

EXECUTIVE NOTE

THE JUSTICE OF THE PEACE COURTS (SHERIFFDOM OF LoTHIAN AND BORDERS) ETC. ORDER 2008 SSI/2008/31

1. The above order was made 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 (“the 2007 Act”). The instrument is subject to negative resolution procedure.

2. This order provides for justice of the peace courts in the sheriffdom of Lothian and Borders. The order will enter into force on 10 March 2008 and makes provision in relation to:

- the establishment of JP courts in Lothian and Borders;
- the disestablishment of district courts in Lothian and Borders;
- the transfer of staff from the local authorities to the Scottish Administration;
- the transfer of property from the local authority to the Scottish Ministers;
- certain fixed penalties and compensation offers; and
- the repeal of certain sections of the District Courts (Scotland) Act 1975 (“the 1975 Act”), mainly for the purposes of unification in Lothian and Borders.

Policy Objectives

3. The 2007 Act makes provision for the unification of Scotland’s Courts to allow for the more efficient, effective and consistent handling of criminal cases through the summary courts. District courts are run by local authorities, and upon unification in each sheriffdom, will be replaced by JP Courts run by the Scottish Court Service. A third commencement order will bring into force a number of provisions of the 2007 Act for the first phase of court unification on 10 March 2008 in the Sheriffdom of Lothian Borders. Provision is made for the powers, jurisdiction, administration and establishment of JP courts in Lothian and Borders.

4. Court unification is a key element of the Scottish Government’s reform of summary justice. It will bring all court services in Scotland under the responsibility of the Scottish Court Service, providing

- Support to the Judiciary in Sheriff and Justice of the Peace summary criminal courts;
- Court services in all summary criminal courts, and managing and providing legal and administrative staff;
- One national IT system for all summary criminal cases; and
- Collection and enforcement of all fines and financial penalties.

Article 2 - Establishment of justice of the peace courts

5. Article 2 specifies the justice of the peace courts that are established in Lothian and Borders on 10 March 2008 with reference to the particular sheriff court district in which they are established and by location. Seven JP courts are established, these being Edinburgh,

Livingston (for Linlithgow Sheriff Court District), Haddington, Peebles, Selkirk, Jedburgh and Duns.

Article 3 - Disestablishment of district courts

6. Article 3 provides for the disestablishment of those district courts which fall within the Sheriffdom of Lothian and Borders on 10 March 2008, these being the district courts in the commission areas of the City of Edinburgh, Midlothian, West Lothian, East Lothian and Scottish Borders Councils.

Article 4 - Transfer of staff

7. Article 4 specifies the scheme which identifies those local authority staff engaged in work in the district court that will transfer to the employment of the Scottish Administration upon unification in the Sheriffdom of Lothian and Borders.

Article 5 - Transfer of property

8. Article 5 provides for the transfer of the property from East Lothian Council to the Scottish Ministers in which the Haddington JP court (formerly East Lothian district court) will sit from 10 March onwards. By virtue of article 5(1), all the rights and liabilities of that property also transfer to the Scottish Ministers. Articles 5(2)-(5) contain transitional and savings provisions in relation to the transfer. This is the only property in the Sheriffdom where a transfer under the Order is required.

Article 6 - Provision in relation to certain fixed penalties and conditional offers

9. 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 disestablished district courts.

Article 7 - Repeal of the District Courts (Scotland) Act 1975 provisions

10. Article 7 repeals certain provisions of the 1975 Act for the Sheriffdom of Lothian and Borders as a consequence of unification in that area. Many of the 1975 Act provisions relate to local authorities' responsibilities for the maintenance of district courts and as such, are superseded by sections 59-66 of the 2007 Act. The provisions of the 1975 Act repealed are sections 1A, 5, 7, 8, 17, 18, 20 and 23, relating respectively to: the establishment and disestablishment of district courts; the appointment of stipendiary magistrates; the appointment of district court clerks; the provision of premises; the payment of JP allowances; the appointment of clerks of the peace; the custody of records; and district court and justice of the peace expenses and destination of fines.

11. Section 5(7) of the 1975 Act, providing that stipendiary magistrates are also justices of the peace, is repealed on a nationwide basis. The new terms and conditions of appointment for justices of the peace, which have come into force on a nationwide basis, are quite different from the terms of appointment for stipendiary magistrates, which makes it inappropriate for the two offices to be linked.

Consultation

General – The Criminal Proceedings etc. (Reform) (Scotland) Act 2007

12. Many of the provisions of the 2007 Act are based on the recommendations of the ‘McInnes Committee’ and subsequent consultation during 2004. The Scottish Executive published *Smarter Justice, Safer Communities – Summary Justice Reform Next Steps*¹, in March 2005 following extensive consultation on the recommendations of the report² of the Committee chaired by Sheriff Principal John McInnes. Details of the history of the Act, including the McInnes report, and the *Smarter Justice* paper are all available through the Scottish Government’s summary justice reform website.³

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13. Plans for unification of the summary courts under the Scottish Court Service were outlined in the *Next Steps* paper. In 2007, the Scottish Court Service conducted a consultation exercise after publishing plans for the establishment of Justice of the Peace Courts, the consequent disestablishment of district courts, and arrangements for the delivery of court-related services in the Sheriffdom of Lothian and Borders.⁴ Accordingly, the Scottish Ministers 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 under sections 59(7) and 64(3) of the 2007 Act.

Financial Effects

14. The Order is made in accordance with the original policy intention of the relevant provisions of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. It therefore has no financial effects beyond those which were set out in the Financial Memorandum to the Act.

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1 Scottish Executive, *Smarter Justice, Safer Communities: Summary Justice Reform - Next Steps*, available at:

<http://www.scotland.gov.uk/Publications/2005/03/20888/55016>

2 Scottish Executive, *Report of the Summary Justice Review Committee*, available at:

<http://www.scotland.gov.uk/Publications/2004/03/19042/34176>

3 The summary justice reform website can be found at:

<http://www.scotland.gov.uk/Topics/Justice/criminal/criminalprocedure/19008>

4 The Scottish Court Service consultation paper *Delivering a Unified Courts Administration in Lothian and Borders Sheriffdom* is available at: http://www.scotcourts.gov.uk/court_unification/sheriffdoms/lothian_and_borders/publications/consultationPaper260207.doc

The subsequent report on that consultation is available at:

[http://www.scotcourts.gov.uk/current/docs/LBFinalReport6September07\(published\).doc](http://www.scotcourts.gov.uk/current/docs/LBFinalReport6September07(published).doc)