



## **THE OFFICE OF SUMMARY SHERIFF ROLE PROFILE**

**This paper was provided by the Judicial Office for Scotland.**

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# **A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SUMMARY SHERIFF IN SCOTLAND**

## **Introduction**

The Courts Reform (Scotland) Act 2014 created a new judicial office in the sheriff court to be known as the summary sheriff. This new judicial office will ensure 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, as specified in the Courts Reform (Scotland) Act 2014. A sheriff can exercise all the jurisdiction of a summary sheriff. A summary sheriff may also exercise the jurisdiction and powers of a justice of the peace. Other functions may be conferred by statute.

The sheriff courts are the main courts of Scotland, located in 39 cities and towns all over Scotland. They deal with the great majority of civil and criminal cases, and a very wide range of other matters.

## **Appointment**

Once appointed a summary sheriff may remain in office until the compulsory retirement age which is 70. As with Sheriffs Principal and Sheriffs, Summary Sheriffs will be prohibited from engaging in any other business activity which might compromise their impartiality when sitting on the bench.

## **Qualifications and Experience**

To qualify for appointment as a summary sheriff, a person must be and have been an advocate or solicitor for at least 10 years. Because of the nature of the office, those appointed should be practitioners of standing, whether Queen's Counsel, advocates or solicitors with considerable court experience.

A summary sheriff will need to have a grasp of every aspect of law, both civil and criminal, as well as mastery of the rules of evidence. Each summary sheriff will be required to devote considerable time to maintaining an up-to-date knowledge and awareness of the relevant law, rules of evidence and procedure. Each summary sheriff will be required to read a substantial number of law reports and other relevant publications in order to keep abreast of the many changes that occur in the law. Summary sheriffs will need to be aware of the legislation of the UK and Scottish Parliaments as well as the decided case law and jurisprudence of the Scottish Courts and the European Court of Human Rights.

Each summary sheriff will require to be versatile and to be able to deal with whatever type of case is put before him or her at short notice and to maintain a sound judicial temperament at all times. Many summary sheriffs will be required to deal with various different types of business during the course of each working day, whether in court or in chambers.

## **Primary Functions**

The primary function of the summary sheriff will be to act as a judge of the first instance. Each summary sheriff will have the same powers and responsibilities throughout Scotland.

## **Attendance at Court**

The summary sheriff will normally commence the court sitting at, or sometimes before, 10.00 am. In some areas pressure of business has resulted in courts now routinely starting at 9.30 am. Similarly the sheriff court frequently sits later than 4 pm. Judicial business, however, extends well beyond the normal court sitting times.

There may be occasions where the business of a summary sheriff at a particular court is completed early in the day. To maximize the efficiency and output of the courts, a summary sheriff may be required to travel to another court, if need be in another sheriffdom, to deal with the business of that court.

Before going to sit in court the summary sheriff will read and consider reports or other court papers in connection with that day's court business. These reports can be lengthy and complicated and many of them, such as criminal justice social work reports and psychiatric reports, require to be given careful consideration. Most summary sheriffs will need to consider such reports the day or, more usually, the night before the case calls in court. A summary sheriff will often require, before sitting in court, to preside at hearings in chambers in respect of various types of court business.

Out of court the summary sheriff will need to undertake a substantial amount of written and chambers work. For example:-

- Writing civil judgments.
- Dealing with interlocutory matters such as unopposed motions and warrants for arrestment or inhibition, where the proceedings are within the competence of the summary sheriff.
- Preparation of stated cases and reports for criminal or civil appeals or children's referral cases, applications for special arrangements for vulnerable witnesses.
- Consideration of applications for adoption and applications for permanence orders, undefended divorces based on affidavit evidence.
- Consideration of breach reports of community disposals and applications for initiating criminal warrants.

A summary sheriff may be called on at any hour of the day or night to consider urgent applications for various criminal warrants, civil interdicts and child protection orders.

## **Nature of Work**

### Criminal Proceedings

The criminal jurisdiction of the summary sheriff is in respect of summary prosecutions. In addition, a summary sheriff will have competence over certain procedural matters in solemn cases prior to the first diet. This would include, for example: the granting of warrants for arrest and production of documents, custody hearings which include bail and bail review hearings.

In summary procedure the maximum penalty, except where lower penalties are prescribed by a particular statute, is 12 months' imprisonment and a fine of £10,000. There are, however, wide discretionary sentences including a Community Payback Order which may involve detailed conditions, drug treatment and testing orders, restriction of liberty orders, supervised attendance orders and the power to order compensation, in addition to other incidental orders including football banning orders, non-harassment orders, anti-social behaviour orders, disqualification orders, and forfeiture of vehicles or other property.

In some courts, especially in the major cities such as Edinburgh, a very substantial volume of business is handled in "bulk courts" such as the custody court and other procedural summary criminal courts. In these courts the volume is high and the situations / decisions with which the summary sheriff will have to deal with are diverse and unpredictable, such as bail decisions; bail reviews; and unexpected pleas from the minor to the serious for charges both common and uncommon. For example, in the midst of a cited court with 120 complaints there may be a plea of guilty, in a summary complaint, in the Health and Safety prosecution of a major company following a high profile accident which attracts the press corps into the court. In addition, situations can arise which will demand that the summary sheriff exerts control over his or her court, such as disruptive accused or those with an overtly political agenda. Accused might appear in court under the influence of mind altering substances and become a nuisance. Other behaviour can challenge the court, and the summary sheriff may not know whether the behaviour is a deliberate or intentional affront to the court or whether it is a result of mental health problems.

A summary sheriff will be able to conduct summary trials and to impose appropriate sentences in summary proceedings. Some of these will result in appeals against sentence or conviction. In appeals against sentence the summary sheriff will be 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 however likely to involve a great deal more work than those against sentence. In summary cases the summary sheriff has to draft a stated case and set out all the relevant findings-in-fact, together with a detailed note in support and explanation of them.

### Civil Proceedings

Schedule 1 of the Courts Reform (Scotland) Act 2014 details the civil proceedings which a summary sheriff will have competence to deal with. In short, a summary sheriff will be able to deal with the following proceedings: Family; domestic abuse; adoption; children's' hearings; forced marriage; warrants and interim orders; diligence proceedings; extension of time to pay debts and simple procedure.

The sheriff court deals with almost all family actions in Scotland. This involves the bulk of divorces, defended as well as undefended; disputes over parental responsibilities and rights and the making of orders relating to parental responsibilities and rights; adoptions including contested adoptions, permanence orders and permanence orders with authority to adopt. Cases involving residence and contact orders and permanence orders can often last for many days and involve difficult and anxious issues where both parties regularly adduce conflicting evidence from expert witnesses. The decisions which summary sheriffs may have to make in relation to children (especially regarding permanence) are the most difficult and distressing that any member of the judiciary makes. A senior judge in England and Wales has commented that the decision to remove a child from his parents to give him a new family is one of the most serious interferences with citizens' rights since Parliament decided to abolish capital punishment. In some courts there are specialist family courts with sheriffs serving in these courts for periods of time.

A summary sheriff will be expected to issue civil judgments with the least possible delay. For the reasons explained above, it can be very difficult to consider cases and prepare judgments in the course of the working day. As a result it is common among sheriffs, and it will be the same for summary sheriffs, to undertake this task in private time.

Appeals against a summary sheriff's decision in civil cases will be heard by the Sheriff Appeal Court.

### Simple Procedure

In the Sheriff Court at present, for reasons of speed and minimisation of expense, civil cases are divided into small claims, summary causes and ordinary causes. Small claims, which comprise claims with a value up to £3,000, are dealt with under special rules which encourage informality and some active intervention by the sheriff. Summary causes, which comprise claims between £3,000 and £5,000, have a more structured formality, but do not involve formal written pleadings.

Under the procedures for small claims and summary cause in the Sheriff Court, it can be difficult to help party litigants because of a sheriff's duty to act as the "referee" in what is essentially an adversarial encounter. The Courts Reform (Scotland) Act 2014 introduces a new procedure known as "simple procedure". In the interest of justice this new procedure is being brought in so that there is a single set of rules to deal with cases under the value of £5,000. It will also require summary sheriffs to ensure that party litigants without legal representation are not unfairly disadvantaged.

New rules are currently being drafted to support the policy objective of the Courts Reform (Scotland) Act 2014. It is expected that the new rules will be in place from the spring of 2016. The rules will reflect, as far as possible, a problem-solving or interventionist approach. It will be for the summary sheriff to identify the issues and specify to parties exactly what the court will wish to see or hear by way of evidence or argument.

## Children's Referrals

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. In many cases the Children's Hearing requires to remit the case to the sheriff for proof. A summary sheriff has concurrent jurisdiction with a sheriff to deal with referrals from the Reporter. When dealing with such cases, it will be for the summary 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 and if the child is detained in a place of safety, strict time limits for hearing and disposing of the case apply. Many of these cases are extremely anxious involving serious allegations of physical or sexual abuse of children. Some involve allegations that a child has committed a serious crime, such as rape. Many cases are hotly contested and last for several days or longer, particularly when parties lead conflicting expert evidence. A summary sheriff will also have substantial appellate jurisdiction in relation to decisions reached by Children's Hearings as to disposal of a child's case and such appeals have to be dealt with as priority business. Such cases can be very time-consuming and many involve consideration of ECHR arguments. Children's referral cases regularly involve vulnerable witnesses.

### **Sensitivity of Judgments**

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

### **The demands of shrieval life**

The working life of a summary sheriff will often be very demanding.

Summary sheriffs will undoubtedly have to work long hours, often under pressure, with a very varied workload. On one day, or a succession of days, a summary sheriff may have to concentrate on the evidence in a single case, for five hours or so. On another day they may have to deal with a variety of cases, in many different legal fields, considering the facts and applying the law each one correctly, sometimes with little guidance. On yet another day they may need to work through a busy summary criminal court. In each case a summary sheriff needs to be able to concentrate for long periods, and very often to be able to switch from one task to another without flagging. There will be a constant requirement for intellectual rigour, for quick correct decision-making, and for accuracy of written and oral expression.

It will be the case that a summary sheriff will hear distressing evidence, and will be required to deal with that evidence in an emotionally charged atmosphere. This may happen across much of a summary sheriff's caseload. In many cases emotions run high and a summary sheriff will have to retain professional detachment, and handle victims and witnesses sensitively.

A summary sheriff will have to maintain a wide knowledge of the law. They may be called upon at a minute's notice to deal with a case within their jurisdiction, sometimes

without the benefit of argument from parties' lawyers. As a result much of a summary sheriff's free time will be spent keeping up to date with the law.

After a day hearing cases, a summary sheriff may have to produce a written judgment setting out the facts and law behind a decision, or write a note for a children's hearing, or approve the terms of a tricky interlocutor, or any other of scores of written tasks. A summary sheriff will have writing days, but even so they may often have to write late into the night to meet the deadlines imposed by writing duties. A summary sheriff must have the self-discipline necessary to keep their work up to date.

An error on the part of a summary sheriff's work, such as an error of law or a mistaken exercise of discretion may result in an appeal. For that reason, a summary sheriff's decision making is very public, and will be scrutinised and if need be criticised by an appeal court. The possibility of being successfully appealed is a particular source of stress that a summary sheriff will need to manage carefully.

The personal life of a summary sheriff should be unimpeachable. They require to command public respect, and their conduct on the bench and off will be the subject of constant scrutiny. There is always a risk of media scrutiny of decisions, and of media intrusion into ones private life.

While the post of summary sheriff will undoubtedly have its challenges, no two days will ever be the same. The work provides intellectual satisfaction and is an important service to society, ensuring that justice is being done. A recent survey of judicial attitudes asked what would be the main reasons members of the judiciary would encourage suitable people to apply to join the Scottish judiciary. The main reasons given were the chance to contribute to justice being done (83%), the challenge of the work (82%), the intellectual satisfaction of the work (71%) and the opportunity to undertake work of public service (69%).

### **The qualities required of a summary sheriff**

From the foregoing, it can be seen that particular qualities are required of a summary sheriff:-

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