

2008 No. 328

JUSTICE OF THE PEACE COURTS

**The Justice of the Peace Court (Sheriffdom of Glasgow and
Strathkelvin) Order 2008**

<i>Made</i>	- - - -	<i>2nd October 2008</i>
<i>Laid before the Scottish Parliament</i>		<i>3rd October 2008</i>
<i>Coming into force</i>		
<i>Articles 1, 4, 6 and 7(9) and (10)</i>		<i>10th November 2008</i>
<i>Remainder</i>		<i>8th December 2008</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 59(2), 64(1) and (4), 65(1), 81(2) and 82(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(a) and all other powers enabling them to do so.

In accordance with sections 59(7) and 64(3) of that Act they have consulted with the Sheriff Principal for the Sheriffdom of Glasgow and Strathkelvin, Glasgow City Council, East Dunbartonshire Council and South Lanarkshire Council.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Order 2008.

(2) The provisions of this article, articles 4, 6, and 7(9) and (10) come into force on 10th November 2008.

(3) All other articles come into force on the relevant date.

(4) In this Order—

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

“the 1988 Act” means the Road Traffic Offenders Act 1988(c);

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

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004(e);

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

“the appointed JP court” means the JP court which the Sheriff Principal determines is the appointed JP court (under section 66(5) of the 2007 Act) in relation to the Glasgow District Court;

“relevant date” means 8th December 2008; and

(a) 2007 asp 6.
(b) 1975 c.20.
(c) 1988 c.53.
(d) 1995 c.46.
(e) 2004 asp 8.

“Glasgow District Court” means the district court for the Commission Area of Glasgow City Council(a).

Establishment of a justice of the peace court

2. A justice of the peace court is established on the relevant date in the Sheriff Court District of Glasgow and Strathkelvin, and that justice of the peace court shall take place in Glasgow.

Disestablishment of Glasgow District Court

3. The Glasgow District Court is disestablished on the relevant date.

Transfer of staff

4. The scheme to be made by the Scottish Ministers under section 65(2) of the 2007 Act shall contain such information as is sufficient to identify the staff, being staff of the Glasgow District Court, to whom the scheme applies.

Incidental, consequential and transitional provisions in relation to certain fixed penalties and conditional offers

5.—(1) The clerk of the appointed JP court shall take possession of such records, productions and other documents relating to any conditional offer or fixed penalty notice which were held by the clerk of the Glasgow District Court.

(2) The clerk of the appointed JP court—

- (a) shall act as the fixed penalty clerk for the purpose of any conditional offer or fixed penalty notice in which the clerk of the Glasgow District Court was the fixed penalty clerk; and
- (b) shall exercise the functions of a fixed penalty clerk in relation to the disposal of any such offer or notice.

(3) Where paragraph (2)(a) applies, anything done by the clerk of the Glasgow District Court, in the capacity of fixed penalty clerk, shall be treated as if done by the clerk of the appointed JP court acting in that capacity.

(4) A notice requesting a hearing, sent to the Glasgow District Court or the clerk of the Glasgow District Court, shall be treated as if sent to the clerk of the appointed JP court.

(5) In this article—

“conditional offer” means, as the case may be, a conditional offer within the meaning of—

- (a) section 302 (fixed penalty: conditional offer by procurator fiscal) of the 1995 Act; or
- (b) section 75(5) (issue of conditional offer) of the 1988 Act;

“fixed penalty clerk” means, as the case may be—

- (a) a fixed penalty clerk within the meaning of section 69(4) of the 1988 Act;
- (b) a fixed penalty clerk within the meaning of section 75(6) of the 1988 Act;
- (c) a clerk of court who has been specified in a conditional offer made under section 302 of the 1995 Act; or
- (d) a clerk of court who has been specified in a fixed penalty notice issued under Part 11 (fixed penalties) of the 2004 Act;

“fixed penalty notice” means, as the case may be, a fixed penalty notice within the meaning of—

- (a) Part 3 (fixed penalties) of the 1988 Act; or

(a) District courts were established for commission areas by virtue of section 1(1) of the District Courts (Scotland) Act 1975. “Commission areas” is defined in section 26 of that Act as “the area of a local authority”. “Local authority” is defined as a “council constituted under section 2 of the Local Government etc. (Scotland) Act 1994” (c.39).

(b) Part 11 of the 2004 Act; and

“a notice requesting a hearing” has the same meaning as in section 89(2) (interpretation) of the 1988 Act.

Transitional provisions relating to the JP court

6.—(1) Where a case in the Glasgow District Court is—

(a) adjourned, continued or deferred; and

(b) a further diet of that case is to be fixed for a date on or after the relevant date,

the court may fix that diet in the appointed JP court despite the fact that that JP court has not yet been established.

(2) It is competent to cite an accused person or a witness to a diet or an ordinary sitting of the JP court (taking place on or after the relevant date) prior to that court being established by this Order.

(3) Where, prior to its establishment, a diet is fixed in or an accused person is cited to a diet or an ordinary sitting of the appointed JP court—

(a) any application—

(i) made under section 134 (incidental applications) or section 137 (alteration of diets) of the 1995 Act in respect of those proceedings; and

(ii) made prior to the establishment of the appointed JP court,

is to be made to the Glasgow District Court; and

(b) the Glasgow District Court may hear and dispose of the application.

(4) Where paragraph (3)(b) applies in relation to an application made by virtue of section 137 of the 1995 Act, the Glasgow District Court may, in accordance with the functions conferred on it by that section, discharge the diet fixed in the appointed JP court, and, either—

(a) fix a new diet to take place prior to the relevant date in that district court; or

(b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed, and to take place on or after the relevant date, in the appointed JP court.

(5) Where section 137ZA (refixing diets) of the 1995 Act applies in respect of a diet fixed in the appointed JP court prior to its establishment, the Glasgow District Court may discharge that diet and—

(a) fix a new diet to take place prior to the relevant date in that district court; or

(b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed, and to take place on or after the relevant date, in the appointed JP court.

(6) Nothing in this article affects the operation of section 66 (transitional arrangements for proceedings) of the 2007 Act.

Supplemental and transitional provisions in relation to certain sittings of the East Dunbartonshire and South Lanarkshire District Courts

7.—(1) The provisions of paragraphs (2) to (4) apply in relation to any proceedings which—

(a) were instituted in the District Court of East Dunbartonshire or the District Court of South Lanarkshire;

(b) had they been instituted in the sheriff court would have been instituted in the Sheriff Court of Glasgow and Strathkelvin at Glasgow; and

(c) have not been completed prior to the relevant date.

(2) Those proceedings continue in the JP Court for Glasgow and Strathkelvin as if instituted there.

(3) The cases involved are to be heard and disposed of as if the JP Court for Glasgow and Strathkelvin always had jurisdiction for the proceedings, and any relevant—

- (a) verdict, sentence, order or other determination, and
- (b) complaint, notice, citation, warrant or other document,

has effect accordingly.

(4) For the purposes of paragraph (2), the clerk of the district court must transfer to the clerk of the JP Court of Glasgow and Strathkelvin such records, productions and other documents relating to the proceedings as are in the district court clerk's possession.

(5) Further, the clerk of the district court must transfer to the clerk of the JP court of Glasgow and Strathkelvin such records, productions and other documents relating to recent proceedings completed in the District Court of East Dunbartonshire at Kirkintilloch or the District Court of South Lanarkshire at Rutherglen as are in the district court clerk's possession.

(6) For the purposes of paragraph (5), proceedings are recent if they were completed not more than 5 years before the relevant date.

(7) The provisions of article 5 apply to—

- (a) the Clerk of the District Court of East Dunbartonshire, but only while exercising functions in relation to the operation of that court at Kirkintilloch; and
- (b) the Clerk of the District Court of South Lanarkshire, but only while exercising functions in relation to the operation of that court at Rutherglen;

as they apply to the Clerk of the Glasgow District Court, and references in that article to “the Clerk of the Glasgow District Court” shall be read accordingly.

(8) Where paragraph (7) applies, references in article 5 to—

“the clerk of the appointed JP court” shall be read as references to the Clerk of the JP Court for Glasgow and Strathkelvin; and

“the Glasgow District Court” shall be read as references to the District Court of East Dunbartonshire at Kirkintilloch or the District Court of South Lanarkshire at Rutherglen as the case may be.

(9) Article 6 applies to cases in the District Court of East Dunbartonshire at Kirkintilloch or the District Court of South Lanarkshire at Rutherglen as it applies to cases in the Glasgow District Court, and references in that article to the “Glasgow District Court” shall be construed accordingly.

(10) Where paragraph (9) applies, references in article 6 to—

- (a) the “Glasgow District Court” shall be read as references to the District Court of East Dunbartonshire or the District Court of South Lanarkshire, as the case may be; and
- (b) references to the “appointed JP court” shall be read as references to the JP Court for Glasgow and Strathkelvin.

Partial repeal of the 1975 Act

8. The provisions of the 1975 Act listed in column 1 of the Schedule to this Order, the subject matter being specified in column 2, to the extent specified, cease to have effect in so far as they apply to the Sheriffdom of Glasgow and Strathkelvin.

KENNY MACASKILL
A member of the Scottish Executive

St Andrew's House,
Edinburgh
2nd October 2008

SCHEDULE

Article 8

PARTIAL REPEAL OF THE 1975 ACT: PROVISIONS WHICH
CEASE TO HAVE EFFECT IN THE SHERIFFDOM OF GLASGOW
AND STRATHKELVIN^(a)

<i>Column 1</i> <i>(provisions of the 1975 Act)</i>	<i>Column 2</i> <i>(subject matter)</i>
Section 1A	Further provision as to establishment and disestablishment of district courts
Section 5 (to the extent that it is not already repealed ^(b))	Stipendiary magistrates
Section 7	Clerk of district court
Section 8	Court houses for district court
Section 17 (to the extent that it is not already repealed ^(c))	Allowances
Section 18 (to the extent that it is not already repealed ^(d))	Appointment and duties of clerk of the peace
Section 20	Custody of records
Section 23	District court and justice of the peace expenses and destination of fines

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- (a) Similar repeals are made in respect of the Sheriffdom of Lothian and Borders and the Sheriffdom of Grampian, Highland and Islands by article 7(2) of and Schedule 4 to the Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008 (S.S.I. 2008/31) and article 6 of and Schedule 3 to the Justice of the Peace Courts (Sheriffdom of Grampian, Highland and Islands) Order 2008 (S.S.I. 2008/93) (as amended by the Justice of the Peace Courts (Sheriffdom of Grampian, Highlands and Islands) Amendment Order 2008 (S.S.I. 2008/179).
- (b) Section 5(7) of the District Courts (Scotland) Act 1975 (“the 1975 Act”) was repealed by article 7(1) of and Schedule 4 to the Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008 (S.S.I. 2008/31).
- (c) Section 17(3) and (4) of the 1975 Act were repealed by article 3(d) of the District Courts and Justice of the Peace (Scotland) Order 2007 (S.S.I. 2007/480).
- (d) Paragraphs (b) and (d) of section 18(4) of the 1975 Act were repealed by article 3(e) of the District Courts and Justices of the Peace (Scotland) Order 2007. Paragraph (e) of section 18(4) was partially repealed by article 3(f) of the same Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various provision in relation to the establishment of a justice of the peace court (“JP court”) in the Sheriffdom of Glasgow and Strathkelvin. JP Courts are being established on a Sheriffdom by Sheriffdom basis and have already been established in Lothian and Borders and Grampian, Highland and Islands.

Article 2 to the Order specifies that a JP court is to be established in the Sheriff Court District of Glasgow and Strathkelvin. That JP court is to take place in Glasgow.

Article 3 disestablishes the district court (established under the District Courts (Scotland) Act 1975) in the Commission Area of Glasgow City Council.

The jurisdiction of the District Courts of East Dunbartonshire and South Lanarkshire also extend into the Sheriffdom of Glasgow and Strathkelvin. This is because the boundaries of those commission areas overlap the boundary of the Sheriffdom of Glasgow and Strathkelvin. There are regular sittings of those district courts at Kirkintilloch and Rutherglen respectively which both fall within the Sheriffdom of Glasgow and Strathkelvin.

The District Courts of East Dunbartonshire and South Lanarkshire are not disestablished by this Order because to do so would mean that there would be inadequate provision of lower tier summary criminal courts in the Sheriffdom of South Strathclyde, Dumfries and Galloway (which is currently served by the South Lanarkshire District Court in sittings at Hamilton, East Kilbride and Lanark and the district courts for other local authority areas within that Sheriffdom) and in the Sheriffdom of North Strathclyde (which is currently served by the East Dunbartonshire District Court in sitting at Milngavie and the district courts for other local authority areas within that Sheriffdom).

Although the District Court of East Dunbartonshire and South Lanarkshire are not disestablished, the repeal of section 6(1) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) for the Sheriffdom of Glasgow and Strathkelvin means that the respective local authorities cannot set down sittings of those courts in the Sheriffdom of Glasgow and Strathkelvin. The effect of this repeal will be that there will no longer be sittings of those district courts within the Sheriffdom of Glasgow and Strathkelvin which, of course, includes Rutherglen and Kirkintilloch. Section 6(1) of the 1995 Act is repealed by paragraph 9(1)(a) of the schedule to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”) which is to be commenced on the 8th December 2008 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 5) Order 2008.

Article 4 confirms that a scheme to be made by the Scottish Ministers (under section 65(2) of the 2007 Act) will identify which staff of the Glasgow District Court that scheme will apply to. The effect of the scheme will be that certain staff (being employees of the Glasgow City Council) will transfer to the employment of the Scottish Administration.

Article 5 makes incidental, consequential and transitional provision in relation to certain fixed penalties and conditional offers of penalties. These provisions will allow the Clerk of the JP Court for Glasgow and Strathkelvin to deal with matters relating to penalties and offers which were previously dealt with by the Clerk of the disestablished Glasgow District Court.

Article 6 makes further transitional provision allowing accused persons and witnesses to be cited to the JP Court for Glasgow and Strathkelvin prior to its establishment. The article makes transitional provision for fixing diets in those courts and for dealing with the alteration of such diets (under sections 137 and 137ZA of the Criminal Procedure (Scotland) Act 1995) and incidental applications made in respect of such cases (under section 134 of that Act).

Article 7 makes supplemental and transitional provision in relation to cases which are ongoing in the District Courts of East Dunbartonshire at Kirkintilloch and the District Court of South

Lanarkshire at Rutherglen. This provision reflects the fact that there will be no further sittings of those courts in those locations as discussed above. The effect of the provisions at article 7(1) to (3) is that cases instigated in those courts and which fall within the jurisdiction of Glasgow Sheriff Court (and hence the jurisdiction of the JP Court for Glasgow and Strathkelvin) are transferred to the Glasgow and Strathkelvin JP Court. Provision is also made for transfer of relevant court records in paragraphs (4) to (6).

Interpretative glosses are provided to attach to articles 5 and 6 of this Order to enable the transfer of court business to the JP Court of Glasgow and Strathkelvin. In relation to article 5, the provisions of article 7(7) and (8) will allow the Clerk of the JP Court for Glasgow and Strathkelvin to deal with matters relating to certain penalties and offers which were previously dealt with by the Clerk of the District Court for East Dunbartonshire at Kirkintilloch and the Clerk of the District Court for South Lanarkshire at Rutherglen. In relation to article 6, the provisions of article 7(9) and (10) will allow citation and fixing of diets in the JP Court for Glasgow and Strathkelvin prior to its establishment in relation to cases in the District Court of East Dunbartonshire at Kirkintilloch and the District Court of South Lanarkshire at Rutherglen.

Article 8 of and the Schedule to the Order make provision in relation to the repeal of various sections of the District Courts (Scotland) Act 1975. These repeals apply only to the Sheriffdom of Glasgow and Strathkelvin and are consequential upon the establishment of the JP court in that Sheriffdom and the disestablishment of the Glasgow District Court.

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