Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

PART 4

JP COURTS AND JPS

Appointment of JPs etc.

67 Appointment of JPs

(1) Justices of the peace are to be appointed by name on behalf of and in the name of Her Majesty by instrument under the hand of the Scottish Ministers.

(2) A JP is to be appointed for a sheriffdom.

(3) An appointment of a JP is to be for a term of 5 years.

(4) However, a JP—
- (a) may resign from office by giving notice to the Scottish Ministers,
- (b) ceases to hold office on reaching the age of 70 years.

(5) In making appointments of JPs, except—
- (a) appointments under subsection (7)(b),
- (b) reappointments under section 70(2),

the Scottish Ministers must comply with such provision as to procedure and consultation as they may by order make.

(6) Provision in an order under subsection (5) may, in particular, relate to—
- (a) the participation in the appointments process of persons who are not—
  - (i) legally qualified,
  - (ii) involved in the administration of the law or of government,
- (b) the manner in which vacancies in office are publicised.

(7) A person who, on the coming into force of this section, holds the office of justice of the peace under the 1975 Act—

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(a) ceases to hold that office under that Act on such day as the Scottish Ministers may by order specify for the purpose of this subsection, and

(b) is, on the day so specified, to be appointed as a JP under subsection (1) unless the person declines the appointment.

(8) Subsection (7)(b) applies only in relation to the full justices (within the meaning given by section 9 of the 1975 Act) whose names were included in a duty rota of justices (that is, such a rota as approved under section 16(1)(b) of that Act) for any time during the 12 months ending on the day specified as mentioned in that subsection.

[[F1](9) Where a person is, by virtue of subsection (7)(b), appointed as a JP under subsection (1), an oath previously taken by the person as required by section 6 of the Promissory Oaths Act 1868 (c. 72) (and in accordance with Promissory Oaths Act 1871 (c. 48)) in relation to the holding by the person of the office of justice of the peace under the 1975 Act also counts in relation to the person's appointment as a JP under subsection (1).]

Textual Amendments

F1 S. 67(9) added (10.12.2007) by The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Incidental, Supplemental and Consequential Provisions) Order 2007 (S.S.I. 2007/540), **art. 5**

Commencement Information

I1 S. 67 wholly in force at 10.12.2007; s. 67 not in force at Royal Assent, see s. 84; s. 67(5)(6) in force at 23.4.2007 by S.S.I. 2007/250, **art. 3**; s. 67(1)-(4)(7)(8) in force at 10.12.2007 by S.S.I. 2007/479, **art. 3**, Sch.

68 Conditions of office

(1) A person is not to be appointed as a JP for a sheriffdom, except where eligible for reappointment under section 70(1)(a), unless the person ordinarily resides in the sheriffdom or within 15 miles of it.

(2) Appointments of JPs are to be made subject to conditions which—

(a) by reference to the JP court business (and business to which signing functions relate) in the sheriffdom, relate to availability to exercise judicial (and signing) functions commensurate to that business,

(b) by reference to an order made under section 69, relate to training and appraisal.

(3) For the purpose of subsection (2)(a)—

(a) the JP court (or signing) business,

(b) any need for availability to exercise judicial (or signing) functions in connection with that business,

means the likely amount as assessed by the sheriff principal.

(4) The Scottish Ministers are, in accordance with a scheme devised by them, to pay allowances to JPs.

(5) A scheme under subsection (4) may, in particular—

(a) by reference to functions, specify rates or amounts of allowances,

(b) specify circumstances in which—

(i) allowances are not payable,

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(ii) a rate or amount of allowances payable is reduced,

(c) provide for procedure for claiming and paying allowances.

Commencement Information

I2 S. 68 wholly in force at 22.2.2010; s. 68 not in force at Royal Assent, see s. 84; s. 68(1)-(3) in force at 10.12.2007 by S.S.I. 2007/479, **art. 3**, Sch.; s. 68(4)(5) in force for certain purposes at 10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009, 14.12.2009 and 22.2.2010 otherwise by S.S.I. 2008/42, **art. 3**, Sch.; S.S.I. 2008/192, **art. 3**, Sch.; S.S.I. 2008/329, **art. 3**, Sch.; S.S.I. 2008/362, **art. 3**, Sch.; S.S.I. 2009/432, **art. 3(1)(2)**, Sch. 1, Sch. 2

69 Training and appraisal of JPs

(1) The **[**[F2]Lord President of the Court of Session**]** may by order make provision as to—

(a) training arrangements for JPs and future JPs, and

(b) appraisal of JPs.

(2) [F3]. . . . . .

(3) An order under subsection (1) may, in particular, establish committees to—

(a) secure— adopt or develop suitable—

(i) training schemes or courses of instruction,

(ii) appraisal systems,

(b) (i) the provision of such schemes or courses,

(ii) the application of such systems,

(c) provide advice about training and appraisal.

(4) [F3]. . . . . .

Textual Amendments

F2 Words in s. 69(1) substituted (1.4.2010) by Judiciary and Courts (Scotland) Act 2008 (asp 6), **ss. 42(2)**, 76; S.S.I. 2010/39, **art. 2**, Sch. (with art. 5)

F3 S. 69(2)(4) repealed (1.4.2010) by Judiciary and Courts (Scotland) Act 2008 (asp 6), **ss. 42(3)**, 76; S.S.I. 2010/39, **art. 2**, Sch. (with art. 5)

70 Reappointment of JPs

(1) A person—

(a) whose 5-year term of appointment as a JP has expired, or

(b) who has resigned from office as a JP,

is eligible for reappointment.

(2) And a person who is eligible under subsection (1)(a) is to be reappointed except where—

(a) the person declines the reappointment,

(b) the person is aged 69 years or over,

(c) the person is disqualified under section 73,

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(d) the sheriff principal for the sheriffdom for which the person was appointed as a JP makes a recommendation to the Scottish Ministers against the reappointment.

(3) A recommendation for the purpose of subsection (2)(d) may be made—

(a) on the ground that the JP has inadequately performed the functions of a JP,

(b) on the ground that the JP has, without good reason, failed to meet a condition imposed under section 68(2),

(c) on the ground that the JP does not ordinarily reside in the sheriffdom of appointment or within 15 miles of it,

(d) on such other ground as the sheriff principal considers relevant.

[[F4](4) Where a person is reappointed as a JP under subsections (1)(a) and (2) (including on a second or subsequent occasion), an oath–

(a) previously taken by the person as required by section 6 of the Promissory Oaths Act 1868 (and in accordance with the Promissory Oaths Act 1871) in relation to the person's appointment as a JP under subsection (1) of section 67, or

(b) which by virtue of subsection (9) of section 67 counts in relation to the person's appointment as a JP under subsection (1) of that section,

also counts in relation to the person's reappointment as a JP by virtue of subsections (1)(a) and (2).**]**

Textual Amendments

F4 S. 70(4) added (10.12.2007) by The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Incidental, Supplemental and Consequential Provisions) Order 2007 (S.S.I. 2007/540), **art. 6**

71 Removal of JPs

(1) A JP may be removed from office by, and only by, an order made under subsection (2).

(2) A tribunal appointed by the Lord President of the Court of Session may order the removal of a JP from office.

(3) The tribunal is to consist of three members, namely—

(a) a sheriff principal,

(b) a person who is, and has been for at least 10 years, a solicitor or advocate,

(c) another person.

(4) The sheriff principal member of the tribunal must not be—

(a) the sheriff principal for the sheriffdom for which the JP is appointed,

(b) a temporary sheriff principal.

(5) The sheriff principal member of the tribunal is to chair the tribunal.

(6) The tribunal may make an order under subsection (2) only if, after investigation carried out at the instance of the sheriff principal for the sheriffdom for which the JP is appointed, it finds that—

(a) the JP is—

(i) unfit for that office, or

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(ii) unfit for performing judicial functions,

by reason of inability, neglect of duty or misbehaviour,

(b) the JP has inadequately performed the functions of a JP,

(c) the JP has, without good reason, failed to meet a condition imposed under section 68(2).

(7) The **[**[F5]Court of Session may by act of sederunt**]** make provision—

(a) as respects the tribunal,

(b) authorising a specified body or class of persons to recommend (by reference to information provided with the recommendation) to a sheriff principal that an investigation for the purposes of subsection (6) be carried out.

(8) Provision in an **[**[F6]act of sederunt**]** under subsection (7)(a) may, in particular—

(a) prescribe the tribunal's procedures,

(b) enable the tribunal, at any time during an investigation, to suspend a JP from office or from acting as a JP.

(9) A person who is removed from office as a JP is ineligible for reappointment as a JP.

Textual Amendments

F5 Words in s. 71(7) substituted (1.4.2010) by Judiciary and Courts (Scotland) Act 2008 (asp 6), **ss. 41(2)**, 76; S.S.I. 2010/39, **art. 2**, Sch. (with art. 5)

F6 Words in s. 71(8) substituted (1.4.2010) by Judiciary and Courts (Scotland) Act 2008 (asp 6), **ss. 41(3)**, 76; S.S.I. 2010/39, **art. 2**, Sch. (with art. 5)

72 Disqualification of solicitors who are JPs

(1) A solicitor who is a JP is disqualified from acting (whether directly or indirectly) as a solicitor in, or in connection with, any proceedings before a JP court in the sheriffdom for which the appointment as JP is made.

(2) A disqualification of a solicitor under subsection (1)—

(a) extends to any member of staff of the solicitor,

(b) where the solicitor is a partner of a partnership or is a member of a limited liability partnership, extends to any—

(i) member of staff of the partnership,

(ii) any other partner or (as the case may be) member of the partnership.

73 Disqualification where sequestration or bankruptcy

(1) A person is disqualified from being appointed as, or acting as, a JP if—

(a) the person's estate has been sequestrated in Scotland, or

(b) the person has been adjudged bankrupt outwith Scotland.

(2) Where a person is disqualified under subsection (1)(a), the disqualification ceases if—

(a) the award of sequestration is recalled or reduced, or

(b) the person is discharged by virtue of the Bankruptcy (Scotland) Act 1985 (c. 66).

(3) Where a person is disqualified under subsection (1)(b), the disqualification ceases if—

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(a) the adjudication of bankruptcy against the person is annulled, or
(b) the person is discharged.

74 Appointment of stipendiary magistrates

(1) Stipendiary magistrates are to be appointed by name on behalf of and in the name of Her Majesty by instrument under the hand of the Scottish Ministers.

(2) A stipendiary magistrate is to be appointed for a sheriffdom.

(3) But a stipendiary magistrate may be appointed only if the Scottish Ministers, on the advice of a sheriff principal, consider that the appointment is necessary or expedient for the purposes of the efficient **[**[F7]disposal of business in**]** any or all of the JP courts in that sheriff principal's sheriffdom.

(4) A stipendiary magistrate may be appointed as a full-time or part-time magistrate.

(5) A person is not to be appointed as a stipendiary magistrate unless the person is, and has been for at least 5 years, a solicitor or advocate.

(6) A stipendiary magistrate may, by reason of holding that office—
(a) exercise judicial and signing functions in the same manner as a JP, and
(b) use the title of office of JP in relation to the exercise of those functions.

(7) An appointment of—
(a) a full-time stipendiary magistrate is to be without limit of time,
(b) a part-time stipendiary magistrate is to be for a term of 5 years.

(8) However, a stipendiary magistrate—
(a) may resign from office by giving notice to the Scottish Ministers,
(b) ceases to hold office on reaching the age of 70 years.

(9) In making appointments of stipendiary magistrates, except—
(a) appointments under subsection (12)(b),
(b) reappointments by virtue of section 75(3)(b) as it relates to section 70(2),

the Scottish Ministers must comply with such provision as to procedure and consultation as they may by order make.

(10) Provision in an order under subsection (9) may, in particular, relate to—
(a) the participation in the appointments process of persons who are not—
(i) legally qualified,
(ii) involved in the administration of the law or of government,
(b) the manner in which vacancies in office are publicised.

(11) In making an appointment of a part-time stipendiary magistrate, the Scottish Ministers must have regard to the desirability of the magistrate having the opportunity of sitting on not fewer than 20 days, and not more than 100 days, in each successive period of 12 months beginning with the day of appointment.

(12) A person who, on the coming into force of this section, holds the office of stipendiary magistrate under the 1975 Act—
(a) ceases to hold that office under that Act on such day as the Scottish Ministers may by order specify for the purpose of this subsection, and

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(b) is, on the day so specified, to be appointed as a stipendiary magistrate under subsection (1) unless the person declines the appointment.

Textual Amendments

F7 Words in s. 74(3) substituted (1.4.2010) by Judiciary and Courts (Scotland) Act 2008 (asp 6), **ss. 58(3)**, 76; S.S.I. 2010/39, **art. 2**, Sch.

Commencement Information

I3 S. 74 wholly in force at 22.2.2010; s. 74 not in force at Royal Assent, see s. 84; s. 74 in force for certain purposes at 10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009, 14.12.2009 and 22.2.2010 otherwise by S.S.I. 2008/42, **art. 3**, Sch.; S.S.I. 2008/192, **art. 3**, Sch.; S.S.I. 2008/329, **art. 3**, Sch.; S.S.I. 2008/362, **art. 3**, Sch.; S.S.I. 2009/432, **art. 3(1)(2)**, Sch. 1, Sch. 2

VALID FROM 28/03/2011

[F8 74A Exercise of functions by stipendiary magistrates

(1) A stipendiary magistrate may, by reason of holding that office—
(a) exercise the same judicial and signing functions as are exercisable by a JP,
(b) do so in the same manner as a JP (including by using the title of office of JP).

(2) For the purpose of subsection (1)—
(a) the acts of a stipendiary magistrate are valid as if the magistrate were a JP,
(b) it does not matter if an enactment from which a JP derives authority to act in a specific case does not bear to give equivalent authority to a stipendiary magistrate.

(3) However, subsections (1) and (2) are subject to any provision of an enactment which expressly excludes a stipendiary magistrate from acting in a specific case.

(4) This section does not limit any other functions of a stipendiary magistrate (in particular, those exercisable in that capacity only).]

Textual Amendments

F8 S. 74A inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 203, 206, **Sch. 7 para. 81**; S.S.I. 2011/178, art. 2, Sch.

75 Stipendiary magistrates: further provision

(1) Stipendiary magistrates are entitled to such remuneration, allowances and pension provision as the Scottish Ministers may determine.

(2) The Scottish Ministers are to pay the expenditure arising in consequence of subsection (1).

(3) In relation to stipendiary magistrates—
(a) section 68(2)(a) applies,
(b) section 70, except subsection (3)(a) and (c), applies,

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(c) section 71, except subsection (6)(b), applies,

(d) sections 72 and 73 apply,

as if a stipendiary magistrate were a JP (and references in those sections to JPs are to be read accordingly).

Commencement Information

I4 S. 75 wholly in force at 22.2.2010; s. 75 not in force at Royal Assent, see s. 84; s. 75 in force for certain purposes at 10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009, 14.12.2009 and 22.2.2010 otherwise by S.S.I. 2008/42, **art. 3**, Sch.; S.S.I. 2008/192, **art. 3**, Sch.; S.S.I. 2008/329, **art. 3**, Sch.; S.S.I. 2008/362, **art. 3**, Sch.; S.S.I. 2009/432, **art. 3(1)(2)**, Sch. 1, Sch. 2

76 Signing functions

(1) A person who is a JP or a stipendiary magistrate may not exercise the judicial functions of office (but may exercise signing functions) if the person is—

(a) a member of a local authority,

(b) a member of the Scottish Parliament,

(c) a member of the House of Commons or the House of Lords.

(2) A member of a local authority, despite not being a JP, may exercise signing functions in the same manner as a JP.

(3) Where a member of a local authority exercises a signing function, the document, declaration or certificate concerned has effect—

(a) as if that function were exercised by a JP,

(b) even where that document, declaration or certificate requires (or bears to require) to be signed, authenticated or given by a JP,

if the words “member of a local authority” appear on it adjacent to the member's signature.

(4) Where in exercising a signing function a stipendiary magistrate uses the title of office of JP, the document, declaration or certificate concerned has effect as if the magistrate were a JP.

(5) A JP, stipendiary magistrate or member of a local authority may not charge a fee for exercising signing functions.

(6) In this Part, “signing functions” are—

(a) signing any document for the purpose of authenticating another person's signature,

(b) taking and authenticating by signature any written declaration,

(c) giving a signed certificate of—

(i) facts within the giver's knowledge, or

(ii) the giver's opinion as to any matter.

77 Records and validity of appointment etc.

(1) The Scottish Ministers are to maintain (in such form as they consider appropriate)—

(a) a list of all persons holding office as a JP or stipendiary magistrate,

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(b) a record of—

(i) the instruments of appointment of those persons,

(ii) any order removing a JP or stipendiary magistrate from office.

(2) The Scottish Ministers are to send to the clerk of each sheriff court a copy of the list and record mentioned in subsection (1) so far as relating to JPs and stipendiary magistrates appointed for the sheriffdom containing that sheriff court.

(3) Where a sheriff clerk is sent a copy of something under subsection (2), the clerk is to make it available (in such form as the clerk considers appropriate) for public inspection.

(4) No appointment of a JP, nor any act of a JP, is invalidated solely because—

(a) provision made under section 67(5) is not complied with,

(b) the residential requirement referred to in section 68(1) is not met, or

(c) a condition imposed under section 68(2) is not met.

(5) No appointment of a stipendiary magistrate, nor any act of a stipendiary magistrate, is invalidated solely because—

(a) provision made under section 74(9) is not complied with, or

(b) a condition imposed by virtue of section 75(3)(a) is not met.

Commencement Information

I5 S. 77 wholly in force at 22.2.2010; s. 77 not in force at Royal Assent, see s. 84; s. 77(1)(4) in force at 10.12.2007 by S.S.I. 2007/479, **art. 3**, Sch.; s. 77(2)(3)(5) in force for certain purposes at 10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009, 14.12.2009 and 22.2.2010 otherwise by S.S.I. 2008/42, **art. 3**, Sch.; S.S.I. 2008/192, **art. 3**, Sch.; S.S.I. 2008/329, **art. 3**, Sch.; S.S.I. 2008/362, **art. 3**, Sch.; S.S.I. 2009/432, **art. 3(1)(2)**, Sch. 1, Sch. 2

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