

**2016 No. 329**

**CRIMINAL LAW**

**The Justices of the Peace (Training and Appraisal) (Scotland)  
Order 2016**

<i>Made</i>	- - - -	<i>27th October 2016</i>
<i>Laid before the Scottish Parliament</i>		<i>28th October 2016</i>
<i>Coming into force</i>	- -	<i>28th November 2016</i>

The Lord President of the Court of Session makes the following Order in exercise of the powers conferred by section 69 and 81(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(a) and all other powers enabling him to do so.

**Citation and commencement**

1.—(1) This Order may be cited as the Justices of the Peace (Training and Appraisal) (Scotland) Order 2016.

(2) It comes into force on 28th November 2016.

**Interpretation**

2. In this Order—

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

“the 2007 Order” means the Justices of the Peace (Scotland) Order 2007(b);

“the 2008 Act” means the Judiciary and Courts (Scotland) Act 2008(c);

“ACJI” means the Advisory Council of the Judicial Institute;

“JAC” means a Justices’ Appraisal Committee established in accordance with the 2007 Order;

“JP” means a justice of the peace appointed under the 2007 Act;

“JP member” has the meaning given in article 9(2)(a) of this Order;

“JTAC” means a Justices’ Training and Appraisal Committee established in accordance with article 9 of this Order;

“JTAC training” means training delivered under the auspices of a JTAC, and which the sheriffdom training programme designates as qualifying as mandatory training;

“JTCJI” means the Justices’ Training Committee of the Judicial Institute established in accordance with article 4 of this Order;

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(a) 2007 asp 6. Section 69 was amended by the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 42, which transferred the power to make orders under section 69 from the Scottish Ministers to the Lord President of the Court of Session. Section 81(2) was amended by paragraph 5(2)(b) of schedule 5 of that Act.

(b) S.S.I. 2007/210.

(c) 2008 asp 6.

“Judicial Institute” means the Judicial Institute for Scotland established by the Lord President for the purposes of discharging the Lord President’s responsibilities for making and maintaining arrangements for the training of judicial office holders in accordance with section 2(2)(d) of the 2008 Act;

“Judicial Institute training” means training delivered under the auspices of the Judicial Institute, which the JTCJI designates in the national training programme as qualifying as mandatory training;

“Judicial Office” means the Judicial Office for Scotland in the Scottish Courts and Tribunals Service which supports the Lord President in exercising the Lord President’s non-judicial functions;

“legal adviser” means a clerk of a JP court appointed under section 63 of the 2007 Act<sup>(a)</sup> and who acts as legal adviser to the JP court in accordance with section 63(5) of the 2007 Act;

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

“mandatory training” means the training mentioned in article 3 of this Order;

“national curriculum” means the curriculum for JPs published by the JTCJI and updated from time to time, which sets out the training objectives for all JPs;

“national training programme” means the annual direction on training approved and issued by the JTCJI in accordance with article 6 of this Order;

“Sheriffdom Legal Adviser” means the legal adviser who is appointed by the Scottish Courts and Tribunals Service to carry out managerial functions in relation to all legal advisers within a sheriffdom;

“sheriffdom training programme” means the programme of training to be delivered by the JTAC, that is produced annually by each JTAC in accordance with article 11 of this Order;

“year” means the period from 1st January to 31st December.

### **Mandatory training**

**3.—**(1) A JP must undertake at least 12 hours of mandatory training each year.

(2) Mandatory training comprises—

- (a) every year, at least 6 hours of JTAC training; and
- (b) every three years, at least 6 hours of Judicial Institute training.

### **Formation of the JTCJI**

**4.—**(1) The JTCJI is established.

(2) The members of the JTCJI are—

- (a) the sheriff principal member of the ACJI;
- (b) the convener of each JTAC;
- (c) the Director of the Judicial Institute;
- (d) the Deputy Director of the Judicial Institute;
- (e) a Sheriffdom Legal Adviser;
- (f) the person responsible for the overall delivery of judicial education within the Judicial Institute; and
- (g) the person responsible for overseeing the delivery of JP training within the Judicial Institute.

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(a) Section 63 was amended by the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 57(3) and paragraph 5(3)(c), schedule 5; and by the Courts Reform (Scotland) Act 2014 (asp 18), paragraph 40(4), schedule 5.

(3) The Sherifffdom Legal Adviser must be nominated by the Sherifffdom Legal Advisers to be a member of the JTCJI.

(4) That appointment lasts for 2 years.

(5) At the end of each 2 years, the Sherifffdom Legal Adviser may be reappointed.

### **Functions of the JTCJI**

**5.** The JTCJI must—

- (a) identify the training requirements for JPs and develop, publish and keep under review the national curriculum;
- (b) develop a national training programme for each year, in accordance with article 6;
- (c) provide advice on the development of training programmes and share training materials, expertise and experience (which may include the production and distribution of training materials to be used by the JTACs for the delivery of any training topics that the JTCJI requires the JTACs to include in the sherifffdom training programmes under article 6);
- (d) when liaising with the Judicial Institute in relation to the content of Judicial Institute training, have regard to reports received from the JTACs on the common development training needs identified from the appraisal process;
- (e) ensure that the individuals who deliver JTAC training do so competently, which may include requiring them to attend such training as the JTCJI considers necessary for this purpose;
- (f) liaise with the Judicial Institute to ensure that Judicial Institute training meets the training requirements of JPs;
- (g) receive and consider the sherifffdom training programmes submitted by the JTACs each year, and issue to any JTAC guidance and directions in relation to its sherifffdom training programme;
- (h) issue such other guidance to the JTACs as it sees fit; and
- (i) issue such recommendations and advice to the Judicial Institute on the training of JPs as it sees fit.

### **National training programme**

**6.—**(1) No later than 30th September each year, the JTCJI must provide the JTACs with the national training programme applicable to the next year.

(2) By 31st December 2016, the JTCJI must provide the JTACs with the national training programme applicable to the year ending 31st December 2017.

(3) The national training programme must—

- (a) include the national curriculum;
- (b) include details of all Judicial Institute training courses and the dates on which these will be delivered; and
- (c) take account of reports received from the JTACs on the common development training needs identified from the appraisal process.

(4) The national training programme may include directions specifying training topics.

(5) Those directions may require 2 or more JTACs to designate, in their sherifffdom training programmes, the training topics specified as JTAC training that must be undertaken.

(6) If the national training programme includes a direction, then it must also include—

- (a) sufficient information to allow a JTAC to determine how long it will take to deliver training on those training topics; and
- (b) a date by which training on those topics must be delivered.

## **Annual report to the Lord President**

7.—(1) By 31st March each year, the JTCJI must submit a report to the Lord President in such form as the Lord President may require.

(2) Except in relation to the report mentioned in paragraph (4), a report must give an account and an evaluation of all JTAC training, any other learning and development activities delivered by the JTACs and all Judicial Institute training provided during the previous year.

(3) A report may contain recommendations in relation to JP training.

(4) The report to be submitted by 31st March 2017 is to comprise the collated reports provided by the JTACs under article 11(3).

## **Procedure of the JTCJI**

8.—(1) A meeting of the JTCJI is to be chaired by the sheriff principal member.

(2) In the absence of the sheriff principal member, a meeting may be chaired by either the Director or the Deputy Director of the Judicial Institute.

(3) The JTCJI may regulate its own procedure (including the quorum at any meeting).

(4) The validity of any proceedings or acts of the JTCJI is not affected by any—

- (a) vacancy in its membership;
- (b) defect in the appointment of a member;
- (c) disqualification of a person as a member after appointment.

## **Formation of a JTAC**

9.—(1) In each sheriffdom, a JTAC is established.

(2) The members of a JTAC are—

- (a) at least 5 but no more than 8 JPs appointed for the sheriffdom in question who have been selected in accordance with paragraph (7) (“JP members”);
- (b) a sheriff or summary sheriff of the sheriffdom who has been nominated by the sheriff principal of the sheriffdom; and
- (c) the Sheriffdom Legal Adviser for the sheriffdom.

(3) Each JTAC must appoint a convener from among its JP members.

(4) An appointment as convener of a JTAC is for a period of one year.

(5) A convener may be reappointed, but cannot serve as convener for more than 3 consecutive years.

(6) All vacancies for a JP member must be notified to all JPs for the sheriffdom in question by the sheriff principal.

(7) A JP must not be appointed as a member of the JTAC unless the JP has been selected following interview by a panel comprising—

- (a) the sheriff principal; and
- (b) two JPs for the sheriffdom who have—
  - (i) been nominated by the sheriff principal; and
  - (ii) been a JP for at least 5 years, unless the sheriff principal considers that there are special reasons why the JP should be appointed to the panel having served for a shorter period.

(8) The panel referred to in paragraph (7) must not select a JP for appointment as a JP member unless it is satisfied that the JP concerned has sufficient knowledge and experience to contribute to the carrying out of the functions of the JTAC.

(9) Subject to article 10, the term of appointment as a JP member is 5 years.

(10) A person who is or has been a JP member may be reappointed.

(11) Paragraph (9) applies to a reappointment under paragraph (10) as it applies to an appointment under paragraph (7).

(12) A sheriff principal may nominate a sheriff or summary sheriff to carry out the sheriff principal's duties under this article.

### **First members of a JTAC**

**10.**—(1) Paragraphs (2) to (8) apply to the appointments of the first JP members of a JTAC.

(2) The first JP members of each JTAC are the JPs who were members of the corresponding JACs immediately before the coming into force of this Order.

(3) The first convener of each JTAC is the JP who was the convener of the corresponding JAC immediately before the coming into force of this Order.

(4) If 5 JP members are appointed, one member must hold office for a term of 3 years, 2 JP members for a term of 4 years, and the remaining 2 members for a term of 5 years.

(5) If 6 JP members are appointed, 2 members must hold office for a term of 3 years, 2 members for a term of 4 years, and the remaining 2 members for a term of 5 years.

(6) If 7 JP members are appointed, 2 members must hold office for a term of 3 years, 2 members for a term of 4 years and the remaining 3 members for a term of 5 years.

(7) If 8 JP members are appointed, 2 members must hold office for a term of 3 years, 3 members for a term of 4 years and the remaining 3 members for a term of 5 years.

(8) The members of a JTAC must decide which JP members are to serve for which terms referred to in paragraphs (4) to (7) and, if they are unable to agree, the length of their terms must be determined by lot.

### **Functions of a JTAC**

**11.**—(1) A JTAC must—

- (a) develop and deliver an annual programme of training called the sheriffdom training programme, consisting of—
  - (i) JTAC training, which must be based on the national curriculum and national training programme; and
  - (ii) such other learning and development activities as a JTAC arranges;
- (b) identify the training needs of the JPs for the sheriffdom each year and have regard to these when devising the sheriffdom training programme;
- (c) in the sheriffdom training programme, designate as JTAC training that must be undertaken by all JPs appointed for the sheriffdom such particular training topics as the JTCJI may in the national training programme direct, and in the interests of consistent delivery, the JTAC must use any training materials provided by the JTCJI for these topics;
- (d) subject to paragraph (2), no later than 30th November each year, submit to the JTCJI a proposed sheriffdom training programme applicable to the next year in such form as the JTCJI may require;
- (e) implement any direction and have regard to any guidance from the JTCJI in relation to the sheriffdom training programme;
- (f) subject to paragraph (3), provide the JTCJI by 28th February each year with such information, and in such format, as the JTCJI may require for the purposes of producing its report to the Lord President under article 7;
- (g) make arrangements for the conduct of appraisals of JPs and report to the JTCJI on the common development training needs identified from the appraisal process;

- (h) on the request of the JTCJI or any other JTAC, share copies of all training materials that the JTAC has produced; and
- (i) implement any direction and have regard to any guidance issued by the Lord President (in carrying out the Lord President's responsibilities under section 2(2)(d) of the 2008 Act) on judicial training or appraisal that applies to JPs.

(2) In relation to the sheriffdom training programme applicable to the year beginning 1st January 2017 to be submitted under paragraph (1)(d), each JTAC must submit a proposed sheriffdom training programme to the JTCJI by 31st January 2017.

(3) The information to be provided by a JTAC under paragraph (1)(f) by 28th February 2017 is to comprise a report on all training undertaken in its sheriffdom during the period from 1st April 2016 to 31st December 2016.

### **Appraisal**

**12.**—(1) Each JTAC must establish and keep under review a scheme for the appraisal of JPs appointed for its sheriffdom, and in doing so must implement any applicable directions or guidance issued by the Lord President.

(2) Appraisal of JPs may be conducted only by other JPs appointed for the same sheriffdom.

(3) The convener of a JTAC must not carry out appraisals of JPs.

(4) The appraisal scheme must include procedures for—

- (a) the selection of JPs to conduct appraisals (“appraising JPs”);
- (b) the notification that will be given to the JP to be appraised (“appraised JP”);
- (c) the appraising JP to record the appraisal and notify it to the appraised JP and the JTAC;
- (d) providing the appraised JP with an opportunity to discuss the appraisal with the appraising JP; and
- (e) the appraising JP to recommend to the convener of the JTAC any action which may be required following the appraisal and for the convener to notify the appraised JP of any action which is considered reasonable in light of the appraising JP's recommendation.

(5) Only JP members may participate in discussions about recommendations that relate to a particular JP under paragraph (4)(e).

(6) Each JTAC must provide its appraisal scheme to—

- (a) all JPs appointed for its sheriffdom;
- (b) the JTCJI; and
- (c) the Lord President.

### **Procedure of a JTAC**

**13.**—(1) A meeting of a JTAC is quorate if the following members are present—

- (a) 3 JP members; and
- (b) the member referred to in article 9(2)(c) or the legal adviser appointed to attend in that member's place in accordance with paragraph (3).

(2) The Director or the Deputy Director of the Judicial Institute may attend any meeting of a JTAC.

(3) The Sheriffdom Legal Adviser member referred to in article 9(2)(c) may appoint a legal adviser from the sheriffdom to attend any meeting of the JTAC in his or her place.

(4) A JTAC must meet at least three times a year.

(5) A JTAC may otherwise regulate its own procedure.

## **Revocations**

**14.** In the 2007 Order, revoke—

- (a) in article 2, the definitions of “JAC” and “JTC”; and
- (b) articles 8 to 17.

Edinburgh  
27 October 2016

*CJM SUTHERLAND*  
Lord President

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order revokes articles 8 to 17 of the Justices of the Peace (Scotland) Order 2007 (“the 2007 Order”), and introduces a new framework for the training of justices of the peace (“JPs”).

Article 3 provides that every JP must undertake at least 12 hours of mandatory training each year, and must undertake 6 hours of training delivered by the Judicial Institute every 3 years.

Article 4 establishes the JTCJI, and articles 5 to 7 set out its functions and responsibilities. Article 8 makes provision about the procedure of the JTCJI.

Article 9 establishes a JTAC in each sheriffdom. The JTACs replace the formerly separate Justices’ Training Committees (“JTCs”) and Justices’ Appraisal Committees (“JACs”) that were established by the 2007 Order. Article 11 sets out the functions of the JTACs and article 12 makes provision for how the JTACs must deal with the appraisal of JPs.

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£6.00

S201610271000 11/2016 19585

<http://www.legislation.gov.uk/id/ssi/2016/329>

ISBN 978-0-11-103344-9



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