



# District Courts (Scotland) Act 1975 (repealed)

## 1975 CHAPTER 20

### PART I

#### DISTRICT COURTS

#### **1 Abolition of existing inferior courts and establishment of district courts.**

- (1) On 16th May 1975 the inferior courts in Scotland existing immediately before that date (in this Act referred to as “the existing courts”) shall cease to exist, and on that date there shall be established, in accordance with the provisions of this Act, a district court for each commission area except in the case of a commission area in respect of which the Secretary of State otherwise directs, having regard to the likely lack of business for such a court.

In this subsection, “inferior courts” means all justice of the peace courts, quarter sessions, burgh courts, police courts, and the court of the bailie of the river and firth of Clyde.

- (2) On and after that date, all functions of burgh magistrates, not otherwise provided for, shall be exercisable by a justice of the peace.
- (3) Where proceedings were instituted before that date in any existing court and those proceedings have not been completed by that date, then, for the purpose of enabling those proceedings to be continued on and after that date, and for preserving in other respects the continuity of the administration of justice—
- (a) the district court having jurisdiction in the area where the proceedings were instituted shall be treated as succeeding to, and being the same court as, the existing court concerned, and any verdict, sentence, order, complaint, notice, citation, warrant, bail bond or other proceedings or document shall have effect accordingly; and

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- (b) the clerk and the prosecutor of the existing court shall transfer all records, productions and documents relating to those proceedings to the clerk or, as the case may be, the prosecutor of the district court concerned.
- (4) Where proceedings were instituted after 14th May 1969 in any existing court and were completed on or before 15th May 1975, the clerk of that court shall transfer all complaints, minutes and other records relating thereto to the clerk of the district court concerned.
- (5) In the case of any other record or document relating to proceedings in the existing courts, the person having custody of it shall, on request by or on behalf of a district court, release it to that court for the purpose of proceedings in that court, and any record or document so released shall be returned to the person who released it as soon as may be after it has ceased to be required for the said purposes.

**[<sup>F1</sup>1A Further provision as to establishment and disestablishment of district courts.**

- (1) Where it appears to the Secretary of State that—
  - (a) there is insufficient business for the district court in a particular commission area; and
  - (b) such insufficiency of business is likely to continue,
 he may by order provide that the district court for that area cease to exist on a specified date.
- (2) Where it appears to the Secretary of State that, in a commission area in which there is no district court, there is likely to be sufficient business to justify the establishment of such a court, he may by order provide for the establishment of such a court in that area on a specified date.
- (3) An order under subsection (1) or (2) above may contain all such provisions as appear to the Secretary of State to be necessary or expedient for rendering the order of full effect and any incidental, supplemental or consequential provisions which appear to him to be necessary or expedient for the purposes of the order, including, but without prejudice to the generality of the foregoing words, provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this enactment).
- (4) Before making an order under subsection (1) or (2) above, the Secretary of State shall consult the district or islands council for the area concerned, and such other persons as appear to him to have an interest in the proposed order.
- (5) Orders under subsection (1) or (2) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

**F1** S. 1A inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\)](#), s. 33

**2 District of, and exercise of jurisdiction by, district court.**

- (1) Each commission area shall be the district of a district court, and the places at which a district court sits, and [<sup>F2</sup>subject to section 10 of the Bail etc. (Scotland) Act 1980

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(sittings of sheriff and district courts)]the days and times when it sits at any given place, shall be determined by the local authority concerned.

- (2) The jurisdiction and powers of the district court shall be exercisable by a stipendiary magistrate or by one or more justices, and no decision of the court shall be questioned on the ground that it was not constituted as required by this subsection unless objection was taken on that ground by or on behalf of a party to the proceedings not later than the time when the proceedings or the alleged irregularity began.

#### Textual Amendments

**F2** Words inserted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), s. 12(2), [Sch. 1 para. 2](#)

#### Modifications etc. (not altering text)

**C1** [S. 2\(1\)](#) excluded by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), s. 10(3)

### 3 Jurisdiction and powers of district court.

- (1) A district court shall have all the jurisdiction and powers of the existing courts (other than those of the justice of the peace small debt court and of quarter sessions) and also those hitherto exercisable by a burgh magistrate, judge of police, or justice of the peace when acting as a court of summary jurisdiction.
- (2) A district court when constituted by a stipendiary magistrate shall, in addition to the jurisdiction and powers mentioned in subsection (1) above, have the summary criminal jurisdiction and powers of a sheriff.
- (3) ..... **F3**
  - (a)
  - (b)
- (4) Where several offences, which if committed in one commission area could be tried under one complaint, are alleged to have been committed in different commission areas, proceedings may be taken for all or any of those offences under one complaint before the district court of any one of such commission areas, and any such offence may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been wholly committed within the jurisdiction of that court.

#### Textual Amendments

**F3** [S. 3\(3\)](#) repealed by [Criminal Law Act 1977 \(c. 45\)](#), s. 65(5) (7), Sch. 13

### 4 Procedure and practice in the district court.

- (1) Subject to the provisions of this section, the rules of procedure and practice which immediately before 16th May 1975 applied to the existing courts shall, with any necessary modifications, apply on and after that date to the district court.
- (2) The powers of the High Court under section 76(1)(b) of the <sup>M1</sup>Summary Jurisdiction (Scotland) Act 1954 to regulate procedure under that Act by acts of adjournal shall include power to regulate and prescribe by acts of adjournal the procedure and practice to be followed in any proceedings in the district court.

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- (3) An act of adjournal made under the said section 76(1)(b) in the exercise of the powers conferred by subsection (2) above may contain such incidental, supplemental, or consequential provisions as appear to the High Court to be necessary or expedient for the purposes of that act, including provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this Act) relating to matters with respect to which an act of adjournal may be made by virtue of those powers.

#### **Marginal Citations**

**M1** 1954 c. 48.

## **5 Stipendiary magistrates.**

- (1) Subject to subsections (2) and (3) below, a local authority may appoint a stipendiary magistrate to sit in a district court, and the terms and conditions of such an appointment, including superannuation and other benefits, shall be those applicable to service in local government.
- (2) A person shall not be appointed to be a stipendiary magistrate unless he is, and has been for at least five years, legally qualified, and for the purposes of this subsection a person shall be legally qualified if he is an advocate or a solicitor.
- (3) A person shall not be appointed to be a stipendiary magistrate until the Secretary of State approves—
- (a) the establishment of the office of stipendiary magistrate in the district court concerned;
  - (b) the salary which it is proposed should pertain to that office; and
  - (c) the appointment of the person proposed for that office.
- (4) Where it appears to the Secretary of State that it is expedient so to do in order to avoid delays in the administration of justice in any district court, he may direct the local authority concerned to appoint a person qualified to be so appointed to act as stipendiary magistrate in that court during such period as the Secretary of State thinks fit.
- (5) Any person who immediately before 16th May 1975 holds office as stipendiary magistrate for any area shall, on that date, become stipendiary magistrate in the district court having jurisdiction in that area and shall be deemed in all respects to have been appointed by virtue of this section.
- (6) The salary of any such stipendiary magistrate as is mentioned in subsection (5) above shall not be less than that payable to him immediately before 16th May 1975.
- (7) Every stipendiary magistrate shall, by virtue of his office, be a justice of the peace for the commission area in which he is appointed.
- (8) Section 12 of the <sup>M2</sup>Sheriff Courts (Scotland) Act 1971 (removal from office of sheriff) shall apply in relation to a stipendiary magistrate as it applies in relation to a sheriff.

#### **Modifications etc. (not altering text)**

**C2** S. 5(1) extended (4.1.1995) by 1994 c. 39, s. 50(1)(with s. 7(2)); S.I. 1994/2850, art. 3(a), **Sch. 2**

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### **Marginal Citations**

**M2** 1971 c. 58.

## **6 District prosecutor.**

- (1) Until the Lord Advocate directs that all prosecutions in a commission area shall proceed at the instance of a procurator fiscal appointed by him, every local authority shall appoint a district prosecutor for the district court and pay to him such reasonable salary as they may determine.
- (2) A procurator fiscal appointed by the Lord Advocate or a district prosecutor may institute and carry on proceedings in the district court, and a procurator fiscal so appointed shall have all the powers and privileges of a district prosecutor.
- (3) Within the district of the district court the district prosecutor shall have all the powers and privileges of a prosecutor in the existing courts and those pertaining by law to a procurator fiscal.
- (4) The Lord Advocate may issue directions to a district prosecutor regarding the prosecution of offences in the district court, and the district prosecutor shall comply with any such direction.
- (5) A district prosecutor shall report to the Lord Advocate on any matter concerning the discharge of his functions as and when called upon to do so by or on behalf of the Lord Advocate.
- (6) A complaint at the instance of the district prosecutor for any district may, in the event of his dying or ceasing to be entitled to discharge the duties of district prosecutor for that district, be taken up and proceeded with by any other person entitled to discharge such duties.
- (7) The offices of clerk to the district court and district prosecutor shall not be held by the same person or by persons who stand in relation to one another as partners or as employer and employee.
- (8) A district prosecutor shall not be removed or suspended from office or have his salary diminished by a local authority without the consent of the Lord Advocate.
- (9) The prosecutions authorised by virtue of this Act under complaint by the procurator fiscal or district prosecutor shall be without prejudice to complaints at the instance of any other person entitled to make the same.

## **7 Clerk of district court.**

- (1) It shall be the duty of each local authority to appoint and employ, whether on a full-time or part-time basis, an officer to act as clerk of the district court for their area, who shall also act as legal assessor in that court, and any person so appointed shall be an advocate or a solicitor.
- (2) There shall be transferred to the clerks of the district courts all functions hitherto exercisable by clerks of the existing courts.
- (3) Where under an agreement an officer of a regional council is placed at the disposal of a district council for the purposes of this section, that officer may perform the duties of clerk of the district court for the area concerned.

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## **8 Court houses for district court.**

- (1) Every local authority shall provide suitable and sufficient premises and facilities for the purposes of the district court.
- (2) Without prejudice to subsection (1) above, every regional, islands or district council having control of premises used to any extent for the purposes of the existing courts as at 15th May 1975 shall make those premises available for the purposes of the district court, and, where those premises include accommodation used by the prosecutor in the existing courts or in the district courts, that accommodation shall be made available to any procurator fiscal appointed by the Lord Advocate to serve in the district court for such period and at such times as the fiscal may require.

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