

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

Part 4 – Jp Courts and Jps

Appointment of JPs etc.

Section 71: Removal of JPs

392. This section deals with the circumstances in which a JP can be removed from office. At present, section 9A of the 1975 Act deals with the removal of a full JP from office.
393. In keeping with the existing law, subsections (1) and (2) provide that a JP may only be removed from office during the five year term of appointment by order of a tribunal appointed by the Lord President of the Court of Session.
394. Subsection (6) makes it clear that a tribunal appointed by the Lord President of the Court of Session can order a JP's removal on only a limited number of specified grounds. Subsection (6) also states that the tribunal's investigations are to be carried out at the instance of the sheriff principal for the sheriffdom to which the JP is appointed. This represents a change from section 9A(2) of the 1975 Act, which provides that the tribunal's investigation is to be carried out at the request of the Scottish Ministers.
395. The combined effect of subsection (4)(a), subsection (5) and subsection (6) is to ensure that the sheriff principal who chairs the tribunal and sheriff principal who requests the tribunal's investigation will be different persons. Under section 9A(2) and (4) of the 1975 Act, tribunals are requested by Scottish Ministers and chaired (unless the Lord President decides otherwise) by the sheriff principal of the JP's sheriffdom. Under subsections (4)(a) and (6) of this section, tribunals will be instigated by the sheriff principal of the sheriffdom to which the JP is appointed, and chaired by a different sheriff principal.
396. Subsection (6)(b) states that a possible ground for removing a JP is that the JP has inadequately performed the functions of a JP. As with the provision at section 70(3)(a), it is anticipated that the tribunal may make this finding if, for example, a JP's appraisals had demonstrated that the JP was not performing adequately as a JP. It is envisaged that "inadequate performance" will constitute a lower test than that of "inability" as a ground for removal.
397. Subsections (7) and (8) allow the Scottish Ministers to make provision by order regarding the tribunal. It is likely that orders regarding the conduct of the tribunal will be similar to the existing Justices of the Peace (Tribunal) Regulations (Scotland) 2001, although they will take account of the differences, as outlined above, between the provisions of this Act and those of the 1975 Act which relate to tribunals.

*These notes relate to the Criminal Proceedings etc. (Reform) (Scotland)
Act 2007 (asp 6) which received Royal Assent on 22 February 2007*

398. Subsection (7)(b) allows any order made by Scottish Ministers to authorise a specific body or class of persons to recommend to a sheriff principal that s/he instigate the establishment of a tribunal. This means that, for example, any committee established to oversee the appraisal of JPs in a sheriffdom under section 69(3) of this Act could also be authorised to recommend to a sheriff principal the instigation of a tribunal in order to investigate whether someone has inadequately performed their functions as a JP.
399. Subsection (9) makes it clear that anybody who is removed from office as a JP is ineligible for reappointment as a JP. This provision reflects the terms of section 9A(10) of the 1975 Act.