

THE OFFICE OF PART-TIME SUMMARY SHERIFF

This paper was provided by the Judicial Office for Scotland.

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

Introduction

The Courts Reform (Scotland) Act 2014 created a new judicial office in the sheriff court to be known as the summary sheriff. The Office of Summary Sheriff ensures that cases are heard at an appropriate level.

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 summary sheriff sits in the sheriff court, but with a restricted jurisdiction in both civil and criminal matters. He or she will be expected to be able to conduct simple procedure and summary cause cases (under £5,000 in value), family cases and summary criminal cases (maximum penalty 12 months). A summary sheriff may exercise the jurisdiction and powers of a justice of the peace.

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

Appointment

Part-time summary 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 summary 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 summary sheriff, who is a solicitor in practice, must not carry out any functions as a part-time summary 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.

A part-time summary sheriff will need to have a sound grasp of summary criminal procedure and the law relating to crimes normally charged at a summary level. He or she should have a reasonable knowledge of simple procedure, summary causes and the areas of the civil law, including contract and the recovery of heritable property, commonly encountered in those procedures. A knowledge of family law and procedure is an advantage.

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

Primary Functions

Part-time summary 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.

The function of the summary sheriff is to act as a judge at first instance in summary criminal,

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family, simple procedure and summary cause cases. A summary sheriff will also have administrative duties in connection with the granting of warrants and other investigative procedures.

Part-time summary 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 court building. In some courts there may only be one summary sheriff. A summary sheriff may sit in more than one court building during the course of a week.

Allocation of Work

The Judicial Office for Scotland is responsible for the deployment of part-time summary sheriffs in response to requests for assistance submitted by courts, under the direction of the Sheriffs Principal. Part-time summary 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 summary 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 summary 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 it 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 maximize efficiency, a part-time summary sheriff may be required to travel to another court building, if need be in another sheriffdom, to deal with the business of that court.

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

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

- a. Writing judgments;
- b. Dealing with interlocutory matters, such as unopposed motions and warrants for arrestment or inhibition;
- c. Preparing stated cases and reports for criminal or civil appeals or children's referral cases;
- d. Considering applications for adoption and permanence orders, and undefended divorces based on affidavit evidence; and
- e. Considering reports of breaches of community disposals and applications for initiating criminal warrants.

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Nature of Work

Criminal Proceedings

The criminal jurisdiction of the part-time summary sheriff is generally restricted to summary crime. In addition, a part-time summary sheriff has competence over certain procedural matters prior to the first diet in potentially solemn cases. These can include the granting of warrants for arrest and orders for the production of documents, consideration of a petition at committal proceedings and bail and bail review hearings.

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, disqualification from driving 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 a part-time summary 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 summary sheriff exerts control over his or her court, including where there are disruptive accused or those with an overtly political agenda. Accused or witness might appear in court under the influence of drink or drugs. Other behaviour can challenge the court's authority.

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

Civil Proceedings

A part-time summary sheriff has competence to deal with: family cases; adoption; children's hearings; warrants and interim orders; diligence; extensions of time to pay; and simple procedure.

The sheriff court deals with almost all family actions. This involves: divorces, disputes over parental responsibilities and rights, maintenance of children, adoptions, permanence orders and permanence orders with authority to adopt. Family cases can involve anxious issues

A part-time summary sheriff is expected to issue civil judgments promptly. These will normally require to be drafted outwith court hours.

Appeals against a summary sheriff's decision are heard by the Sheriff Appeal Court.

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Simple Procedure

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

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 summary 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 summary 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.

Children's Welfare Hearings

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

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 summary 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 summary sheriffs who are 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, it is assumed, new part-time summary sheriffs will already have acquired or will be capable of acquiring. Induction is designed to provide support to the new part-time summary sheriff in making the transition from practice to the 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, to observe the work undertaken and to have the opportunity to discuss how best to approach and organise for the challenges ahead.

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

The demands of shrieval life

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

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

A part-time summary 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 summary sheriff must have the self-discipline necessary to keep his or her work up to date.

While the post of part-time summary 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 they do undertake, part-time summary sheriffs are paid a daily fee, which directly equates to one day of a permanent summary sheriff's salary. The current daily fee (effective from 1 April 2020) is £533.92. In addition, necessary travel and subsistence expenses will be reimbursed.

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