



# 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—

- (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.

### *Appointment of JPs etc.*

## **67 Appointment of JPs**

- (1) Justices of the peace are to be appointed by name on behalf of and in the name of Her Majesty by instrument under the hand of the Scottish Ministers.
- (2) A JP is to be appointed for a sheriffdom.
- (3) An appointment of a JP is to be for a term of 5 years.
- (4) However, a JP—
  - (a) may resign from office by giving notice to the Scottish Ministers,
  - (b) ceases to hold office on reaching the age of 70 years.
- (5) In making appointments of JPs, except—
  - (a) appointments under subsection (7)(b),
  - (b) reappointments under section 70(2),

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

- (6) Provision in an order under subsection (5) may, in particular, relate to—
- (a) the participation in the appointments process of persons who are not—
    - (i) legally qualified,
    - (ii) involved in the administration of the law or of government,
  - (b) the manner in which vacancies in office are publicised.
- (7) A person who, on the coming into force of this section, holds the office of justice of the peace under the 1975 Act—
- (a) ceases to hold that office under that Act on such day as the Scottish Ministers may by order specify for the purpose of this subsection, and
  - (b) is, on the day so specified, to be appointed as a JP under subsection (1) unless the person declines the appointment.
- (8) Subsection (7)(b) applies only in relation to the full justices (within the meaning given by section 9 of the 1975 Act) whose names were included in a duty rota of justices (that is, such a rota as approved under section 16(1)(b) of that Act) for any time during the 12 months ending on the day specified as mentioned in that subsection.

## **68 Conditions of office**

- (1) A person is not to be appointed as a JP for a sheriffdom, except where eligible for reappointment under section 70(1)(a), unless the person ordinarily resides in the sheriffdom or within 15 miles of it.
- (2) Appointments of JPs are to be made subject to conditions which—
- (a) by reference to the JP court business (and business to which signing functions relate) in the sheriffdom, relate to availability to exercise judicial (and signing) functions commensurate to that business,
  - (b) by reference to an order made under section 69, relate to training and appraisal.
- (3) For the purpose of subsection (2)(a)—
- (a) the JP court (or signing) business,
  - (b) any need for availability to exercise judicial (or signing) functions in connection with that business,
- means the likely amount as assessed by the sheriff principal.
- (4) The Scottish Ministers are, in accordance with a scheme devised by them, to pay allowances to JPs.
- (5) A scheme under subsection (4) may, in particular—
- (a) by reference to functions, specify rates or amounts of allowances,
  - (b) specify circumstances in which—
    - (i) allowances are not payable,
    - (ii) a rate or amount of allowances payable is reduced,
  - (c) provide for procedure for claiming and paying allowances.

## **69 Training and appraisal of JPs**

- (1) The Scottish Ministers may by order make provision as to—

- (a) training arrangements for JPs and future JPs, and
  - (b) appraisal of JPs.
- (2) An order under subsection (1) may, in particular, confer functions on the Lord President of the Court of Session.
- (3) An order under subsection (1) may, in particular, establish committees to—
  - (a) adopt or develop suitable—
    - (i) training schemes or courses of instruction,
    - (ii) appraisal systems,
  - (b) secure—
    - (i) the provision of such schemes or courses,
    - (ii) the application of such systems,
  - (c) provide advice about training and appraisal.
- (4) An order under subsection (1) may not be made without the Lord President's prior approval of the provision contained in the order.

## **70 Reappointment of JPs**

- (1) A person—
  - (a) whose 5-year term of appointment as a JP has expired, or
  - (b) who has resigned from office as a JP,is eligible for reappointment.
- (2) And a person who is eligible under subsection (1)(a) is to be reappointed except where—
  - (a) the person declines the reappointment,
  - (b) the person is aged 69 years or over,
  - (c) the person is disqualified under section 73,
  - (d) the sheriff principal for the sheriffdom for which the person was appointed as a JP makes a recommendation to the Scottish Ministers against the reappointment.
- (3) A recommendation for the purpose of subsection (2)(d) may be made—
  - (a) on the ground that the JP has inadequately performed the functions of a JP,
  - (b) on the ground that the JP has, without good reason, failed to meet a condition imposed under section 68(2),
  - (c) on the ground that the JP does not ordinarily reside in the sheriffdom of appointment or within 15 miles of it,
  - (d) on such other ground as the sheriff principal considers relevant.

## **71 Removal of JPs**

- (1) A JP may be removed from office by, and only by, an order made under subsection (2).
- (2) A tribunal appointed by the Lord President of the Court of Session may order the removal of a JP from office.
- (3) The tribunal is to consist of three members, namely—
  - (a) a sheriff principal,



- (b) a person who is, and has been for at least 10 years, a solicitor or advocate,
  - (c) another person.
- (4) The sheriff principal member of the tribunal must not be—
  - (a) the sheriff principal for the sheriffdom for which the JP is appointed,
  - (b) a temporary sheriff principal.
- (5) The sheriff principal member of the tribunal is to chair the tribunal.
- (6) The tribunal may make an order under subsection (2) only if, after investigation carried out at the instance of the sheriff principal for the sheriffdom for which the JP is appointed, it finds that—
  - (a) the JP is—
    - (i) unfit for that office, or
    - (ii) unfit for performing judicial functions,by reason of inability, neglect of duty or misbehaviour,
  - (b) the JP has inadequately performed the functions of a JP,
  - (c) the JP has, without good reason, failed to meet a condition imposed under section 68(2).
- (7) The Scottish Ministers may by order make provision—
  - (a) as respects the tribunal,
  - (b) authorising a specified body or class of persons to recommend (by reference to information provided with the recommendation) to a sheriff principal that an investigation for the purposes of subsection (6) be carried out.
- (8) Provision in an order under subsection (7)(a) may, in particular—
  - (a) prescribe the tribunal's procedures,
  - (b) enable the tribunal, at any time during an investigation, to suspend a JP from office or from acting as a JP.
- (9) A person who is removed from office as a JP is ineligible for reappointment as a JP.

## **72 Disqualification of solicitors who are JPs**

- (1) A solicitor who is a JP is disqualified from acting (whether directly or indirectly) as a solicitor in, or in connection with, any proceedings before a JP court in the sheriffdom for which the appointment as JP is made.
- (2) A disqualification of a solicitor under subsection (1)—
  - (a) extends to any member of staff of the solicitor,
  - (b) where the solicitor is a partner of a partnership or is a member of a limited liability partnership, extends to any—
    - (i) member of staff of the partnership,
    - (ii) any other partner or (as the case may be) member of the partnership.

## **73 Disqualification where sequestration or bankruptcy**

- (1) A person is disqualified from being appointed as, or acting as, a JP if—
  - (a) the person's estate has been sequestrated in Scotland, or
  - (b) the person has been adjudged bankrupt outwith Scotland.

- (2) Where a person is disqualified under subsection (1)(a), the disqualification ceases if—
  - (a) the award of sequestration is recalled or reduced, or
  - (b) the person is discharged by virtue of the Bankruptcy (Scotland) Act 1985 (c. 66).
- (3) Where a person is disqualified under subsection (1)(b), the disqualification ceases if—
  - (a) the adjudication of bankruptcy against the person is annulled, or
  - (b) the person is discharged.

## **74 Appointment of stipendiary magistrates**

- (1) Stipendiary magistrates are to be appointed by name on behalf of and in the name of Her Majesty by instrument under the hand of the Scottish Ministers.
- (2) A stipendiary magistrate is to be appointed for a sheriffdom.
- (3) But a stipendiary magistrate may be appointed only if the Scottish Ministers, on the advice of a sheriff principal, consider that the appointment is necessary or expedient for the purposes of the efficient administration of any or all of the JP courts in that sheriff principal's sheriffdom.
- (4) A stipendiary magistrate may be appointed as a full-time or part-time magistrate.
- (5) A person is not to be appointed as a stipendiary magistrate unless the person is, and has been for at least 5 years, a solicitor or advocate.
- (6) A stipendiary magistrate may, by reason of holding that office—
  - (a) exercise judicial and signing functions in the same manner as a JP, and
  - (b) use the title of office of JP in relation to the exercise of those functions.
- (7) An appointment of—
  - (a) a full-time stipendiary magistrate is to be without limit of time,
  - (b) a part-time stipendiary magistrate is to be for a term of 5 years.
- (8) However, a stipendiary magistrate—
  - (a) may resign from office by giving notice to the Scottish Ministers,
  - (b) ceases to hold office on reaching the age of 70 years.
- (9) In making appointments of stipendiary magistrates, except—
  - (a) appointments under subsection (12)(b),
  - (b) reappointments by virtue of section 75(3)(b) as it relates to section 70(2),
 the Scottish Ministers must comply with such provision as to procedure and consultation as they may by order make.
- (10) Provision in an order under subsection (9) may, in particular, relate to—
  - (a) the participation in the appointments process of persons who are not—
    - (i) legally qualified,
    - (ii) involved in the administration of the law or of government,
  - (b) the manner in which vacancies in office are publicised.
- (11) In making an appointment of a part-time stipendiary magistrate, the Scottish Ministers must have regard to the desirability of the magistrate having the opportunity of sitting

on not fewer than 20 days, and not more than 100 days, in each successive period of 12 months beginning with the day of appointment.

- (12) A person who, on the coming into force of this section, holds the office of stipendiary magistrate under the 1975 Act—
- (a) ceases to hold that office under that Act on such day as the Scottish Ministers may by order specify for the purpose of this subsection, and
  - (b) is, on the day so specified, to be appointed as a stipendiary magistrate under subsection (1) unless the person declines the appointment.

## **75 Stipendiary magistrates: further provision**

- (1) Stipendiary magistrates are entitled to such remuneration, allowances and pension provision as the Scottish Ministers may determine.
- (2) The Scottish Ministers are to pay the expenditure arising in consequence of subsection (1).
- (3) In relation to stipendiary magistrates—
- (a) section 68(2)(a) applies,
  - (b) section 70, except subsection (3)(a) and (c), applies,
  - (c) section 71, except subsection (6)(b), applies,
  - (d) sections 72 and 73 apply,
- as if a stipendiary magistrate were a JP (and references in those sections to JPs are to be read accordingly).

## **76 Signing functions**

- (1) A person who is a JP or a stipendiary magistrate may not exercise the judicial functions of office (but may exercise signing functions) if the person is—
- (a) a member of a local authority,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the House of Commons or the House of Lords.
- (2) A member of a local authority, despite not being a JP, may exercise signing functions in the same manner as a JP.
- (3) Where a member of a local authority exercises a signing function, the document, declaration or certificate concerned has effect—
- (a) as if that function were exercised by a JP,
  - (b) even where that document, declaration or certificate requires (or bears to require) to be signed, authenticated or given by a JP,
- if the words “member of a local authority” appear on it adjacent to the member’s signature.
- (4) Where in exercising a signing function a stipendiary magistrate uses the title of office of JP, the document, declaration or certificate concerned has effect as if the magistrate were a JP.
- (5) A JP, stipendiary magistrate or member of a local authority may not charge a fee for exercising signing functions.
- (6) In this Part, “signing functions” are—

- (a) signing any document for the purpose of authenticating another person's signature,
- (b) taking and authenticating by signature any written declaration,
- (c) giving a signed certificate of—
  - (i) facts within the giver's knowledge, or
  - (ii) the giver's opinion as to any matter.

## **77 Records and validity of appointment etc.**

- (1) The Scottish Ministers are to maintain (in such form as they consider appropriate)—
  - (a) a list of all persons holding office as a JP or stipendiary magistrate,
  - (b) a record of—
    - (i) the instruments of appointment of those persons,
    - (ii) any order removing a JP or stipendiary magistrate from office.
- (2) The Scottish Ministers are to send to the clerk of each sheriff court a copy of the list and record mentioned in subsection (1) so far as relating to JPs and stipendiary magistrates appointed for the sheriffdom containing that sheriff court.
- (3) Where a sheriff clerk is sent a copy of something under subsection (2), the clerk is to make it available (in such form as the clerk considers appropriate) for public inspection.
- (4) No appointment of a JP, nor any act of a JP, is invalidated solely because—
  - (a) provision made under section 67(5) is not complied with,
  - (b) the residential requirement referred to in section 68(1) is not met, or
  - (c) a condition imposed under section 68(2) is not met.
- (5) No appointment of a stipendiary magistrate, nor any act of a stipendiary magistrate, is invalidated solely because—
  - (a) provision made under section 74(9) is not complied with, or
  - (b) a condition imposed by virtue of section 75(3)(a) is not met.