

2008 No. 31

CRIMINAL LAW

The Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008

<i>Made</i> - - - -	<i>7th February 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>8th February 2008</i>
<i>Coming into force</i> - -	<i>10th March 2008</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 59(2), 64(1), 64(4), 65(1), 65(5) and 81(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(a) and all other powers enabling them to do so.

In accordance with section 59(7) and 64(3) of that Act they have consulted with the Sheriff Principal for the Sheriffdom of Lothian and Borders, City of Edinburgh Council, Midlothian Council, West Lothian Council, East Lothian Council and Scottish Borders Council.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008 and comes into force on 10th March 2008.

(2) In this Order—

“the 1975 Act” means the District Courts (Scotland) Act 1975(b);

“the 1988 Act” means the Road Traffic Offenders Act 1988(c);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(d);

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004(e); and

“the 2007 Act” means the Criminal Proceedings etc. (Reform) (Scotland) Act 2007;

“relevant date” means 10th March 2008.

Establishment of justice of the peace courts

2.—(1) Justice of the peace courts are established, on the relevant date, in each of the sheriff court districts listed in column 1 of Schedule 1 to this Order.

(2) Those justice of the peace courts shall take place at the locations specified in column 2 of Schedule 1 to this Order.

(a) 2007 asp 6.
(b) 1975 c.20.
(c) 1988 c.53.
(d) 1995 c.46.
(e) 2004 asp 8.

Disestablishment of district courts

3. The district courts established for the commission areas listed in Schedule 2 to this Order are disestablished on the relevant date^(a).

Transfer of staff

4. The scheme to be made by the Scottish Ministers under section 65(2) of the 2007 Act shall contain such information as is sufficient to identify the staff, being staff of the district courts which are disestablished by this Order, to whom the scheme applies.

Transfer of property, rights and liabilities

5.—(1) All of the property, rights and liabilities of the local authority specified in column 1 of Schedule 3 to this Order, in relation to the heritable property specified in column 2 of that Schedule, are transferred to and vest in the Scottish Ministers on the relevant date.

(2) The transfer, by virtue of this article, of any property, rights and liabilities to the Scottish Ministers shall not affect the validity of anything done (or having effect as if done) by or in relation to that local authority, so far as it relates to any property, rights and liabilities transferred by virtue of this article, before the relevant date.

(3) Anything (including legal proceedings) which, on the relevant date, is in the process of being done by or in relation to that local authority, so far as it relates to any property, rights and liabilities transferred by virtue of this article, shall be continued by or in relation to the Scottish Ministers.

(4) Anything done (or having effect as if done) by or in relation to that local authority for the purposes of or in connection with any property, rights and liabilities transferred to the Scottish Ministers by virtue of this article shall, if in force on the relevant date, have effect as if done by or in relation to the Scottish Ministers in so far as that is required for continuing its effect after that date.

Incidental, consequential and transitional provisions in relation to certain fixed penalties and conditional offers

6.—(1) The clerk of a relevant district court must transfer to the clerk of the appointed JP court such records, productions and other documents relating to any conditional offer or fixed penalty notice.

(2) The clerk of the appointed JP court—

(a) shall act as the fixed penalty clerk for the purpose of any conditional offer or fixed penalty notice in which the clerk of a relevant district court was the fixed penalty clerk; and

(b) shall exercise the functions of a fixed penalty clerk in relation to the disposal of any such offer or notice.

(3) Where paragraph (2)(a) applies, anything done by the clerk of a relevant district court, in the capacity of fixed penalty clerk, shall be treated as if done by the clerk of the appointed JP court acting in that capacity.

(4) A notice requesting a hearing, sent to a relevant district court or the clerk of a relevant district court, shall be treated as if sent to the clerk of the appointed JP court.

(5) In this article—

“the appointed JP court” means the JP court which the sheriff principal determines is the appointed JP court (under section 66(5) of the 2007 Act) in relation to a relevant district court;

“conditional offer” means, as the case may be, a conditional offer within the meaning of—

(a) District courts were established for commission areas by virtue of section 1(1) of the 1975 Act. “Commission areas” is defined in section 26 of that Act as “the area of a local authority”. “Local authority” is defined as a “council constituted under section 2 of the Local Government etc. (Scotland) Act 1994” (c.39).

(a) section 302 of the 1995 Act; or

(b) section 75(5) of the 1988 Act;

“fixed penalty clerk” means, as the case may be—

(a) a fixed penalty clerk within the meaning of section 69(4) of the 1988 Act;

(b) a fixed penalty clerk within the meaning of section 75(6) of the 1988 Act;

(c) a clerk of court who has been specified in a conditional offer made under section 302 of the 1995 Act; or

(d) a clerk of court who has been specified in a fixed penalty notice issued under Part 11 of the 2004 Act;

“fixed penalty notice” means, as the case may be—

(a) a fixed penalty notice within the meaning of Part 3 of the 1988 Act; or

(b) a fixed penalty notice within the meaning of Part 11 of the 2004 Act;

“a notice requesting a hearing” has the same meaning as in section 89(2) of the 1988 Act; and

“relevant district court” means a district court disestablished by this Order.

Partial repeal of the 1975 Act

7.—(1) The provision of the 1975 Act listed in column 1 of Part 1 of Schedule 4 to this Order, the subject matter being specified in column 2, is repealed.

(2) The provisions of the 1975 Act listed in column 1 of Part 2 of Schedule 4 to this Order, the subject matter being specified in column 2, to the extent specified cease to have effect in so far as they apply to the Sheriffdom of Lothian and Borders.

KENNY MACASKILL

A member of the Scottish Executive

St Andrew's House,
Edinburgh
7th February 2008

SCHEDULE 1

Article 2

ESTABLISHMENT OF JUSTICE OF THE PEACE COURTS

<i>Column 1</i> <i>(sheriff court district in which justice of the peace courts are established)</i>	<i>Column 2</i> <i>(location at which justice of the peace courts are to take place)</i>
Edinburgh	Edinburgh
Linlithgow	Livingston
Haddington	Haddington
Peebles	Peebles
Selkirk	Selkirk
Jedburgh	Jedburgh
Duns	Duns

SCHEDULE 2

Article 3

DISESTABLISHMENT OF DISTRICT COURTS: COMMISSION AREAS

City of Edinburgh Council

Midlothian Council

West Lothian Council

East Lothian Council

Scottish Borders Council

SCHEDULE 3

Article 5

TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES

<i>Column 1 (local authority)</i>	<i>Column 2(heritable property)</i>
East Lothian Council	Those subjects extending to approximately 68 square metres or thereby situated on the first floor of the County Buildings, Court Street, Haddington, EH41 3HN designated by the council as the District Court office before the making of this order (incorporating the public counter, waiting area, office licensing office and the JPs' room).

SCHEDULE 4

Article 7

PARTIAL REPEAL OF THE 1975 ACT

PART 1

THE 1975 ACT: GENERAL REPEAL

<i>Column 1 (provision of the 1975 Act)</i>	<i>Column 2 (subject matter)</i>
Section 5(7)	Stipendiary magistrates

PART 2

THE 1975 ACT: PROVISIONS WHICH CEASE TO HAVE EFFECT IN THE SHERIFFDOM OF LoTHIAN AND BORDERS

<i>Column 1 (provisions of the 1975 Act)</i>	<i>Column 2 (subject matter)</i>
Section 1A	Further provision as to the establishment and disestablishment of district courts
Section 5 (to the extent that it is not repealed by Part 1 of this Schedule)	Stipendiary magistrates
Section 7	Clerk of district court
Section 8	Court houses for district court
Section 17 (to the extent that it is not already repealed(a))	Allowances
Section 18 (to the extent that it is not already repealed(b))	Appointment and duties of clerk of the peace
Section 20	Custody of records
Section 23	District court and justice of the peace expenses and destination of fines

(a) Section 17(3) and (4) of the 1975 Act were repealed by article 3(d) of the District Courts and Justices of the Peace (Scotland) Order 2007 (S.S.I. 2007/480).

(b) Paragraphs (b) and (d) of section 18(4) of the 1975 Act were repealed by article 3(e) of the District Courts and Justices of the Peace (Scotland) Order 2007. Paragraph (e) of section 18(4) was partially repealed by article 3(f) of the same Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various provision in relation to the establishment of justice of the peace courts in the Sheriffdom of Lothian and Borders.

Article 2 and Schedule 1 to the Order specify the justice of the peace courts which are to be established in the various Sheriff Court Districts within the Sheriffdom of Lothian and Borders.

Article 3 and Schedule 2 to the Order make provision for the disestablishment of the district courts (established under the District Courts (Scotland) Act 1975) which sit within the Sheriffdom of Lothian and Borders. Those district courts are disestablished by reference to commission areas (areas of Councils) in which they were established.

Article 4 confirms that a scheme to be made by the Scottish Ministers (under section 65(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007) will identify which staff of the district courts that scheme will apply to. The effect of that scheme will be that certain staff (being employees of the local authorities which administer the district courts) will transfer to the employment of the Scottish Administration.

Article 5(1) makes provision for the transfer of property, rights and liabilities to the Scottish Ministers of the heritable property identified in Schedule 3. Articles 5(2) to (4) make transitional and savings provision in relation to that transfer.

Article 6 makes incidental, consequential and transitional provision in relation to certain fixed penalties and conditional offers of penalties. These provisions will allow the clerks to the justice of the peace courts to deal with matters relating to these penalties and offers which were previously dealt with by the clerk to the, now disestablished, district courts.

Article 7 and Schedule 4 make provision in relation to the repeal of various sections of the District Courts (Scotland) Act 1975.

£3.00

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