

2010 No. 39 (C. 1)

COURT OF SESSION

HIGH COURT OF JUSTICIARY

JUDICIAL APPOINTMENTS AND DISCIPLINE

JUSTICE OF THE PEACE COURT

SCOTTISH COURT SERVICE

SHERIFF COURT

The Judiciary and Courts (Scotland) Act 2008 (Commencement
No. 4, Transitional Provisions and Savings) Order 2010

Made - - - -

9th February 2010

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 71(2) and 76(1) of the Judiciary and Courts (Scotland) Act 2008(a).

Citation and interpretation

1.—(1) This Order may be cited as the Judiciary and Courts (Scotland) Act 2008 (Commencement No. 4, Transitional Provisions and Savings) Order 2010.

(2) In this Order—

- (a) “the Act” means the Judiciary and Courts (Scotland) Act 2008;
- (b) “the 1971 Act” means the Sheriff Courts (Scotland) Act 1971(b); and
- (c) references to sections, chapters, parts, paragraphs and schedules are, unless otherwise stated, references to sections, chapters and parts of, and paragraphs of schedules and schedules to, the Act.

Appointed day

2. The days appointed for the coming into force of the provisions of the Act are—

- (a) 20th February 2010 for section 37(5) and section 40 insofar as it inserts section 12(C)(5) into the Sheriff Courts (Scotland) Act 1971(c); and

(a) 2008 asp 6.
(b) 1971 c.58
(c) 1971 c.58.

(b) 1st April 2010 for the provisions of the Act specified in the Schedule to this Order.

Transitional provisions and savings

3. Despite the coming into force of sections 35-40 and paragraphs 2(1) and (3) and 3 of schedule 5, any proceedings for removal from judicial or shrieval office which have been commenced before 1st April 2010 shall continue to be governed by the law in force immediately before that date.

4. Judicial conduct occurring before 1st April 2010 may be taken into account in any proceedings under Chapters 4 and 5 of Part 2.

5. Despite the coming into force of sections 41 and 42, subordinate legislation made by Scottish Ministers under sections 69(1) and 71(7) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(a) shall continue to have effect on or after 1st April 2010 as it had effect immediately before that date until such time as the Lord President of the Court of Session and the Court of Session respectively exercise their powers to make subordinate legislation under those sections and such subordinate legislation comes into force.

6. Despite the coming into force of section 48, any direction given by Scottish Ministers under section 9 of the 1971 Act before 1st April 2010 shall continue to have effect until its expiry or until the Lord President gives a direction under section 2(3) covering that subject matter.

7. Despite the coming into force of section 53 any authorisation or direction given by Scottish Ministers under section 10 of the 1971 Act before 1st April 2010 shall continue to have effect until its expiry or until revoked by the Lord President of the Court of Session.

8. Despite the coming into force of section 55, any requirement imposed or direction given by Scottish Ministers respectively under subsections (2) and (3) of section 14 of the 1971 Act shall continue to have effect until revoked by the Lord President of the Court of Session.

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
9th February 2010

(a) asp 6. The Justices of the Peace (Scotland) Order 2007 (S.S.I. 2007/210) was made under section 69 of that Act and the District Courts and Justices of the Peace (Scotland) Order 2007 (S.S.I. 2007/480) was made under section 71.

SCHEDULE

Article 2(b)

PROVISIONS OF THE ACT COMING INTO FORCE ON 1ST APRIL 2010

<i>Column 1</i> <i>Provisions of the Act</i>	<i>Column 2</i> <i>Subject matter</i>
Section 2 in so far as not already in force	Head of the Scottish Justiciary
Section 3	Delegation of functions
Sections 28 and 29	Judicial conduct
Sections 30 to 33	Judicial complaints reviewer
Section 34	Suspension
Sections 35 and 36	Removal from office
Section 37 in so far as not already in force	
Sections 38 and 39	
Section 40 in so far as not already in force	
Section 41	
Section 42	Training and appraisal of justices of the peace
Section 43	Meaning of “judicial office holder”
Sections 47 to 56	Sheriff courts
Sections 57 to 58	Justice of the peace courts
Section 60(2) in so far as not already in force, except in relation to paragraph 1 of schedule 3	The Scottish Court Service
Sections 61 to 64	Functions of the Scottish Court Service
Section 65	Provision of advice, etc to the Scottish Ministers
Section 67	Annual report
Sections 68 to 70	Ministerial powers
Section 73 in so far as not already in force	Consequential repeal
Schedule 3, paragraphs 15, 16, 17 and 19	The Scottish Court Service

<i>Column 1</i>	<i>Column 2</i>
<i>Provisions of the Act</i>	<i>Subject matter</i>
Schedule 4	Appointment etc of office holders: Consequential amendments
Schedule 5 in so far as not already in force	Consequential amendments and repeals

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the order making powers in sections 37(5) and 40 of the Judiciary and Courts (Scotland) Act 2008 on 20th February and the remaining provisions on 1st April 2010, with the exception of paragraph 1 of schedule 3.

Articles 3 to 8 make various transitional provisions and savings as a result of the transfer of powers from Scottish Ministers to the Lord President and the Court of Session.

Article 5 provides that orders made by Scottish Ministers on the training and appraisal and removal of justices of the peace are to remain in force until the Lord President of the Court of Session and Court of Session exercise their powers to make subordinate legislation under the relevant provisions as amended by this Act.

Article 6 provides that administrative directions given by Scottish Ministers to sheriffs principal and sheriffs are to continue to have effect until their expiry or until replaced by a direction given by the Lord President.

Article 7 provides that where Scottish Ministers have authorised a sheriff principal or directed a sheriff to act in another sheriffdom, that authorisation or direction shall continue to have effect until its expiry or until revoked by the Lord President of the Court of Session.

Article 8 provides that where Scottish Ministers have required any sheriff to reside at a particular place or have directed a sheriff to perform his or her duties in a particular sheriff court district or districts, that requirement or direction shall continue to have effect until revoked by the Lord President of the Court of Session.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Act have been brought into force by the Judiciary and Courts (Scotland) Act 2008 (Commencement No. 1) Order 2009 (S.S.I. 2009/83 (c. 6); the Judiciary and Courts (Scotland) Act 2008 (Commencement No. 2) Order 2009 (S.S.I. 2009/192 (c.15) and the Judiciary and Courts (Scotland) Act 2008 (Commencement No. 3) Order 2009 (S.S.I. 2009/318 (c.25):—

<i>Provision</i>	<i>Date of Commencement</i>
Section 1	1st June 2009
Subsections (1), (5) and (6) of section 2 for the purposes of subsections (2)(b) and (c)	1st June 2009
Subsections (2)(b) and (c) of section 2	1st June 2009
Sections 4 to 8	1st June 2009
Sections 9 to 18	1st June 2009
Sections 19 and 20	1st June 2009
Sections 21 to 23	1st June 2009
Sections 24 to 26	1st June 2009
Section 27	1st October 2009
Sections 44 to 46	1st June 2009
Section 59	16th March 2009
Section 60(1)	1st October 2009
Section 60(2) in so far as it relates to the commencement of paragraphs 6, 9 to 14, 18 and 20 of schedule 3	1st October 2009
Section 60(2) in so far as it relates to the commencement of subparagraphs 3(2), (3) and (4) of schedule 3	16th March 2009
Section 60(2) in so far as it relates to the commencement of paragraphs 2, 3(1), 4, 5, 7 and 8 of schedule 3	1st June 2009

<i>Provision</i>	<i>Date of Commencement</i>
Section 66	1st October 2009
Section 73 in so far as it relates to the commencement of paragraph 4 of schedule 5	1st June 2009
Schedule 1	1st June 2009
Schedule 2	1st June 2009
Schedule 3, paragraphs 6, 9 to 14, 18 and 20	1st October 2009
Schedule 3, paragraphs 2, 3(1), 4, 5, 7 and 8	1st June 2009
Schedule 3, subparagraphs 3(2), (3) and (4)	16th March 2009
Schedule 5, paragraph 4	1st June 2009

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