

2008 No. 363

JUSTICE OF THE PEACE COURTS

The Justice of the Peace Courts (Sheriffdom of Tayside, Central and Fife) Order 2008

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|--|----------------------------|---------------------------|
| <i>Made</i> | - - - - | <i>6th November 2008</i> |
| <i>Laid before the Scottish Parliament</i> | | <i>7th November 2008</i> |
| <i>Coming into force</i> | <i>Articles 1, 4 and 6</i> | <i>1st December 2008</i> |
| | <i>Remainder</i> | <i>23rd February 2009</i> |

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 59(2), 64(1) and (4), 65(1) 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 sections 59(7) and 64(3) of that Act they have consulted with the Sheriff Principal for the Sheriffdom of Tayside, Central and Fife, Angus Council, Clackmannanshire Council, Dundee City Council, Falkirk Council, Fife Council, Perth and Kinross Council and Stirling Council.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Justice of the Peace Courts (Sheriffdom of Tayside, Central and Fife) Order 2008.

(2) The provisions of this article and articles 4 and 6 come into force on 1st December 2008.

(3) All other articles come into force on the relevant date.

(4) 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);

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

“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;

“relevant date” means 23rd February 2009; and

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

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

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.

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 relevant district courts, to whom the scheme applies.

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

5.—(1) The clerk of the appointed JP court shall take possession of such records, productions and other documents relating to any conditional offer or fixed penalty notice which were held by the clerk of the relevant district court.

(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 the 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—

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

- (a) section 302 (fixed penalty: conditional offer by procurator fiscal) of the 1995 Act; or
- (b) section 75(5) (issue of conditional offer) 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 (fixed penalties) of the 2004 Act;

“fixed penalty notice” means, as the case may be, a fixed penalty notice within the meaning of—

- (a) Part 3 (fixed penalties) of the 1988 Act; or

(a) District courts were established for commission areas by virtue of section 1(1) of the District Courts (Scotland) Act 1975 (“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).

(b) Part 11 of the 2004 Act; and

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

Transitional provisions relating to JP courts

6.—(1) Where a case in a relevant district court is—

(a) adjourned, continued or deferred; and

(b) a further diet of that case is to be fixed for a date on or after the relevant date,

the court may fix that diet in the appointed JP court despite the fact that that JP court has not yet been established.

(2) It is competent to cite an accused person or a witness to a diet or an ordinary sitting of a JP court (taking place on or after the relevant date) prior to that court being established by this Order.

(3) Where, prior to its establishment, a diet is fixed in or an accused person is cited to a diet or an ordinary sitting of the appointed JP court—

(a) any application—

(i) made under section 134 (incidental applications) or section 137 (alteration of diets) of the 1995 Act in respect of those proceedings; and

(ii) made prior to the establishment of the appointed JP court,

is to be made to the relevant district court; and

(b) the relevant district court may hear and dispose of the application.

(4) Where paragraph (3)(b) applies in relation to an application made by virtue of section 137 of the 1995 Act, the relevant district court may, in accordance with the functions conferred on it by that section, discharge the diet fixed in the appointed JP court, and, either—

(a) fix a new diet to take place prior to the relevant date in the district court; or

(b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed, and to take place after the relevant date, in the appointed JP court.

(5) Where section 137ZA (refixing diets) of the 1995 Act applies in respect of a diet fixed in the appointed JP court prior to its establishment, the relevant district court may discharge that diet and—

(a) fix a new diet to take place prior to the relevant date in the district court; or

(b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed, and to take place on or after the relevant date, in the appointed JP court.

(6) Nothing in this article affects the operation of section 66 (transitional arrangements for proceedings) of the 2007 Act.

Partial repeal of the 1975 Act

7. The provisions of the 1975 Act listed in column 1 of Schedule 3 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 Tayside, Central and Fife.

KENNY MACASKILL

A member of the Scottish Executive

St Andrew's House,
Edinburgh
6th November 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> |
|---|---|
| Arbroath | Arbroath |
| Forfar | Forfar |
| Dundee | Dundee |
| Perth | Perth |
| Alloa | Alloa |
| Falkirk | Falkirk |
| Stirling | Stirling |
| Cupar | Cupar |
| Dunfermline | Dunfermline |
| Kirkcaldy | Kirkcaldy |

SCHEDULE 2

Article 3

DISESTABLISHMENT OF DISTRICT COURTS: COMMISSION AREAS

Angus Council

Clackmannanshire Council

Dundee City Council

Falkirk Council

Fife Council

Perth and Kinross Council

Stirling Council

SCHEDULE 3

Article 7

PARTIAL REPEAL OF THE 1975 ACT: PROVISIONS WHICH
CEASE TO HAVE EFFECT IN THE SHERIFFDOM OF TAYSIDE,
CENTRAL AND FIFE(a)

| <i>Column 1</i> <i>(provisions of the 1975 Act)</i> | <i>Column 2</i> <i>(subject matter)</i> |
|--|---|
| Section 1A | Further provision as to establishment and disestablishment of district courts |
| Section 5 (to the extent that it is not already repealed (b)) | 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 (c)) | Allowances |
| Section 18 (to the extent that it is not already repealed (d)) | 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 |

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- (a) Similar repeals are made in respect of the Sheriffdom of Lothian and Borders; the Sheriffdom of Grampian, Highland and Islands and the Sheriffdom of Glasgow and Strathkelvin, by article 7(2) of and Schedule 4 to the Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008 (S.S.I. 2008/31); article 6 of and Schedule 3 to the Justice of the Peace Courts (Sheriffdom of Grampian, Highland and Islands) Order 2008 (S.S.I. 2008/93) (as amended by the Justice of the Peace Courts (Sheriffdom of Grampian, Highlands and Islands) Amendment Order 2008 (S.S.I. 2008/179)); and article 8 of and the Schedule to the Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Order (S.S.I. 2008/328).
- (b) Section 5(7) of the 1975 Act was repealed by article 7(1) of and Schedule 4 to the Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008 (S.S.I. 2008/31).
- (c) Section 17(3) and (4) of the 1975 Act were repealed by article 3(d) of the District Courts and Justice of the Peace (Scotland) Order 2007 (S.S.I. 2007/480).
- (d) 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 provisions in relation to the establishment of justice of the peace courts (“JP courts”) in the Sheriffdom of Tayside, Central and Fife.

JP courts are being established on a Sheriffdom by Sheriffdom basis and have already been established in Lothian and Borders and Grampian, Highland and Islands, and from 8th December 2008, in Glasgow and Strathkelvin.

Article 2 of 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 Tayside, Central and Fife.

Article 3 of 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 Tayside, Central and Fife. 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 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 6 makes further transitional provision allowing accused persons and witnesses to be cited to the JP courts in the Sheriffdom of Tayside, Central and Fife, prior to their establishment. The article also makes transitional provision for fixing diets in those courts and for dealing with the alteration of such diets (under sections 137 and 137ZA of the Criminal Procedure (Scotland) Act 1995) and incidental applications made in respect of such cases (under section 134 of that Act).

Article 7 of and Schedule 3 to the Order make provision in relation to the repeal of various sections of the District Courts (Scotland) Act 1975. These repeals apply only to the Sheriffdom of Tayside, Central and Fife and are consequential upon the establishment of JP courts in that Sheriffdom and the disestablishment of the district courts.

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