

EXECUTIVE NOTE

THE JUSTICE OF THE PEACE COURTS (SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE) ORDER 2008 SSI/2008/363

1. The above Order was made in exercise of the powers conferred by sections 59(2), 64(1) and (4), 65(1), and 81(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”). The instrument is subject to negative resolution procedure.

2. This Order provides for justice of the peace courts (“JP courts”) in the Sheriffdom of Tayside, Central and Fife. Certain transitional provisions in the Order will enter into force on 1 December 2008 while the remainder of the Order comes into force on 23 February 2009. The Order makes provision in relation to:

- the establishment of JP courts in Tayside, Central & Fife;
- the disestablishment of the district courts in Tayside, Central & Fife;
- the transfer of staff of the district courts to the employment of the Scottish Ministers;
- certain fixed penalties and conditional offers of penalties that will be dealt with by the clerks to the JP courts;
- citation of accused persons and witnesses to the JP courts in Tayside, Central & Fife prior to their establishment;
- the fixing of diets in the JP courts prior to their establishment, and applications for the alteration of such diets; and
- the repeal of certain sections of the District Courts (Scotland) Act 1975 (“the 1975 Act”), for the purposes of court unification in Tayside, Central & Fife.

Policy Objectives

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). Unification has already taken place in the Sheriffdoms of Lothian and Borders and Grampian, Highland and Islands, and from 8 December 2008, in the Sheriffdom of Glasgow and Strathkelvin. A sixth commencement order for the 2007 Act will bring into force a number of provisions for this fourth phase of unification on 23 February 2009.

4. Court unification is a key element of the Scottish Government’s reform of summary justice. It will bring all court services in Scotland under the responsibility of SCS, which will provide:

- support to the Judiciary in Sheriff and Justice of the Peace summary criminal courts;
- court services in all summary criminal courts, and managing and providing legal and administrative staff;
- one national IT system for all summary criminal cases; and
- improved collection and enforcement of all fines and financial penalties.

Article 2 - Establishment of Justice of the Peace Courts

5. Article 2 and Schedule 1 specify the JP Courts that are established in Tayside, Central & Fife on 23 February 2009, with reference to the particular sheriff court district and location in which they are established. Ten JP courts are established, these being Arbroath, Forfar, Dundee, Perth, Alloa, Falkirk, Stirling, Cupar, Dunfermline and Kirkcaldy.

Article 3 – Disestablishment of district courts

6. Article 3 and Schedule 2 provide for the disestablishment of those district courts which fall within the Sheriffdom of Tayside, Central & Fife, these being the district courts in the commission areas of Angus Council, Clackmannanshire Council, Dundee City Council, Falkirk Council, Fife Council, Perth and Kinross Council and Stirling Council.

Article 4 – Transfer of staff

7. Article 4 requires the creation of a scheme to identify those local authority staff who will transfer to the Scottish Administration. SCS and CoSLA have agreed that local authority staff whose normal work involves 50% or more of their time being engaged on activities associated with the business of the district court will meet the criterion for transfer.

Article 5 – Incidental, consequential and transitional provisions in relation to certain fixed penalties and conditional offers

8. Article 5 makes incidental, consequential and transitional provision in relation to certain fixed penalties and conditional offers of penalties. These provisions will allow the clerks to the JP courts to deal with matters relating to these penalties and offers which were previously dealt with by the clerk to the disestablished district courts.

Article 6 – Transitional provisions relating to fixing of diets and citation in JP courts prior to establishment

9. Section 66 of the 2007 Act makes provision for the transition of proceedings from district courts to JP courts upon unification. Article 6 makes further transitional provision for the fixing of diets and the citation of accused persons and witnesses to JP courts in Tayside, Central & Fife prior to their establishment. This will be particularly useful where the JP court to which proceedings will transfer is at a different address from the current district court.

10. Article 6 will have effect from 1 December 2008. From that date, district courts in Tayside, Central & Fife will be able to fix diets to take place in a JP court from 23 February 2009, and accused persons and witnesses may be cited to a JP court although it is not yet established. In addition, transitional provision is made allowing district courts to re-fix diets and deal with applications for the alteration of diets, and fix earlier or later diets to take place in the district court or JP court, respectively.

Article 7 – Partial repeal of the 1975 Act

11. Article 7 and Schedule 3 repeal certain provisions of the 1975 Act for the Sheriffdom of Tayside, Central & Fife on 23 February 2009 as a consequence of unification in that area.

Many of the 1975 Act provisions relate to local authorities' responsibilities for the maintenance of district courts and as such are superseded by sections 59-66 of the 2007 Act. The provisions of the 1975 Act repealed are sections 1A, 5, 7, 8, 17, 18, 20 and 23, relating respectively to: the establishment and disestablishment of district courts; the appointment of stipendiary magistrates; the appointment of district court clerks; the provision of premises; the payment of JP allowances; the appointment of clerks of the peace; the custody of records; and district court and justice of the peace expenses and destination of fines.

Consultation

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

12. 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.

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13. Plans for unification of the summary courts under SCS were outlined in the *Next Steps* paper. In 2008, SCS conducted a consultation exercise after publishing plans for the establishment of JP Courts, the consequent disestablishment of district courts, and arrangements for the delivery of court-related services in the Sheriffdom of Tayside, Central and Fife.³ Accordingly, the Scottish Ministers have consulted with the Sheriff Principal for the Sheriffdom of Tayside Central and Fife, Angus Council, Clackmannanshire Council, Dundee City Council, Falkirk Council, Fife Council, Perth and Kinross Council and Stirling Council under sections 59(7) and 64(3) of the 2007 Act.

Financial Effects

14. 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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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 in Tayside, Central and Fife Sheriffdom* is available at: http://www.scotcourts.gov.uk/court_unification/publications/tayside_central_fife/TCF_Consultation_Final_report.pdf

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