



Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

PART 4

JP COURTS AND JPS

Appointment of JPs etc.

67 Appointment of JPs

- (1) Justices of the peace are to be appointed by name on behalf of and in the name of Her Majesty by instrument under the hand of the Scottish Ministers.
- (2) A JP is to be appointed for a sheriffdom.
- (3) An appointment of a JP is to be for a term of 5 years.
- (4) However, a JP—
 - (a) may resign from office by giving notice to the Scottish Ministers,
 - [^{F1}(b) ceases to hold office when the JP retires from office.]
- (5) In making appointments of JPs, except—
 - (a) appointments under subsection (7)(b),
 - (b) reappointments under section 70(2),the Scottish Ministers must comply with such provision as to procedure and consultation as they may by order make.
- (6) Provision in an order under subsection (5) may, in particular, relate to—
 - (a) the participation in the appointments process of persons who are not—
 - (i) legally qualified,
 - (ii) involved in the administration of the law or of government,
 - (b) the manner in which vacancies in office are publicised.
- (7) A person who, on the coming into force of this section, holds the office of justice of the peace under the 1975 Act—

Changes to legislation: There are currently no known outstanding effects for the *Criminal Proceedings etc. (Reform) (Scotland) Act 2007*, Cross Heading: *Appointment of JPs etc.*. (See end of Document for details)

- (a) ceases to hold that office under that Act on such day as the Scottish Ministers may by order specify for the purpose of this subsection, and
 - (b) is, on the day so specified, to be appointed as a JP under subsection (1) unless the person declines the appointment.
- (8) Subsection (7)(b) applies only in relation to the full justices (within the meaning given by section 9 of the 1975 Act) whose names were included in a duty rota of justices (that is, such a rota as approved under section 16(1)(b) of that Act) for any time during the 12 months ending on the day specified as mentioned in that subsection.
- [^{F2}(9) Where a person is, by virtue of subsection (7)(b), appointed as a JP under subsection (1), an oath previously taken by the person as required by section 6 of the Promissory Oaths Act 1868 (c. 72) (and in accordance with Promissory Oaths Act 1871 (c. 48)) in relation to the holding by the person of the office of justice of the peace under the 1975 Act also counts in relation to the person's appointment as a JP under subsection (1).]

Annotations:

Amendments (Textual)

- F1** S. 67(4)(b) substituted (30.5.2014) by [The Judicial Pensions and Retirement Act 1993 \(Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace\) Order 2014 \(S.S.I. 2014/155\)](#), arts. 1(2), **4(2)**
- F2** S. 67(9) added (10.12.2007) by [The Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(Incidental, Supplemental and Consequential Provisions\) Order 2007 \(S.S.I. 2007/540\)](#), **art. 5**

Commencement Information

- I1** S. 67 wholly in force at 10.12.2007; s. 67 not in force at Royal Assent, see s. 84; s. 67(5)(6) in force at 23.4.2007 by [S.S.I. 2007/250](#), **art. 3**; s. 67(1)-(4)(7)(8) in force at 10.12.2007 by [S.S.I. 2007/479](#), **art. 3**, Sch.

68 Conditions of office

- (1) A person is not to be appointed as a JP for a sheriffdom, except where eligible for reappointment under section 70(1)(a), unless the person ordinarily resides in the sheriffdom or within 15 miles of it.
- (2) Appointments of JPs are to be made subject to conditions which—
- (a) by reference to the JP court business (and business to which signing functions relate) in the sheriffdom, relate to availability to exercise judicial (and signing) functions commensurate to that business,
 - (b) by reference to an order made under section 69, relate to training and appraisal.
- (3) For the purpose of subsection (2)(a)—
- (a) the JP court (or signing) business,
 - (b) any need for availability to exercise judicial (or signing) functions in connection with that business,
- means the likely amount as assessed by the sheriff principal.
- (4) [^{F3}The Scottish Courts and Tribunals Service is, in accordance with a scheme devised by it and after consultation with the Scottish Ministers], to pay allowances to JPs.
- (5) A scheme under subsection (4) may, in particular—

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- (a) by reference to functions, specify rates or amounts of allowances,
- (b) specify circumstances in which—
 - (i) allowances are not payable,
 - (ii) a rate or amount of allowances payable is reduced,
- (c) provide for procedure for claiming and paying allowances.

Annotations:

Amendments (Textual)

F3 Words in s. 68(4) substituted (1.4.2018) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential and Supplemental Provisions\) Order 2018 \(S.S.I. 2018/93\)](#), arts. 1, 3

Commencement Information

I2 S. 68 wholly in force at 22.2.2010; s. 68 not in force at Royal Assent, see s. 84; s. 68(1)-(3) in force at 10.12.2007 by [S.S.I. 2007/479](#), [art. 3](#), [Sch.](#); s. 68(4)(5) in force for certain purposes at 10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009, 14.12.2009 and 22.2.2010 otherwise by [S.S.I. 2008/42](#), [art. 3](#), [Sch.](#); [S.S.I. 2008/192](#), [art. 3](#), [Sch.](#); [S.S.I. 2008/329](#), [art. 3](#), [Sch.](#); [S.S.I. 2008/362](#), [art. 3](#), [Sch.](#); [S.S.I. 2009/432](#), [art. 3\(1\)\(2\)](#), [Sch. 1](#), [Sch. 2](#)

69 Training and appraisal of JPs

- (1) The [^{F4}Lord President of the Court of Session] may by order make provision as to—
 - (a) training arrangements for JPs and future JPs, and
 - (b) appraisal of JPs.
- (2) ^{F5}
- (3) An order under subsection (1) may, in particular, establish committees to—
 - (a) secure— adopt or develop suitable—
 - (i) training schemes or courses of instruction,
 - (ii) appraisal systems,
 - (b) (i) the provision of such schemes or courses,
 - (ii) the application of such systems,
 - (c) provide advice about training and appraisal.
- (4) ^{F5}

Annotations:

Amendments (Textual)

F4 Words in s. 69(1) substituted (1.4.2010) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), [ss. 42\(2\)](#), [76](#); [S.S.I. 2010/39](#), [art. 2](#), [Sch.](#) (with [art. 5](#))

F5 S. 69(2)(4) repealed (1.4.2010) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), [ss. 42\(3\)](#), [76](#); [S.S.I. 2010/39](#), [art. 2](#), [Sch.](#) (with [art. 5](#))

70 Reappointment of JPs

- (1) A person—
 - (a) whose 5-year term of appointment as a JP has expired, or

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(b) who has resigned from office as a JP,
is eligible for reappointment.

(2) And a person who is eligible under subsection (1)(a) is to be reappointed except where —

- (a) the person declines the reappointment,
- ^{F6}(b)
- (c) the person is disqualified under section 73,
- (d) the sheriff principal for the sheriffdom for which the person was appointed as a JP makes a recommendation to the Scottish Ministers against the reappointment.

(3) A recommendation for the purpose of subsection (2)(d) may be made—

- (a) on the ground that the JP has inadequately performed the functions of a JP,
- (b) on the ground that the JP has, without good reason, failed to meet a condition imposed under section 68(2),
- (c) on the ground that the JP does not ordinarily reside in the sheriffdom of appointment or within 15 miles of it,
- (d) on such other ground as the sheriff principal considers relevant.

[^{F7}(4) Where a person is reappointed as a JP under subsections (1)(a) and (2) (including on a second or subsequent occasion), an oath—

- (a) previously taken by the person as required by section 6 of the Promissory Oaths Act 1868 (and in accordance with the Promissory Oaths Act 1871) in relation to the person's appointment as a JP under subsection (1) of section 67, or
- (b) which by virtue of subsection (9) of section 67 counts in relation to the person's appointment as a JP under subsection (1) of that section,

also counts in relation to the person's reappointment as a JP by virtue of subsections (1)(a) and (2).]

Annotations:

Amendments (Textual)

- F6** S. 70(2)(b) repealed (30.5.2014) by *The Judicial Pensions and Retirement Act 1993 (Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace) Order 2014* (S.S.I. 2014/155), arts. 1(2), **4(3)**
- F7** S. 70(4) added (10.12.2007) by *The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Incidental, Supplemental and Consequential Provisions) Order 2007* (S.S.I. 2007/540), **art. 6**

71 Removal of JPs

- (1) A JP may be removed from office by, and only by, an order made under subsection (2).
- (2) A tribunal appointed by the Lord President of the Court of Session may order the removal of a JP from office.
- (3) The tribunal is to consist of three members, namely—
 - (a) a sheriff principal,
 - (b) a person who is, and has been for at least 10 years, a solicitor or advocate,
 - (c) another person.

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- (4) The sheriff principal member of the tribunal must not be—
 - (a) the sheriff principal for the sheriffdom for which the JP is appointed,
 - (b) a temporary sheriff principal.
- (5) The sheriff principal member of the tribunal is to chair the tribunal.
- (6) The tribunal may make an order under subsection (2) only if, after investigation carried out at the instance of the sheriff principal for the sheriffdom for which the JP is appointed, it finds that—
 - (a) the JP is—
 - (i) unfit for that office, or
 - (ii) unfit for performing judicial functions, by reason of inability, neglect of duty or misbehaviour,
 - (b) the JP has inadequately performed the functions of a JP,
 - (c) the JP has, without good reason, failed to meet a condition imposed under section 68(2).
- (7) The [^{F8}Court of Session may by act of sederunt] make provision—
 - (a) as respects the tribunal,
 - (b) authorising a specified body or class of persons to recommend (by reference to information provided with the recommendation) to a sheriff principal that an investigation for the purposes of subsection (6) be carried out.
- (8) Provision in an [^{F9}act of sederunt] under subsection (7)(a) may, in particular—
 - (a) prescribe the tribunal's procedures,
 - (b) enable the tribunal, at any time during an investigation, to suspend a JP from office or from acting as a JP.
- (9) A person who is removed from office as a JP is ineligible for reappointment as a JP.

Annotations:

Amendments (Textual)

- F8** Words in s. 71(7) substituted (1.4.2010) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), **ss. 41(2)**, [76](#); [S.S.I. 2010/39](#), **art. 2**, [Sch.](#) (with [art. 5](#))
- F9** Words in s. 71(8) substituted (1.4.2010) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp 6\)](#), **ss. 41(3)**, [76](#); [S.S.I. 2010/39](#), **art. 2**, [Sch.](#) (with [art. 5](#))

[^{F10}71A Re-employment of former JPs

- (1) A sheriff principal of a sheriffdom may appoint a qualifying former JP to act as a JP of the sheriffdom.
- (2) An individual appointed to act as mentioned in subsection (1) may so act only during such periods or on such occasions as the sheriff principal may determine.
- (3) A sheriff principal may make an appointment under subsection (1) only if it appears to the sheriff principal to be expedient as a temporary measure in order to facilitate the efficient disposal of business in the JP courts of the sheriffdom.
- (4) A “qualifying former JP” is an individual who—
 - (a) ceased to hold that office other than—

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- (i) by virtue of an order under section 71,
- (ii) by virtue of not being reappointed to the office on the ground mentioned in section 70(2)(d),
- (b) has not reached the age of 75, and
- (c) is not disqualified under section 73.

Annotations:

Amendments (Textual)

F10 Ss. 71A, 71B inserted (30.5.2014) by [The Judicial Pensions and Retirement Act 1993 \(Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace\) Order 2014 \(S.S.I. 2014/155\)](#), arts. 1(2), **4(4)**

71B Re-employment of former JPs: further provision

- (1) Subject to subsection (3), an individual's appointment under section 71A lasts until the sheriff principal by whom the individual was appointed (or a successor to that sheriff principal) recalls the individual's appointment.
- (2) An individual appointed under section 71A(1) to act as a JP of a sheriffdom may exercise in the sheriffdom the jurisdiction and powers that attach to the office of JP.
- (3) An individual's appointment under section 71A(1) ceases when that individual reaches the age of 75.
- (4) Despite the ending (whether by virtue of subsection (3) or otherwise) of an individual's appointment under section 71A(1)—
 - (a) the individual may continue to deal with, give judgment in or deal with an ancillary matter relating to, a case begun before the individual while acting under that appointment,
 - (b) so far as is necessary for that purpose, and for the purpose of any subsequent proceedings arising out of the case or the matter, the individual is to be treated as acting, or as the case may be, having acted under that appointment.
- (5) The Scottish Court Service may pay to a former JP appointed under section 71A(1) such allowances as the Scottish Ministers may determine.]

Annotations:

Amendments (Textual)

F10 Ss. 71A, 71B inserted (30.5.2014) by [The Judicial Pensions and Retirement Act 1993 \(Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace\) Order 2014 \(S.S.I. 2014/155\)](#), arts. 1(2), **4(4)**

72 Disqualification of solicitors who are JPs

- (1) A solicitor who is a JP is disqualified from acting (whether directly or indirectly) as a solicitor in, or in connection with, any proceedings before a JP court in the sheriffdom for which the appointment as JP is made.
- (2) A disqualification of a solicitor under subsection (1)—
 - (a) extends to any member of staff of the solicitor,

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- (b) where the solicitor is a partner of a partnership or is a member of a limited liability partnership, extends to any—
 - (i) member of staff of the partnership,
 - (ii) any other partner or (as the case may be) member of the partnership.

73 Disqualification where sequestration or bankruptcy

- (1) A person is disqualified from being appointed as, or acting as, a JP if—
 - (a) the person's estate has been sequestrated in Scotland, or
 - (b) the person has been adjudged bankrupt outwith Scotland.
- (2) Where a person is disqualified under subsection (1)(a), the disqualification ceases if—
 - (a) the award of sequestration is recalled or reduced, or
 - (b) the person is discharged by virtue of the Bankruptcy (Scotland) Act [F112016].
- (3) Where a person is disqualified under subsection (1)(b), the disqualification ceases if—
 - (a) the adjudication of bankruptcy against the person is annulled, or
 - (b) the person is discharged.

Annotations:

Amendments (Textual)

F11 Word in s. 73(2)(b) substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), sch. 8 para. 25 (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

F1274 Appointment of stipendiary magistrates

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Annotations:

Amendments (Textual)

F12 S. 74 repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), sch. 5 para. 40(5)(a); S.S.I. 2016/13, art. 2, sch.

[F13 74A Exercise of functions by stipendiary magistrates

^{F14}

Annotations:

Amendments (Textual)

F13 S. 74A inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 203, 206, Sch. 7 para. 81; S.S.I. 2011/178, art. 2, Sch.

F14 S. 74A repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), sch. 5 para. 40(5)(b); S.S.I. 2016/13, art. 2, sch.

Changes to legislation: There are currently no known outstanding effects for the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Cross Heading: Appointment of JPs etc.. (See end of Document for details)

^{F15}75 Stipendiary magistrates: further provision

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Annotations:

Amendments (Textual)

F15 S. 75 repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 40(5)** (c); S.S.I. 2016/13, art. 2, sch.

76 Signing functions

- (1) A person who is a JP ^{F16}... may not exercise the judicial functions of office (but may exercise signing functions) if the person is—
 - (a) a member of a local authority,
 - (b) a member of the Scottish Parliament,
 - (c) a member of the House of Commons or the House of Lords.
- (2) A member of a local authority, despite not being a JP, may exercise [^{F17}the same signing functions as are exercisable by] a JP.
- (3) Where a member of a local authority exercises a signing function, the document, declaration or certificate concerned has effect—
 - (a) as if that function were exercised by a JP,
 - (b) even where that document, declaration or certificate requires (or bears to require) to be signed, authenticated or given by a JP,
 if the words “member of a local authority” appear on it adjacent to the member’s signature.
- ^{F18}(4)
- (5) A JP^{F19} ... or member of a local authority may not charge a fee for exercising signing functions.
- (6) In this Part, “signing functions” are—
 - (a) signing any document for the purpose of authenticating another person’s signature,
 - (b) taking and authenticating by signature any written declaration,
 - (c) giving a signed certificate of—
 - (i) facts within the giver’s knowledge, or
 - (ii) the giver’s opinion as to any matter.

Annotations:

Amendments (Textual)

- F16** Words in s. 76(1) repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 40(6)(a)**; S.S.I. 2016/13, art. 2, sch.
- F17** Words in s. 76(2) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **Sch. 7 para. 82(a)**; S.S.I. 2011/178, art. 2, Sch.
- F18** S. 76(4) repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **Sch. 7 para. 82(b)**; S.S.I. 2011/178, art. 2, Sch.

Changes to legislation: There are currently no known outstanding effects for the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Cross Heading: Appointment of JPs etc.. (See end of Document for details)

F19 Words in s. 76(5) repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 40(6)(b)**; S.S.I. 2016/13, art. 2, sch.

77 Records and validity of appointment etc.

- (1) The Scottish Ministers are to maintain (in such form as they consider appropriate)—
 - (a) a list of all persons holding office as a JP ^{F20} ...,
 - (b) a record of—
 - (i) the instruments of appointment of those persons,
 - (ii) any order removing a JP ^{F21} ... from office.
- (2) The Scottish Ministers are to send to the clerk of each sheriff court a copy of the list and record mentioned in subsection (1) so far as relating to JPs ^{F22} ... appointed for the sheriffdom containing that sheriff court.
- (3) Where a sheriff clerk is sent a copy of something under subsection (2), the clerk is to make it available (in such form as the clerk considers appropriate) for public inspection.
- (4) No appointment of a JP, nor any act of a JP, is invalidated solely because—
 - (a) provision made under section 67(5) is not complied with,
 - (b) the residential requirement referred to in section 68(1) is not met, or
 - (c) a condition imposed under section 68(2) is not met.

^{F23}(5)

Annotations:

Amendments (Textual)

- F20** Words in s. 77(1)(a) repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 40(7)(a)**; S.S.I. 2016/13, art. 2, sch.
- F21** Words in s. 77(1)(b)(ii) repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 40(7)(a)**; S.S.I. 2016/13, art. 2, sch.
- F22** Words in s. 77(2) repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 40(7)(b)**; S.S.I. 2016/13, art. 2, sch.
- F23** S. 77(5) repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 40(7)(c)**; S.S.I. 2016/13, art. 2, sch.

Commencement Information

- I3** S. 77 wholly in force at 22.2.2010; s. 77 not in force at Royal Assent, see s. 84; s. 77(1)(4) in force at 10.12.2007 by S.S.I. 2007/479, **art. 3, Sch.**; s. 77(2)(3)(5) in force for certain purposes at 10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009, 14.12.2009 and 22.2.2010 otherwise by S.S.I. 2008/42, **art. 3, Sch.**; S.S.I. 2008/192, **art. 3, Sch.**; S.S.I. 2008/329, **art. 3, Sch.**; S.S.I. 2008/362, **art. 3, Sch.**; S.S.I. 2009/432, **art. 3(1)(2), Sch. 1, Sch. 2**

Changes to legislation:

There are currently no known outstanding effects for the *Criminal Proceedings etc. (Reform) (Scotland) Act 2007*, Cross Heading: Appointment of JPs etc..