

EAST AYRSHIRE COUNCIL

STATUTORY MEETING 17TH MAY 2007

APPOINTMENT OF EX OFFICIO JUSTICES OF THE PEACE

Report by Solicitor to the Council/Clerk of the Peace

1. PURPOSE OF REPORT

- 1.1 To apprise the Council of the current and future legal position and consequent options in respect of the appointment of Elected Members as ex officio Justices of the Peace, the criteria to be applied in respect of any such appointments and some of the duties involved.

2. BACKGROUND

- 2.1 In terms of Section 11 of the District Courts (Scotland) Act 1975 a local authority may nominate up to one quarter of its Members for appointment as ex officio Justices of the Peace (i.e. no more than eight for East Ayrshire). Although ex officio appointments are not subject to Ministers' approval, appointments are not effective until the date on which they are intimated to Ministers, irrespective of whether any nominee has previously held any such ex officio appointment. Accordingly, in terms of the statutory provisions all previously held ex-officio positions terminated on 3 May 2007.
- 2.2 The future of lay justice in Scotland is on the point of radical change. Specifically, the Criminal Proceedings etc. (Reform)(Scotland) Bill has now received Royal Assent and is expected to come into force in December 2007. At that time the lay justice provisions of the 1975 Act will be repealed which will mean that the position of ex officio justice will cease to exist. The Act's provisions are also to the effect that all local authority members, from December 2007 onwards, will be able to perform the signing duties that ex officio justices currently carry out.

3. OPTIONS FOR CONSIDERATION

- 3.1 Given the impending statutory changes it would therefore appear that in relation to this matter the Council has three principal options:-
- (a) It can decide not to nominate any of its Members as ex officio justices;
 - (b) It can decide to nominate up to one quarter of its Members for appointment in terms of the existing statutory provisions; or
 - (c) It can decide to re-nominate Members who previously held the position of ex officio justice in the previous Council.

The potential benefits and/or disadvantages of each of these options can be considered individually.

- 3.2** There is no doubt that ex officio justices perform a valuable role in relation to a range of signing duties as such justices can also deal with all forms of statutory declarations. In the event that no such justices were to be appointed by the Council all signing duties between May and December 2007 would therefore have to be carried out by existing East Ayrshire J.P's. Such an approach could potentially prove to be problematic depending on volume of business.
- 3.3** As indicated above, the Council is currently legally entitled to nominate up to one quarter of its members to hold the office of ex officio justice. The only potential disadvantage in doing so would be that any member nominated who had not previously held office would be required to take the Oath of Allegiance and the Judicial Oath before being in a position to carry out any signing duties. Although this is effectively an administrative process before one of the local Sheriffs, past experience has shown that it can take some time to make the necessary arrangements. Any delays would therefore only reduce further the seven month maximum tenure of office for ex officio justices.
- 3.4** The third potential option would be for the re-nomination of any Members who previously held the office of ex officio justice. As there would be no requirement for any such Member to take the Oath of Allegiance and the Judicial Oath, any such nominations would allow the Member concerned to hold the office from the date on which the nomination is intimated to Ministers. For information purposes, the details of ex officio justices nominated by the previous Council is included as Appendix 1.

4. CRITERIA FOR APPOINTMENT

- 4.1** Ex officio Justices are subject to the same terms of appointment as those appointed by the Scottish Ministers and the same general criteria are therefore relevant when making nominations for ex officio appointments.
- 4.2** The main consideration is that a candidate should be personally suitable as respects character, integrity and understanding and should be generally recognised as such by those among whom he or she lives and works. The disqualifications which are most relevant to signing justices are that a person who lives more than 15 miles from the boundary of the Commission Area may not be appointed. In addition, a person who is sequestered is disqualified until the award of sequestration is recalled or reduced and lastly persons who have been convicted of serious offences or repeated minor offences will not be appointed. There are also various matters which have been considered as an impediment to appointment, e.g. certain types of employment such as Police service render a candidate unsuitable.
- 4.3** Members should also note that, in terms of the Bail, Judicial Appointments Etc.(Scotland) Act 2000 all ex officio Justices require to be placed on the Supplemental List of Justices which means in practice that ex officio Justices

can only perform signing duties. Therefore ex officio Justices cannot serve on the bench in the District Court. In addition, signing duties do not include the signing of warrants.

5. LEGAL/FINANCIAL/POLICY/COMMUNITY PLANNING IMPLICATIONS

5.1 None arising directly from this report.

6. RECOMMENDATIONS

6.1 The Council should:-

(a) In light of the impending statutory changes to the role of the ex officio justice, decide whether or not to nominate ex officio Justices of the Peace for the period up until December 2007; and

(b) If deciding so to nominate conclude whether any such nominations should be of up to the statutory maximum of one quarter of the members of the Council or restricted to any such members who have previously held the office under the previous Council.

Solicitor to the Council

10 May 2007

LIST OF BACKGROUND PAPERS

NIL

Anyone wishing further information should contact Stuart McCall (Tel: 01563 576085).

APPENDIX 1

EX OFFICIO JUSTICES OF THE PEACE NOMINATED AT THE STATUTORY MEETING OF EAST AYRSHIRE COUNCIL ON 8 MAY 2003

Councillor Eric Jackson
Councillor Thomas Farrell
Councillor Elaine Dinwoodie
Councillor Daniel Coffey
Councillor Douglas Reid
Councillor Robert McDill
Councillor Stephanie Young
Councillor Maureen McKay