

2007 No. 480

CRIMINAL LAW

**The District Courts and Justices of the Peace (Scotland)
Order 2007**

<i>Made</i> - - - -	<i>25th October 2007</i>
<i>Laid before the Scottish Parliament</i>	<i>26th October 2007</i>
<i>Coming into force</i> - -	<i>10th December 2007</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 64(4), (5) and (6), 67(7), 71(7) and 71(8) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(a) and all other powers enabling them to do so.

PART 1

GENERAL

Citation and Commencement

1. This Order may be cited as the District Courts and Justices of the Peace (Scotland) Order 2007 and comes into force on 10th December 2007.

Interpretation

2.—(1) In this Order—

“the 1975 Act” means the District Courts (Scotland) Act 1975(b);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(c);

“the 2007 Act” means the Criminal Proceedings etc. (Reform) (Scotland) Act 2007;

“investigation” means an investigation carried out in terms of section 71(6) of the 2007 Act;

“JAC” means a Justices’ Appraisal Committee established in accordance with the Justices of the Peace (Scotland) Order 2007(d);

“Lord President” means the Lord President of the Court of Session;

“sheriff principal” means the sheriff principal for the sheriffdom for which the JP is appointed;
and

“tribunal” means a tribunal constituted under section 71 of the 2007 Act.

(2) For the purposes of articles 6 to 14 of this Order, “JP” means a justice of the peace appointed under section 67 of the 2007 Act who is the subject of an investigation.

(a) 2007 asp 6.
(b) 1975 c.20.
(c) 1995 c. 46.
(d) S.S.I. 2007/210.

PART 2

DISTRICT COURTS

Repeals

3. The following provisions of the 1975 Act are repealed:

- (a) section 9;
- (b) section 9A, including regulations made under that section(a);
- (c) sections 10 to 16;
- (d) subsections (3) and (4) of section 17;
- (e) paragraphs (b) and (d) of section 18(4);
- (f) in paragraph (e) of section 18(4), from the words “and of any justice” to the end.

Remaining district courts

4.—(1) The following provisions of the 1995 Act, all of which refer to JP courts, shall apply to remaining district courts to the same extent as they apply to JP courts:

- (a) section 25(2C)(a);
- (b) section 137D(1)(a);
- (c) section 156B(2)(b)(i);
- (d) section 301A(2)(b)(ii).

(2) For the purpose of remaining district courts:

- (a) the local authority that has responsibility for making payments under section 17(6) of the 1975 Act is the local authority in whose local authority area the JP sits;
- (b) the duties of clerks of the peace set out in section 18 of the 1975 Act are to be exercised in relation to JPs sitting in their local authority areas.

PART 3

JUSTICES OF THE PEACE

Termination of appointments of justices of the peace under the 1975 Act

5. The specified day for the purpose of section 67(7) of the 2007 Act is 10th December 2007.

Removal of JPs: Recommendation to sheriff principal by a JAC for an investigation

6.—(1) Any JAC is authorised to make a recommendation to a sheriff principal that an investigation be carried out in relation to a JP who is appointed for that sheriff principal’s sheriffdom.

(2) When making a recommendation, the JAC must provide the sheriff principal with information about the JP’s performance of his or her functions.

Commencement of investigation

7. Prior to an investigation by the tribunal commencing, the sheriff principal shall give the JP written notice of the investigation and of the reasons for requesting the investigation.

(a) The Justices of the Peace (Tribunal) (Scotland) Regulations 2001 (S.S.I. 2001/217) were made under section 9A of the 1975 Act.

Payments to Members

8. The Scottish Ministers may pay to a member of the tribunal such sums as they consider appropriate in respect of the performance of that person's duties as a member.

Change in membership of tribunal

9.—(1) This article shall apply where, after commencement of an investigation, any member of the tribunal—

- (a) dies;
- (b) resigns; or
- (c) is, in the opinion of the Lord President, unable to act.

(2) The Lord President—

- (a) if the member is the chairing member of the tribunal, must appoint a new chairing member,
- (b) in any other case—
 - (i) if requested by the JP, must appoint a new member,
 - (ii) otherwise, may appoint a new member.

(3) On a new member being appointed under paragraph (2), the tribunal may begin the investigation of new.

Procedure – general

10. Other than as specified in this Order, the procedure to be followed by and before the tribunal shall be that determined by the tribunal.

Procedure – further provisions

11.—(1) The tribunal may receive oral or written evidence from such persons as it thinks fit.

(2) The tribunal shall give the JP the opportunity to make written and oral representations regarding the matters which are the subject of the investigation.

(3) Representations under paragraph (2) may be made by the JP personally or by anyone acting on his or her behalf.

(4) The tribunal shall sit in private.

(5) No member of the tribunal shall disclose information received in the course of an investigation other than for the purposes of the exercise of the tribunal's functions under the 2007 Act and this Order.

Suspension

12.—(1) At any time during an investigation, the tribunal may suspend the JP from office or from acting as a JP so far as relating to the exercise of judicial functions.

(2) A suspension imposed under paragraph (1) shall terminate—

- (a) on the tribunal deciding not to order the removal of the JP from office; or
- (b) before then, on the tribunal deciding to bring the suspension to an end.

Draft findings to be sent to JP

13.—(1) The tribunal shall send to the JP a draft of its findings on the investigation and shall give the JP an opportunity to make comments on the draft by such a date as the tribunal may specify.

(2) The tribunal shall have regard to any comments made under paragraph (1) but need not give the JP an opportunity to comment on any alterations made to the draft prior to submission of the final report under article 14.

Reports and Decisions

14.—(1) On completion of its investigation, the tribunal shall submit a written report to the sheriff principal specifying—

- (a) its findings on the investigation;
- (b) its decision on whether to order removal of the JP from office; and
- (c) where appropriate, the date of removal from office.

(2) At the same time as submitting its report under sub-paragraph (1), the tribunal shall—

- (a) send a copy of the report to the JP; and
- (b) intimate its decision on whether to order the removal of the JP from office to the Scottish Ministers.

St Andrew's House,
Edinburgh
25th October 2007

KENNY MACASKILL
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under powers contained in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”).

Article 3 is made under section 64(4) of the 2007 Act. A number of provisions within the District Courts (Scotland) Act 1975 (“the 1975 Act”) are repealed. They are replaced by new provisions relating to the appointment, training and appraisal of JPs, contained in Part 4 of the 2007 Act.

Article 4(1) is made under section 64(5) of the 2007 Act. It sets out the provisions of the 1995 Act (introduced by the 2007 Act) that apply to remaining district courts in the same way as they apply to JP courts.

Article 4(2) is made under section 64(6) of the 2007 Act. It modifies the effect of sections 17 and 18 of the 1975 Act for the purposes of remaining district courts.

Article 5 is made under section 67(7) of the 2007 Act. That section allows the Scottish Ministers to specify a day on which those who hold office as justices of the peace under the 1975 Act cease to hold that office. Subject to section 67(8) of the 2007 Act, a person who holds office on the specified day, 10th December 2007, is to be appointed as a JP under section 67(1) of the 2007 Act, unless the person declines the appointment.

Articles 6 to 14 are made under section 71(7) and (8) of the 2007 Act, and make provision in connection with the procedure to be followed by and before a tribunal constituted under section 71 of the 2007 Act. Such a tribunal is constituted to carry out an investigation at the request of the sheriff principal in order to ascertain whether a JP should be removed from office on the basis of any of the grounds set out at section 71(6) of the 2007 Act.

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£3.00

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland