

THE OFFICE OF PART-TIME SHERIFF

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A PART-TIME SHERIFF

Introduction

Part-time sheriffs play a vital role in the administration of justice. They provide invaluable assistance in the efficient disposal of business in the Sheriff Courts. Part-time Sheriffs have an identical jurisdiction to Sheriffs. They may be asked to sit in the full range of cases which call in the Sheriff Court.

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

A sheriff is expected to deal with substantial civil business, especially in cases with a value of up to £100,000. He or she will also preside over summary and solemn criminal trials, where the maximum sentences are respectively 12 months and five years.

The essential requirement for the office is the ability and legal standing to perform the judicial and administrative functions of the office. This profile describes the range of responsibilities and functions which a sheriff will undertake.

Appointment

Part-time sheriffs are appointed by the Scottish Ministers. The Lord President of the Court of Session is also consulted before the decision to appoint.

A part-time sheriff is appointed for a 5 year period. Re-appointment is automatic, subject to certain conditions, or until the office holder reaches the mandatory retirement age. A part-time sheriff, who is a solicitor in practice, must not carry out any functions as a part-time sheriff in a sheriff court district in which his or her place of business is situated.

Qualifications and Experience

To be eligible for appointment, a person must be legally qualified, and been so for at least 10 years immediately preceding the appointment. Those seeking appointment as a part-time sheriff should be practitioners of standing, whether Queen's Counsel, advocates or solicitors, with considerable court experience.

A part-time sheriff will need to have a sound grasp of both solemn and summary criminal procedure and the substantive criminal law. He or she should have a reasonable knowledge of the civil law especially in contract, delict and family law. He or she should have a good awareness of civil procedure in the sheriff court ordinary, family law and simple procedures. He or she should also be aware of the areas of the civil law, including the recovery of heritable property, commonly encountered in the simple procedure process.

A part-time sheriff should be versatile and able to deal with cases put before him or her at short notice.

Primary Functions

Part-time sheriffs most commonly provide cover for permanent sheriffs who may be away from business on annual or sick leave; or attending judicial training or conferences. They also help to cover additional work which may arise from time to time in the court programme.

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The primary function of the part-time sheriff is to act as a judge at first instance. However, they do not exercise appellate functions nor any of the administrative and *quasi-judicial* functions of a permanent sheriff.

Part-time sheriffs have the same powers and responsibilities throughout Scotland. In the cities and larger towns, a number of sheriffs and summary sheriffs may work in the same sheriff court building. In some courts there may be only one sheriff. In the more rural areas, particularly those in the islands, the sheriff may sit in more than one court building during the course of a week.

A part-time sheriff also acts as in commissary cases; dealing with the granting of confirmation of executors and the administration of wills. Part-time sheriffs deal with requests for extradition to Scotland. The sheriffs in Edinburgh deal with all applications from abroad for extradition of persons from Scotland.

Allocation of Work

The Judicial Office for Scotland is responsible for the deployment of part-time sheriffs in response to requests for assistance submitted by individual sheriff courts, under the direction of the Sheriffs Principal. Part-time sheriffs may sit in any of the sheriff courts in Scotland, except in the court district containing their place of business. However, as with all judiciary, they would be expected to decline jurisdiction in any case where a conflict of interest arises.

Attendance at Court

Part-time sheriffs will normally commence the formal court sitting at, or before, 10.00 am. Many courts now routinely start at 9.30 am. A part-time sheriff should be at the court building well before he or she is due to sit. The court usually finishes around 4 or 4.30 pm but can extend beyond that time in order to accommodate witnesses or to complete a hearing, including a trial

There may be occasions when the business at a particular court is completed early in the day. In order to maximise efficiency, a part-time sheriff may be required to travel to another court building to deal with business there.

Before sitting, a part-time sheriff will generally be required to read and consider reports and other papers in connection with that day's business. Many of them, including criminal justice social work and psychiatric reports, require to be given particularly careful consideration, but at short notice, often on the day that the case calls.

Part-time Sheriffs undertake a variety of work in chambers, including:-

- a. Writing civil judgments;
- b. Dealing with interlocutory matters, such as unopposed motions and warrants for arrestment and inhibition;
- c. Dealing with warrants for arrestment or inhibition;
- d. Preparing stated cases and reports for criminal or civil appeals or children's

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- referral cases;
- e. Considering applications for adoptions and permanence orders, and undefended divorces based on affidavit evidence; and
 - f. Considering reports of breaches of community disposals and applications for initiating criminal warrants.

Nature of Work

Criminal Proceedings

The criminal jurisdiction of the part-time sheriff is both summary and solemn.

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

In the cities and larger towns, the volume in a custody or intermediate diet court can be high. The situations, with which the part-time sheriff will have to deal, are diverse and, to a degree, unpredictable. Unexpected pleas of guilty from the minor to the serious may be tendered. In the midst of a cited court, there may be a plea in a Health and Safety prosecution of a major company following a high profile accident.

Situations can arise which will demand that the part-time sheriff exerts control over his or her court, including where there are disruptive accused or those with an overtly political agenda. Accused or witnesses might appear in court under the influence of drink or drugs. Other behaviour can challenge the court's authority.

A part-time sheriff has concurrent jurisdiction with the High Court for proceedings on indictment, with the exception of murder, rape and treason. The maximum sentence is 5 years. A part-time sheriff has power to remit a case to the High Court when a longer period is necessary. Discretionary non-custodial sentences are available. There is no limit to the amount of a fine.

Part-time sheriffs are expected to adopt a pro-active role in the management of solemn criminal cases, especially at first diets. In solemn cases, sheriffs should assist the Sheriffs Principal in the discharge of their statutory function to secure the efficient disposal of business generally and not just in relation to a case called before him or her.

A part-time sheriff is required to preside over trials and to impose appropriate sentences. Some trials will result in appeals against sentence and/or conviction. In appeals against sentence in summary proceedings, the part-time sheriff is required to prepare a report for the Sheriff Appeal Court (SAC), providing a record of the relevant circumstances and the reasons for the sentence. In conviction appeals, the part-time sheriff has to draft a stated case for the SAC setting out relevant findings-in-fact, together with a note in their support and explanation. In solemn sentence or conviction appeals, the part-time sheriff will prepare

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a report for the High Court giving his or her opinion on the case generally and on the grounds of appeal.

Civil Proceedings

The Sheriff Court has exclusive competence to deal with civil proceedings where the total value of the orders sought does not exceed £100,000. The Sheriff Court has concurrent jurisdiction with the Court of Session in almost all other civil cases, with the exception of judicial review.

The Sheriff Court deals with almost all family actions. This involves divorce, disputes over parental responsibilities and rights, maintenance of children, adoptions, permanence orders and permanence orders with authority to adopt. Family cases can be anxious.

Part-time sheriffs are expected to issue civil judgments promptly. These will normally require to be drafted outwith court hours.

Appeals against a part-time sheriff's decision are heard by the Sheriff Appeal Court.

Simple Procedure

Simple procedure is a court process designed to provide a speedy, inexpensive and informal way in which to resolve disputes. Part-time sheriffs are required to negotiate and secure settlement of the claims at the earliest opportunity and to adopt a proactive role in the management of the cases.

Children's Referrals

Children who are alleged to be in need of compulsory measures of care are referred by the Reporter to the Children's Panel and dealt with by a Children's Hearing. Where the facts are disputed, it may be for the sheriff to decide at a proof whether what is alleged is established. These cases require to be given priority. If the child is detained in a place of safety, strict time limits for hearing and disposing of the case apply. A part-time sheriff has a substantial appellate jurisdiction in relation to decisions reached by Children's Hearings. Such appeals have to be dealt with as a priority.

Child Welfare Hearings

Child welfare hearings have become an important part of the part-time sheriff's work. These involve residence, contact and related orders. The rules require the part-time sheriff to secure the quick resolution of those disputes.

Summary Applications

Summary application procedure is used for a number of different types of action, including adults with incapacity and antisocial behaviour. It is also used when appealing against certain decisions made by licensing or other local authorities.

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Fatal Accident Inquiries

Inquiries into sudden or suspicious deaths are conducted if: (a) the deceased dies in the course of his or her employment or in custody; or (b) the Lord Advocate determines that it is appropriate to hold an inquiry in the public interest. The part-time sheriff is required to make findings and recommendations which might avoid a recurrence of death in similar situations.

Judicial Training and Support

The following measures are intended to provide professional support and reassurance to any new appointees. The Judicial Institute (JI) is responsible for preparing and organising the delivery of all judicial training and continuing professional development for all judicial office holders.

The JI provides induction training on a “blended learning” basis. This means that a substantial amount of online learning will be issued 4-5 weeks before a new part-time sheriff’s appointment date. The work undertaken and submitted to the JI is built on by face to face training over a maximum of five days. For part-time sheriffs appointed following the current round, the face to face training will take place for the entire week commencing Monday 24 January 2022. This includes presentations, problem exercises and facilitated discussions on a range of topics relevant to the judicial role. Induction is not, however, a crash course on the substantive law. Knowledge of which is assumed, and which new part-time sheriffs will already have acquired or will be capable of acquiring. Induction is designed to provide support to the new part-time sheriff in making the transition from practice to a judicial role.

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, observe the work undertaken and have the opportunity to discuss how best to approach and organise for the challenges ahead.

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

The demands of shrieval life

A part-time sheriff may have to deal with a variety of cases in one day. He or she may need to work through a busy criminal court. A part-time sheriff needs to be able to concentrate and to switch from one task to another. There will be a requirement for quick, correct decision-making.

A part-time sheriff may hear distressing evidence, and be required to deal with that evidence in an emotionally charged atmosphere. The part-time sheriff will have to retain professional detachment, and deal with victims and witnesses sensitively.

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A part-time sheriff may have to produce a written judgment setting out the facts and law behind a decision, to write a note for a children's hearing, or to approve the terms of an interlocutor. A part-time sheriff must have the self-discipline necessary to keep his or her work up to date.

While the post of a part-time sheriff will have its challenges, no two days will be the same. The work provides intellectual satisfaction. It is an important service to society; ensuring that justice is being done.

Fees and Expenses

In recognition of the range of duties which they undertake, part-time sheriffs are paid a daily fee, which directly equates to one day of a permanent sheriff's salary. The current daily fee (effective from 1 April 2020) is £665.56. In addition necessary travel and subsistence expenses will be reimbursed.

Judicial Office for Scotland
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