

Appointment and reassignment or removal of justices' clerks

1. This note provides guidance on how the appointment and reassignment or removal of justices' clerks should take place with the establishment of Her Majesty's Courts Service on 1 April 2005.

The legislative position

2. S 27 (1) of the Courts Act 2003 provides that justices' clerks are to be appointed and designated by the Lord Chancellor under his general powers of appointment under s 2(1) of that Act. The Lord Chancellor's powers will be delegated to Her Majesty's Courts Service (HMCS) in accordance with appointment of all staff under s 2(1). There is no provision in the Courts Act for underpinning rules or regulations in this area.

3. The Constitutional Reform Bill, now going through Parliament, amends s 27 (1) of the Courts Act to provide that the appointment and designation of justices' clerks should be in consultation with the Lord Chief Justice. The Lord Chief Justice will delegate this power to the relevant Presiding Judge.

4. S 27 (4) of the Courts Act provides that before reassigning a justices' clerk, the Lord Chancellor must consult the bench chairman of the relevant local justice area(s).

5. The Constitutional Reform Bill adds to this by providing that before reassigning a justices' clerk, the Lord Chancellor should obtain the concurrence of the Lord Chief Justice. The Lord Chief Justice will delegate this power to the relevant Presiding Judge although if agreement cannot be reached, the matter will be referred to him through the Senior Presiding Judge.

6. The changes proposed in the Constitutional Reform Bill will be implemented administratively when HMCS is established on 1 April 2005 even if the Constitutional Reform Bill has not received Royal Assent by then.

Appointment

7. Where a vacancy for a justices' clerk position exists, the Area Director should work with the Human Resources Directorate to invite applications and then establish a selection panel. Normal selection procedures should apply although to reflect the hybrid nature of the role of justices' clerk, the selection panel should comprise:

- the Area Director;
- a justices' clerk from a different area within the region to be nominated jointly by the Regional Director and relevant Presiding Judge; and
- a magistrate, who should be the Chair of the Justices' Issues Group for the area or their nominee
- a representative of the DCA Human Resources Directorate nominated by the DCA Human Resources Director.

8. Following the selection panel, the Area Director should, as Justices' Chief Executives do now, consult the magistrates of the area(s) affected as well as the relevant Presiding Judge before the appointment is finalised. He should consider and respond to any representations made by them on the proposed appointment.

Reassignment or removal

9. Before any reassignment or removal of a justices' clerk, the Area Director should consult the bench chairman of the relevant local justice area (s) and respond to any points they wish to make on the reassignment. After this, he should seek the agreement of the relevant Presiding Judge. The Presiding Judge will take account of any representations from the justices' clerk and the bench chairman and resolve any differences with the Area or Regional Director.

10. If agreement cannot be reached, the matter will be referred first to the Senior Presiding Judge and ultimately the Lord Chief Justice for discussion with the Chief Executive and/or Lord Chancellor. The Lord Chief Justice may withhold his concurrence if he is not satisfied with the reasons for the reassignment or removal.

Department for Constitutional Affairs

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