



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

2007 asp 6

## PART 4

### JP COURTS AND JPS

#### *Establishing JP courts etc.*

#### **59 Establishing JP courts**

- (1) It is the duty of the Scottish Ministers to secure the adequate and efficient provision of courts of summary criminal jurisdiction.
- (2) The Scottish Ministers may by order establish courts of summary criminal jurisdiction to be known as justice of the peace courts.
- (3) JP courts are to be established by reference to a particular sheriff court district.
- (4) There is to be at least one JP court located in every sheriff court district except where, in relation to a district, the Scottish Ministers determine that a JP court is not necessary.
- (5) In determining for the purposes of subsection (4) whether a JP court is necessary, the Scottish Ministers must have regard to—
  - (a) the amount of summary criminal court business in the district, and
  - (b) the capacity of—
    - (i) other JP courts in the same sheriffdom,
    - (ii) the sheriff courts in that sheriffdom.
- (6) The Scottish Ministers may by order provide for—
  - (a) the relocation of a JP court,
  - (b) the disestablishment of a JP court.
- (7) Before making an order under subsection (2) or (6), the Scottish Ministers must consult the sheriff principal for the sheriffdom in which the JP court is, or is to be, located.
- (8) This section—

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*Status: This is the original version (as it was originally enacted).*

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- (a) is without prejudice to section 1 (organisation and administration of sheriff courts) of the 1971 Act, and
- (b) does not affect the operation of the sheriff court.

(9) In this Part—

- a “district court” is a court of that name established under the 1975 Act,
- a “JP court” is a justice of the peace court,
- a “JP” is a justice of the peace.

## **60 Making provision for JP courts**

(1) The Scottish Ministers—

- (a) must make such provision, including provision—
  - (i) as to organisation and administration, and
  - (ii) for suitable and sufficient premises and facilities,
 as is necessary for the purposes of JP courts,
- (b) may make such other provision as is expedient in connection with those purposes.

(2) Provision under subsection (1)(a)(ii)—

- (a) may, for the purposes of a JP court, require the local authority for the place in which the court is (or is to be) located to—
  - (i) let (or sub-let) premises controlled by the local authority to the Scottish Ministers, or
  - (ii) make such premises available for use,
- (b) may be effected through arrangements made in agreement with a local authority or other persons.

(3) A requirement under subsection (2)(a)(i) is subject to agreement—

- (a) between the Scottish Ministers and the local authority as to the rent payable under, and as to the other terms of, the lease, and
- (b) with any third party who has an interest in the premises.

(4) A requirement under subsection (2)(a)(ii) is subject to—

- (a) reimbursing the authority for any reasonable expenses incurred by it in respect of heating, lighting and cleaning in relation to the use of the premises for the purposes of the JP court, and
- (b) allowing the premises to continue to be used for any business normally conducted there, or for any business for which it may be used under a local enactment (whether a local Act or otherwise), without adversely affecting that business.

(5) The Scottish Ministers may allow premises used for the purposes of a JP court to be used by other persons, subject to such conditions as the Scottish Ministers may impose for the purpose of ensuring that the business of the JP court is not adversely affected.

(6) Any dispute arising from the operation of subsections (2) to (5), which the parties are unable to resolve, is to be determined by an arbiter appointed—

- (a) by agreement of the parties, or
- (b) in the absence of such agreement, by the Lord President of the Court of Session on the application of a party.

- (7) A JP court is, having regard to the desirability of minimising the expense and inconvenience caused to persons involved (whether as parties or witnesses) in proceedings before the court, to sit at a suitable place.

## **61 Administration of JP courts**

- (1) A sheriff principal has responsibility for the efficient administration of any JP court located in that sheriff principal's sheriffdom.
- (2) A sheriff principal may, for the purpose of ensuring the efficient administration of any JP court in that sheriff principal's sheriffdom, give directions of an administrative character to any persons (except the Scottish Ministers) involved in the administration of the JP court.
- (3) The Scottish Ministers may, for the purpose of ensuring the efficient administration of the JP courts, give directions of an administrative character to any persons involved in the administration of any or all of the JP courts.
- (4) Before giving directions under subsection (3) to a sheriff principal, the Scottish Ministers must consult that sheriff principal.
- (5) A person to whom directions are given under this section must comply with the directions.

## **62 Area and territorial jurisdiction of JP courts**

- (1) A JP court has territorial jurisdiction in respect of offences committed within—
- (a) the sheriff court district in which it is located, and
  - (b) any other district in the same sheriffdom.
- (2) Without prejudice to subsection (1)(b), it is competent for proceedings for an offence committed in one district in a sheriffdom to be taken in a JP court in any other district in the sheriffdom.
- (3) Sections 9 and 10 of the 1995 Act include further provision in relation to the territorial jurisdiction of JP courts.
- (4) A JP or stipendiary magistrate may exercise the judicial functions of office at any place within the sheriffdom for which the JP or (as the case may be) magistrate is appointed.
- (5) It is also competent (in the exercise of judicial functions) for a JP or stipendiary magistrate to sign, at any other place in Scotland, any—
- (a) warrant, judgment or interlocutor, or
  - (b) other document,
- relating to criminal proceedings within that sheriffdom.
- (6) A JP or stipendiary magistrate may exercise signing functions at any place in Scotland.
- (7) The competence of a JP or stipendiary magistrate under subsections (4) and (5) extends to competence to—
- (a) exercise the functions mentioned in those subsections for the purposes of any remaining district court for an area wholly or partly within the sheriffdom for which the JP or (as the case may be) stipendiary magistrate is appointed, and
  - (b) do so at any place within the area of that district court.

- (8) Any reference in this Act, the 1995 Act or any other enactment to the area of a JP court means the sheriff court district in which it is located.

### **63 Constitution and powers etc. of JP courts**

- (1) A JP court has competence, subject to sections 6 and 7 of the 1995 Act (which include provision as to the constitution and powers of JP courts), as respects summary proceedings for offences.
- (2) The Scottish Ministers may by order amend section 6(2) of the 1995 Act so that it provides that a JP court (when not constituted by a stipendiary magistrate) is to be constituted by one JP only.
- (3) Each JP court is to have a clerk of the court.
- (4) The clerk of a JP court is to be a solicitor or advocate.
- (5) The clerk of a JP court—
- (a) except on occasions when a stipendiary magistrate presides, is to act as legal adviser to the court, and
  - (b) has such other functions as the Scottish Ministers may confer.
- (6) Each JP court is to have such staff as is necessary for the efficient administration of the court.

### **64 Abolition of district courts**

- (1) For the purpose mentioned in subsection (2), the Scottish Ministers may by order—
- (a) provide for any district court to be disestablished,
  - (b) impose, in relation to the disestablishment, specific requirements on the local authority responsible for the court.
- (2) The purpose is that, by the end of a period determined by the Scottish Ministers, the district courts (taken as a whole) cease to exist.
- (3) Before making an order under subsection (1), the Scottish Ministers must consult—
- (a) the sheriff principal for the sheriffdom in which the district court is located, and
  - (b) the local authority responsible for the court.
- (4) The Scottish Ministers may by order repeal any or all of the provisions of the 1975 Act to such extent as they consider to be appropriate for the purposes of or in connection with the provisions of this Part.
- (5) The Scottish Ministers may by order provide for the application for the purpose of the operation of any remaining district courts of any provisions of the 1995 Act, or any other enactment, which refer to JP courts.
- (6) The provisions of—
- (a) the 1975 Act for the time being in force,
  - (b) the 1995 Act, or any other enactment, so far as applying in relation to any remaining district courts,
- have effect with or subject to such modifications as the Scottish Ministers may by order make for the purpose of the operation of any remaining district courts.

- (7) Any function of any remaining district court (including as referable to jurisdiction or powers) exercisable by virtue of—
- (a) a provision of the 1975 Act (including as modified under subsection (6)(a) or as affected by repeal by or under this Act),
  - (b) a provision of the 1995 Act (including as applied under subsection (5), as modified under subsection (6)(b) or as affected by repeal by or under this Act),
  - (c) a provision of any other enactment (including as modified under subsection (6)(b) or as affected by repeal by or under this Act),
- is subject to such provision as the Scottish Ministers may by order make for the purpose of the operation of any remaining district courts.
- (8) Any function of a local authority under a provision of the 1975 Act for the time being in force (including as modified under subsection (6)(a)) is subject to any requirements imposed under subsection (1)(b).

## **65      Transfer of staff and property**

- (1) An order under section 64(1) may include provision by reference to a scheme made (or to be made) under subsection (2).
- (2) The Scottish Ministers must make a scheme for the transfer to the employment of the Scottish Administration of clerks, assessors and other staff of the district court to which the order applies.
- (3) A scheme under subsection (2) may apply to—
- (a) all, or any description of, staff,
  - (b) an individual member of staff.
- (4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#)) apply to any transfer of staff by virtue of a scheme made under subsection (2) whether or not they would apply apart from this subsection.
- (5) An order under section 64(1) may include provision for the transfer to, and vesting in, the Scottish Ministers of—
- (a) property (including rights)—
    - (i) of the local authority responsible for the district court to which the order applies, and
    - (ii) which is used (or exercised) for the time being for or in connection with the operation or administration of that district court,
  - (b) liabilities of that local authority deriving from the operation or administration of that district court.
- (6) Provision—
- (a) in a scheme under subsection (2),
  - (b) under subsection (5),
- may specify the extent to which the transfer is (or is to be) made.
- (7) Subsection (5) has effect despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities to which it relates.

- (8) A certificate issued by the Scottish Ministers that any property or liability has (or has not) been transferred under subsection (5) is conclusive evidence of that matter.

## **66 Transitional arrangements for proceedings**

- (1) Where a district court is disestablished by virtue of section 64(1)—
- (a) any proceedings which were instituted in the district court, but which have not been completed when it is disestablished, continue in the appointed JP court as if instituted there,
  - (b) the cases involved are to be heard and disposed of as if the appointed JP court always had jurisdiction for the proceedings, and
  - (c) any relevant—
    - (i) verdict, sentence, order or other determination, and
    - (ii) complaint, notice, citation, warrant or other document,has effect accordingly.
- (2) For the purposes of subsection (1), the clerk of the district court must transfer to the clerk of the appointed JP court such records, productions and other documents relating to the proceedings as are in the district court clerk's possession.
- (3) Further, the clerk of the district court must transfer to the clerk of the appointed JP court such records, productions and other documents relating to recent proceedings as are in the district court clerk's possession.
- (4) For the purposes of subsection (3), proceedings are recent if they were completed not more than 5 years before the date on which the relevant district court is disestablished.
- (5) The sheriff principal for the sheriffdom in which a district court is located may determine which is the appointed JP court for the purposes of the application of this section in relation to that district court.
- (6) Before making a determination under subsection (5) which would have the effect of transferring proceedings to another sheriffdom, the sheriff principal must consult the sheriff principal for that other sheriffdom.