

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SHERIFF IN SCOTLAND

Introduction

- 1) The essential requirement for the office of sheriff is to possess the intellectual and legal standing to perform the judicial functions of the office. This paper describes the range of responsibilities and functions which a sheriff must undertake.

Qualification

- 2) To be eligible for appointment as a sheriff an individual must be a solicitor or advocate for a period of at least 10 years. A person is also eligible for appointment if they hold any other judicial office as specified below:
 - a. sheriff principal;
 - b. summary sheriff;
 - c. part-time sheriff; or
 - d. part-time summary sheriff
- 3) Due to the nature of the office, those seeking appointment should be practitioners of standing, whether Queen's Counsel, advocates or solicitors with considerable court experience.

Appointment

- 4) Sheriffs are appointed by Her Majesty The Queen on the recommendation of the First Minister. The First Minister must consult the Lord President of the Court of Session, Scotland's most senior Judge, before putting their recommendations forward.
- 5) Once appointed a sheriff may remain in office until the compulsory retirement age which is 70.

Primary Functions

- 6) The primary function of the sheriff is to act as judge of the first instance. However, sheriffs also exercise some appellate functions and a large number of administrative and *quasi*-judicial functions. Some sheriffs, with five or more years' service, are appointed as appeal sheriffs to sit in the Sheriff Appeal Court.
- 7) Each sheriff has the same powers and responsibilities throughout Scotland. In the cities and larger towns a number of sheriffs may work in the same sheriff court building. In some courts there may be only one sheriff whereas in the more rural areas, particularly those in the islands,

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the sheriff may sit in more than one court during the course of a working week.

- 8) Sheriffs normally commence the court sitting at, or sometimes before, 10:00 am. They sit until, or later than, 4:00 pm. Judicial business can extend beyond the normal court sitting times. A sheriff should be at the court well before he or she is due to sit.
- 9) Before sitting in court a sheriff will generally be required to read and consider reports or court papers in connection with that day's court business. These reports can be lengthy and complicated. Many of them, such as criminal justice social work reports and psychiatric reports, require to be given careful consideration.
- 10) To maximise the efficiency and output of the courts, a sheriff may expect to be required to travel to another court, or if need be a court in another Sheriffdom, to deal with business of that court.
- 11) Out of court the sheriff will undertake various work in chambers. For example:-
 - a. Writing judgments.
 - b. Dealing with matters such as warrants for arrestment or inhibition.
 - c. Preparation of stated cases and reports for criminal or civil appeals.
 - d. Consideration of applications for adoptions and permanence orders, and undefended divorces based on affidavit evidence.
 - e. Consideration of breach reports of community disposals and applications for initiating criminal warrants.
- 12) A sheriff may be called on at any hour of the day or night to consider urgent applications for various warrants, interdicts and child protection orders. There is usually a rotation of this duty.

Nature of Work

- 13) Sheriffs have a wide jurisdiction, both civil and criminal. They deal with the great majority of civil and criminal cases that call in the 39 sheriff courts of Scotland.

Criminal Proceedings

- 14) The criminal jurisdiction of the sheriff is both summary and solemn.

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- 15) In summary procedure, the maximum penalty, except where lower penalties are prescribed by statute, is 12 months' imprisonment and a fine of £10,000. A sheriff has a wide discretion to impose other sentences including community payback orders which may involve detailed conditions, drug treatment and testing orders, restriction of liberty orders and the power to order compensation. In addition, sheriffs can grant football banning orders, non-harassment orders, anti-social behaviour orders, mental health orders, disqualification orders and forfeiture of vehicles or other property.
- 16) A sheriff has concurrent jurisdiction with the High Court for solemn (jury) proceedings on indictment, with the exception of the crimes of murder, rape and treason. In solemn procedure, the maximum sentence of imprisonment available to the sheriff is 5 years. The sheriff has powers to remit a case to the High Court for sentence when a longer period of imprisonment is thought to be necessary. In addition, the same discretionary non-custodial sentences available in summary procedure may be selected. There is no limit to the amount of fine which may be imposed.
- 17) Sheriffs are expected to adopt a proactive role in the management of criminal cases. For example: in solemn cases, sheriffs will assist the Sheriffs Principal in the discharge of their statutory function to secure the efficient disposal of business. With the assistance of the sheriff clerk, sheriffs will be actively involved in the general management of the solemn business of the court, notably at the First Diet stage. Greater demands on sheriffs will arise from the introduction of procedures akin to those of the High Court -where solemn cases will be indicted not to a trial but to a preliminary hearing.
- 18) In appeals against sentence in summary proceedings the sheriff is required to prepare a report for the Sheriff Appeal Court, providing a sufficient record of all relevant circumstances and the reasons for the sentence. Appeals against conviction are likely to involve more work than those against sentence and take the form of a stated case. In solemn cases the sheriff will have to prepare a report for the High Court giving his or her opinion on the case generally and on the grounds of appeal.

Court Reform - Sheriff and Jury Business

- 19) Reform in sheriff and jury business, resulting from Sheriff Principal Bowen's 2011 review of sheriff and jury procedure, is currently underway. The vision is to create a sheriff-centred model for sheriff and jury business. In the Scottish mainland jurisdictions, sheriff and jury business should

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only be routinely held at 16 designated courts¹. These courts will become centres of specialism in which sheriffs and staff can develop more efficient working practices.

- 20) The Courts Reform (Scotland) Act 2014 created a new judicial office in the sheriff court known as the summary sheriff. A summary sheriff sits in the sheriff court but with a more restricted jurisdiction in both civil and criminal matters. This new judicial tier will ensure that cases in Scotland's courts are heard at an appropriate level in the court structure.
- 21) Fifteen summary sheriffs took up post during April and May 2016. The judicial recruitment campaigns for future years will be focused on building up the total numbers of summary sheriffs in key locations. The future judicial deployment decisions taken by Sheriffs Principal will increasingly be shaped around the goal of shifting solemn business over to the jury centres.

Civil Proceedings

- 22) A sheriff has exclusive competence to deal with civil proceedings where the total value of the orders sought does not exceed £100,000.
- 23) The Sheriff Court deals with almost all family actions in Scotland. This involves divorces; disputes over the custody and maintenance of children; adoptions; permanence orders and permanence orders with authority to adopt.
- 24) Sheriffs are expected to issue civil judgments with the least possible delay. It can be difficult to consider cases and prepare judgments in the course of the working day, due to varying pressures of business and the complexity of certain judgments. Sheriffs are only rarely allocated dedicated writing time during court hours. It can be assigned at the Sheriff Principal's discretion, but sheriffs normally undertake this task out-with normal court hours. The burden can be lessened by using any gaps in the day's business for writing.
- 25) In the Sheriff Court, at present, civil cases are divided into small claims, summary causes and ordinary causes. Small claims and summary causes will soon be replaced by the new simple procedure. Appeals against the sheriff's decision in civil cases are principally heard by the Sheriff Appeal

¹ Glasgow, Aberdeen, Inverness, Edinburgh, Livingston, Paisley, Dumbarton, Kilmarnock, Airdrie, Hamilton, Ayr, Dumfries, Perth, Dundee, Falkirk and Dunfermline.

Court. If the decision is further appealed to the Court of Session, a final appeal may lie to the UK Supreme Court.

Children's Referrals

26) In Scotland children alleged to be in need of compulsory measures of supervision are referred by the Reporter to the Children's Panel and dealt with by a children's hearing. When dealing with such cases, it will be for the sheriff to decide on the evidence at proof whether what is alleged by the Reporter is established. These cases require to be given priority in the court programme. If the child is detained in a place of safety, strict time limits for hearing and disposing of the case apply. A sheriff has substantial appellate jurisdiction in relation to decisions reached by children's hearings. Such appeals have to be dealt with as a priority.

Summary Applications

27) The summary application procedure is used for a number of different types of actions, for example applications for mortgage repossessions, applications relating to adults with incapacity, or applications relating to antisocial behaviour. It is also used when appealing against certain decisions made by other organisations, and in many cases the legislation will specifically state that the appeal is to be lodged using the summary application procedure.

Fatal Accident Inquiries

28) Inquiries into sudden or suspicious deaths are conducted (a) if the deceased dies in the course of his or her employment or in custody or (b) if the Lord Advocate determines it is appropriate to hold an inquiry in the public interest. These inquiries are normally instructed because of particular public interest or importance and can be very lengthy. The sheriff is required to make certain findings and is empowered to make recommendations to avoid a recurrence of the incident. Substantial public interest often attends such inquiries.

Child Welfare Hearings

29) These hearings have become an important part of actions involving residence and contact orders where the sheriff requires to make an order having regard to the welfare of the child. The rules require the sheriff to secure the quick resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute.

Sensitivity of Judgments

30) The range of decision-making by the sheriff is very broad, and includes matters of considerable local or public interest. Sensitivity must be applied by the sheriff in dealing with matters involving public interest or concern. In such cases, a sheriff may issue a sentencing statement which will be published on the Judiciary for Scotland website.

Court Reform – Civil

31) A judicially-led review of the civil justice system was undertaken in 2007-2009 and the outcome was published in September 2009 as the "Report of the Scottish Civil Courts Review". Various recommendations were made; including the creation of a new tier of judiciary (summary sheriffs), a shift of business from the Court of Session to the Sheriff Courts and changes to civil court rules to support modernisation of civil court procedures. The Courts Reform (Scotland) Act 2014 has provided enabling legislation to bring these recommendations to fruition.

32) The sheriff court now has exclusive competence by virtue of section 39 of the 2104 Act in actions where the total value of orders does not exceed £100,000. As a result, sheriffs will be expected to manage and deal with the increased number of complex actions that would have previously called within the Court of Session.

33) The Act of Sederunt (Simple Procedure Rules) 2016 was made on 9 June 2016. Training for sheriffs is in development and will take place early in November 2016 with simple procedure coming into force on 28 November 2016. Simple procedure is designed to provide a speedy, inexpensive and informal way to resolve disputes involving sums of £5,000 or less. The new rules require a problem-solving or interventionist approach by the sheriff. It will be for the sheriff to identify the issues and specify to parties exactly what the court will wish to hear or see by way of evidence.

Other Activities

34) Sheriffs are expected, and are frequently called upon, to serve, and in some instances are required by statute to be represented, on a wide variety of *quasi*-judicial, administrative and advisory or consultative bodies. These include the Judicial Appointments Board for Scotland, the Scottish Civil Justice Council, the Scottish Sentencing Council, the Parole Board, the Judicial Institute Advisory Committee, the Scottish Courts and Tribunals Service Board, sub-committees for the Judicial Council for Scotland, the Scottish Legal Aid Board, Justice of the Peace Training

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Committee, court user groups, criminal justice bodies and research groups.

Judicial Institute Training and Support

35) The following measures, which are put in place during the early stages of a new sheriff's service in office, are intended to provide professional support and reassurance to any new appointees. The Judicial Institute for Scotland is responsible for preparing and organising the delivery of all judicial training and continuing professional development for all judicial office holders.

36) For those who are appointed from practice: the Judicial Institute gives induction training over a maximum of five days, including presentations, problem exercises and facilitated discussions on the following topics:

- a) Judicial Resources and Communications
- b) Assessing Witnesses
- c) Dealing with Unrepresented Parties
- d) Domestic Abuse
- e) Road Traffic Cases
- f) Sexual History and Credibility
- g) Sentencing
- h) Civil Judgment Writing
- i) Writing Appeals and Stated Cases.
- j) Civil Actions

37) All new appointees must complete at least three sitting-in days with an experienced sheriff. This allows them to familiarise themselves with the judicial environment on the bench, observe the work undertaken and have the opportunity to discuss how best to approach and organise for the challenges ahead.

38) A newly appointed sheriff will also have the opportunity of being supported by a mentor. The scheme is voluntary, but it allows a new sheriff an opportunity to seek support from another experienced sheriff on a confidential basis.

The qualities required of a sheriff

39) In conclusion, from the foregoing, it can be seen that particular qualities are required of a sheriff:-

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- Intellectual rigour of a high order
- Excellent powers of concentration
- A good grasp of law and legal procedure and the ability to keep up to date with changes
- Mental and physical stamina
- A very high degree of self-discipline
- Emotional robustness
- The confidence to manage a difficult court
- An ability to work hard under pressure
- A good suite of soft skills
- Proficiency in the use of information technology

Judicial Office for Scotland
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