

EXECUTIVE NOTE TO

THE JUSTICES OF THE PEACE (SCOTLAND) ORDER 2007 SSI/2007/210

1. The above Order was made in exercise of the powers conferred by sections 67(5), 67(6) and 69 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The instrument is subject to negative resolution procedure and is made with the approval of the Lord President.
2. The Criminal Proceedings etc. (Reform) (Scotland) Act received Royal Assent on 22 February 2007 (hereinafter referred to as “the Act”). A Commencement Order will be made to bring, among others, sections 67(5), 67(6) and 69 into force on 23 April 2007. This Order is therefore being made using an anticipatory exercise of power as provided for in terms of paragraph 10 of the schedule to The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999. The reason for this is to ensure that work can proceed with establishing recruitment, appointment and training committees from late April 2007 onwards. This will allow those committees to be selected by autumn 2007. The recruitment committees (JPACs) can then start work immediately on any recruitment which is likely to be necessary in their sheriffdoms, while the training committees and appraisal committees (JTCs and JACs) can hold preparatory meetings before the start of the new appointments system for justices of the peace comes fully into force. At present, this is planned for December 2007.
3. If making the Order were delayed until after the provisions of the Act had come into force, this could significantly delay the timetable for bringing sections 67 to 73 of the Act fully into force in view of the preparatory work that must be undertaken. It is therefore expeditious for the powers in sections 67(5), 67(6) and 69 to be used to make the Order at this time. .

Policy Objectives

4. Part 4 of the Act makes provision for Justice of the Peace Courts (JP Courts) and Justices of the Peace (JPs). Generally these provisions are intended to enable reform to the system of lay justice in Scotland.
5. Reforms are made in respect of JPs’ terms of appointment; making the procedures which are followed before JPs are appointed more consistent and transparent; improving the training of JPs and making it more consistent; and introducing a system of appraisal for JPs.
6. Section 67(5) of the Act provides that, when making new appointments of justices of the peace, the Scottish Ministers must comply with such provision for procedure and consultation as they may by Order make.
7. Section 69(1) provides that Ministers may by Order make provision for the training of JPs and future JPs, and for the appraisal of JPs. Any Order made under this subsection must be approved by the Lord President – this requirement provides a safeguard against any possibility of the Executive imposing training and appraisal requirements upon the judiciary which could be perceived as affecting the judiciary’s independence.

8. The Order therefore includes provisions relating to the appointment, training and appraisal of JPs. In particular, it allows for the establishment of committees in each sheriffdom which will have responsibility for performing certain functions in relation to recruitment, training and appraisal. These committees will be known as Justice of the Peace Advisory Committees (JPACs), which will have functions in relation to the appointment of JPs; Justices' Appraisal Committees (JACs), which will have functions in relation to the appraisal of JPs; and Justices' Training Committees (JTCs) which will have functions in relation to the training of JPs.
9. With regard to the appointment of JPs, the Order makes it clear that Ministers may only appoint someone as a JP if that person has been recommended for appointment by the JPAC for that sheriffdom. JPACs are to be chaired by the sheriff principal of the relevant sheriffdom, and will be made up of a mixture of JPs and lay members (and, possibly, one sheriff). The Order makes it clear that JPACs must act in accordance with procedures which have been approved by the Judicial Appointments Board for Scotland (JABS). The policy objective is to ensure that local bodies, operating in each sheriffdom under the chairmanship of the sheriff principal, work according to national standards, approved by the JABS, for transparency and fairness in the recruitment of JPs.
10. With regard to training, the Order allows for the creation of JTCs in each sheriffdom. These committees will be responsible for ensuring that ongoing training is delivered to the JPs in each sheriffdom. Training committees will be required to produce training plans each year which will set out to the Lord President and the sheriff principal of the sheriffdom what training will be made available in the forthcoming financial year. In producing these plans, JTCs must take into account any guidance or directions which have been issued by the Lord President or the sheriff principal of the sheriffdom. The JTCs are also required to produce an annual report on the training which has been made available during the previous financial year. The policy intention behind these requirements is to ensure that JTCs in each sheriffdom make effective ongoing local training available to all JPs in the sheriffdom. The ability of the Lord President or the sheriff principal to give directions to the JTC ensures that the committees must take account of any particular national priorities.
11. The Order also ensures that all new JPs must undergo a course of training approved by the Lord President before they are appointed as a JP, and that all current JPs must attend a training course approved by the Lord President within two years of taking up their new five year appointments under section 67(7)(b) of the Act. Again, the intention is to ensure a degree of national consistency in the arrangements for providing "refresher" and induction training for JPs.
12. In addition, the Order provides for the establishment of Justices Appraisal Committees. These committees will be made up entirely of JPs, who will be selected by an interview panel comprising the sheriff principal and two experienced JPs. The fact that the JACs are made up entirely of JPs ensures that decisions in relation to the appraisal of JPs are taken solely by other members of the judiciary. All members of the JAC will automatically belong to the JTC – which ensures that appraisal results are taken into account when training needs are being considered. The JAC must establish and publish a scheme for the appraisal of JPs. Among other things, this scheme must set out a method by which a JP can appeal against the assessment included in the appraisal.

13. The Executive believes that the primary benefit of appraisal is likely to be the fact that JPs can receive constructive feedback on their performance from their peers. In some situations, however, it will be necessary for an appraiser to recommend to the JAC that follow-up action is taken (follow-up training or even, in extreme cases, a recommendation to the sheriff principal to establish a tribunal to consider the JP's fitness for office). The Order requires the JAC to establish procedures for the appraiser to notify the JAC of any action which may be required following the appraisal, and for the JAC to notify the JP of any action which it deems to be reasonable following its consideration of this recommendation.

Consultation

14. The contents of draft versions of the Order have been discussed in some detail by the Court Unification and Lay Justice Reference Group and its successor body, the Lay Justice Planning and Delivery Group. These groups include representatives from the District Courts Association (both justices of the peace and legal assessors); the Judicial Appointments Board for Scotland; the Judicial Studies Committee; the Sheriffs Principal; the Sheriffs' Association; Victim Support Scotland; COSLA; the Scottish Court Service; and the Lord Lieutenants' Association.
15. A draft version of the Order was produced in early 2006, and members of the Court Unification and Lay Justice Reference Group were briefed on its contents at a meeting in March 2006. This version of the Order was sent to the Justice 1 Committee in April 2006, and has been publicly available on the Parliament's website since then.
16. Revisions were made to the Order as a result of discussions at the Court Unification and Lay Justice Reference Group meeting on 15 December 2006. For example the method of appointing JPs to Justices' Appraisal Committees was changed from being a system of election, in order to reduce the possibility of all JPs on the appraisal panel coming from the same part of a sheriffdom. The revised draft was then discussed at the Lay Justice Planning and Delivery Group meeting which took place on Friday 9 February 2007.
17. All of the sheriffs principal have been consulted on the policy content of the Order. In addition, the Lord President has approved the contents of the Order, as is required under section 69(4) of the Act.

Financial Effects

This Order has no financial effects beyond those which were set out in the Financial Memorandum to the Criminal Proceedings etc. (Reform) (Scotland) Bill. As that memorandum made clear, a total of £0.9/0.8m has been set aside in 2006-07 and 2007-08 for lay justice reform (£0.15m is being carried over from 2006-07 to 2007-08). £0.7m of this is categorised as recurring spending. This funding will cover the costs of - for example - enabling JPACs to comply with standard recruitment procedures as is required by 3(3)(a) of the Order, and providing a training course for all existing JPs who take up appointments under the new system, as is required by section 11 of the Order.

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