



# The Law Commission

(LAW COM. No. 101)

## MAGISTRATES' COURTS BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS  
RELATING TO THE JURISDICTION OF, AND THE PRACTICE  
AND PROCEDURE BEFORE, MAGISTRATES' COURTS AND  
THE FUNCTIONS OF JUSTICES' CLERKS, AND TO  
MATTERS CONNECTED THEREWITH

*Presented to Parliament by the Lord High Chancellor  
by Command of Her Majesty  
April 1980*

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*To the Right Honourable the Lord Hailsham of St. Marylebone, C.H.,  
Lord High Chancellor of Great Britain*

The Magistrates' Courts Bill which is the subject of this Report seeks to consolidate certain enactments relating to the matters mentioned above. In order to produce a satisfactory consolidation it is necessary to make a number of recommendations which are set out in the Appendix to this Report.

The Home Office and other departments concerned have been consulted in connection with the recommendations, and they agree with them.

3rd April 1980

MICHAEL KERR,  
*Chairman of the Law Commission.*

## APPENDIX

### RECOMMENDATIONS

1. The Magistrates' Courts Act 1952 refers to a "petty-sessional court-house": see sections 98(3) and (4) and 123(1), which are re-enacted in clauses 121(3) and (4) and 147(1) of the Bill. That expression had, in the Act of 1952, the meaning given by the definition in section 13(13) of the Interpretation Act 1889. The Interpretation Act 1978, which came into force on 1 January 1979, repealed section 13(13) but did not repeat the definition or substitute one.

Two views can be taken as to the way in which the Act of 1889 may have affected the construction of the relevant provisions of the Act of 1952. One view is that the repeal cannot have affected their construction at all. The other is that the expression "petty-sessional court-house" must as from 1 January 1979 be construed as undefined words to which it is for the courts to attribute a new meaning. There is therefore a doubt which, for the purposes of this consolidation, we would propose to resolve on the assumption that it cannot have been the intention of Parliament in the Act of 1978 to change the meaning of the expression in the Act of 1952.

Accordingly we recommend that, in re-enacting the provisions of the Act of 1952 in which the expression appears, it should be given the meaning contained in the Act of 1889.

Effect is given to this recommendation in the definition of "petty-sessional court-house" in clause 150(1) of the Bill.

2. Section 15(1) of the Justices of the Peace Act 1949 (which is reproduced in clause 144(1) of the Bill) refers to "magistrates' courts" and section 44(1) of that Act provides that magistrates' court "means a court of summary jurisdiction or examining justices, and includes a single examining justice". The Act does not contain any definition of "court of summary jurisdiction", and evidently relied on the definition of that expression in the Interpretation Act 1889, section 13(11), which was as follows:

"any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law".

The Interpretation Act 1978, which came into operation on 1 January 1979, repealed the Interpretation Act 1889 without re-enacting the definition of "court of summary jurisdiction" or providing any new definition in place of it.

The Interpretation Act 1978 also provides (section 5, Schedule 1 and Schedule 2, paragraph 4(1)(b)) that, in any Act whenever passed, unless the

contrary intention appears, "magistrates' court" has, in relation to England and Wales, the meaning assigned to it by section 124 of the Magistrates' Courts Act 1952, namely:

"any justice or justices of the peace acting under any enactment or by virtue of his or their commission or under the common law."

This definition is now contained in clause 148(1) of the Bill.

Since the definition of "magistrates' court" in section 44(1) of the Justices of the Peace Act 1949 is not in terms the same as the definition applied by the Interpretation Act 1978, we think that this must be regarded as a case where "the contrary intention appears", and therefore the 1978 Act definition does not at present apply to the reference to magistrates' courts in section 15(1) of the Act of 1949.

There has been a considerable amount of case-law about the meanings both of "court of summary jurisdiction", as defined by the Interpretation Act 1889, and of "magistrates' court", as defined by the Magistrates' Courts Act 1952. So far as the case-law affects the present consolidation, its outcome broadly is that the scope of these two expressions is the same, except that "magistrates' court" has been held to include examining justices whereas "court of summary jurisdiction" has generally been thought not to include them.

Apart, therefore, from the problem (referred to below) created by the repeal of the Interpretation Act 1889, we have concluded that it would make no difference of substance if, in section 15(1) of the Justices of the Peace Act 1949, the reference were to "magistrates' courts" as defined in accordance with the Interpretation Act 1978.

It would be desirable that the Bill should refer to "magistrates' courts" rather than to "courts of summary jurisdiction", since the latter is an obsolescent expression and it would be a retrograde step to use it in re-enacting the law if this can be avoided.

Two views are tenable as to the way in which the repeal of the Interpretation Act 1889, without providing a new definition of "court of summary jurisdiction", may have affected the construction of section 15(1) of the Justices of the Peace Act 1949. One view is that the repeal cannot have affected its construction at all. The other is that the words "court of summary jurisdiction", where they occur in the Justices of the Peace Act 1949, must as from 1 January 1979 be construed as undefined words, to which it is for the courts to attribute a new meaning, unfettered and, at the same time, unassisted by the Interpretation Act 1889. As in the case of the meaning of "petty-sessional court-house", there is therefore a doubt; for the purposes of this consolidation, we would propose to resolve this doubt on the assumption that it cannot have been the intention of Parliament, in passing the Interpretation Act 1978, to alter the meaning of existing Acts in which the words "court of summary jurisdiction" are used. The proposed substitution of a reference to "magistrates' courts" would therefore proceed on the basis that the meaning of "court of summary jurisdiction" in the Justices of the Peace Act 1949 has not been changed by the repeal.

Accordingly we recommend that:

- (a) in re-enacting section 15(1) of the Act of 1949 the expression “magistrates’ courts” should be retained:
- (b) the expression should be defined in accordance with the definition in the Interpretation Act 1978;
- (c) since the definition in the Act of 1978 is the same as that in clause 148(1) of the Bill, clause 144(1) should (in re-enacting section 15(1) of the Act of 1949) leave clause 148(1) to apply to the expression.

Effect is given to this recommendation in clauses 144(1) and 148(1) of the Bill.

3. Section 56(1) of the Magistrates’ Courts Act 1952, as substituted by section 79 of the Domestic Proceedings and Magistrates’ Courts Act 1978, defines “domestic proceedings” for the purposes of the Act of 1952. Section 56(1) contains a list consisting of paragraphs (a) to (m). Paragraph (b) refers to proceedings under section 87 or section 88 of the Children and Young Persons Act 1933 and paragraph (d) refers to proceedings under section 26 of the Children Act 1948.

Section 56(1A) of the Act of 1952, as substituted, provides that the court before which certain proceedings fall to be heard may order them to be treated as domestic proceedings. Among others, section 56(1A) mentions proceedings under any enactment for the enforcement or variation of an order made, confirmed or registered under any of the enactments specified in paragraphs (a) to (l) of section 56(1) and any other proceedings being heard therewith.

The Child Care Act 1980 consolidates, among other things, the provisions referred to in section 56(1)(b) and (d) of the Act of 1952. Accordingly, the Act of 1980 (in Schedule 5 paragraph 5 and Schedule 6) repeals those paragraphs and inserts into section 56(1) a new paragraph (n) referring to sections 47, 49 and 50 of the Act of 1980, which contain material formerly in the sections mentioned in the repealed paragraphs.

Because the provisions of the Act of 1980 will (once that Act is in force) be mentioned in paragraph (n) of section 56(1) of the Act of 1952, not in paragraphs (a) to (l), the ambit of the court’s power to treat proceedings as domestic proceedings will be reduced. This is a clear error in the Act of 1980 and we propose that, in re-enacting section 56 of the Act of 1952, the power of the court to treat the proceedings concerned as domestic should be restored. Clause 65(1) of the Bill reproduces the new paragraph (n) of section 56(1) as a paragraph (k) and clause 65(2), which reproduces section 56(1A), refers to that paragraph (among others).

Effect is accordingly given to this recommendation in clause 65(2) of the Bill.

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