



## **THE OFFICE OF SHERIFF PRINCIPAL**

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## **Introduction**

1. The essential requirements for the office of Sheriff Principal are leadership and management skills together with the intellectual and legal standing to perform the appellate and other judicial functions of the office. This paper describes the range of responsibilities which a Sheriff Principal must undertake.

## **Court Reforms**

2. The Courts Reform (Scotland) Act 2014 (the 2014 Act) has brought significant changes to the court system in Scotland. These changes impact heavily on the work of a sheriff principal, and will require careful management to ensure they are successfully implemented. The key changes which the Act has brought in are:

## **Structural Changes**

- The creation of a National Personal Injury (PI) Court with a Scotland – wide jurisdiction (established September 2015).
- Cases being heard at the right level. The redistribution of civil business from the Court of Session to the sheriff courts. The privative jurisdiction of the sheriff courts is increased from £5000 to £100,000. The Outer House will only hear cases in excess of £100,000.
- The creation of a Sheriff Appeal Court which hears summary criminal and civil appeals from the sheriff courts.
- The creation of the Scottish Courts and Tribunals Service (SCTS). (A merger of the Scottish Court Service and the Scottish Tribunals Service).

## **Judicial Changes**

- The establishment of the office of summary sheriff, ensuring that cases in Scotland's courts are heard at an appropriate level in the court structure. A summary sheriff sits in the Sheriff Court but with a more restricted jurisdiction in both civil and criminal matters.
- The ability for the Lord President to appoint specialist sheriffs and summary sheriffs, to serve in specialist courts, for example personal injury.

## **Civil Rules Changes**

- The Scottish Civil Justice Council was created in 2013 as a single rules council to draft rules of procedure and advise the Lord President on the development of the civil justice system.
  - The 2014 Act will be supported by the introduction of simplified procedures with an emphasis on making court rules accessible to all court users.
  - Court rules will be substantially reviewed and re-written.
3. The Sheriffs Principal have been heavily involved in implementing the changes and will continue to be so as the courts adapt to the introduction of the new judicial tier. Furthermore, all Sheriffs Principal assist the Lord President in considering how best to deploy sheriffs and summary sheriffs. This requires significant leadership skills to balance the need to ensure the efficient disposal of business, with the need to have proper regard to the skills and experience of existing office holders, and their personal aspirations.

## **Management Functions**

4. The management functions of the Sheriff Principal have increased considerably in recent years. The statutory responsibility imposed by Section 27 of the 2014 Act is to ensure the efficient disposal of the business of the sheriff courts of the Sheriffdom. This is subject to the Lord President's responsibility under Section 2 of the Judiciary and Courts (Scotland) Act 2008 is to ensure the efficient disposal of business in the Scottish courts. Each Sheriff Principal therefore has a direct responsibility to the Lord President for the efficient disposal of business in the Sheriffdom generally.
5. The efficiency of the courts depends upon the approach adopted by a wide range of agencies over which the Sheriff Principal has no executive authority. The majority of the work of the sheriff court is criminal. In criminal cases the efficiency of the courts depends to a significant extent on the efficiency of the procurator fiscal's office. In turn, the procurator fiscal is dependent upon the police efficiently investigating and timeously reporting crimes. The approach taken by the local bar also influences the ability of a court to operate in an efficient manner. It is axiomatic that the attitude of the bench also affects the ability of a court to process cases efficiently. Thus the role of the Sheriff Principal is to keep under review the efficiency of the various courts within his or her jurisdiction, to highlight problems within the system to the relevant parties, to suggest means by which the problem might be resolved and, if necessary, to persuade organisations to re-allocate resources in order that a

resolution of the problem causing the inefficiency can be achieved. This requires the Sheriff Principal to be able to analyse and understand statistical information and to have the necessary powers of persuasion to bring about effective change. The Local Criminal Justice Board, chaired by the Sheriff Principal and upon which the SCTS, Crown Office & Procurator Fiscal Service, the Police and sometimes the Social Work Department are represented, is the vehicle for many such discussions. Some of the more routine activities of the Sheriff Principal include:

- i) maintaining a general oversight of the administration of the Sheriffdom wide court programming and the allocation of sheriffs/summary sheriffs to each court to secure achievement of the programme.
  - ii) arranging and confirming sitting dates and court holidays.
  - iii) regularly confirming that the shrieval complement is adequate and properly deployed, and preparing when necessary in conjunction with the Sheriffdom business manager a business case for the increase in judicial complement.
  - iv) allocating sheriffs/summary sheriffs to particular duties, e.g. adoptions, commissary, insolvencies.
  - v) monitoring shrieval leave; and dealing with exceptional requests for leave or problems arising from over-demand for leave at critical times.
  - vi) dealing with requests from sheriffs for leave of absence to engage in official activities such as judicial training, meetings with local authorities and other agencies and conferences.
  - vii) monitoring cases at avizandum, dealing with requests for writing time and taking action to deal with unacceptable delays.
  - viii) addressing the demands of the High Court of Justiciary and Tribunals for shrieval assistance.
  - ix) dealing with crises when insufficient shrieval cover is available by re allocation of sheriffs to deal with the most compelling matters.
  - x) meeting regularly, or at least from time to time, with representatives of the Crown, whether at national, regional or local level to discuss levels of business and anticipated developments.
  - xi) chairing the Local Criminal Justice Board.
  - xii) managing the use and deployment of part-time sheriffs.
6. From time to time the Sheriff Principal will be required to take the initiative in driving through procedural change. This may involve no more than altering the balance of particular types of work within court programmes, for example

between solemn and summary criminal work. However, it is not uncommon for more fundamental changes to be called for, including the establishment of specialist courts.

7. As the senior member of the judiciary within the Sheriffdom, the Sheriff Principal has to deal with issues of health and welfare brought to his or her attention by sheriffs<sup>1</sup>, along with discussions about career prospects, potential transfers and matters of that nature. He or she will also receive and, in most cases, deal with minor complaints<sup>2</sup> about members of the judiciary from aggrieved litigants and court users; court staff; members of the legal profession; and other judicial office holders.
8. The Sheriff Principal has a responsibility for controlling activities within courthouses. This may involve regular meetings and liaison with SCTS officials, Police and G4S staff on issues of courthouse security and the arrangements for the movement of prisoners to and within court buildings, together with requests from outside agencies (e.g. schools, Law Faculties, Social Work Departments) for the use of court facilities.
9. The Sheriff Principal is at the interface between the Scottish Government Justice Directorate and the court system. When any initiative is proposed, whether by Government or by others (including the Sheriff Principal himself or herself) which requires the provision or re allocation of resources, the Sheriff Principal will be fully involved in preliminary consultations, and planning and implementing the proposals when it is considered appropriate to proceed.

### **Non-appellate judicial or quasi-judicial functions**

10. Sheriffs Principal have in recent years, as a matter of practice, assumed responsibility for hearing inquiries brought under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 where the circumstances raise significant issues of public interest or importance.
11. Sheriffs Principal are required from time to time to conduct inquiries into fitness for office of Sheriff Officers (section 79 of the Debtors (Scotland) Act 1987); Justices of the Peace (section 71 of the Criminal Proceedings etc. Reform) (Scotland) Act 2007); and other miscellaneous office holders.
12. The Sheriff Principal is also likely to be appointed as an Investigating Judge for complaints made under the Complaints Against the Judiciary (Scotland) Rules 2015 in respect of sheriffs, part-time sheriffs, summary sheriffs and part-time summary sheriffs or justices of the peace. This may be in respect of judicial office holders within his or her Sheriffdom or elsewhere.

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<sup>1</sup> The Lord President has overall responsibility for the welfare of the judiciary and is supported by the Judicial Office in fulfilling that function.

<sup>2</sup> For complaints about the conduct of judicial office holders, the Lord President has published the Complaints About the Judiciary (Scotland) Rules 2015.

13. Sheriffs Principal have responsibility for the administration of the Justice of the Peace Courts within the Sheriffdom by virtue of section 61 of the Criminal Proceedings (Reform) (Scotland) Act 2007. This brought new responsibilities including selecting those persons who will sit on the Sheriffdom JP Advisory Committee (with responsibility for recruitment), and the Sheriffdom Training and Appraisal Committees. The Sheriff Principal chairs the JPAC which will require to meet regularly to monitor patterns of business and JP availability. He or she also has a responsibility for the interviewing and recommending the appointment of Justices of the Peace.
14. Sheriffs Principal have significant duties in relation to Sheriff Officers in terms of the provisions of Part V of the Debtors (Scotland) Act 1987. Prospective Sheriff Officers must petition the Sheriff Principal for appointment, and must satisfy the Sheriff Principal as to their suitability for appointment. Thereafter the work of Sheriff Officers is subject to inspection at the instance of the Sheriff Principal, and all complaints relating to the work of Sheriff Officers are received by and investigated by him or her.
15. By virtue of the provisions of Section 29 of the Local Government etc. (Scotland) Act 1994, Sheriffs Principal have responsibility for the appointment of members of Valuation Appeal Committees and for maintaining membership of those committees at a level sufficient to dispose of business needs. Sheriffs Principal are consulted about appointments to the panels of Safeguarders and Curators ad litem.
16. At least one Sheriff Principal or sheriff must be a member of the Scottish Civil Justice Council. A Sheriff Principal serves on the Judicial Appointments Board for Scotland. Two Sheriffs Principal are members of the Advisory Council of Messenger at Arms and Sheriff Officers. A Sheriff Principal is a member of the Board of the SCTS. A Sheriff Principal sits on the Advisory Committee of the Judicial Institute and is chair of the Justices of the Peace Training Committee of the Institute..
17. Sheriffs Principal are regularly called upon to consider proposals for legislative change, or to take a leading part in the process of procedural and substantive law reform. A Sheriff Principal is often called upon to be a member of working groups and committees established for these purposes.
18. Other miscellaneous duties which have been delegated to Sheriffs Principal include:
  - i) ad hoc appointment as Deputy Chairman of the Scottish Land Court;
  - ii) an inquiry under Sections 268 and 269 of the Merchant Shipping Act 1995 and
  - iii) an appeal under the Police (Scotland) Regulations.

19. The Sheriff Principal has a traditional ceremonial role to be present during official visits by the Royal Family within the Sheriffdom.

### **Appellate Functions**

20. The primary appellate function of the Sheriff Principal is to hear appeals when sitting in the Sheriff Appeal Court. The Sheriff Principal will hear both Civil and Criminal Appeals.
21. Civil appeals will be heard by a bench of three Appeal Sheriffs sitting in Edinburgh, although procedural business, routine appeals and appeals from small claims and summary causes may be dealt with by a single Appeal Sheriff in the local Sheriffdom
22. The Sheriff Appeal Court will also hear appeals against summary criminal proceedings from both the sheriff and justice of the peace courts. The Bench generally comprises two or three appeal sheriffs depending on the type of appeal to be considered. The Court also hears appeals against bail decisions made by a sheriff or a justice of the peace. These hearings are presided over by a single appeal sheriff.
23. Sheriffs Principal also have the responsibility of hearing appeals from Mental Health Tribunals brought under Section 320 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and under Section 131 of the Licensing (Scotland) Act 2005.

### **The first few months of appointment**

24. The following measures which are put in place during the early stages of a new Sheriff Principal's service in office are intended to provide professional support and reassurance to any new appointees and also accord with best international practice. 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

#### An Induction Course

(1) For those who are appointed from practice: The Judicial Institute gives induction training over a maximum of five days,<sup>3</sup> including presentations, problem exercises and facilitated discussions on the following topics, tailored as appropriate for the needs of the successful candidate:

- (a) Judicial ethics and conduct;
- (b) Court management, including criminal jury trial management;

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<sup>3</sup> Lord President's Judicial Training Determination No 1 of 2011

- (c) Procedural and evidential issues (civil and criminal);
  - (d) Assessment of witnesses;
  - (e) Judgement writing and *ex tempore* decisions;
  - (f) Sentencing;
  - (g) Contempt of court;
  - (h) Social context, equal treatment and diversity issues;
  - (i) Unrepresented litigants and vulnerable witnesses in court;
  - (j) Use of information communications technology available to the judiciary.
- (2) Elements of the above list are targeted at first instance sheriffs and judges, so given the particular core duties and responsibilities of a Sheriff Principal which are predominantly in the area of appellate law and procedure coupled with considerable management and administrative functions, aspects of the list, will be altered accordingly. The Sheriff Principal member of the Advisory Council of the Judicial Institute in conjunction with the Director of the Judicial Institute will create a role specific induction programme for the successful candidate taking account of the nature of the position and the candidate's own strengths and experience. If a newly appointed judicial office holder requests specific coaching in a particular area, the Judicial Institute will provide it.
- (3) The Judicial institute will seek to organise and deliver a training event for the successful candidate which will include modules designed to enhance, individual management and administration skills; HR training; strategic planning in conjunction with SCTS and Judicial Office; judicial leadership; creation and development of legal policy for the management of the shrieval judiciary and other like themes and subjects.

#### Sitting-in

- (4) Separately, new appointees must complete at least three sitting-in days with an experienced Sheriff Principal in order to familiarise themselves with the judicial environment on the bench, observe the work undertaken there, and have the opportunity to discuss with a serving Sheriff Principal how best to approach and organise for the challenges ahead.

### Mentoring

- (5) For both those who are appointed directly from the wider profession and those who have previously or currently hold the office of sheriff, a newly appointed Sheriff Principal will be offered the assistance and guidance of a mentor drawn from among the other Sheriffs Principal to whom he or she can turn on a confidential basis for support in the early period of his or her appointment. The scheme is voluntary. If a newly appointed Sheriff Principal opts for a mentor, the scheme envisages a mentoring relationship which lasts for one year. In fact, the relationship can last for a judicial career.
25. In addition to these particular measures a new Sheriff Principal will have the assistance and support of his or her colleagues among the other Sheriffs Principal. A new Sheriff Principal will also be able to seek the advice and guidance of the Lord President. Finally the successful candidate can expect direct support from the Judicial Office in the exercise of their judicial leadership responsibilities.