

*Draft Order laid before the Scottish Parliament under paragraphs 2(2) and 2A(3)(a) of Schedule 2 to the European Communities Act 1972 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2014 No.**

**COURTS**

**The Judicial Pensions and Retirement  
Act 1993 (Part-time Sheriff, Stipendiary  
Magistrate and Justice of the Peace) Order 2014**

*Made* - - - -

*Coming into force* - -

The Scottish Ministers make the following Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) and sections 26(9) and 29(3) of the Judicial Pensions and Retirement Act 1993(2) and all other powers enabling them to do so.

In accordance with paragraphs 2(2) and 2A(3)(a) of Schedule 2 to the European Communities Act 1972(3), a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Judicial Pensions and Retirement Act 1993 (Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace) Order 2014.

(2) This Order comes into force on the day after the day on which it is made.

(3) This Order extends to Scotland only.

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- (1) [1972 c.68](#). Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#) (“the Scotland Act”), Schedule 8, paragraph 15(3) (which was amended by the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) (“the 2006 Act”), section 27(4)) and the European Union (Amendment) Act [2008 \(c.7\)](#), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.
- (2) [1993 c.8](#). By virtue of section 30(1), the reference to the appropriate Minister in section 26(9)(a) means, in relation to any judicial office whose jurisdiction is exercised exclusively in relation to Scotland, the Secretary of State. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.
- (3) Paragraph 2 was amended by the 2006 Act section 27(2)(a) and paragraph 2A was inserted by section 29 of that Act. Paragraphs 2 and 2A have been modified by paragraph 2C and by paragraphs 2 and 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act [2010 \(asp 10\)](#).

### Judicial Pensions and Retirement Act 1993

2.—(1) The Judicial Pensions and Retirement Act 1993 is amended in accordance with this article.

(2) In section 27 (completion of proceedings after retirement), subsection (3)(ff) is repealed.

(3) In Schedule 5 (retirement provisions: the relevant offices), after the entry for temporary sheriff principal in Scotland (4) insert—

“Part-time sheriff in Scotland  
Stipendiary magistrate in Scotland  
Justice of the peace in Scotland”.

### Sheriff Courts (Scotland) Act 1971

3.—(1) The Sheriff Courts (Scotland) Act 1971(5) is amended in accordance with this article.

(2) In section 11B(6) (limitation, termination etc. of appointment of part-time sheriffs)—

(a) for subsection (3), substitute—

“(3) A part-time sheriff’s appointment comes to an end when the part-time sheriff retires from office.”; and

(b) subsection (6)(b) is repealed.

(3) In section 14A (re-employment of retired sheriffs principal and sheriffs)—

(a) in subsection (1) for “or sheriff” substitute “, sheriff or part-time sheriff”; and

(b) after subsection (3) insert—

“(3A) A “qualifying former part-time sheriff” is an individual who—

(a) ceased to hold that office other than—

(i) by virtue of an order under section 12E; or

(ii) by virtue of not being reappointed to the office on either of the grounds mentioned in section 11B(6)(c) and (d); or

(iii) by being appointed as a sheriff principal, and

(b) has not reached the age of 75.”.

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

4.—(1) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007(7) is amended in accordance with this article.

(2) In section 67 (appointment of JPs), for subsection (4)(b) substitute—

“(b) ceases to hold office when the JP retires from office.”.

(3) In section 70 (reappointment of JPs), subsection (2)(b) is repealed.

(4) After section 71 (removal of JPs) insert—

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(4) The entry for temporary sheriff principal in Scotland was amended by the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9), schedule 1, paragraph 5(2).

(5) 1971 c.58.

(6) Section 11B was inserted by the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9), section 7.

(7) 2007 asp 6.

#### **“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—

(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.

#### **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.”.

(5) For section 74(8)(b) (appointment of stipendiary magistrates) substitute—

“(b) ceases to hold office when the stipendiary magistrate retires from office.”.

(6) In section 75 (stipendiary magistrates: further provision)—

(a) after subsection (3)(c) insert—

“(ca) sections 71A and 71B, except section 71B(5), apply;” and

(b) after subsection (3) insert—

“(4) The Scottish Ministers may pay to a former stipendiary magistrate appointed under section 71A(1) such remuneration or allowances as they may determine.”.

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Judicial Pensions and Retirement Act 1993 (Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace) Order 2014 No. 155

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St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Article 2 of this Order amends the Judicial Pensions and Retirement Act 1993 (“the 1993 Act”) by adding entries for the offices of part-time sheriff, stipendiary magistrate and justice of the peace to the list of relevant offices in Schedule 5 to that Act. Persons holding an office listed in Schedule 5 are subject to the retirement provisions set out in section 26 of that Act.

Section 26(1) of the 1993 Act provides that persons holding these offices shall retire at age 70. Articles 3(2)(a), 4(2) and 4(5) therefore alter the wording of the existing provision which sets the retirement date for these offices.

Section 26(4) to (6) of the 1993 Act provides for persons holding these offices to continue in office after the age of 70 if the Scottish Ministers consider it desirable in the public interest. These continuations can be authorised for up to a year at a time until the office-holder is 75.

This Order also provides for the persons holding these offices to be authorised by a sheriff principal to be able to return to act in these offices after they have left office.

Article 3(3) amends section 14A of the Sheriff Courts (Scotland) Act 1971 (“the 1971 Act”) to provide that the terms of that section, which allows the re-employment of former sheriffs to act as such, also apply to former holders of the office of part-time sheriff.

Article 4(4) inserts new sections 71A and 71B into the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”). These sections provide that justices of the peace may be re-employed to act as such, on the same basis as former sheriffs. Article 4(6) amends section 75 of the 2007 Act, which applies these provisions to the office of stipendiary magistrate, so that these new sections apply to that office, with the necessary modifications.

This Order also repeals provisions which do not require certain judicial office-holders to be automatically re-appointed if their term in office ends when they are aged 69. Article 3(2)(b) repeals section 11B(6)(b) of the 1971 Act, which applied to part-time sheriffs. Article 4(3) repeals section 70(2)(b) of the 2007 Act, which applied to justices of the peace (and, as applied by section 75, stipendiary magistrates).

No business regulatory impact assessment has been prepared for this Order as no impact upon businesses, charities or voluntary bodies is foreseen.