a) identify the training needs of justices in its area;

- (b) prepare a training plan to meet those needs;
- (c) ensure there are arrangements in place to deliver the required training;
- (d) monitor the training of justices in its area; and
- (e) specify that certain training is essential for all or certain justices, having regard to guidance issued by the Lord Chief Justice.

Considerations of the JAATAC

25.—(1) In undertaking the responsibilities in these Rules, each JAATAC must have regard to—

- (a) guidance issued by the Lord Chief Justice;
- (b) the national training programme for justices;
- (c) any national minimum training provision;
- (d) any representations made to the JAATAC concerning justices' training by any senior circuit judge in the JAATAC area;
- (e) the budget for justices' training in the area; and
- (f) any requirements of the Lord Chief Justice to report on justices' training.

Determining the number of justices required

26.—(1) Each JAATAC must determine annually in respect of its JAATAC area—

- (a) the number of justices required to preside in each of the magistrates' courts and the family courts;
- (b) the number of justices required to sit as youth justices; and
- (c) the number of justices required to sit as family justices.

(2) In determining the number of justices required for each role, a JAATAC must take into account—

- (a) the number of court sessions needed to deal with the anticipated workload;
- (b) the need to ensure that each court is able to sit with justices approved or authorised for that particular role;
- (c) the need to ensure that justices are able to sit sufficiently often in approved and authorised roles to maintain their competence;
- (d) the views of the chairmen of the justices in the JAATAC area; and
- (e) whether a justice is authorised to sit only in the family court.

Grant of approval or authorisation

27.—(1) In order to approve justices to preside in court or to authorise justices to sit as youth or family justices, a JAATAC must be satisfied that—

- (a) additional justices for that particular role are required in the relevant local justice area;
- (b) each justice meets any criteria set out by the Lord Chief Justice for the relevant role;
- (c) in respect of an authorisation to sit as a youth justice or a family justice, the justice is suitable for that role;
- (d) in respect of an approval to preside in court, the justice—
 - (i) has completed training courses approved by the Lord Chief Justice for that function; and
 - (ii) has been appraised as competent in that role in accordance with the appraisal scheme.

Review of competence

28.—(1) This Rule applies to justices in respect of their competence to sit in the adult court (other than their competence to preside in court).

(2) Each JAATAC must review the competence of a justice—

- (a) if the justice has not completed, within a reasonable time, any training requirement specified in Rule 18(1)(a);
- (b) if the justice has not completed, within a reasonable time, one or more training requirements designated as essential pursuant to Rule 24(2)(e);
- (c) following any appraisal or series of appraisals carried out in accordance with this Rule or with the appraisal scheme;
- (d) where, following a complaint about a justices' performance, the JAATAC is satisfied that the justice has failed to demonstrate the necessary competence; or
- (e) where, following a referral in relation to a complaint considered under the Judicial Conduct (Magistrates) Rules 2014(8), the JAATAC is satisfied that the justice has failed to demonstrate the necessary competence.

(3) A JAATAC may review the competence of any justice returning from absence of six months or more.

(4) Following a review under this Rule, the JAATAC may take any action it considers appropriate, including one or more of the following—

- (a) confirming that it is satisfied as to the competence of the justice;
- (b) requiring the justice to undertake training courses or further training courses;
- (c) requiring the justice to undertake one or more appraisal or further appraisals;
- (d) where satisfied that a justice has failed over a period of time to reach the required standard, instructing the justices' clerk to report the matter to the appropriate Lord Chancellor's advisory committee on Justices of the Peace.

Review of approvals and authorisations

29.—(1) This Rule applies to justices in respect of—

- (a) any approval of justices to preside in the magistrates' court or family court; and
- (b) any authorisation of justices to sit as a youth justice or family justice.

(2) A JAATAC must review the approval or authorisation of a justice—

- (a) if requested to do so by that justice;
- (b) where a minimum sitting requirement has been laid down in directions made by the Lord Chief Justice, if the justice has not met that requirement;
- (c) where no minimum sitting requirement has been laid down as in paragraph (2)(b), if the justice has not sat in the role for which that justice is approved or authorised for a continuous period of 12 months preceding the date of the review;
- (d) if it appears to the JAATAC that a justice may not be suitable for the role for which an authorisation relates;
- (e) if the justice has not completed, within a reasonable time, any training requirements specified in Rule 18;

- (f) if the justice has not completed, within a reasonable time, one or more training requirements designated as essential pursuant to Rule 24(2)(e);
- (g) following an appraisal or series of appraisals carried out in accordance with this Rule or the appraisal scheme;
- (h) where, following a complaint about a justices' performance or suitability to perform a particular function, the JAATAC is satisfied that the justice has failed to demonstrate the necessary competence in the role to which the approval or authorisation relates; or
- (i) where, following a referral in relation to a complaint considered under the Judicial Conduct (Magistrates) Rules 2014(9), the JAATAC is satisfied that the justice has failed to demonstrate the necessary competence in the role to which the approval or authorisation relates.

(3) A JAATAC may review the approval or authorisation of any justice returning from absence of six months or more.

(4) Where a JAATAC is investigating a complaint concerning the performance of a justice presiding in a magistrates' court or family court, it may suspend the approval for that justice to preside pending the completion of its review under paragraph 2.

(5) Following a review of an authorisation or an approval, the JAATAC may take any action it considers appropriate, including one or more of the following—

- (a) confirming the approval or authorisation;
- (b) requiring the justice to undertake training or further training;
- (c) requiring the justice to undertake one or more appraisal or further appraisals;
- (d) revoking the approval to preside in court (either generally or in a specific role);
- (e) recommending the revocation of an authorisation to sit as a youth justice or family justice; or
- (f) where satisfied that a justice has failed over a period of time to reach the required standard, instructing the justices' clerk to report the matter to the appropriate Lord Chancellor's advisory committee on Justices of the Peace.

Revocation of approvals and authorisations

30.—(1) A JAATAC may revoke an approval of a justice to preside in court, or recommend to the Lord Chief Justice to revoke the authorisation to sit as a family justice or youth justice, as follows—

- (a) where requested to do so by the justice who is the subject of the approval or authorisation;
- (b) where the justice has not met the minimum sitting requirement as laid down in directions made by the Lord Chief Justice;
- (c) if the justice has not completed, within a reasonable time, any training requirements specified in Rule 18;
- (d) if the justice has not completed, within a reasonable time, one or more training requirements designated as essential pursuant to Rule 24(2)(e);
- (e) where the justice has failed to undertake training or appraisal required under Rule 29(5);
- (f) where the JAATAC is satisfied that the justice is no longer suitable to sit in the role to which the authorisation relates; or
- (g) where the JAATAC is satisfied that the justice fails to demonstrate the necessary competence in the role to which the approval or authorisation relates.

Reconsideration and appeal procedure

- 31.**—(1) This Rule applies where a justice is dissatisfied with a decision made by a JAATAC—
- (a) not to select him for training in relation to the functions set out at Rule 18(1)(b)(d) or (f);
 - (b) following a review under Rules 28 or 29; or
 - (c) following a revocation or recommendation of revocation under Rule 30.
- (2) The justice concerned may—
- (a) request the JAATAC to reconsider its decision;
 - (b) where permitted by the prescribed procedure, appeal to the chairman of the justices.
- (3) The chairman considering an appeal under paragraph (2)(b) may—
- (a) confirm the JAATAC’s decision; or
 - (b) require the JAATAC to reconsider its decision.

Review of excess authorisations

- 32.**—(1) Where a JAATAC determines that the number of justices required to sit as a family or youth justice is excessive, to the extent that justices cannot sit sufficiently often to meet their minimum sitting requirements, it may—
- (a) invite authorised justices to resign their authorisation; or
 - (b) recommend that the Lord Chief Justice revokes any authorisation.
- (2) Revocation of any authorisation under this Rule must be by lot in such a way as to retain a sufficient number of justices approved to preside to enable them to carry out their functions.

Consequential provision

- 33.**—(1) The Family Court (Composition and Distribution of Business) Rules 2014(10) are amended as follows.
- (2) For rule 10 (interpretation of this part), substitute, “In this Part—““2016 Rules” means the Justices of the Peace Rules 2016”.
- (3) In rule 11—
- (a) in paragraph (1), for “is on a list of approved family chairmen”, substitute “has been approved to preside in accordance with the 2016 Rules”;
 - (b) in paragraph (2), for “included on a list of approved family court chairmen”, substitute “approved in accordance with the 2016 Rules”;
 - (c) in paragraph (2)(a), for “on the list of approved family court chairmen”, substitute “approved in accordance with the 2016 Rules”;
 - (d) in paragraph (2)(b), for “rule 31 of the 2007 Rules”, substitute “rule 18 of the 2016 Rules”; and
 - (e) omit paragraph (3).
- (4) In paragraph (1)(b) of rule 12, for “rule 31(d) of the 2007 Rules”, substitute “rule 18(1)(f) of the 2016 Rules”.

Date

Senior Presiding Judge

Name

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules replace the Justices of the Peace (Size and Chairmanship of Bench) Rules 2005 (S.I. 2005/553), the Justices of the Peace (Training and Development Committee) Rules 2007 (S.I. 2007/1609), the Family Court (Constitution of Committees: Family Panels) Rules 2014 (S.I. 2014/842), and the Youth Courts (Constitution of Committees and Right to Preside) Rules 2007 (S.I. 2007/1611).

The Rules reproduce some of the provisions relating to the procedure for elections of chairmen and deputy chairmen, but remove the requirements for postal ballots and election meetings.

The Rules provide for the establishment of a Justices' Approvals, Authorisations, Training and Appraisals Committee (JAATAC). This committee replaces Bench Training and Development Committees, Family Training and Development Committees, Magistrates' Area Training Committees and the Inner London Youth Training and Development Committee.

The Rules make provision for election to and membership of the JAATAC, and set out the role and functions of the JAATAC.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.



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