

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

EXPLANATORY NOTES

INTRODUCTION

Part 4 – Jp Courts and Jps

Appointment of JPs etc.

Section 67: Appointment of JPs

369. This section provides for the appointment of justices of the peace.
370. Subsection (1) makes it clear that JPs will be appointed by Scottish Ministers on behalf of and in the name of the Queen. This provision is essentially the same as the existing provision which provides for the appointment of JPs – section 9(1) of the District Courts (Scotland) Act 1975 (the 1975 Act).
371. Subsection (2) indicates that JPs are to be appointed to a sheriffdom. This provision should be read alongside section 62(4) which makes it clear that they will be able to perform judicial functions in any part of the sheriffdom to which they are appointed. Under sections 9(1) and 26(1) of the 1975 Act, JPs are currently able to perform judicial functions within the local authority area to which they are appointed. The Act therefore has the effect of widening the geographical area within which JPs can act.
372. Subsection (3) states that a JP’s appointment is for a term of five years. Under the 1975 Act, there was no limit to the length of a JP’s appointment (although all “full justices”, who were eligible to sit on the bench, had to become “signing justices” on the supplemental list when they reached the age of 70, and therefore ceased to be able to sit on the bench).
373. Subsection (5) requires the Scottish Ministers to comply with any order that they make as to procedure and consultation for appointing JPs. This provision reflects the terms of section 9(8A) of the 1975 Act, which was inserted into the 1975 Act by the Bail, Judicial Appointments etc (Scotland) Act 2000. No regulations have been made under section 9(8A) of the 1975 Act. An order under this subsection is likely to make it clear that candidates will be recommended to Scottish Ministers for appointment as JPs, prior to their first five year appointment, by Justice of the Peace Advisory Committees (JPAC), chaired by the sheriff principal of the relevant sheriffdom.
374. Further to subsection (6)(a), each JPAC will have a mixture of lay members and JPs. The order is also likely to make it clear that each JPAC should agree protocols with the Judicial Appointments Board for Scotland, setting out how it will recruit JPs. These protocols are likely to deal with matters such as the way in which JP vacancies should be publicly advertised.
375. Subsections (7) and (8) deal with existing justices of the peace. Subsection (7) makes provision for their appointment to be terminated on a date specified by order. However,

the effect of subsections (7)(b) and (8) is that any full JPs who have been placed on the court rota during the 12 months before that specified date are to be appointed as a JP under subsection (1) unless they decline their appointment. This provision will ensure that all existing JPs who sit on the bench become subject to the new arrangements for JPs set out in this part of the Act. The intention is that the Executive will write to all current full JPs several months before their appointment is due to be terminated. It will explain that their appointment will cease on a given date, but state that they will be appointed as JPs providing they have been, or will be, placed on the court rota during the twelve months prior to that date and that they agree to meet certain conditions (these are dealt with in the next section). JPs who agree to this will return a form to the Executive, and will be reappointed as JPs. Their new appointments will start on the day that their old appointments cease.

Section 68: Conditions of office

376. This section sets out the conditions which may be attached to the appointment of justices of the peace.
377. Subsection (1) states that somebody is not to be appointed as a JP unless they ordinarily live in, or within 15 miles of, the sheriffdom to which they are being appointed. This subsection only applies to a JP's first appointment. A JP who moved outside of the sheriffdom during the course of their five year appointment, but who still undertook duties on the bench within the sheriffdom to which they were appointed, would be eligible for reappointment at the end of five years, but could be subject to a recommendation against reappointment made by the sheriff principal in terms of section 70(3)(c).
378. The effect of subsection (1) is slightly different to that of sections 9(3) and 9(4) of the 1975 Act. These provisions of the 1975 Act prevent a JP from holding office, or acting as a JP, unless they live in or within 15 miles of their local authority area. They also allow Scottish Ministers to waive this requirement if they consider it to be in the public interest to do so. The new provisions remove this element of discretion at the time of a JP's appointment.
379. Subsection (2) states that the appointment of JPs shall be made subject to conditions relating to training, appraisal and their availability to meet the business needs of the relevant part of their sheriffdom. The intention is that JPs will need to accept these conditions prior to being appointed. Subsection (3) makes it clear that the sheriff principal will assess the likely court business in their sheriffdom. The sheriff principal's assessment will be referred to when setting conditions on JPs' required availability.
380. Subsections (4) and (5) require the Scottish Ministers to pay allowances to JPs according to a scheme devised by them. These allowances are likely to cover reimbursement for expenses incurred in fulfilling the duties of a JP, and also reimbursement for any loss of earnings as a result of undertaking a JP's duties. Under section 17(6) of the 1975 Act, allowances to JPs are currently paid by local authorities.

Section 69: Training and appraisal of JPs

381. This section allows Ministers to make provision by order in relation to the training and appraisal of JPs and future JPs. It also allows them to establish committees which will have responsibility for key functions relating to training and appraisal.
382. Under the 1975 Act, Scottish Ministers have the power to make schemes and provide courses for the instruction of justices of the peace. They do not however have any powers relating to appraisal.
383. In practice, the Executive envisages that the training and appraisal of JPs will come under the overall oversight of the Lord President. That is the reason for the provisions at subsection (2) and (4).

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

384. It is likely that candidates, having undergone a recruitment process, will be required to undergo a mandatory induction scheme before being recommended to Ministers for appointment as JPs. The Executive currently envisages that the content of this scheme will be drawn up or approved by the Judicial Studies Committee, a non-statutory body which organises training courses for the Scottish judiciary. The scheme would then be issued or approved by the Lord President.
385. The Executive also envisages that all existing JPs will be required to undertake a minimum amount of ongoing training each year, including being required to undertake refresher training within two years of taking up their new five year appointments. Again, it is likely that the Judicial Studies Committee would draw up or approve these ongoing training requirements, which would then be issued or approved by the Lord President.
386. With regard to appraisal, the Executive envisages that JPs will be appraised against a competence framework which would be drawn up or approved by the Judicial Studies Committee. This competence framework would then be approved by the Lord President.
387. Subsection (3) allows the order in relation to training and appraisal to include the power to establish committees. These committees will have the power to devise or adopt appropriate training and appraisal courses and systems; to ensure that these courses or systems are delivered or used; and to provide advice about training and appraisal. The composition and functions of these committees will be set out in more detail in the draft order. It is likely that groups in each sheriffdom, mainly or entirely composed of JPs, will be given responsibilities relating to the delivery of appraisal and training within the sheriffdom. In doing so, they will effectively assume the responsibilities for training that justices' committees currently have under section 16(1)(c) of the 1975 Act.

Section 70: Reappointment of JPs

388. Subsection (1) makes it clear that a JP is eligible for reappointment on the expiry of his or her five year appointment. A JP who has resigned from office is also eligible to be reappointed.
389. The effect of subsection (2) is that a JP whose five year appointment has finished shall be reappointed unless certain circumstances apply. The subsection also sets out what those circumstances are.
390. Subsection (2)(d) makes it clear that a JP shall not be reappointed if the sheriff principal for the JP's sheriffdom recommends to Scottish Ministers that the JP should not be reappointed. Subsection (3) sets out the grounds on which the sheriff principal may make such a recommendation. They are that the JP has inadequately performed the functions of a JP; that the JP has, without good reason, failed to meet requirements under section 68(2) relating to training, appraisal or availability to meet the business needs of the relevant part of their sheriffdom; that the JP no longer lives within fifteen miles of the sheriffdom to which they are appointed; or on such other ground as the sheriff principal considers relevant (one example of this might be if the JP had been convicted of a number of motor offences during the previous five years).
391. The provision at subsection (3)(a) relating to inadequate performance of the functions of a JP is intended to allow a sheriff principal to recommend against reappointment if, for example, a JP's appraisals had demonstrated that the JP was not performing adequately.

Section 71: Removal of JPs

392. This section deals with the circumstances in which a JP can be removed from office. At present, section 9A of the 1975 Act deals with the removal of a full JP from office.
393. In keeping with the existing law, subsections (1) and (2) provide that a JP may only be removed from office during the five year term of appointment by order of a tribunal appointed by the Lord President of the Court of Session.

394. Subsection (6) makes it clear that a tribunal appointed by the Lord President of the Court of Session can order a JP's removal on only a limited number of specified grounds. Subsection (6) also states that the tribunal's investigations are to be carried out at the instance of the sheriff principal for the sheriffdom to which the JP is appointed. This represents a change from section 9A(2) of the 1975 Act, which provides that the tribunal's investigation is to be carried out at the request of the Scottish Ministers.
395. The combined effect of subsection (4)(a), subsection (5) and subsection (6) is to ensure that the sheriff principal who chairs the tribunal and sheriff principal who requests the tribunal's investigation will be different persons. Under section 9A(2) and (4) of the 1975 Act, tribunals are requested by Scottish Ministers and chaired (unless the Lord President decides otherwise) by the sheriff principal of the JP's sheriffdom. Under subsections (4)(a) and (6) of this section, tribunals will be instigated by the sheriff principal of the sheriffdom to which the JP is appointed, and chaired by a different sheriff principal.
396. Subsection (6)(b) states that a possible ground for removing a JP is that the JP has inadequately performed the functions of a JP. As with the provision at section 70(3)(a), it is anticipated that the tribunal may make this finding if, for example, a JP's appraisals had demonstrated that the JP was not performing adequately as a JP. It is envisaged that "inadequate performance" will constitute a lower test than that of "inability" as a ground for removal.
397. Subsections (7) and (8) allow the Scottish Ministers to make provision by order regarding the tribunal. It is likely that orders regarding the conduct of the tribunal will be similar to the existing Justices of the Peace (Tribunal) Regulations (Scotland) 2001, although they will take account of the differences, as outlined above, between the provisions of this Act and those of the 1975 Act which relate to tribunals.
398. Subsection (7)(b) allows any order made by Scottish Ministers to authorise a specific body or class of persons to recommend to a sheriff principal that s/he instigate the establishment of a tribunal. This means that, for example, any committee established to oversee the appraisal of JPs in a sheriffdom under section 69(3) of this Act could also be authorised to recommend to a sheriff principal the instigation of a tribunal in order to investigate whether someone has inadequately performed their functions as a JP.
399. Subsection (9) makes it clear that anybody who is removed from office as a JP is ineligible for reappointment as a JP. This provision reflects the terms of section 9A(10) of the 1975 Act.

Section 72: Disqualification of solicitors who are JPs

400. This section disqualifies a solicitor who is a JP from acting in any proceedings in a JP court in the sheriffdom to which they have been appointed as a JP. Subsection (2) extends this disqualification to the solicitor's staff and – where the solicitor is a partner of a law firm – to any other partner or member of staff of the partnership. This provision reflects the terms of section 13 of the 1975 Act.

Section 73: Disqualification where sequestration or bankruptcy

401. This section mirrors section 13A of the 1975 Act. It prevents someone from being appointed as a JP or, if they have been appointed, from acting as a JP, if their estate has been sequestrated in Scotland or if the person has been adjudged bankrupt outside Scotland. The disqualification ceases, however, if the circumstances set out in subsections (2) and (3) apply.
402. Under section 70(2)(c) of this Act, a JP whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt, may not be reappointed as a JP at the end of their five year term of appointment.

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 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.

Section 75: Stipendiary magistrates: further provision

411. This section makes provision for the payment, reappointment, removal and disqualification of stipendiary magistrates.
412. Subsection (1) gives Scottish Ministers the power to determine the remuneration, allowances and pension provision of stipendiary magistrates. The exact mechanism by which Ministers will determine this is still to be decided. One possibility is that the remuneration of stipendiary magistrates will be linked to another, independently determined, pay scale. Subsection (2) makes it clear that Scottish Ministers are to pay the expenditure arising from subsection (1).
413. Subsection (3) specifies those provisions in the Act relating to JPs which also apply to stipendiary magistrates. These provisions relate to terms of appointment, reappointment, removal and disqualification.
414. The provisions in section 70 of the Act will, in effect, only apply to part-time stipendiary magistrates, since they relate to reappointment at the end of a five year term of appointment. A part-time stipendiary magistrate is to be reappointed at the end of their five year term unless they decline their reappointment; they are aged 69 years or over; they are disqualified under the provisions of section 73 relating to sequestration and bankruptcy; or the sheriff principal makes a recommendation against reappointment. Sheriffs principal will be able to recommend against the reappointment of part-time stipendiary magistrates on the grounds that they have not complied with any terms of appointment relating to their availability to meet local business needs (this provision could be especially relevant for part-time stipendiary magistrates) and on such other grounds as the sheriff principal considers relevant. Since stipendiary magistrates will not be subject to training, appraisal or residential requirements, failure to comply with any of those is not specified as a possible ground for removal. Since stipendiary magistrates will not be subject to appraisal, "inadequate performance" does not constitute a specific ground for a recommendation against reappointment for part-time stipendiary magistrates.
415. Similarly, at subsection (3)(c) the "inadequate performance" provision set out at section 71(6)(b) of this Act as a possible ground for removing JPs does not apply to stipendiary magistrates.
416. Under subsection (3)(d), the provisions of sections 72 and 73 apply to stipendiary magistrates as well as to JPs. These sections relate to the disqualification of solicitors who are JPs, and disqualification in the case of sequestration and bankruptcy.

Section 76: Signing functions

417. This section sets out who, in future, will be able to carry out the signing functions which can currently be undertaken by people on the supplemental list under sections 15(8) and (9) of the 1975 Act.
418. Subsection (1) makes it clear that no person who is a member of a local authority, a member of the Scottish Parliament, a member of the House of Commons or a member of the House of Lords can sit on the bench as a JP. JPs who become members of these bodies can still, however, exercise the signing functions set out at subsection (6). In addition, any member of a local authority can exercise the signing functions set out at subsection (6), regardless of whether or not they are a JP.
419. Subsection (6) defines what is meant by "signing functions". The definition is the same as that currently used in section 15(9) of the 1975 Act, and limits the range of documents which can be signed. For example, local authority members will be able to countersign written declarations that somebody has lost their insurance policy, or that they wish to change their name. They are also able to confirm facts within their own knowledge – for example by signing passport applications and shotgun licensing applications for people whom they know. However unlike "full" justices of the peace under the 1975 Act, or

any justice of the peace under the current Act, people who can only undertake “signing functions” cannot sign affidavits (since these record oral statements) or warrants.

420. These sections are different in their effect from the provisions of the 1975 Act which related to signing functions. Under sections 15(8) and (9) of the 1975 Act, anybody placed on the supplemental list could undertake signing functions, but no other functions, by virtue of their office. Under section 15(1) of the 1975 Act, all JPs are currently placed on the supplemental list once they reach the age of 70. Under section 12 of the 1975 Act, as amended by the Bail, Judicial Appointments etc (Scotland) Act 2000, councillors are not able to hold office as full justices, but can be entered onto the supplemental list. Under section 11(1) of the 1975 Act, local authorities are currently allowed to nominate up to one quarter of their councillors to be entered onto the supplemental list.
421. Under the provisions of this Act, there will not be a supplemental list. JPs who have reached the age of 70 will not therefore have signing functions. Under subsections (2) and (3), all councillors will automatically have signing functions by virtue of their office, which will allow them to sign the range of documents set out in subsection (6). If a person were appointed as a JP after this section's provisions had come into force, therefore, and then became a councillor, they would remain as a JP at least until the end of their five year term of appointment, but would only be able to undertake signing functions. In addition, the bar on councillors sitting on the bench as justices will be extended to MPs, MSPs and members of the House of Lords.
422. The provisions at subsections (3) and (4) make it clear that forms (such as statutory declarations regarding lost insurance policies) which specify a “JP” as a possible signatory, can also be signed by a stipendiary magistrate or local authority member, if they are exercising signing functions.
423. Subsection (5) provides that JPs and councillors cannot charge a fee for exercising signing functions.

Section 77: Records and validity of appointment etc.

424. This section makes provision for the keeping of records of those holding office as JPs and stipendiary magistrates. It also provides for the appointments and acts of JPs and stipendiary magistrates to be valid, even if certain requirements set out in this Act have not been met.
425. Subsection (1) requires Scottish Ministers to keep a list of all people who hold office as a JP or stipendiary magistrate; a record of the instruments of appointment for all JPs and stipendiary magistrates; and a record of any order removing a JP or stipendiary magistrate from office. Subsections (2) and (3) require Scottish Ministers to send the list and record to the sheriff clerk of each sheriff court, and for arrangements to be made to ensure that the list is available for public inspection.
426. Subsections (4) and (5) make it clear that the appointments and acts of JPs and stipendiary magistrates are still valid, even if their appointment has not complied with the requirements for procedure and consultation set out in an order made under section 67(5) or section 74(9); the requirement that the JP ordinarily live in or within 15 miles of their constituency at the time of their first appointment has not been met; or if a JP has breached one of their terms of appointment as set out in section 68(2).