

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 4 – Jp Courts and Jps**

##### **Appointment of JPs etc.**

##### *Section 74: Appointment of stipendiary magistrates*

403. This section provides for the appointment of stipendiary magistrates. It will replace section 5 of the 1975 Act. Stipendiary magistrates differ from lay justices because they are professional judges who must have been a solicitor or advocate for at least five years. Although all local authorities, with the approval of Scottish Ministers, currently have the power to appoint stipendiary magistrates, only Glasgow City Council currently does so. Stipendiary magistrates have the same criminal jurisdiction as a sheriff when sitting summarily, which means that they can sentence people for up to three months in custody (or six or nine months under certain circumstances) and fine them up to £5,000. Under the provisions of sections 43 to 45 of this Act, they will be able to sentence people to a year's imprisonment, and fine them £10,000. Justices of the peace can sentence people to two months' imprisonment and fine them £2,500.
404. Subsection (1) states that stipendiary magistrates are to be appointed by Scottish Ministers on behalf of and in the name of the Queen. Under the 1975 Act, stipendiary magistrates are appointed by a local authority, subject to the approval of Scottish Ministers.
405. Subsection (2) states that a stipendiary magistrate will be appointed for a sheriffdom. A stipendiary magistrate will be able to sit in any JP court within the sheriffdom to which they are appointed (section 62(4) of the Act).
406. Subsection (3) makes it clear that the appointment of a stipendiary magistrate is to be conditional upon Scottish Ministers approving the decision to make such an appointment, on the advice of the sheriff principal for that sheriffdom.
407. Subsection (6) makes it clear that a stipendiary magistrate may exercise the same judicial and signing functions as a JP, and may use the title of office of JP in discharging those functions. This means, for example, that a stipendiary magistrate is able to sign any documents for which a JP's signature would be competent. Stipendiary magistrates will continue to have the same jurisdiction as a sheriff sitting summarily (see section 7(5) of the 1995 Act, as amended by paragraph 9 of the schedule to this Act).
408. Subsections (7) and (8) bring the appointment terms of full-time stipendiary magistrates into line with those of other full-time professional members of the judiciary in Scotland, by providing for them to be appointed until the age of 70. Under the 1975 Act, retirement for stipendiary magistrates is set according to the conditions of service “applicable to

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Act 2007 (asp 6) which received Royal Assent on 22 February 2007*

service in local government.” The provisions for the appointment terms of part-time stipendiary magistrates are similar to those for JPs at subsections 67(3) and (4) of this Act. Part-time stipendiary magistrates will be appointed for renewable terms of five years, subject to the entitlement to resign at any time and need to retire at 70.

409. Subsection (9) requires Scottish Ministers to comply with any order that they make as to procedure and consultation for appointing stipendiary magistrates. Subsection (10) illustrates what such an order may relate to. This allows Ministers to set out how stipendiary magistrates would be recruited. The order could, for example, set out any role that the Judicial Appointments Board for Scotland may assume in the recruitment process. These subsections replicate the provisions for JPs at section 67(5) and (6).
410. Subsection (12) concerns those currently holding the office of stipendiary magistrate. It replicates the provisions made for JPs at section 67(7). Subsection (12) makes provision for stipendiary magistrates' appointment to terminate on a date specified by order. It also states that they are to be appointed as a stipendiary magistrate under section 74 unless they decline their appointment. Their new appointments will start on the same the day that their old appointments cease.