

EXECUTIVE NOTE

THE STIPENDIARY MAGISTRATES (SPECIFIED DAY) (SHERIFFDOM OF GLASGOW AND STRATHKELVIN) ORDER 2008 SSI/2008/330

1. The above Order was made in exercise of the powers conferred by sections 74(12) and 81(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”). The instrument is subject to negative resolution procedure.

2. The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 5) Order 2008 will bring into force various provisions of the 2007 Act, most of which apply to the Sheriffdom of Glasgow and Strathkelvin, on 8th December 2008. Section 74 will be brought into force on that date and accordingly this Order is 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 the smooth transition of appointment of Stipendiary Magistrates from one statutory regime to the other in the Sheriffdom of Glasgow and Strathkelvin on 8th December 2008.

Policy Objective

2. Stipendiary magistrates differ from lay justices because they are professional judges who must have been a solicitor or advocate for at least five years. Stipendiary magistrates have the same criminal jurisdiction as a sheriff when sitting summarily, which means that they can sentence people for up to a year’s imprisonment and fine them up to £10,000.

3. The 2007 Act makes provision for the unification of Scotland’s courts to allow for the more efficient, effective and consistent handling of criminal cases through the summary courts. District courts are run by local authorities, and upon unification in each sheriffdom, will be replaced by JP courts run by the Scottish Court Service (SCS). The Sheriffdom of Lothian and Borders unified on 10 March 2008, followed by Grampian, Highland and Islands on 2 June 2008. The Sheriffdom of Glasgow and Strathkelvin will become the third unified sheriffdom on 8 December 2008.

4. In non-unified sheriffdoms, stipendiary magistrates may be appointed by local authorities under section 5 of the District Courts (Scotland) Act 1975 (“the 1975 Act”). Section 74 of the 2007 Act provides for the appointment of stipendiary magistrates, and replaces section 5 of the 1975 Act upon unification in each sheriffdom. Although local authorities in non-unified sheriffdoms, with the approval of Scottish Ministers, currently have the power to appoint stipendiary magistrates, only Glasgow City Council currently does so.

5. Section 74 will enter into force in the Sheriffdom of Glasgow and Strathkelvin on 8 December 2008. Accordingly, this Order specifies 8 December as the date upon which existing stipendiary magistrates in the Sheriffdom of Glasgow and Strathkelvin cease to hold office under the 1975 Act and take up new appointments under the 2007 Act.

Consultation

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

6. Many of the provisions of the 2007 Act are based on the recommendations of the ‘McInnes Committee’ and subsequent consultation during 2004. The then 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.

Unification of the Summary Courts in the Sheriffdom of Glasgow and Strathkelvin

7. Plans for unification of the summary courts under the SCS were outlined in the *Next Steps* paper. In 2008, the SCS conducted a consultation exercise after publishing plans for the establishment of Justice of the Peace Courts, the consequent disestablishment of district courts, and arrangements for the delivery of court-related services in the Sheriffdom of Glasgow and Strathkelvin.³

Financial Effects

8. The Order itself simply specifies the day on which the change in stipendiary magistrates’ appointments set out under section 74 of the 2007 Act will take effect. The Order therefore has no new financial effects.

Gerard Bonnar
Criminal Procedure Division
October 2008

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 Scottish Court Service consultation paper *Delivering a Unified Courts Administration: Sheriffdom of Glasgow and Strathkelvin*: is available at: http://www.scotcourts.gov.uk/court_unification/publications/glasgow_and_strathkelvin/Master_Draft_Consultio_n_GS.pdf

The subsequent report on that consultation will be published at: http://www.scotcourts.gov.uk/court_unification/publications.asp