SCOTTISH STATUTORY INSTRUMENTS

2009 No. 331

JUSTICE OF THE PEACE COURTS

The Justice of the Peace Courts (Sheriffdom of North Strathclyde) etc. Order 2009

Made - - - -	*28th September 2009*
Laid before the Scottish Parliament	*29th September 2009*
Coming into force	
Articles 1, 4, 6 and 7(9) and (10)	*23rd November 2009*
Remainder	*14th December 2009*

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 North Strathclyde, Argyll and Bute Council, East Ayrshire Council, North Ayrshire Council, East Dunbartonshire Council, West Dunbartonshire Council, Inverclyde Council, Renfrewshire Council and East Renfrewshire Council.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Justice of the Peace Courts (Sheriffdom of North Strathclyde) etc. Order 2009.

(2) This article, articles 4, 6 and 7(9) and (10) come into force on 23rd November 2009.

(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;

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

"relevant date" means 14th December 2009; and

"relevant district court" means a district court disestablished by this Order.

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

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(**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).

(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

(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.

Supplemental and transitional provisions in relation to certain sittings of the East Ayrshire District Court

7.—(1) Paragraphs (2) to (4) apply in relation to any proceedings which—

(a) were instituted in the District Court of East Ayrshire;

(b) had they been instituted in the sheriff court would have been instituted in the Sheriff Court of North Strathclyde at Kilmarnock; and

(c) have not been completed prior to the relevant date.

(2) Those proceedings continue in the JP Court for Kilmarnock at Kilmarnock as if instituted there.

(3) The cases involved are to be heard and disposed of as if the JP Court for Kilmarnock at Kilmarnock always had jurisdiction for the proceedings, and any relevant—

(a) verdict, sentence, order or other determination, and

(b) complaint, notice, citation, warrant or other document,

has effect accordingly.

(4) For the purposes of paragraph (2), the clerk of the district court must transfer to the clerk of the JP Court for Kilmarnock at Kilmarnock such records, productions and other documents relating to the proceedings as are in the district court clerk's possession.

(5) Further, the clerk of the district court must transfer to the clerk of the JP Court for Kilmarnock at Kilmarnock such records, productions and other documents relating to recent proceedings completed in the District Court of East Ayrshire at Kilmarnock as are in the district court clerk's possession.

(6) For the purposes of paragraph (5), proceedings are recent if they were completed not more than 5 years before the relevant date.

(7) Article 5 applies to the Clerk of the District Court of East Ayrshire, but only while exercising functions in relation to the operation of that court at Kilmarnock, in the same way as they apply to a clerk of a relevant district court.

(8) Where paragraph (7) applies, references in article 5 to—

"the clerk of a relevant district court" or "the clerk of the relevant district court" shall be read as references to the Clerk of the District Court of East Ayrshire, but only while exercising functions in relation to the operation of that court at Kilmarnock;

"the clerk of the appointed JP court" shall be read as references to the Clerk of the JP Court for Kilmarnock at Kilmarnock; and

"a relevant district court" shall be read as references to the District Court of East Ayrshire at Kilmarnock.

(9) Article 6 applies to cases in the District Court of East Ayrshire at Kilmarnock as it applies to cases in a relevant district court.

(10) Where paragraph (9) applies, references in article 6 to—

(a) "a relevant district court" or "the relevant district court" shall be read as references to the District Court of East Ayrshire at Kilmarnock; and

(b) "the appointed JP court" shall be read as references to the JP Court for Kilmarnock at Kilmarnock.

Partial repeal of the 1975 Act

8. 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 North Strathclyde.

KENNY MACASKILL
A member of the Scottish Executive

St Andrew's House,
Edinburgh
28th September 2009

SCHEDULE 1

Article 2

ESTABLISHMENT OF JUSTICE OF THE PEACE COURTS

Column 1 *(sheriff court district in which justice of the peace courts are established)*	*Column 2* *(location at which justice of the peace courts are to take place)*
Campbeltown	Campbeltown
Dumbarton	Dumbarton
Dunoon	Dunoon
Dunoon	Lochgilphead
Greenock	Greenock
Kilmarnock	Kilmarnock
Kilmarnock	Irvine
Oban	Oban
Paisley	Paisley

SCHEDULE 2

Article 3

DISESTABLISHMENT OF DISTRICT COURTS: COMMISSION AREAS

Argyll and Bute Council

North Ayrshire Council

East Dunbartonshire Council

West Dunbartonshire Council

Inverclyde Council

Renfrewshire Council

East Renfrewshire Council

SCHEDULE 3

Article 8

PARTIAL REPEAL OF THE 1975 ACT: PROVISIONS WHICH CEASE TO HAVE EFFECT IN THE SHERIFFDOM OF NORTH STRATHCLYDE(**a**)

Column 1 *(provisions of the 1975 Act)*	*Column 2* *(subject matter)*
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

(**a**) Similar repeals are made 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 (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)); 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)).

(**b**) Section 5(7) of the District Courts (Scotland) Act 1975 ("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.

(**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 provision in relation to the establishment of justice of the peace courts ("JP courts") in the Sheriffdom of North Strathclyde. 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.

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 North Strathclyde.

Article 3 of, and Schedule 2 to, the Order make provision for the disestablishment of district courts (established under the District Courts (Scotland) Act 1975) which sit within the Sheriffdom of North Strathclyde. The district court of East Dunbartonshire, which has jurisdiction extending into both the Sheriffdom of North Strathclyde and the Sheriffdom of Glasgow and Strathkelvin, is also disestablished. Those district courts are disestablished by reference to commission areas (areas of Councils) in which they were established.

The jurisdiction of the district court of East Ayrshire also extends into the Sheriffdom of South Strathclyde, Dumfries and Galloway. This is because the boundary of that commission area crosses over the boundary of that Sheriffdom. There are regular sittings of that district court at Kilmarnock which falls within the Sheriffdom of North Strathclyde and Cumnock which falls within the Sheriffdom of South Strathclyde, Dumfries and Galloway.

The District Court of East Ayrshire is not disestablished but the repeal of section 6(1) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") for the Sheriffdom of North Strathclyde means that that local authority cannot set down sittings of that court in that Sheriffdom. The effect of this repeal will be that there will no longer be sittings of that district court within the Sheriffdom of North Strathclyde which includes Kilmarnock. It will, however, be possible for there to be sittings of that court in the Sheriffdom of South Strathclyde, Dumfries and Galloway. Section 6(1) of the 1995 Act is repealed by paragraph 9(1)(a) of the schedule to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 ("the 2007 Act") which will be commenced for the Sheriffdom of North Strathclyde on the 14th December 2009.

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 North Strathclyde 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 makes supplemental and transitional provision in relation to cases which are ongoing in the District Court of East Ayrshire at Kilmarnock. This provision reflects the fact that there will be no further sittings of that court at that location as discussed above. The effect of the provisions at article 7(1) to (3) is that cases instigated in that court and which fall within the jurisdiction of Kilmarnock Sheriff Court are transferred to the JP Court sitting at Kilmarnock. Provision is also made for transfer of relevant court records in paragraphs (4) to (6).

Interpretative provisions are provided to attach to articles 5 and 6 of this Order to enable the transfer of court business to the JP Court sitting at Kilmarnock. In relation to article 5, the provisions of article 7(7) and (8) will allow the Clerk of the JP Court sitting at Kilmarnock to deal

with matters relating to certain penalties and offers which were previously dealt with by the Clerk of the District Court for East Ayrshire at Kilmarnock. In relation to article 6, the provisions of article 7(9) and (10) will allow citation and fixing of diets in the JP Court sitting at Kilmarnock prior to its establishment in relation to cases in the District Court of East Ayrshire at Kilmarnock.

Article 8 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 North Strathclyde and are consequential upon the establishment of the JP courts in that Sheriffdom and the disestablishment of the district courts. Similar repeals have been made following the establishment of JP courts in the other Sheriffdoms.

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