

**2007 No. 210**

**CRIMINAL LAW**

**The Justices of the Peace (Scotland) Order 2007**

*Made* - - - - - *6th March 2007*

*Laid before the Scottish Parliament* - - *8th March 2007*

*Coming into force* - - *23rd April 2007*

The Scottish Ministers, in exercise of the powers conferred by sections 67(5) and (6), 69 and 81(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007<sup>(a)</sup> and all other powers enabling them in that behalf, and with the approval of the Lord President of the Court of Session granted in accordance with section 69(4) of that Act, hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Justices of the Peace (Scotland) Order 2007 and shall come into force on 23rd April 2007.

**Interpretation**

2. In this Order—

- “the Act” means the Criminal Proceedings etc. (Reform) (Scotland) Act 2007;
- “appointed member” means a member of a JPAC appointed by the sheriff principal;
- “the Board” means the body known as the Judicial Appointments Board for Scotland;
- “commission area” means a commission area within the meaning of section 26 of the 1975 Act;
- “full justice” means a full justice within the meaning of section 9 of the 1975 Act;
- “JAC” means a Justices’ Appraisal Committee established in accordance with this Order;
- “JP” means a justice of the peace appointed under the Act;
- “JPAC” means a Justice of the Peace Advisory Committee established in accordance with this Order;
- “JTC” means a Justices’ Training Committee established in accordance with this Order;
- “justice of the peace” means a full justice or a JP;
- “Lord President” means the Lord President of the Court of Session;
- “specified day” is the day which the Scottish Ministers have specified, or may specify, by order made under section 67(7) of the Act; and
- “the 1975 Act” means the District Courts (Scotland) Act 1975<sup>(b)</sup>.

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<sup>(a)</sup> 2007 asp 6.  
<sup>(b)</sup> 1975 c. 20.

### **Appointment of JPs**

3.—(1) The Scottish Ministers may appoint a person as a JP for a sheriffdom only if that person has been recommended for appointment by the JPAC for that sheriffdom.

(2) Paragraph (1) does not apply to—

- (a) an appointment under section 67(7)(b) of the Act; or
- (b) a reappointment under section 70(2) of the Act.

(3) In making decisions as to which persons to recommend for appointment as JPs, a JPAC—

- (a) shall act in accordance with procedures approved by the Board; and
- (b) may have regard to recommendations submitted to it by other persons.

(4) A JPAC may not recommend a person for appointment as a JP unless that person has undertaken a course of training approved for the purposes of this paragraph by the Lord President.

### **Formation of a JPAC**

4.—(1) There shall be a JPAC for each sheriffdom.

(2) The sheriff principal of the sheriffdom shall be the convener of that sheriffdom's JPAC.

### **Appointments to JPAC**

5.—(1) The sheriff principal shall from time to time make appointments so that (in addition to the sheriff principal) there are no less than 7, and no more than 10, members of the JPAC.

(2) In making appointments under paragraph (1), the sheriff principal shall ensure that—

- (a) the number of appointed members of the JPAC who are justices of the peace is equal to, or greater than, the number of such members who are not justices of the peace; and
- (b) at least 3 appointed members of the JPAC are persons who are not—
  - (i) a justice of the peace;
  - (ii) the holder of any other judicial office;
  - (iii) a solicitor; or
  - (iv) an advocate.

(3) The sheriff principal may not appoint a sheriff to be a member of a JPAC while another sheriff is such a member.

(4) A person may not be appointed as a member of a JPAC if that person is—

- (a) a member of the House of Commons or the House of Lords;
- (b) a member of the Scottish Parliament; or
- (c) a local authority councillor.

(5) A person shall cease to be a member of a JPAC if that person becomes a person described in sub-paragraph (a), (b) or (c) of paragraph (4).

### **JPAC – terms of appointment**

6.—(1) Every appointed member of a JPAC shall be appointed for a term of 5 years and, on the expiry of that term, may be re-appointed for one further term of 5 years only.

(2) The appointment of a person as a member of a JPAC shall cease when that person reaches the age of 70 years.

## **Appointments to JPAC – procedure**

7.—(1) A person may not be appointed as a member of a JPAC without having been interviewed by a panel comprising—

- (a) the convener of that JPAC or a sheriff having jurisdiction in the relevant area who has been nominated by the convener; and
- (b) two justices of the peace for the relevant area, each of whom has been a justice of the peace for at least 5 years.

(2) The convener of the JPAC or a sheriff nominated by the convener under paragraph (1)(a) shall select the justices of the peace referred to in paragraph (1)(b).

(3) In paragraph (1), the “relevant area” is the sheriffdom in respect of which the JPAC is formed except that, in the case of an interview under paragraph (1) held prior to the specified day, the “relevant area” in sub-paragraph (b) of that paragraph is a commission area any part of which falls within that sheriffdom.

(4) In making appointments to the JPAC, the sheriff principal—

- (a) shall bring the existence of a vacancy to the attention of—
  - (i) all JPs appointed for the sheriffdom; or
  - (ii) in the case of a vacancy arising before the specified day, all full justices appointed for a commission area any part of which falls within the sheriffdom,if the vacancy is one which the sheriff principal intends should be filled by a justice of the peace; and
- (b) shall arrange for the existence of a vacancy to be advertised in a newspaper circulating in the sheriffdom if the vacancy is one which the sheriff principal intends should be filled by a person who is not the holder of a judicial office.

(5) In paragraph (4)(a)(ii) “full justices” means full justices whose names have been included in a duty rota of justices (that is, such a rota as approved under section 16(1)(b) of the 1975 Act) for any time during the 12 months ending on the coming into force of this Order.

## **Formation of a JTC**

8.—(1) There shall be a JTC for each sheriffdom.

(2) The members of a JTC shall be—

- (a) the members of the JAC for the sheriffdom in question;
- (b) a sheriff having jurisdiction in the sheriffdom nominated by the sheriff principal of that sheriffdom; and
- (c) a person nominated by the Scottish Ministers who is—
  - (i) under section 63 of the Act the clerk of a JP court within the sheriffdom; or
  - (ii) until such time as that section comes into force in the sheriffdom, the clerk of a district court within that sheriffdom under section 7 of the 1975 Act.

(3) The person referred to in sub-paragraph (c) of paragraph (2) shall act as legal adviser to the JTC.

(4) In respect of each JTC, the Scottish Ministers shall appoint a person who will be entitled to attend meetings of that JTC (or any sub-committee of that JTC) but will not be a member of that JTC (or any sub-committee of that JTC).

(5) The convener of the JAC for a sheriffdom shall be the convener of the JTC for that sheriffdom.

## **Functions of a JTC**

9.—(1) The JTC for a sheriffdom shall—

- (a) consider the training needs of the justices of the peace in that sheriffdom;

- (b) consider any guidance or directions on the training of justices of the peace which has been issued by the Lord President or the sheriff principal of that sheriffdom; and
  - (c) no later than the end of February each year, provide to the Lord President and the sheriff principal of that sheriffdom a training plan covering the period from April that year until March of the following year.
- (2) The training plan shall include information as to—
- (a) the proposed types of training;
  - (b) the number of justices of the peace who are to receive training;
  - (c) the place or places where the training is likely to be provided; and
  - (d) the proposed dates of the training.
- (3) No later than the end of September each year, the JTC for each sheriffdom shall provide to the Lord President and the sheriff principal of that sheriffdom an annual report on training which was undertaken in the preceding 12 months to the end of March that year.
- (4) The annual report shall include information as to—
- (a) the types of training which have taken place in that period;
  - (b) the evaluation of the training which has taken place;
  - (c) the cost of the training;
  - (d) the number of justices of the peace who attended the training; and
  - (e) any substantial respects in which the training which has taken place has differed from the training which was proposed in the training plan for that period.

### **JTC – procedures**

**10.—**(1) A JTC may arrange for any of its functions to be carried out by a sub-committee appointed by it.

(2) A person may not be appointed by a JTC to be a member of one of that JTC's sub-committees unless that person would be entitled to be appointed as a member of that JTC.

### **Training requirement – existing JPs**

**11.—**(1) The requirement in paragraph (2) applies in the case of a full justice who ceases to hold office as described in section 67(7)(a) of the Act and who is appointed as a JP for a sheriffdom by virtue of section 67(7)(b) of the Act.

(2) Within 2 years of appointment as a JP for a sheriffdom, the JP shall undertake a training course of a type approved for the purposes of this paragraph by the Lord President.

(3) The requirement specified in paragraph (2) shall not apply in the case of a JP who—

- (a) has, prior to appointment as a JP for a sheriffdom, undertaken a training course such as is described in that paragraph; or
- (b) is aged 67 or over on appointment as a JP for a sheriffdom.

### **Training requirement**

**12.—**(1) Every JP shall, during each term of appointment, undertake at least such minimum period of approved training as is set down from time to time by the Lord President.

(2) In paragraph (1), “approved training” is training of a type approved for the purposes of this article by the Lord President.

### **Formation of a JAC**

**13.—**(1) There shall be a JAC for each sheriffdom.

(2) The sheriff principal of the sheriffdom in respect of which the JAC is to be formed shall from time to time make appointments so that there are no less than 5, and no more than 8, members of the JAC.

(3) Each JAC shall appoint one of its members to act as the convener of that JAC.

(4) An appointment as convener of a JAC shall be for a period of one year.

(5) At the first meeting of each JAC following its establishment its members shall make an appointment under paragraph (3).

### **JAC – terms of appointment**

**14.—**(1) Paragraphs (2) to (6) apply as regards the terms of appointment of the first members of a JAC following its establishment.

(2) If 5 members are appointed one member shall hold office for a term of one year, 2 members for a term of 2 years and the remaining 2 members for a term of 3 years.

(3) If 6 members are appointed 2 members shall hold office for a term of one year, 2 members for a term of 2 years, and the remaining 2 members for a term of 3 years.

(4) If 7 members are appointed 2 members shall hold office for a term of one year, 2 members for a term of 2 years and the remaining 3 members for a term of 3 years.

(5) If 8 members are appointed 2 members shall hold office for a term of one year, 3 members for a term of 2 years and the remaining 3 members for a term of 3 years.

(6) The members of a JAC shall decide which members are to serve for which terms referred to in paragraphs (2) to (5) and, if they are unable to agree, the length of their terms shall be determined by lot.

(7) Except as provided for in paragraphs (1) to (6), every member of a JAC shall be appointed for a term of 3 years.

(8) A person shall cease to be a member of a JAC for a sheriffdom if that person neither holds office as a JP for that sheriffdom nor as a full justice appointed for a commission area any part of which falls within that sheriffdom.

### **Appointments to JAC - procedure**

**15.—**(1) A person may not be appointed as a member of a JAC without having been interviewed by a panel comprising—

- (a) the sheriff principal of the relevant area, or a sheriff having jurisdiction in the relevant area nominated by the sheriff principal; and
- (b) two justices of the peace for the relevant area, each of whom has been a justice of the peace for at least five years.

(2) The sheriff principal of the relevant area or a sheriff nominated by that sheriff principal under paragraph (1)(a) shall select the justices of the peace referred to in paragraph (1)(b).

(3) In paragraph (1), the “relevant area” is the sheriffdom in respect of which the JAC is formed except that, in the case of an interview under paragraph (1) held prior to the specified day, the “relevant area” in sub-paragraph (b) of that paragraph is a commission area any part of which falls within that sheriffdom.

(4) A person may be appointed as a member of a JAC for a sheriffdom only if that person is a justice of the peace for the relevant area.

(5) In paragraph (4), the “relevant area” is the sheriffdom in respect of which the JAC is formed except that, in the case of appointments made before the specified day, the “relevant area” is a commission area any part of which falls within that sheriffdom.

(6) In making appointments to the JAC, the sheriff principal shall bring the existence of a vacancy to the attention of—

- (a) all JPs appointed for the sheriffdom; or

- (b) in the case of a vacancy arising before the specified day, all full justices appointed for a commission area any part of which falls within the sheriffdom.

(7) In paragraph (6) “full justices” means full justices whose names have been included in a duty rota of justices (that is, such a rota as approved under section 16(1)(b) of the 1975 Act) for any time during the 12 months ending on the coming into force of this Order.

### **JAC – procedures**

**16.**—(1) A JAC meeting shall be quorate if there are 3 members at the meeting.

(2) A JAC may arrange for any of its functions to be carried out by a sub-committee appointed by it.

(3) A person may not be appointed by a JAC of a sheriffdom to be a member of one of that JAC’s sub-committees unless that person would be entitled to be appointed as a member of the JAC for that sheriffdom.

### **Appraisal of JPs**

**17.**—(1) Every JAC shall establish a scheme to appraise the performance on the bench of JPs.

(2) The JAC shall select JPs to conduct appraisals (“the appraising justices”) and may also arrange for a JP appointed for another sheriffdom to conduct appraisals.

(3) The JAC shall determine the intervals at which JPs are to be appraised.

(4) The JAC shall establish a procedure for conducting appraisals, which shall include the following elements—

- (a) the notification that will be given to the JP to be appraised (“the appraised justice”);
- (b) a procedure for the appraising justice to record his or her assessment and for notifying the appraised justice and the JAC of that assessment;
- (c) a procedure for enabling the appraised justice to discuss the assessment with the appraising justice;
- (d) a procedure enabling the appraised justice to challenge the assessment to a person other than the appraising justice;
- (e) a procedure for the appraising justice to recommend to the convener of the JAC any action which may be required following the appraisal and for the JAC to notify the appraised justice of any action which it deems is reasonable following consideration of the appraising JP’s assessment and recommendation; and
- (f) the time limits for these procedures.

(5) The JAC shall publish its scheme to the JPs in its sheriffdom.

*CATHY JAMIESON*  
A member of the Scottish Executive

St Andrew’s House,  
Edinburgh  
6th March 2007

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision in connection with the Scottish Ministers' power to appoint justices of the peace under section 67(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 ("the Act"). A person may not be appointed as a justice of the peace under that section unless they have been recommended for appointment by a Justice of the Peace Advisory Committee (JPAC).

The Order makes provision for the formation of JPACs; Justices' Training Committees (JTCs) and Justices' Appraisal Committees (JACs). The Order sets out the requirements for appointment to these committees, the terms of appointment and the procedure for being appointed. The Order also makes provisions for various functions to be exercised by these committees. The Order makes provision for the formation of sub-committees of JTCs and JACs.

The Order sets out the training requirements applicable to justices of the peace appointed under the Act and to full justices of the peace appointed under the District Courts (Scotland) Act 1975.

The Order sets out the framework for the appraisal of justices of the peace appointed under the Act.

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