

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 9 – Justice of the Peace Courts

Section 127 – Establishing, relocating and disestablishing justice of the peace courts

253. *Section 127* restates the powers to establish justice of the peace courts at section 59 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 and updates the powers in subsections (7) and (7A). The effect of the amendments at subsections (2) and (3) is that the Scottish Ministers will be able to use their powers to establish, relocate or disestablish a justice of the peace court only following the submission of a proposal to do so by the SCTS. Such a proposal must be agreed to by the Lord President and have been subject to consultation with persons considered appropriate by the SCTS. It will be for the Scottish Ministers to decide, following the submission of a proposal, whether to exercise their order making powers under section 59(2) or (6) of the 2007 Act.
254. This provision re-orders the existing provisions which govern the process for the making of an order under section 59(2) and (6) of the 2007 Act, bringing them into line with the process to be followed for an order under section 2 of the Act (the power to alter sheriffdoms, sheriff court districts and sheriff courts). An order under section 59(2) or (6) of the 2007 Act is subject to the affirmative procedure.

Section 128– Abolition of the office of stipendiary magistrate

255. *Section 128* provides that the office of stipendiary magistrate is abolished. Existing stipendiary magistrates (who will have sat in a summary criminal proceedings only capacity) are to be appointed as summary sheriffs and part-time stipendiary magistrates are to be appointed as part-time summary sheriffs, unless they decline appointment. Section 74(5) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 provides that a person is not to be appointed as a stipendiary magistrate unless the person is, and has been for at least five years, a solicitor or advocate. It is, therefore, possible that a person appointed as a stipendiary magistrate may not be qualified for appointment as a summary sheriff, as section 14 of the Act requires ten years legal qualification. Subsections (4) and (7) ensure that they may still be appointed as a summary sheriff.

Section 129 – Summary sheriffs to sit in justice of the peace courts

256. This section permits summary sheriffs to sit in justice of the peace courts. When summary sheriffs sit in these courts, they will only be entitled to exercise the same summary criminal sentencing powers as justices of the peace.