EXPLANATORY MEMORANDUM TO THE

THE CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007 (POWERS OF DISTRICT AND JP COURTS) ORDER 2007

2007 No. 3480 (S.7)

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order makes provision consequential on the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 ("the 2007 Act"), an Act of the Scottish Parliament. Part 4 of the 2007 Act makes provision in relation to new Justice of the Peace Courts (JP Courts) and Justices of the Peace ("JPs"). This Order will make consequential amendments to the Road Traffic Offenders Act 1988 ("the 1988 Act") so that District and JP Courts can impose disqualification from driving. The amendments to the 1988 Act will also enable District and JP Courts to deal with offences which involve obligatory endorsement of driving licences and which are not fixed penalty offences or offences in respect of which a conditional offer could be issued.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order is made in exercise of the powers conferred by sections 104, 112 (1) and 113(4) and (5) of the Scotland Act 1998 ("the 1998 Act"). The Order is, by virtue of section 115(1) and paragraphs 1, 2 and 3 of Schedule 7 to the Act, subject to affirmative resolution procedure in both Houses of the UK Parliament. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of an Act of the Scottish Parliament, in this case the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

3.2 This section 104 Order is expedient in consequence of the 2007 Act. The 2007 Act establishes new JP Courts (which will be rolled out gradually and will replace the existing District Courts) and will also make more immediate changes to the appointment and training of JPs in both the existing District Courts and the new JP Courts. These changes make it appropriate for the District and JP Courts to handle more serious offences under the Road Traffic Offenders Act 1998 ("the 1988 Act") which involve disqualification or obligatory endorsement. However, the subject matter of the 1988 Act is reserved under the 1998 Act so the Scottish Parliament did not have legislative competence to make the necessary amendments to the 1988 Act under the 2007 Act. Those changes are now being made in this Order.

4. Legislative Background

4.1 The Criminal Proceedings etc. (Reform) (Scotland) Act received Royal Assent on 27 February 2007. The Act includes provisions to improve the operation of the justice system in Scotland, and the gradual replacement of Districts Courts with JP Courts. The new system for the appointment, training and appraisal of JPs is expected to come into force on 10 December 2007. It is anticipated that the first JP Court will

be established in the Sheriffdom of Lothian and Borders in March 2008. JP Courts are then expected to be established on a phased basis across Scotland, and will gradually replace all existing District Courts in every Sheriffdom in Scotland before the end of the 2009-10 financial year.

4.2 Section 10(2) of the 1988 Act currently prevents District Courts from trying offences involving obligatory endorsement of driving licences (unless they are fixed penalty offences or offences in respect of which a conditional offer could be issued, in which case they would be within the jurisdiction of District Courts by virtue of section 10(1)). Section 50(b) of the 1988 Act provides that District Courts cannot impose disqualification from driving, although section 35(6) of that Act makes it clear that the District Court can impose disqualification from driving under "totting up" provisions where there are twelve or more penalty points to be taken into account.

4.3 This Order will amend the 1988 Act to enable District and JP Courts to consider cases which involve obligatory endorsement and which are currently excluded from the jurisdiction of the District Court under section 10(2) of the 1988 Act. It will also repeal section 50(b), enabling District and JP Courts to impose disqualification from driving in non "totting up" cases.

4.4 The amendments to the 1988 Act will affect both District and JP Courts. This can be justified on the basis that the 2007 Act will strengthen the process for appointing, training and appraising judicial personnel in the surviving District Courts as well as the new JP Courts as they are rolled out. This will also ensure that, during the phased introduction of the JP Courts, there are no regional disparities between the sentences that can be imposed by the new set of judicial office holders. It will also allow the court system across Scotland to benefit from a redistribution of business as cases which are currently heard in the sheriff court are allocated to the lay courts. The amendments made to the 1988 Act by the Order currently refer only to the District Courts. However, as the new JP Courts are introduced across Scotland, paragraph 7 of the schedule to the 2007 Act will be used to amend the references to the District Courts in the 1988 Act to references to the JP Courts. The Order therefore includes consequential amendments to paragraph 7 of the Schedule to the 2007 Act to reflect the main amendments which are being made to the 1988 Act.

5. Extent

5.1 This instrument extends to England, Wales and Scotland. The amendments to the 2007 Act extend to Scotland only.

6. European Convention on Human Rights

6.1 The Minister of State at the Scotland Office has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

> In my view the provisions of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Powers of District and JP Courts) Order 2007 are compatible with the Convention rights

7. Policy background

7.1 In 2001 the Scottish Ministers established a Summary Justice Review Committee, chaired by Sheriff Principal John McInnes, to report on improvements which could be made to the Scottish summary justice system. The Committee reported in 2004, and recommended a range of measures to reduce the number of less serious offences which resulted in court cases. It also recommended the abolition of the office of justice of the peace – partly because of the reduced level of less serious business which the lay courts would see once the Committee's other recommendations had come into force.

7.2 The findings of the Committee were subjected to widespread consultation. Many of its recommendations received widespread support. However, the consultation revealed considerable opposition to the abolition of lay justice, and support instead for moves to improve its quality. After consideration of the consultation, the Scottish Ministers decided to retain the role of Justice of the Peace. It was also decided to improve the recruitment, appointment and training of justices in order to equip them to play an enhanced role within the summary justice system, by allowing them to hear some cases which are currently heard in sheriff summary courts, in order to reduce the pressure on the Sheriff Courts.

7.3 The 2007 Act, includes a number of provisions to improve the training and recruitment of justices of the peace; to change JPs' terms of appointment; and to introduce a system of appraisal for JPs. It also gives the Scottish Ministers the power to increase JPs' custodial sentencing powers by order from two months to up to six months.

7.4 This Order is therefore expedient as a result of the other changes introduced by the 2007 Act and enables JPs, in both the new JP Courts and the surviving District Courts, under their new terms and conditions of appointment to hear disqualification and obligatory endorsement cases which are currently heard in the Sheriff Courts.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is that some cases which are currently heard in the sheriff court can instead be heard in the district or JP courts. Overall, this will probably slightly reduce the cost of operating the Scottish court system. Before JP courts have been established across the country, this redistribution of business will affect local authorities, since cases will transfer from courts which are run by the Scottish Court Service (the sheriff courts) to courts which are run by local authorities (the district courts). However the Scottish Executive has advised that it does not expect the overall level of business in the District Courts to increase significantly because other changes included within the 2007 Act will ensure that some less serious offences are no longer dealt with in court.

9. Contact

9.1 Adam Pile at the Scotland Office [adam.pile@scotland.gsi.gov.uk] can answer any queries regarding the instrument.

Adam Pile
Scotland Office
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