

EXECUTIVE NOTE

THE JUSTICE OF THE PEACE COURTS (SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY) ETC. ORDER 2009

SSI/2009/332

1. The above Order was made in exercise of the powers conferred by sections 59(2), 64(1) and (4), 65(1), 81(2) and 82(1) 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 (“JP Courts”) in the Sheriffdom of South Strathclyde, Dumfries and Galloway. Certain transitional provisions in the Order will enter into force on 23 November 2009, while the remainder comes into force on 22 February 2010. The Order makes provision in relation to:

- the establishment of JP courts in South Strathclyde, Dumfries and Galloway;
- the disestablishment of the district courts which have jurisdiction wholly or partly in the Sheriffdom of South Strathclyde, Dumfries and Galloway;
- the transfer of staff of the district courts to the employment of the Scottish Ministers;
- certain fixed penalties and conditional offers of penalties that will be dealt with by the clerks to the JP courts;
- citation of accused persons and witnesses to the JP courts in South Strathclyde, Dumfries and Galloway prior to their establishment;
- the fixing of diets in the JP courts prior to their establishment, and applications for the alteration of such diets; and
- the repeal of the District Courts (Scotland) Act 1975 (“the 1975 Act”). This is consequential upon the establishment of JP courts throughout Scotland and the corresponding disestablishment of district courts.

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 (SCS). Unification has already taken place in the Sheriffdoms of Lothian & Borders, Grampian, Highland & Islands, Glasgow & Strathkelvin and Tayside, Central & Fife. A further commencement order will bring into force a number of provisions of the 2007 Act for this sixth phase of unification on 22 February 2010.

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 SCS, which will provide:

- 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
- improved collection and enforcement of all fines and financial penalties.

Article 2 - Establishment of Justice of the Peace Courts

5. Article 2 and Schedule 1 specify the JP Courts that are established in South Strathclyde, Dumfries and Galloway on 22 February 2010, with reference to the particular sheriff court district and location in which they are established. Ten JP courts are established, these being Ayr, Coatbridge, Cumbernauld, Dumfries, Hamilton, Kirkcudbright, Lanark, Motherwell, Annan and Stranraer.

Article 3 – Disestablishment of district courts

6. Article 3 and Schedule 2 provide for the disestablishment of those district courts which fall wholly or partly within the Sheriffdom of South Strathclyde, Dumfries and Galloway, these being the district courts for the commission areas of Dumfries and Galloway Council, North Lanarkshire Council, East Ayrshire Council, South Ayrshire Council and South Lanarkshire Council.

Article 4 – Transfer of staff

7. Article 4 requires the creation of a scheme that will identify the local authority staff to be transferred to the Scottish Administration. SCS and CoSLA have agreed that those local authority staff whose normal work duties entail 50% or more of their time being engaged on activities associated with the business of the district court will meet the criterion for transfer.

Article 5 – Incidental, consequential and transitional provisions in relation to certain fixed penalties and conditional offers

8. The provisions of Article 5 will allow the clerks to the JP courts to deal with matters relating to certain fixed penalties and conditional offers which were previously dealt with by the clerk to the disestablished district courts.

Article 6 – Transitional provisions relating to JP courts

9. Section 66 of the 2007 Act makes provision for the transfer of proceedings from district courts to JP courts upon unification. Article 6 makes further provision for the fixing of diets and the citation of accused persons and witnesses to JP courts in South Strathclyde, Dumfries and Galloway prior to their establishment. This will be particularly useful where the JP court to which proceedings will transfer is in a different location to the current district court.

10. Article 6 will have effect from 23 November 2009. From that date, district courts in South Strathclyde, Dumfries and Galloway will be able to fix diets to take place in a JP court from 22 February 2010, and accused persons and witnesses may be cited to a JP court although it is not yet established. In addition, transitional provision is made allowing district courts to re-fix diets and deal with applications for the alteration of diets, and fix earlier or later diets to take place in the district court or JP court, respectively.

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

11. Article 7 repeals the District Courts Scotland Act 1975. This is consequential upon the establishment of JP courts throughout Scotland and the corresponding disestablishment of district courts. This Order is the final step in that process. 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.

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 then 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.

The previous order for the unification of South Strathclyde, Dumfries and Galloway

13. Plans for unification of the summary courts under SCS were outlined in the *Next Steps* paper. In 2009, SCS conducted a consultation exercise after publishing plans for the establishment of JP Courts, the consequent disestablishment of district courts, and arrangements for the delivery of court-related services in the Sheriffdom of South Strathclyde, Dumfries and Galloway.³

14. On 5 May 2009, the Justice Committee considered the [Justice of the Peace Courts \(Sheriffdom of South Strathclyde, Dumfries and Galloway\) Order 2009](#)⁴. That Order was expressed in similar terms to the current statutory instrument: designed to establish Justice of the Peace courts in South Strathclyde, Dumfries and Galloway, and to disestablish the Sheriffdom's district courts. It would have the practical effect of closing Girvan, Cumnock, Annan and East Kilbride district courts, without providing for direct replacements - Justice of the Peace courts - at those locations. The debate⁵ held by the Committee is reported in full in the official record. MSPs raised concerns which included travelling distance concerns. The [Committee voted to annul the Order](#), which led to it being revoked by the Scottish Government.

The present Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc. Order 2009

15. The Government has conducted further consultation on the proposals for establishment of Justice of the Peace courts in South Strathclyde, Dumfries and Galloway in terms of the statutory requirements under the 2007 Act. Accordingly, the Scottish Ministers have

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 Scottish Court Service consultation paper *Delivering a Unified Courts Administration in the Sheriffdom of South Strathclyde, Dumfries and Galloway* is available at: http://www.scotcourts.gov.uk/court_unification/publications/south_strathclyde_dumfries_and_galloway/master_draft_consultation.pdf

The subsequent report on that consultation will be published at: http://www.scotcourts.gov.uk/court_unification/publications.asp

⁴ http://www.opsi.gov.uk/legislation/scotland/ssi2009/ssi_20090115_en_1

⁵ <http://www.scottish.parliament.uk/s3/committees/justice/or-09/ju09-1302.htm#Col1741>

consulted with the Sheriff Principal for the Sheriffdom of South Strathclyde, Dumfries and Galloway, Dumfries and Galloway Council, East Ayrshire Council, North Lanarkshire Council, South Ayrshire Council and South Lanarkshire Council under sections 59(7) and 64(3) of the 2007 Act. After further consideration the Government has brought forward the present Order.

16. The Order is intended to achieve very similar objectives to its predecessor. The main difference is that this Order will establish a Justice of the Peace Court at Annan, ensuring that a court at Annan will continue to function following court unification.

Annan

17. In terms of access to local justice, the Government acknowledges the concerns raised at the Justice Committee consideration in May. In particular the concern that the eastern part of the Sheriffdom will be adversely affected by the change, with substantially increased journey times for those living in settlements such as Langholm. In recognition of these concerns, the revised Order will establish a JP court at Annan. SCS will investigate the practical steps required to ensure that the security and accommodation problems identified are managed taking account of the view expressed by members of the Committee and other MSPs in attendance that they did not favour significant refurbishment at substantial cost.

Cumnock and Girvan

18. Concerns on access to local justice have also been raised in relation to the closures at Cumnock and (to a lesser extent) at Girvan. In relation to Cumnock, there will be an impact on individuals who will have longer journeys to court. The distances involved in travelling to the JP court (in Ayr) from any part of the district would be comparable to those other rural areas of Scotland. The low levels of business at Cumnock and Girvan District Courts suggest that very few people will be affected and some will actually benefit.

19. The Government acknowledges that there is a need to upgrade the facilities at Ayr JP Court, but this is a strong value for money option, reflecting Ayr's status as the regional population centre and transport hub: and also that renovation at Ayr would be required irrespective of the position with Cumnock and Girvan. Options for renovation are being appraised and will be taken forward after unification. After due consideration of the debate on the previous Order and the merits of the arguments the Government maintains its earlier proposals in respect of Cumnock and Girvan.

Financial Effects

20. 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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