

2009 No. 332

JUSTICE OF THE PEACE COURTS

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

<i>Made</i>	- - - -	<i>28th September 2009</i>
<i>Laid before the Scottish Parliament</i>		<i>29th September 2009</i>
<i>Coming into force</i>		
<i>Articles 1, 4 and 6</i>		<i>23rd November 2009</i>
<i>Remainder</i>		<i>22nd February 2010</i>

The Scottish Ministers make the following Order 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(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 South Strathclyde, Dumfries and Galloway, Dumfries and Galloway Council, East Ayrshire Council, North Lanarkshire Council, South Ayrshire Council and South Lanarkshire Council.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc. Order 2009.

(2) This article and articles 4 and 6 come into force on 23rd November 2009.

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

(4) In this Order—

“the 1988 Act” means the Road Traffic Offenders Act 1988(b);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(c);

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004(d);

“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 22nd February 2010; and

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

(a) 2007 asp 6.
(b) 1988 c.53.
(c) 1995 c.46.
(d) 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) (transfer of staff and property) 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 the 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;

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

“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
- (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 the appointed 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 that 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.

(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 that 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.

Repeal of the District Courts (Scotland) Act 1975

7. The District Courts (Scotland) Act 1975(a) is hereby repealed.

KENNY MACASKILL

A member of the Scottish Executive

St Andrew's House,
Edinburgh
28th September 2009

(a) 1975 c. 20. Section 5(7) of the District Courts (Scotland) Act 1975 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).

Sections 9, 9A (including the Justices of the Peace (Tribunal) (Scotland) Regulations 2001 (S.S.I. 2001/217) made under that section), 10 to 16, 17(3) and (4) and 18(4)(b) and (d) were repealed by article 3 of the District Courts and Justice of the Peace (Scotland) Order 2007 (S.S.I. 2007/480). Paragraph (e) of section 18(4) was partially repealed by article 3(f) of the same Order.

Sections 1A, 5 (to the extent it was not already repealed), 7, 8, 17 (to the extent that it was not already repealed), 18 (to the extent that it was not already repealed), 20 and 23 were repealed in respect of the Sheriffdom of Lothian and Borders; the Sheriffdom of Grampian, Highland and Islands; the Sheriffdom of Glasgow and Strathkelvin; and the Sheriffdom of Tayside, Central and Fife, by article 7(2) of and Schedule 4 to the Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008; 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)); article 8 of and the Schedule to the Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Order 2008 (S.S.I. 2008/328) (as amended by the Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Amendment Order 2008 (S.S.I. 2008/374)); and article 7 of and Schedule 3 to the Justice of the Peace Court (Sheriffdom of Tayside, Central and Fife) Order 2008 (S.S.I. 2008/363) (as amended by the Sheriffdom of Tayside, Central and Fife) Amendment Order 2009 (S.S.I. 2009/20)). Similar repeals will be made in respect of the Sheriffdom of North Strathclyde by the Justice of the Peace Courts (Sheriffdom of North Strathclyde) Order 2009.

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>
Airdrie	Coatbridge
Airdrie	Cumbernauld
Hamilton	Hamilton
Hamilton	Motherwell
Lanark	Lanark
Ayr	Ayr
Dumfries	Annan
Dumfries	Dumfries
Stranraer	Stranraer
Kirkcudbright	Kirkcudbright

SCHEDULE 2

Article 3

DISESTABLISHMENT OF DISTRICT COURTS: COMMISSION AREAS

Dumfries and Galloway Council

North Lanarkshire Council

East Ayrshire Council

South Ayrshire Council

South Lanarkshire Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various provision in relation to the establishment of justice of the peace courts (“JP courts”) in the Sheriffdom of South Strathclyde, Dumfries and Galloway. JP courts are being established on a Sheriffdom by Sheriffdom basis and have already been established in: Lothian and Borders; Grampian, Highland and Islands; Glasgow and Strathkelvin; and Tayside, Central and Fife. The Justice of the Peace Courts (Sheriffdom of North Strathclyde) etc. Order 2009 will establish JP Courts in that Sheriffdom on 14th December 2009.

Article 2 of, and Schedule 1 to, the Order specify the JP courts which are to be established in the various sheriff court districts within the Sheriffdom of South Strathclyde, Dumfries and Galloway.

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 South Strathclyde, Dumfries and Galloway. The district court of East Ayrshire, which has jurisdiction extending into both the Sheriffdom of South Strathclyde, Dumfries and Galloway and the Sheriffdom of North Strathclyde, and the district court of South Lanarkshire, which has jurisdiction extending into both the Sheriffdom of South Strathclyde, Dumfries and Galloway and the Sheriffdom of Glasgow and Strathkelvin, are also disestablished. 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 2007 Act) will identify which staff of the district courts that scheme will apply to. The effect of the 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 Clerk to the JP courts to deal with matters relating to penalties and offers which were previously dealt with by the Clerk of 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 South Strathclyde, Dumfries and Galloway prior to their establishment. The article 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 1995 Act) and incidental applications made in respect of such cases (under section 134 of that Act).

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.

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