



# District Courts (Scotland) Act 1975

## 1975 CHAPTER 20

### PART II

#### JUSTICES AND CLERKS OF THE PEACE

##### *Justices of the peace*

#### **9 Appointment and removal of justices**

- (1) Subject to the provisions of this section, there shall, in Scotland, be a commission of the peace for each commission area; and the commission for any commission area shall be a commission under the Great Seal addressed generally, and not by name, to all such persons as may from time to time hold office as justices of the peace for the commission area.
- (2) Justices of the peace for any commission area, other than stipendiary magistrates and ex officio justices, shall be appointed by name on behalf and in the name of Her Majesty by instrument under the hand of the Secretary of State, and a justice so appointed shall only be removed from office in like manner.
- (3) Subject to subsection (4) below and section 10 of this Act, a person shall not be appointed to hold office as a justice of the peace for any commission area under subsection (2) above and shall not act as a justice for that area unless he lives in or within 15 miles of that area.
- (4) The residential requirements mentioned in subsection (3) above shall not apply in any case where it appears to the Secretary of State to be in the public interest that those requirements should not apply and he so directs; and, where any such direction relates to the appointment of any person as a justice for any commission area, it shall have effect, and shall be treated for the purposes of this Act, as an instrument appointing that person to hold office as a justice for that area in accordance with subsection (2) above.
- (5) A direction given under subsection (4) above may be made subject to such conditions as the Secretary of State thinks fit.

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- (6) Where a direction given under subsection (4) above is rescinded by a further direction and at that time the justice to whom it relates does not meet the residential requirements mentioned in subsection (3) above, that further direction shall have effect, and shall be treated for the purposes of this Act, as an instrument removing that person from office in accordance with subsection (2) above.
- (7) Where a person appointed justice of the peace for any area is not qualified under the foregoing provisions of this section to act by virtue of the appointment, he shall be removed from office by an instrument under subsection (2) above, if the Secretary of State is of the opinion that the appointment ought not to continue having regard to the probable duration and other circumstances of the want of qualification.
- (8) No appointment of a justice of the peace nor any act of a justice shall be invalidated by reason only of the fact that a justice of the peace so appointed or so acting does not meet the residential requirements mentioned in subsection (3) above, or does not comply with any condition imposed by the Secretary of State under subsection (5) above.
- (9) There shall be kept and maintained by the Secretary of State—
- (a) a record of all persons for the time being holding office as a justice of the peace ;
  - (b) the instruments of appointment (if any) of those persons;
  - (c) the instruments of removal (if any) of those who have held that office ; and
  - (d) the supplemental list provided for by section 15 below.
- (10) The Secretary of State shall cause to be transmitted to the clerk of the peace for each commission area a copy of any instrument appointing or removing a justice of the peace for that area in accordance with subsection (2) above and notification of the names of any justices who have been transferred to the supplemental list.
- (11) Subject to any express amendment or repeal made by this Act, any enactment passed or instrument made before the passing of this Act shall have effect on and after 16th May 1975 as if—
- (a) any reference to a person appointed justice by a commission of the peace or to a person being removed from a commission of the peace were a reference to his being appointed or removed from office in accordance with the provisions of this Act; and
  - (b) any reference to a supplemental list in connection with the commission of peace for any area were a reference to the supplemental list kept by virtue of this Act.

## **10 Existing justices and magistrates**

- (1) Subject to the provisions of this section, any person holding office as justice of the peace for any area immediately before 16th May 1975 by virtue of the entry of his name in any commission of the peace—
- (a) who resides in the area to which that commission relates shall, on and after that date, hold that office for the commission area in which he resides at that date;
  - (b) who does not so reside shall, on and after that date, hold that office for the commission area in which he resided at the time of his appointment under such commission.

- (2) Any person holding office as a magistrate or judge of police of a burgh immediately before 16th May 1975 shall, on and after that date, hold office as justice of the peace for the commission area in which the burgh was situated.
- (3) Any person holding office as justice of the peace for any commission area on or after 16th May 1975 by virtue of the provisions of subsection (1) or (2) above shall hold that office as if appointed in accordance with section 9(2) of this Act as a justice for that area.
- (4) Where the Secretary of State is satisfied in all the circumstances that it is expedient that any such person as is mentioned in subsection (1) above should hold that office for another commission area, he may so direct, and any such direction shall have effect, and shall be treated for the purposes of this Act, as an instrument appointing that person in accordance with the said section 9(2) to hold office for such commission area as is mentioned in the direction.
- (5) For the purposes of section 5 of the Licensing (Scotland) Act 1959 (election of members of licensing court etc.), a person who is, by virtue of subsection (1) or (2) above, to hold office as a justice for a commission area on and after 16th May 1975 shall be deemed to hold that office for that area between 16th April 1975 and 15th May 1975.

## **11 Ex officio justices**

- (1) Any person holding office as justice of the peace for any area immediately before 16th May 1975 by virtue of any other office for the time being held by him shall, on that date, cease to hold office as justice for that area, notwithstanding the provisions of any enactment or of any instrument in terms of which he holds that office.
- (2) Each local authority may nominate up to one quarter of their members to serve as ex officio justices for their area, and any person so nominated shall hold office as ex officio justice from the date on which the local authority intimate their nomination to the Secretary of State and shall continue as such for the period during which he remains a member of the authority and continues to retain the authority's nomination.
- (3) Subject to subsection (4) below, any person nominated to serve as an ex officio justice shall, before acting as such a justice, take the oath of allegiance and judicial oath in accordance with the Promissory Oaths Act 1868 and the Promissory Oaths Act 1871.
- (4) A person re-nominated to serve as an ex officio justice immediately after the expiry of a previous term as such shall not require to take again the oaths mentioned in subsection (3) above.
- (5) Each local authority shall intimate to the Secretary of State the date on which a person duly nominated under subsection (2) above ceases to be a member of the authority or on which his nomination is terminated by the authority.
- (6) A person duly nominated under subsection (2) above shall not be treated as having ceased to be a member of the local authority during any period when he is standing for re-election to that authority.
- (7) A person holding office as an ex officio justice by virtue of subsection (2) above shall hold office as if appointed in accordance with section 9(2) of this Act as a justice for the commission area concerned.

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- (8) A person holding office as an ex officio justice by virtue of subsection (2) above shall, in his capacity as a justice, not be elected under section 5(3) of the Licensing (Scotland) Act 1959 to serve as a member of a licensing court or court of appeal and shall not attend or vote at any meeting of justices to elect members of any such court.

## **12 Disqualification in certain cases of justices who are members of local authorities**

- (1) A justice of the peace who is a member of a local authority within the meaning of the Local Government (Scotland) Act 1973 shall not act as a member of a district court in any proceedings brought by or against, or by way of appeal from a decision of, the authority or any committee or officer of the authority.
- (2) For the purposes of the foregoing subsection—
- (a) any reference to a committee of a local authority includes a joint committee, joint board, joint authority or other combined body of which that authority is a member or on which it is represented; and
  - (b) any reference to an officer of a local authority refers to a person employed or appointed by the authority or a committee thereof in the capacity in which he is employed or appointed to act, but does not include a district prosecutor.

## **13 Disqualification of solicitor who is a justice**

- (1) Subject to the provisions of this section, it shall not be lawful for any solicitor who is a justice of the peace for any commission area, nor for any partner of his, nor for any member of his or his firm's staff, to act directly or indirectly as a solicitor in or in connection with any proceedings before—
- (a) a district court for that area ; or
  - (b) a licensing court or court of appeal for that area.
- (2) The disqualification imposed by the foregoing subsection shall not apply to a solicitor who is a justice of the peace for any area and whose name is entered on the supplemental list.
- (3) The disqualification imposed by subsection (1)(b) above shall not apply in relation to proceedings before a licensing court for a licensing division, being a division in which the solicitor does not ordinarily exercise any functions as a justice of the peace in a licensing court.

## **14 Courses for justices**

The Secretary of State may make schemes and provide courses for the instruction of justices of the peace, and it shall be the duty of the justices' committee of a commission area to implement and administer any such schemes in accordance with arrangements approved by the Secretary of State.

## **15 Supplemental list**

- (1) Subject to subsection (5) below, there shall be entered in the supplemental list the name of any justice of the peace who is of the age of 70 years or over.
- (2) The Secretary of State may direct that the name of a justice of the peace for any area shall be entered in the supplemental list if the Secretary of State is satisfied—

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- (a) that by reason of the justice's age or infirmity or other like cause it is expedient he shall cease to exercise judicial functions as a justice for the area; or
  - (b) that by reason of the circumstances existing in that area it is expedient that the justice should cease to exercise such functions and confine his functions to doing all or any of those acts as a justice mentioned in subsection (9) below; or
  - (c) that the justice declines or neglects to take a proper part in the exercise of his judicial or other functions; or
  - (d) that the justice declines or neglects to attend a course of instruction provided by virtue of section 14 of this Act, being a course suitable to his experience.
- (3) On a person's appointment as a justice of the peace for any area, the Secretary of State may direct that his name shall be entered in the supplemental list if that person is appointed a justice for that area on ceasing to be a justice for some other area (including any commission area within the meaning of the Administration of Justice Act 1973).
- (4) The name of a justice of the peace shall be entered in the supplemental list if he applies for it to be entered and the application is approved by the Secretary of State.
- (5) Nothing in subsections (1) to (4) above shall apply to a person holding office as stipendiary magistrate.
- (6) A person's name shall be removed from the supplemental list if he ceases to be a justice of the peace.
- (7) The Secretary of State may direct that the name of any person entered in the supplemental list, if not required to be so entered by virtue of subsection (1) above, shall be removed from that list.
- (8) Subject to the following subsections, a justice of the peace for any area, while his name is entered in the supplemental list, shall not, by reason of being a justice for that area, be qualified as a justice to do any act or to be a member of any committee or other body.
- (9) Subsection (8) above shall not preclude a justice from doing all or any of the following acts as a justice, that is to say—
  - (a) signing any document for the purpose of authenticating another person's signature;
  - (b) taking and authenticating by his signature any written declaration; and
  - (c) giving a certificate of facts within his knowledge or of his opinion as to any matter.
- (10) No act or appointment shall be invalidated by reason of the disqualification under subsection (8) above of the person acting or appointed.
- (11) Where immediately before 16th May 1975 a person's name is entered in the supplemental list kept in connection with any commission of the peace by virtue of section 4 of the Justices of the Peace Act 1949, his name shall be treated as included in the supplemental list for Scotland under this section.

## **16 Justices' committees**

- (1) There shall be constituted in accordance with this section a justices' committee for every commission area which shall—

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- (a) assist and advise the local authority concerned on any matter relating to the administration of the district court;
  - (b) approve the duty rota of justices ;
  - (c) secure that adequate training arrangements for justices are made for their area in accordance with a scheme made under section 14 above, and that these arrangements are adhered to by justices ;
  - (d) take such other steps as appear to them to be appropriate in order to secure the effective administration of justice in the district court.
- (2) The clerk of the peace for a commission area shall, before 16th June 1975 and during the month preceding 16th June in every following year, call a meeting of the justices for that area, at such place and time as he may consider convenient, to elect from their number a justices' committee.
  - (3) The Secretary of State may prescribe the upper and lower limits of the number of members of which a committee in any commission area may be composed.
  - (4) A stipendiary magistrate appointed to any commission area shall, by virtue of his office, be a member of the committee for that area.
  - (5) The members of a committee shall elect from among themselves a chairman, who shall preside at their meetings.
  - (6) The clerk of the peace for a commission area shall, by virtue of his office, be secretary to the committee for that area.
  - (7) A justices' committee may regulate their own procedure.

## **17 Allowances**

- (1) Subject to the provisions of this section, a justice of the peace shall be entitled to receive payments at the prescribed rates by way of travelling allowance or subsistence allowance where expenditure on travelling or, as the case may be, on subsistence is necessarily incurred by him for the purpose of enabling him to perform any of his duties as a justice, and to receive payments at the prescribed rate by way of financial loss allowance where for that purpose there is incurred by him any other expenditure to which he would not otherwise be subject or there is suffered by him any loss of earnings or of benefit under the National Insurance Acts 1965 to 1973 which he would otherwise have made or received.
- (2) For the purposes of this section, the duties of a justice shall not include any duties performed as a member of a licensing court or a court of appeal.
- (3) A justice attending a meeting of justices authorised by or under any enactment or approved by the Secretary of State for the purposes of this section shall be deemed to be acting in the performance of his duties as a justice.
- (4) For the purposes of this section, a justice attending a course of instruction provided in accordance with arrangements made by the Secretary of State or by a justices' committee, by virtue of section 14 of this Act, or such other course as may be approved by the Secretary of State, shall be deemed to be acting in the performance of his duties as a justice.
- (5) A justice shall not be entitled to any payment under this section in respect of any duties if, in respect of those duties, a payment of the like nature may be paid to him under

arrangements made apart from this section or if regulations provide that this section shall not apply.

- (6) An allowance payable under this section to a justice for any area in respect of his duties as such shall be paid by the local authority concerned.
- (7) Regulations may make provision as to the manner in which this section is to be administered and, in particular—
  - (a) for prescribing the rates of allowances and the forms to be used and the particulars to be provided for the purpose of claiming payment thereof;
  - (b) for avoiding duplication between payments under this section and under other arrangements where expenditure is incurred for more than one purpose, and otherwise for preventing abuse.
- (8) Regulations for the purposes of this section shall be made by the Secretary of State by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) The provisions of this section do not apply to stipendiary magistrates.

#### *Clerks of the peace*

### **18 Appointment and duties of clerk of peace**

- (1) Any person who immediately before 16th May 1975 holds office as clerk of the peace for any area shall, on that date, cease to hold that office, notwithstanding the provisions of any enactment or of any instrument in terms of which any person holds that office.
- (2) On and after that date, the duties of clerk of the peace shall, subject to subsection (3) below, be performed in each commission area by an officer of the local authority concerned, and it shall be the duty of every such authority to appoint and employ, whether on a full-time or part-time basis, an officer to hold the office of clerk of the peace for their area for the purpose of performing those duties.
- (3) Notwithstanding subsection (2) above, where under an agreement an officer of a regional council is placed at the disposal of a district council for the purposes of the performance of their duties under that subsection, that officer may perform the duties of clerk of the peace for the commission area comprising their district.
- (4) It shall be the duty of the clerk of the peace for any commission area—
  - (a) to advise and assist the justices in the performance of their functions;
  - (b) to arrange meetings of the justices for that area ;
  - (c) to cause to be kept a record of—
    - (i) those for the time being holding office as a justice for that area, and
    - (ii) those having held that office who have ceased to do so,and to include in that record a copy of any instrument appointing or removing a justice for that area in accordance with section 9(2) of this Act;
  - (d) to cause to be kept a record of the justices in that area whose names are entered in the supplemental list;
  - (e) to notify the Secretary of State of all deaths and resignations of justices in that area and of any justice in that area who has become incapable of exercising any function as a justice or who has ceased to meet the residential requirements mentioned in section 9(3) above ;

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- (f) to carry out such further duties as may be prescribed.