EXECUTIVE NOTE

THE JUSTICE OF THE PEACE COURTS (SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY) ORDER 2009 SSI/2009/115

1. The above Order was made 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 ("the 2007 Act"). The instrument is subject to negative resolution procedure.

2. This Order provides for Justice of the Peace Courts("JP Courts") in the Sheriffdom of South Strathclyde, Dumfries and Galloway. Certain transitional provisions in the Order will enter into force on 18 May 2009, while the remainder comes into force on 29 June 2009. The Order makes provision in relation to:

- the establishment of JP courts in South Strathclyde, Dumfries and Galloway;
- the disestablishment of the district courts in South Strathclyde, Dumfries and Galloway;
- the transfer of staff of the district courts to the employment of the Scottish Ministers;
- certain fixed penalties and conditional offers of penalties that will be dealt with by the clerks to the JP courts;
- citation of accused persons and witnesses to the JP courts in South Strathclyde, Dumfries and Galloway prior to their establishment;
- the fixing of diets in the JP courts prior to their establishment, and applications for the alteration of such diets; and
- the repeal of certain sections of the District Courts (Scotland) Act 1975 ("the 1975 Act"), for the purposes of unification in South Strathclyde, Dumfries and Galloway.

Policy Objectives

3. The 2007 Act makes provision for the unification of Scotland's courts to allow for the more efficient, effective and consistent handling of criminal cases through the summary courts. District courts are run by local authorities, and upon unification in each sheriffdom, will be replaced by JP courts run by the Scottish Court Service (SCS). Unification has already taken place in the Sheriffdoms of Lothian & Borders, Grampian, Highland & Islands, Glasgow & Strathkelvin and Tayside, Central & Fife. A seventh commencement order for the 2007 Act will bring into force a number of provisions for this fifth phase of unification on 29 June 2009.

4. Court unification is a key element of the Scottish Government's reform of summary justice. It will bring all court services in Scotland under the responsibility of SCS, which will provide:

- support to the Judiciary in Sheriff and Justice of the Peace summary criminal courts;
- court services in all summary criminal courts, and managing and providing legal and administrative staff;
- one national IT system for all summary criminal cases; and
- improved collection and enforcement of all fines and financial penalties.

Article 2 - Establishment of Justice of the Peace Courts

5. Article 2 and Schedule 1 specify the JP Courts that are established in South Strathclyde, Dumfries and Galloway on 29 June 2009, with reference to the particular sheriff court district and location in which they are established. Nine JP courts are established, these being Ayr, Coatbridge, Cumbernauld, Dumfries, Hamilton, Kirkcudbright, Lanark, Motherwell, and Stranraer.

Article 3 – Disestablishment of district courts

6. Article 3 and Schedule 2 provide for the disestablishment of those district courts which fall entirely within the Sheriffdom of South Strathclyde, Dumfries and Galloway, these being the district courts in the commission areas of Dumfries and Galloway Council, North Lanarkshire Council, South Ayrshire Council and South Lanarkshire Council.

7. There is only one district court established for each of the local authority areas in Scotland. The district courts sit at different locations within the local authority areas, but there is, for example, only one East Ayrshire District Court. The Order does not disestablish the district court in the commission area of East Ayrshire, but the regular sittings of that court at Cumnock falls within the Sheriffdom of South Strathclyde, Dumfries and Galloway. Although the district court at Cumnock is not specifically disestablished by the Order, it will no longer sit at that location after 29 June 2009, with cases and recent records transferring to the Ayr JP Court under Article 7 of the Order.

8. The repeal of section 6(1) of the Criminal Procedure (Scotland) Act 1995 for the Sheriffdom of South Strathclyde, Dumfries and Galloway means that the local authority will not be able to set down sittings of the East Ayrshire district court in that Sheriffdom. The effect of this repeal will be that there will no longer be sittings of that court in the Sheriffdom of South Strathclyde, Dumfries and Galloway.[1]

Article 4 – Transfer of staff

9. Article 4 requires the creation of a scheme that will identify the local authority staff to be transferred to the Scottish Administration. SCS and CoSLA have agreed that those local authority staff whose normal work duties entail 50% or more of their time being engaged on activities associated with the business of the district court will meet the criterion for transfer.

Article 5 – Incidental, consequential and transitional provisions in relation to certain fixed penalties and conditional offers

10. The provisions of Article 5 will allow the clerks to the JP courts to deal with matters relating to these penalties and offers which were previously dealt with by the clerk to the disestablished district courts.

[1] Section 6(1) of the 1995 Act is repealed by paragraph 9(1)(a) of the Schedule to the 2007 Act, which is to be brought into force for South Strathclyde, Dumfries and Galloway on 29 June by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 7) Order 2009.

Article 6 – Transitional provisions relating to JP courts

11. Section 66 of the 2007 Act makes provision for the transfer of proceedings from district courts to JP courts upon unification. Article 6 (in conjunction with article 7(9) and (10)) makes further provision for the fixing of diets and the citation of accused persons and witnesses to JP courts in South Strathclyde, Dumfries and Galloway prior to their establishment. This will be particularly useful where the JP court to which proceedings will transfer is in a different location to the current district court.

12. Article 6 (and article 7(9) and (10)) will have effect from 18 May 2009. From that date, district courts in South Strathclyde, Dumfries and Galloway will be able to fix diets to take place in a JP court from 29 June 2009, and accused persons and witnesses may be cited to a JP court although it is not yet established. In addition, transitional provision is made allowing district courts to refix diets and deal with applications for the alteration of diets, and fix earlier or later diets to take place in the district court or JP court, respectively.

Article 7 – Transitional arrangements for proceedings at certain sittings of the East Ayrshire District Court

13. Article 7 makes further transitional provision in relation to cases which have been instigated in the District Court of East Ayrshire sitting at Cumnock. This provision reflects the fact that there will be no further sittings of the East Ayrshire district court in that location. The effect of the provision is that cases instigated in Cumnock District Court, are transferred to the Ayr JP Court. Provision is also made for the transfer of relevant court records.

Article 8 – Partial repeal of the 1975 Act

14. Article 8 repeals certain provisions of the 1975 Act for the Sheriffdom of South Strathclyde, Dumfries and Galloway on 29 June 2009 as a consequence of unification in that area. Many of the 1975 Act provisions relate to local authorities' responsibilities for the maintenance of district courts and as such are superseded by sections 59-66 of the 2007 Act.

Consultation

General – The Criminal Proceedings etc. (Reform) (Scotland) Act 2007

15. Many of the provisions of the 2007 Act are based on the recommendations of the 'McInnes Committee' and subsequent consultation during 2004. The then Scottish Executive published *Smarter Justice, Safer Communities – Summary Justice Reform Next Steps*[2], in March 2005 following extensive consultation on the recommendations of the report[3] of the Committee chaired by Sheriff Principal John McInnes.

[2] Scottish Executive, *Smarter Justice, Safer Communities: Summary Justice Reform - Next Steps*, available at: http://www.scotland.gov.uk/Publications/2005/03/20888/55016

[3] Scottish Executive, *Report of the Summary Justice Review Committee*, available at: http://www.scotland.gov.uk/Publications/2004/03/19042/34176

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

16. Plans for unification of the summary courts under SCS were outlined in the *Next Steps* paper. In 2009, SCS conducted a consultation exercise after publishing plans for the establishment of JP Courts, the consequent disestablishment of district courts, and arrangements for the delivery of court-related services in the Sheriffdom of South Strathclyde, Dumfries and Galloway.[4] Accordingly, the Scottish Ministers 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 under sections 59(7) and 64(3) of the 2007 Act.

Financial Effects

17. The Order is made in accordance with the original policy intention of the relevant provisions of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. It therefore has no financial effects beyond those which were set out in the Financial Memorandum to the Act.

Gerard Bonnar
Criminal Procedure Division
March 2009

[4] The Scottish Court Service consultation paper *Delivering a Unified Courts Administration in the Sheriffdom of South Strathclyde, Dumfries and Galloway* is available at:
http://www.scotcourts.gov.uk/court_unification/publications/south_strathclyde_dumfries_and_galloway/master_draft_consultation.pdf
The subsequent report on that consultation will be published at:
http://www.scotcourts.gov.uk/court_unification/publications.asp