

AGENDA ITEM

FALKIRK COUNCIL

Subject: APPOINTMENT OF EX OFFICIO JUSTICES OF THE PEACE
Meeting: FALKIRK COUNCIL
Date: 18 May 2007
Author: ACTING DIRECTOR OF LAW AND ADMINISTRATION SERVICES

1. INTRODUCTION

- 1.1 The purpose of this Report is to advise Members of the provisions of the Criminal Proceedings etc (Reform) (Scotland) Act which received Royal Assent in February 2007 and the effect this has on the appointment of ex officio justices of the peace.

2. DISTRICT COURTS (SCOTLAND) ACT 1975

- 2.1 In terms of Section 11 of the District Courts (Scotland) Act 1975, the Council has power to nominate up to one quarter of its members (8) to serve as ex officio justices of the Peace for its area. These appointments are not subject to Scottish Ministers' approval, although the Council must intimate its nominations to the Ministers and new ex officio appointments begin on the date on which that intimation is made. Once appointed, ex officio Justices are bound by the same statutory and ethical obligations as Justices of Peace appointed by the Scottish Ministers under Section 9 of the 1975 Act, including the provisions covering removal from office, except that ex officio Justices cease to hold office when they are no longer a member of the Council or if their nomination is terminated by the Council.
- 2.2 The Secretary of Commissions for Scotland has recommended that where a local authority decides that members who were ex officio justices prior to the local elections on 3 May 2007 should remain in office, these individuals be re-nominated after the election.

3. CURRENT EX OFFICIO JUSTICES

- 3.1 Prior to the election there were 8 ex officio justices nominated by Falkirk Council, namely:-

John Constable, Bo'ness
Dennis Goldie, Falkirk*
Gerald Goldie, Falkirk
Lynda Kenna, Larbert & Stenhousemuir
Craig Martin, Carronshore
Robert Spears, Grangemouth
Alexander Fowler, Maddiston*
James Wilson, Denny*

*Did not stand for re-election on 3 May 2007.

- 3.2 The location of these ex officio justices assisted in providing adequate geographical coverage throughout the Commission area.

4. CRIMINAL PROCEEDINGS ETC (REFORM) (SCOTLAND) BILL

- 4.1 On 23 February 2007 the Criminal Proceedings etc (Reform) (Scotland) Act received Royal Assent. The lay justice provisions of this Act are expected to come into force in December 2007. At the same time, the lay justice provisions of the 1975 Act (including section 11) will be repealed. The effect of these changes will be that the position of ex officio justice will cease to exist, as will the position of signing justice more generally. The Act's provisions also mean, however, that all local authority members, from December 2007 onwards, will be able to perform the signing duties that ex officio justices currently carry out. The Scottish Executive anticipates providing guidance to local authority members on these signing powers closer to the time of the Act's provisions coming into force. Signing duties for current ex officio justices are restricted to:-

- Signing any document for the purpose of authenticating another person's signature
- Taking and authenticating by his/her signature any written declaration, and
- Giving a certificate of facts within his/her knowledge or of his/her opinion as to any matter.

- 4.2 The Council can of course decide not to nominate any ex officio justices to hold office during the seven month period after May 2007. However, if the Council decides to nominate up to a quarter of its councillors to serve as ex officio justices between May and December 2007, then it should inform the Scottish Executive of those nominations as soon as possible. It should be noted that ex officio justices hold office from the date when their nomination is intimated to Ministers, rather than from the date on which they are nominated.

5. GENERAL CRITERIA FOR SCOTTISH MINISTERS' APPOINTMENTS

- 5.1 Should the Council decide to nominate Members as ex officio justices, it may be helpful for the Council to be aware of the general criteria to which Scottish Ministers have regard in considering candidates for appointment as Justices and, in particular, those factors which could disqualify a person from appointment either absolutely or conditionally. The main consideration is that a candidate should be personally suitable in point of character, integrity and understanding, and should be generally recognised as such by those among whom he/she lives and works. Ministers will, however, also have regard to a person's capacity to be aware that personal views may be a potential danger to impartiality and their willingness and ability to overcome this danger. Ministers do not regard the appointment of a candidate as a Justice of the Peace as, in any way, a reward for services rendered. Political affiliation is not a primary consideration, although such affiliation requires to be stated for statistical purposes.

6. DISQUALIFICATIONS

6.1 The disqualifications for appointment may be summarised as follows:

6.2 Residential Disqualification

Under Section 9(3) of the 1975 Act a person who resides more than 15 miles from the boundary of the commission area shall not be appointed, or act, as a Justice of the Peace. This residential requirement shall not apply in any case where it appears to the Scottish Ministers to be in the public interest that the requirement should not apply and they so direct

6.3 Age Limits

The normal age limit for appointment is 60, but Ministers will consider an older candidate who has not yet attained the age of 64 years if he/she is exceptionally well qualified or has had previous judicial experience.

6.4 Sequestration

Under Section 13A of the 1975 Act, a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland is disqualified from being appointed or acting as justice of the peace until the award of sequestration is recalled or reduced or he is discharged under or by the virtue of the Bankruptcy (Scotland) Act 1985; or the adjudication of bankruptcy against him is annulled or he is discharged.

6.5 Convicted Persons

Ministers will not appoint candidates who have been convicted of serious offences or of repeated minor offences which imply lack of respect for the law.

6.6 Persons Active in National or European Politics

Ministers will not appoint a member of the Scottish Parliament, United Kingdom Parliament or of the European Parliament, a candidate formally adopted for election to either of those Parliaments, or a whole-time paid party political agent where the area in which the justice would serve covers any part of the constituency.

6.7 Physical Disability

Ministers will not appoint a person who by reason of infirmity cannot carry out all the duties of a justice of the peace.

6.8 Police etc

Ministers will not appoint police officers, members of the special constabulary, traffic wardens or civilians employed by the police, as justices of the peace. Close relatives of

anyone in these categories will not be appointed for a Commission Area in which their relative serves or works.

6.9 HM Forces

Ministers will not appoint a serving member of HM Forces as a Justice of the Peace.

6.10 Court Officials etc

Ministers will not appoint as justices of peace persons serving in the district court or persons who regularly appear before it, such as members of the prosecution service or officers of the social work department. Section 13 of the 1975 Act disqualifies solicitors who are justices of the peace (and members of their firms) from acting in any proceedings before the district court for their area, but this does not apply to justices on the supplemental list. Ministers will not appoint serving members of children's panels as justices undertaking court duties although previous experience as a panel member is regarded as relevant.

6.11 Others

These disqualifications (apart from those of age and infirmity) normally apply also to a candidate whose spouse would be disqualified. Close relatives may similarly be disqualified. Persons who are not of British Nationality will not be appointed if they are unable to take the oath of allegiance and judicial oath required by law.

7. REPUTATION OF THE DISTRICT COURT

- 7.1 The selection criteria are intended to maintain the reputation of the district court and the confidence which members of the public should have in justices of the peace as people of integrity.

8. OATHS

- 8.1 Under statute, a person re-nominated to serve as an ex officio justice immediately after the expiry of a previous term as such is not required to take again the oath of allegiance and judicial oath taken at the outset of a period of continuous service. New ex officio justices must take the oath of allegiance and judicial oath.

9. RECOMMENDATION

- 9.1 It is recommended that Council considers whether or not to nominate members for appointment as ex officio justices of the peace for the period up to the date that the provisions of the Criminal Proceedings etc (Reform) (Scotland) Act take effect.**

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Acting Director of Law and Administration

Date: 27 April 2003

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