



# District Courts (Scotland) Act 1975

## 1975 CHAPTER 20

An Act to make provision as respects district courts and justices of the peace in Scotland, to amend sections 28 and 29 of the Licensing (Scotland) Act 1959; and for connected purposes. [27th March 1975]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### DISTRICT COURTS

#### **1 Abolition of existing inferior courts and establishment of district courts**

- (1) On 16th May 1975 the inferior courts in Scotland existing immediately before that date (in this Act referred to as " the existing courts ") shall cease to exist, and on that date there shall be established, in accordance with the provisions of this Act, a district court for each commission area except in the case of a commission area in respect of which the Secretary of State otherwise directs, having regard to the likely lack of business for such a court.

In this subsection, " inferior courts " means all justice of the peace courts, quarter sessions, burgh courts, police courts, and the court of the bailie of the river and firth of Clyde.

- (2) On and after that date, all functions of burgh magistrates, not otherwise provided for, shall be exercisable by a justice of the peace.
- (3) Where proceedings were instituted before that date in any existing court and those proceedings have not been completed by that date, then, for the purpose of enabling those proceedings to be continued on and after that date, and for preserving in other respects the continuity of the administration of justice—

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- (a) the district court having jurisdiction in the area where the proceedings were instituted shall be treated as succeeding to, and being the same court as, the existing court concerned, and any verdict, sentence, order, complaint, notice, citation, warrant, bail bond or other proceedings or document shall have effect accordingly; and
  - (b) the clerk and the prosecutor of the existing court shall transfer all records, productions and documents relating to those proceedings to the clerk or, as the case may be, the prosecutor of the district court concerned.
- (4) Where proceedings were instituted after 14th May 1969 in any existing court and were completed on or before 15th May 1975, the clerk of that court shall transfer all complaints, minutes and other records relating thereto to the clerk of the district court concerned.
- (5) In the case of any other record or document relating to proceedings in the existing courts, the person having custody of it shall, on request by or on behalf of a district court, release it to that court for the purpose of proceedings in that court, and any record or document so released shall be returned to the person who released it as soon as may be after it has ceased to be required for the said purposes.

## **2 District of, and exercise of jurisdiction by, district court**

- (1) Each commission area shall be the district of a district court, and the places at which a district court sits, and the days and times when it sits at any given place, shall be determined by the local authority concerned.
- (2) The jurisdiction and powers of the district court shall be exercisable by a stipendiary magistrate or by one or more justices, and no decision of the court shall be questioned on the ground that it was not constituted as required by this subsection unless objection was taken on that ground by or on behalf of a party to the proceedings not later than the time when the proceedings or the alleged irregularity began.

## **3 Jurisdiction and powers of district court**

- (1) A district court shall have all the jurisdiction and powers of the existing courts (other than those of the justice of the peace small debt court and of quarter sessions) and also those hitherto exercisable by a burgh magistrate, judge of police, or justice of the peace when acting as a court of summary jurisdiction.
- (2) A district court when constituted by a stipendiary magistrate shall, in addition to the jurisdiction and powers mentioned in subsection (1) above, have the summary criminal jurisdiction and powers of a sheriff.
- (3) The limit imposed by section 3 of the Summary Jurisdiction (Scotland) Act 1954 upon—
- (a) the amount of the fine which may be imposed by a court of summary jurisdiction other than a sheriff court on convicting a person of a common law offence,
  - (b) the amount of caution which any such person may be ordained to find,
- shall be raised from £50 to £100.
- (4) Where several offences, which if committed in one commission area could be tried under one complaint, are alleged to have been committed in different commission areas, proceedings may be taken for all or any of those offences under one complaint

before the district court of any one of such commission areas, and any such offence may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been wholly committed within the jurisdiction of that court.

#### **4 Procedure and practice in the district court**

- (1) Subject to the provisions of this section, the rules of procedure and practice which immediately before 16th May 1975 applied to the existing courts shall, with any necessary modifications, apply on and after that date to the district court
- (2) The powers of the High Court under section 76(1)(b) of the Summary Jurisdiction (Scotland) Act 1954 to regulate procedure under that Act by acts of adjournal shall include power to regulate and prescribe by acts of adjournal the procedure and practice to be followed in any proceedings in the district court.
- (3) An act of adjournal made under the said section 76(1)(b) in the exercise of the powers conferred by subsection (2) above may contain such incidental, supplemental, or consequential provisions as appear to the High Court to be necessary or expedient for the purposes of that act, including provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this Act) relating to matters with respect to which an act of adjournal may be made by virtue of those powers.

#### **5 Stipendiary magistrates**

- (1) Subject to subsections (2) and (3) below, a local authority may appoint a stipendiary magistrate to sit in a district court, and the terms and conditions of such an appointment, including superannuation and other benefits, shall be those applicable to service in local government.
- (2) A person shall not be appointed to be a stipendiary magistrate unless he is, and has been for at least five years, legally qualified, and for the purposes of this subsection a person shall be legally qualified if he is an advocate or a solicitor.
- (3) A person shall not be appointed to be a stipendiary magistrate until the Secretary of State approves—
  - (a) the establishment of the office of stipendiary magistrate in the district court concerned ;
  - (b) the salary which it is proposed should pertain to that office; and
  - (c) the appointment of the person proposed for that office.
- (4) Where it appears to the Secretary of State that it is expedient so to do in order to avoid delays in the administration of justice in any district court, he may direct the local authority concerned to appoint a person qualified to be so appointed to act as stipendiary magistrate in that court during such period as the Secretary of State thinks fit.
- (5) Any person who immediately before 16th May 1975 holds office as stipendiary magistrate for any area shall, on that date, become stipendiary magistrate in the district court having jurisdiction in that area and shall be deemed in all respects to have been appointed by virtue of this section.
- (6) The salary of any such stipendiary magistrate as is mentioned in subsection (5) above shall not be less than that payable to him immediately before 16th May 1975.

- (7) Every stipendiary magistrate shall, by virtue of his office, be a justice of the peace for the commission area in which he is appointed.
- (8) Section 12 of the Sheriff Courts (Scotland) Act 1971 (removal from office of sheriff) shall apply in relation to a stipendiary magistrate as it applies in relation to a sheriff.

## **6 District prosecutor**

- (1) Until the Lord Advocate directs that all prosecutions in a commission area shall proceed at the instance of a procurator fiscal appointed by him, every local authority shall appoint a district prosecutor for the district court and pay to him such reasonable salary as they may determine.
- (2) A procurator fiscal appointed by the Lord Advocate or a district prosecutor may institute and carry on proceedings in the district court, and a procurator fiscal so appointed shall have all the powers and privileges of a district prosecutor.
- (3) Within the district of the district court the district prosecutor shall have all the powers and privileges of a prosecutor in the existing courts and those pertaining by law to a procurator fiscal.
- (4) The Lord Advocate may issue directions to a district prosecutor regarding the prosecution of offences in the district court, and the district prosecutor shall comply with any such direction.
- (5) A district prosecutor shall report to the Lord Advocate on any matter concerning the discharge of his functions as and when called upon to do so by or on behalf of the Lord Advocate.
- (6) A complaint at the instance of the district prosecutor for any district may, in the event of his dying or ceasing to be entitled to discharge the duties of district prosecutor for that district, be taken up and proceeded with by any other person entitled to discharge such duties.
- (7) The offices of clerk to the district court and district prosecutor shall not be held by the same person or by persons who stand in relation to one another as partners or as employer and employee.
- (8) A district prosecutor shall not be removed or suspended from office or have his salary diminished by a local authority without the consent of the Lord Advocate.
- (9) The prosecutions authorised by virtue of this Act under complaint by the procurator fiscal or district prosecutor shall be without prejudice to complaints at the instance of any other person entitled to make the same.

## **7 Clerk of district court**

- (1) It shall be the duty of each local authority to appoint and employ, whether on a full-time or part-time basis, an officer to act as clerk of the district court for their area, who shall also act as legal assessor in that court, and any person so appointed shall be an advocate or a solicitor.
- (2) There shall be transferred to the clerks of the district courts all functions hitherto exercisable by clerks of the existing courts.

- (3) Where under an agreement an officer of a regional council is placed at the disposal of a district council for the purposes of this section, that officer may perform the duties of clerk of the district court for the area concerned.

## **8 Court houses for district court**

- (1) Every local authority shall provide suitable and sufficient premises and facilities for the purposes of the district court.
- (2) Without prejudice to subsection (1) above, every regional, islands or district council having control of premises used to any extent for the purposes of the existing courts as at 15th May 1975 shall make those premises available for the purposes of the district court, and, where those premises include accommodation used by the prosecutor in the existing courts or in the district courts, that accommodation shall be made available to any procurator fiscal appointed by the Lord Advocate to serve in the district court for such period and at such times as the fiscal may require.

## **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.

- (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 ;

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

### PART III

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **19 Compensation**

- (1) The Secretary of State shall, by regulations made with the consent of the Minister for the Civil Service, provide for the payment by such person as may be prescribed, subject to such exceptions and conditions as may be prescribed, of compensation to or in respect of persons who are or were clerks of the peace, justice of the peace fiscals or the holders of such other office or employment as may be prescribed and who suffer loss of employment or loss or diminution of emoluments which is attributable to any provision of this Act.
- (2) Regulations under this section may—
- (a) include provision as to the manner in which and the person to whom any claim for compensation is to be made, and for the determination of all questions arising under the regulations ;
  - (b) make different provisions for different classes of persons and for other different circumstances;
  - (c) be framed so as to have effect from a date earlier than the making of the regulations, but not so as to place any person in a less favourable position than he would have been in if they had not been so framed.
- (3) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **20 Custody of records**

- (1) Subject to section 1 of this Act and the provisions of this section, the clerk of the peace for any area shall, on or before 15th May 1975, transmit to the Keeper of the Records of Scotland all justice of the peace records, other than records relating to licensing under the Licensing Acts, being records of which at that date he has the custody under the Public Records (Scotland) Act 1937; and, for the purposes of this subsection, justice of the peace records shall be deemed to include the commission of the peace.
- (2) Subject to subsections (3) and (4) below, records of county licensing courts and courts of appeal shall, on or before 15th May 1975, be transferred to and vest in the local authority concerned within whose area the court to which those records relate has jurisdiction.
- (3) Where the area within which such a court has jurisdiction is divided so that the area falls within the areas of two or more districts, the records relating to that court shall be transferred to and vest in the district council whose area includes, according to the latest census (not being a sample census), the greater part of the population of the area within which that court has jurisdiction.

- (4) Where, under subsection (3) above, the records of a court have vested in a district council, that council shall make the records available for consultation to any other council to which that subsection relates.
- (5) All records relating to the appointment of justices of the peace for any commission area under this Act, to their acts as justices for that area (whether under the Licensing Acts or not), and to their ceasing to hold office as justices for that area, shall be records of the local authority concerned; and shall be records belonging to that authority for the purposes of section 200(7) to (10) of the Local Government (Scotland) Act 1973.
- (6) Any dispute as to the vesting of records under this section shall be referred to and determined by the Secretary of State, whose decision in the matter shall be final.

## **21 Amendment of Legal Aid (Scotland) Act 1967 and Legal Advice and Assistance Act 1972**

- (1) In section 2(5)(b) of the Legal Aid (Scotland) Act 1967 (financial conditions of legal aid), after the word " sheriff " there shall be inserted the words " or in a district court ".
- (2) In section 2(5)(b) of the Legal Advice and Assistance Act 1972 (advice and assistance), for the words " a sheriff " there shall be substituted the words " a sheriff or a district court ".

## **22 Amendment of sections 28 and 29 of the Licensing (Scotland) Act 1959**

For sections 28 and 29 of the Licensing (Scotland) Act 1959 (clerk to licensing courts and courts of appeal and fees payable), there shall be substituted the following sections—

### **“28 Clerk to licensing courts and courts of appeal.**

- (1) The council of every islands area or district shall appoint and employ, whether on a full-time or part-time basis—
  - (a) an officer to be the clerk of every licensing court and court of appeal having jurisdiction within their area, and
  - (b) such other persons as may be necessary to assist that officer or to act on his behalf as clerk or assistant clerk of those courts.
- (2) Where under an agreement an officer of a regional council is placed at the disposal of a district council for the purposes of this section, that officer may perform the duties of clerk or assistant clerk of the aforementioned courts.

### **29 Fees payable.**

- (1) The Secretary of State may prescribe the fees payable by any applicant to a licensing court or court of appeal.
- (2) The fees mentioned in subsection (1) above shall not include fees payable under the provisions of the Betting, Gaming and Lotteries Acts 1963 to 1971 or of the Gaming Act 1968.
- (3) Fees prescribed by the Secretary of State under subsection (1) above shall, on being paid by any applicant to the court, be paid over by the clerk of that court

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to the council which defrays the expenses of that court under section 21 of this Act.”

### **23 District court and justice of peace expenses and destination of fines**

- (1) All expenses in connection with the district court and justice of the peace business shall be defrayed by the local authority concerned.
- (2) Except where otherwise provided, all fines imposed in the district court shall accrue to the local authority concerned.
- (3) A local authority shall defray the expenses of any appeal in which the district prosecutor is involved in connection with proceedings brought by him in his capacity as district prosecutor.
- (4) A local authority may defray the expenses of any action brought against the district prosecutor in connection with the exercise of his functions, and may relieve him from any liability imposed as a result of such an action.
- (5) Having regard to the additional expenditure incurred or likely to be incurred by local authorities in the year 1975-76, which is attributable to the coming into operation of any provision of this Act, the Secretary of State may redetermine for that year the amount and portion mentioned in section 2(2)(a) and (b) of the Local Government (Scotland) Act 1966, and by an order, made in the like manner and subject to the like provisions as a rate support grant order, increase the amount fixed by the relevant rate support grant order as the aggregate amount of the rate support grants and any element of the grants for that year.
- (6) The provisions of sections 2 and 3 of the said Act of 1966, relating to consultation and to a report of the considerations leading to a determination under the said section 2, shall apply to a redetermination under subsection (5) above as they apply to a determination under that section.
- (7) Expressions used in subsections (5) and (6) above have the same meanings as in the said Act of 1966.

### *General*

### **24 Amendments and repeals**

- (1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments respectively specified in that Schedule, being minor amendments or amendments consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 2 to this Act (which includes certain obsolete or unnecessary enactments) are hereby repealed to the extent specified in the third column of that Schedule.
- (3) The Secretary of State may by order amend, repeal or revoke any provision of an Act passed or an instrument under an Act made before 16th May 1975 if it appears to him that that provision is inconsistent with any provision of this Act or requires modification in consequence of this Act.
- (4) Where any local enactment provides for any matter which is also provided for by any provision of this Act or of any order made thereunder, the provision of this Act, or, as

the case may be, of that order, shall have effect in substitution for the local enactment, which shall cease to have effect.

- (5) Any order made under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **25 Expenses**

There shall be defrayed out of moneys provided by Parliament—

- (a) any expenses incurred by the Secretary of State under this Act; and
- (b) any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

## **26 Interpretation**

- (1) In this Act, unless the context otherwise requires—

" clerk of the district court " includes such depute clerk as may be required for the purposes of any district court;

" commission area " means a district or islands area within the meaning of the Local Government (Scotland) Act 1973 ;

" district prosecutor " includes such depute or assistant district prosecutor as may be required for the purposes of any district court;

" justice " or " justice of the peace " means a justice of the peace appointed under section 9 of this Act or deemed to have been so appointed ;

" licensing court " and " court of appeal " have the same meanings as in the Licensing (Scotland) Act 1959;

" local authority " means a district council or an islands council;

" prescribed " means prescribed by regulations made by the Secretary of State.

- (2) Any power conferred by this Act to make an order shall include power, exercisable in like manner and subject to the same conditions, to vary or revoke the order by a subsequent order.
- (3) Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, extended or applied by or under any other enactment, including this Act.

## **27 Short title, extent and commencement**

- (1) This Act may be cited as the District Courts (Scotland) Act 1975, and, except section 24(1) and subsection (2) below and the entries in Schedule 1 to this Act relating to the Magistrates' Courts Act 1952 and to section 18(1) of the Police (Scotland) Act 1967, extends to Scotland only.
- (2) This Act, except sections 8, 10, 11, 14, 16, 17, 20, 23, 26 and this section, shall come into force on 16th May 1975.

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## SCHEDULES

### SCHEDULE 1

#### MINOR AND CONSEQUENTIAL AMENDMENT OF ENACTMENTS

##### *The Savings Bank (Scotland) Act 1819*

- 1 In section 2 (rules, etc., of Savings Banks including the confirmation of rules by justices), there shall be substituted—
- (a) for the words " Justices of the Peace assembled at the Quarter Sessions of the Peace " the words " the sheriff " ;'
  - (b) for the word " Justices " the word " sheriff " ;
  - (c) for the words " Clerk of the said Justices " (wherever occurring) the words " the sheriff clerk ".
- 2 In section 4 (further provision in relation to the rules, etc., of Savings Banks), there shall be substituted—
- (a) for the words " the Clerk of the said Justices " the words " the sheriff clerk " ;
  - (b) for the word " Sixpence " the words " 20 pence ".

##### *The Game Act 1831*

- 3 In section 18 (licences to deal in game), for the words from the beginning to " less than two " there shall be substituted the words " Each islands and district council ", and for the words " such division or district " there shall be substituted the words " their area ".
- 4 In Schedule (A) (form of licence), for the words from the beginning to " said special session " there shall be substituted the words " The islands council of . . . (or, as the case may be) the . . . district council " , and the words after " (Signed) " shall cease to have effect.

##### *The Criminal Law Amendment Act 1885*

- 5 In section 13 (summary proceedings against brothel keeper), for the words " summary conviction " there shall be substituted the words " conviction in the sheriff court or the district court " , and the words from " Any person " to " such conviction " shall cease to have effect. ,

##### *The Coal Mines Regulation Act 1887*

- 6 In section 12 (payment of miners by weight), for the words " a chairman of a court of quarter sessions " there shall be substituted the words " the sheriff ".

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*The Burgh Police (Scotland) Act 1892*

- 7 In sections 120, 290, 333, 382, 405, 409, 410, 435, 438, 448, 453 and 467, and paragraphs (4), (5), (11), (17), (18), (20), (21), (22) and (24) of Schedule 5, for any reference to a magistrate there shall be substituted a reference to a district court.
- 8 In section 272 (regulations as to omnibuses etc.), for the words " islands or district council" (where second occurring) there shall be substituted the words " district court ".
- 9 In section 326 (penalty for obstruction of workmen), for the words " magistrates, or any of them " there shall be substituted the words " district court or a justice of the peace ".
- 10 In section 380(6) (penalties), for the word " magistrates " there shall be substituted the words " islands or district council ".
- 11 In section 402 (unlicensed theatres may be entered), for the words " Any magistrate " and the words " the magistrates " there shall be substituted the words " a district court ".
- 12 In section 403 (suppression of brothels), for the words " The magistrate " there shall be substituted the words " A district court ", for the words " the magistrate " there shall be substituted the words " the court " and for the words " two magistrates " there shall be substituted the words " district court ".
- 13 In section 404 (house for entertainments being a nuisance), for the words " The magistrates " and " two magistrates " there shall be substituted respectively the words " A district court " and " a district court ".
- 14 In section 412 (goods found to be reported to police office), for the word " magistrate " (wherever occurring) there shall be substituted the words " district court ".
- 15 In section 413 (stolen goods to be delivered up to owner), for the word " magistrate" (wherever occurring) there shall be substituted the words " district court ", for the word " he " there shall be substituted the words " the court ", and for the word "magistrate's" there shall be substituted the words " district court's ".
- 16 In section 415 (unclaimed property to be disposed of), for the word " magistrate " (wherever occurring) there shall be substituted the words " district court ".
- 17 In section 436 (brokers to produce articles and books on demand), for the word " magistrate " (except where first occurring) there shall be substituted the words " district court ".
- 18 In section 439 (defacer of stolen goods to be held to be resetter), for the word " magistrate " there shall be substituted the words " district court ".
- 19 In section 465 (previous convictions may be proved), for the words " the magistrate" (where first occurring) there shall be substituted the words " any court of summary jurisdiction ", for the word " magistrate " (where second occurring) there shall be substituted the word " court ", and for the word " he" there shall be substituted the words " the court ".
- 20 In section 468 (horse etc. of persons arrested may be secured), for the words " any two magistrates " there shall be substituted the words " the district court ".
- 21 In section 470 (watchman may be placed in charge of shops left open), for the words " the magistrate " (where first occurring) there shall be substituted the words " any

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court of summary jurisdiction ", and for the word " magistrate " (where second occurring) there shall be substituted the word " court ".

22 In section 484 (signing of convictions and warrants), for the word " magistrate " there shall be substituted the words " justice of the peace ".

23 In section 491 (deposits as security for appearances), for the word " magistrate" (wherever occurring) there shall be substituted the words " district court ", and for the words from " clerk " onwards there shall be substituted the words " local authority concerned ".

24 In section 511 (forms when recovering civil debt), for the word " magistrate " (where first and second occurring) there shall be substituted the words " district court ", and for the word " magistrate " (where last occurring) there shall be substituted the words " justice of the peace ".

*The Public Order Act 1936*

25 In section 8(6) (application to Scotland), for the words from " and to the council" onwards there shall be substituted the words " there shall be substituted references to a region ".

*The Magistrates' Courts Act 1952*

26 In section 72A(2) (transfer of fine orders, Scotland), for the words "fifty pounds" there shall be substituted the words " one hundred pounds ".

*The Summary Jurisdiction (Scotland) Act 1954*

27 In section 77 (interpretation), the following amendments shall be made—

- (a) in the definition of " Court " and " Court of summary jurisdiction ", for the words from " justice " onwards there shall be substituted the words " and district court ";
- (b) in the definition of " Justice of the peace ", for the words " for any " onwards there shall be substituted the words " for any commission area in Scotland acting within such commission area. ";
- (c) in the definition of " Prosecutor ", for the words " justice of the peace fiscal, burgh prosecutor " there shall be substituted the words " district prosecutor, deputy district prosecutor, assistant district prosecutor ".

*The Licensing (Scotland) Act 1959*

28 In section 6 (casual vacancies in licensing courts and court of appeal), for the words "the first meeting of a quarter sessions, statutory or adjourned," there shall be substituted the words " a special meeting of the justices convened by the clerk of the peace for that purpose, ".

*The Police (Scotland) Act 1967*

29 In section 16 (declarations by constables), for the words from "justice" to "burgh" there shall be substituted the words " or justice of the peace ".

30 In section 17(1)(c) (functions of constables), for the words from " justice " to " burgh" there shall be substituted the words " or justice of the peace ".

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- 31 In section 18(1) (jurisdiction of constables in border counties), for the words from " justice " to " magistrate " there shall be substituted the words " or justice of the peace ".
- 32 In section 45 (search warrants for police clothing etc.), for the words from " justice " to " burgh " there shall be substituted the words " or justice of the peace ".

## SCHEDULE 2

### REPEALS

Chapter	Short Title	Extent of Repeal
1661 c. 38.	The Justices of the Peace Act 1661.	The whole Act.
59 Geo. 3. c. 62.	The Savings Bank (Scotland Act) 1819.	In section 2, the words "for which Attestation" to "no more".
6 Geo. 4 c. 48.	The Justices of the Peace Small Debt (Scotland) Act 1825.	The whole Act.
1 & 2 Will. 4. c. 32.	The Game Act 1831.	In Schedule (A), the words after " (Signed)".
2 & 3 Will. 4. c. 75.	The Anatomy Act 1832.	In section 1, from the word "countersigned" onwards.
12 & 13 Vict. c. 34.	The Justices of the Peace Small Debt (Scotland) Act 1849.	The whole Act.
19 & 20 Vict. c. 48.	The Justices (Scotland) Act 1856.	The whole Act.
28 & 29 Vict. c. 124.	The Admiralty Powers etc. Act 1865.	Section 5.
31 & 32 Vict. c. 72.	The Promissory Oaths Act 1868.	In the Schedule, Second Part, under the heading "Scotland", the words " for counties and burghs".
34 & 35 Vict. c. 48.	The Promissory Oaths Act 1871.	In section 2, in the third paragraph, the words "or in open court at quarter sessions of the peace for the county, borough, or place in which the person taking the oaths acts as justice".
40 & 41 Vict. c. 41.	The Crown Office Act 1877.	In section 3, proviso (2), from the words "in particular" onwards.

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Chapter	Short Title	Extent of Repeal
48 & 49 Vict. c. 69.	The Criminal Law Amendment Act 1885.	In section 5, paragraph (1). In section 13, the words from " Any person " to " such conviction ".
55 & 56 Vict. c. 55.	The Burgh Police (Scotland) Act 1892.	Section 4(7), (19) and (20). Section 287. In section 290, the words from "and such person" onwards. Section 431. In section 448, the words " in the absence of the magistrate or burgh prosecutor". In section 451, the words "magistrate or", in both places where they occur. In section 453, the words from " at the instance " onwards. Sections 455, 456, 497, 498 and 507 to 509.
60 & 61 Vict. c. 48.	The Stipendiary Magistrates Jurisdiction (Scotland) Act 1897.	The whole Act.
61 & 62 Vict. c. 20.	The Ex-officio Justices of the Peace (Scotland) Act 1898.	The whole Act.
3 Edw. 7. c. 25.	The Licensing (Scotland) Act 1903.	In section 70(4), the first paragraph. Sections 91 and 101. In section 107, the definition of "magistrate".
6 Edw. 7. c. 16.	The Justices of the Peace Act 1906.	The whole Act.
2 & 3 Geo. 5. c. 14.	The Protection of Animals (Scotland) Act 1912.	In section 13(f), the words "and any justice of the peace constable".
18 & 19 Geo. 5. c. 29.	The Slaughter of Animals (Scotland) Act 1928.	In section 7(d), the words " and any justice of the peace constable".
1 Edw. 8 & 1 Geo.6. c. 6.	The Public Order Act 1936.	Section 8(5).
1 Edw. 8 & 1 Geo. 6. c. 43.	The Public Records (Scotland) Act 1937.	Section 3.

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Chapter	Short Title	Extent of Repeal
		In section 14(1), the definition of "justice of the peace records " and, in the definition of " court records ", the words "and justice of the peace records".
		In section 14(2), the words "or is or is not a justice of the peace record ".
10 & 11 Geo. 6. c. 43.	The Local Government (Scotland) Act 1947.	Section 187.
12,13 & 14 Geo. 6. c. 101.	The Justices of the Peace Act 1949.	The whole Act
7 & 8 Eliz. 2. c. 51.	The Licensing (Scotland) Act 1959.	Sections 155, 189(e), 190, 191 and 194.
		In section 199, the definitions of "burgh court" and "magistrate".
1963 c. 2.	The Betting, Gaming and Lotteries Act 1963.	In Schedule 1, in paragraph 20 (2), the words from "and that local authority" onwards.
1964 c. 42.	The Administration of Justice Act 1964.	Section 31.
1968 c. 65.	The Gaming Act 1968.	In Schedule 2, in paragraph 63 (2), the words from "and that local authority" onwards.
1968 c. 69.	The Justices of the Peace Act 1968,	The whole Act.