

**EXECUTIVE NOTE TO
THE DISTRICT COURTS AND JUSTICES OF THE PEACE (SCOTLAND) ORDER
2007 SSI/2007/480**

1. The above Order was made in exercise of the powers conferred by sections 64(4), (5) and (6), 67(7), 71(7) and (8) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”). The instrument is subject to negative resolution procedure.
2. The 2007 Act received Royal Assent on 22 February 2007. A second Commencement Order is being made that will bring, among others, sections 2, 37, 64, 67(1) – (4), (7) and (8), and 71 into force on 10 December 2007.
3. 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 (SSI 1999/1379). This is to ensure the effective operation of those sections which will enter into force on 10 December 2007.

Policy Objectives

Article 3 - District Courts - Repeals

4. Article 3 is made under section 64(4) of the 2007 Act, which provides that the District Courts (Scotland) Act 1975 (“the 1975 Act”) may be repealed to the extent that is necessary in connection with Part 4 of the 2007 Act.
5. The 2007 Act provides for the unification of the Scottish courts. District courts are run by local authorities. District Courts will be replaced by JP Courts run by Scottish Court Service. This will allow for the more efficient, effective and consistent handling of criminal cases through the summary courts.
6. Part 4 of the 2007 Act provides for the reform of arrangements for lay justices (justices of the peace or ‘JPs’). JPs will in future be appointed to a sheriffdom and will be required to participate in regular training and appraisal. JPs are currently appointed under the 1975 Act. On 10 December 2007 all JPs who have been placed on the court rota at any time during the previous 12 months will be reappointed under section 67 of the 2007 Act unless they decline the appointment.
7. Article 3 repeals sections 9, 9A (and any regulations made under that section), 10 – 16, 17(3) and (4), 18(4)(b), (d) and partially (e) of the 1975 Act as a consequence of the new arrangements for lay justice under Part 4 of the 2007 Act. Each of these provisions of the 1975 Act are superseded by provisions of the 2007 Act and repealed by this Order.
8. Section 9 of the 1975 Act provides for the appointment of JPs which is superseded by section 67 of the 2007 Act.
9. Section 9A of the 1975 Act, and the Justices of the Peace (Scotland) (Tribunal) Regulations 2001 (SSI 2007/217) (“the 2001 Regulations”) detail the procedure for removing a JP from office. Section 9A is superseded by section 71 of the 2007 Act, and articles 6 – 14 of this Order.

10. Section 10 of the 1975 Act relating to existing justices and magistrates is superseded by section 67 of the 2007 Act.

11. Sections 11 and 12 of the 1975 Act relate to the appointment of ex officio justices and signing justices. Section 15 of the 1975 Act makes provision in relation to the supplemental list. This is a record of persons with certain signing functions. Section 76 of the 2007 Act makes provision that local authority members may exercise signing functions in the same manner as a JP, but may not, be appointed as JPs.

12. Section 13 of the 1975 Act places a bar on solicitors who are JPs from acting in proceedings in the area to which they are appointed. Section 72 of the 2007 Act makes similar provision.

13. Section 13A of the 1975 Act relating to disqualification in the case of sequestration or bankruptcy is superseded by section 73 of the 2007 Act, which makes provision to similar effect.

14. Section 14 of the 1975 Act is superseded by section 69 of the 2007 Act, which came in to force on 23 April 2007, allowing the Scottish Ministers to make provision for the training and appraisal of JPs.

15. Section 16 of the 1975 Act provides for the establishment of a justices' committees. These committees will be superseded. The Justices of the Peace (Scotland) Order 2007 (SSI 2007/210) ("the Justices of the Peace Order") established a Justices of the Peace Advisory Committee (JPAC), a Justices' Training Committee (JTC) and a Justices' Appraisal Committee (JAC) for each sheriffdom. Justices' committees will be disestablished from 10th December.

16. Sections 17(3) and (4) of the 1975 Act provide for certain allowances for Justices paid by the local authority. In future these allowances will be paid by the Scottish Court Service.

17. Sections 18(4)(b) and (d) of the 1975 Act provide for certain functions of clerks of the peace which will be superseded by the provisions of the 2007 Act

18. Section 18(4)(e) of the 1975 Act is superseded by section 77 of the 2007 Act. The Scottish Ministers under section 77(1) of the 2007 Act are required to keep a record of persons holding office as JPs, and of any order made removing a person from the office of JP.

Summary

19. The policy intention underlying article 3 is that the provisions of the 2007 Act relating to the reform of lay justice operate effectively upon coming into force on 10 December 2007. As arrangements for lay justice and district courts have until now been primarily governed by the 1975 Act, the reforms of the 2007 Act will render many of its provisions inoperative, and thus this Order repeals those provisions.

Article 4(1) - Remaining District Courts

20. Article 4(1) is made under section 64(5) of the 2007 Act, which provides that the Scottish Ministers may, by order, provide that any provision of any Act referring to JP courts will apply equally to remaining district courts until unification is complete.

21. Sections 2(2)(c), 22(3), 16 and 37 of the 2007 Act make various amendments to the Criminal Procedure (Scotland) Act 1995. Sections 2 and 37 are due to be commenced on 10 December 2007, and sections 16 and 22(3) should be commenced on 10 March 2008. In each case, the amended provision of the 1995 Act would refer only to the JP court and not to the district court. JP courts will not exist in areas until the time of court unification in each Sheriffdom. Furthermore, due to the programme of phased unification, JP courts will exist in certain areas but not in others and these provisions should apply only to cases being heard in district courts. The policy intention is that these provisions should apply equally to district courts until they are replaced.

22. Section 2(2)(c) of the 2007 Act inserts a new subsection 25(2C) into the 1995 Act. This creates an offence of failing to seek the court's consent to a change in 'domicile of citation' (the address at which formal communications relating to the case will be sent to the accused).

23. Section 22(3) of the 2007 Act inserts new section 137D into the 1995 Act. Where a person is awaiting sentence at a JP court and is also due to be sentenced at the sheriff court, this provision allows a prosecutor to apply for the case to be transferred to the sheriff court. This 'rolling up' of court matters is intended to allow for greater flexibility and efficiency in the handling and disposal of cases.

24. Section 16 of the 2007 Act inserts new section 156B into the 1995 Act. This makes provision in relation to witnesses who have been granted bail after being arrested for failing to appear at a court diet, and who then breach that bail.

25. Section 37 of the 2007 Act inserts new section 301A into the 1995 Act, introducing new powers for the sheriff court to grant orders for the recovery or production of documents in summary cases.

Article 4(2) – Remaining District Courts

26. Article 4(2) is made under section 64(6) of the 2007 Act, which gives the Scottish Ministers power, by order, to provide that any of the provisions of the 1975 Act in force are to have effect with or subject to such modifications as deemed necessary for the operation of any remaining district courts.

27. Until the completion of court unification, a number of JPs will be appointed to a sheriffdom, but will sit in a district court run by a local authority. Article 4(2)(a) ensures that while the local authority is still responsible for a district court, it shall continue to make payments in respect of allowances for a JP sitting in that court. Post unification, such payments will be made by Scottish Court Service.

28. Clerks of peace are currently employed by a local authority and appointed to that local authority area under section 18 of the 1975 Act. Article 4(2)(b) ensures the policy intention that clerks of the peace will still exercise their duties in relation to JPs sitting in that local authority area, although the JP will be appointed to the wider area of the sheriffdom.

The policy intention behind these provisions is to ensure that appropriate administrative arrangements continue to be in place when the changes to the lay justice come into force.

Article 5 – Justices of the peace

29. Article 5 specifies 10th December as the date upon which existing JPs cease to hold office under the 1975 Act and take up new appointments under the 2007 Act.

Articles 6 – 14 – Regulations for the procedure and removal of JPs from office

30. Articles 6 – 14 of the Order are made under subsection 71(7) of the 2007 Act, which provides that the Scottish Ministers may, by order, make provision in relation to a tribunal which may order the removal of a JP from office, and authorise a specific body or class of persons that can recommend such a tribunal be established.

31. The current regulations governing the establishment of tribunals are the Justices of the Peace (Tribunal) (Scotland) Regulations 2001 which are repealed by article 3(b) of this Order. Articles 6-14 detail the procedure for tribunals and investigations in accordance with the changes made by the 2007 Act. These changes are primarily that tribunals are now instigated by the sheriff principal of the sheriffdom to which the JP is appointed, and that JPs are required to participate in regular appraisals.

32. The Order authorises Justices' Appraisal Committees (JACs) to make recommendations to a sheriff principal that a tribunal be established to investigate a JP. Under the Justices of the Peace (Scotland) Order 2007, the JAC of each sheriffdom is the body that considers appraisal reports and decides whether follow-up training for a JP is required. It is intended that where a JP receives a series of appraisals diagnosing serious flaws in their performance, a tribunal may need to be established.

33. The Order also makes provision as to the operation of the tribunal.

34. The policy objective behind these provisions is to establish a framework in which appropriate decisions about the suitability of JPs can be made.

Consultation

General - The Criminal Proceedings etc. (Reform) (Scotland) Act 2007

35. The Scottish Executive published *Smarter Justice, Safer Communities – Summary Justice Reform Next Steps*¹, in March 2005 following extensive consultation on the recommendations of the report² of the Committee chaired by Sheriff Principal John McInnes. Details of the history of the Act, including the McInnes report, and the *Smarter Justice* paper are all available through the Scottish Government's summary justice reform website.³

¹ Scottish Executive, *Smarter Justice, Safer Communities: Summary Justice Reform - Next Steps*, available at: <http://www.scotland.gov.uk/Publications/2005/03/20888/55016>

² Scottish Executive, *Report of the Summary Justice Review Committee*, available at: <http://www.scotland.gov.uk/Publications/2004/03/19042/34176>

³ The summary justice reform website can be found at: <http://www.scotland.gov.uk/Topics/Justice/criminal/criminalprocedure/19008>

Financial Effects

36. The Order is made in accordance with the original policy intention of the relevant provisions of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. It therefore has no financial effects beyond those which were set out in the Financial Memorandum to the Act.

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