

THE OFFICE OF SUMMARY SHERIFF

This paper was provided by the Judicial Office for Scotland.

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A 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. This new judicial office will ensure 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 to possess ability to perform the judicial and administrative functions of the office. This paper describes the range of responsibilities and functions which a summary sheriff will undertake.

Appointment

Summary 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 before putting her recommendations forward.

Once appointed, a summary sheriff may remain in office until the compulsory retirement age of 70. As with Sheriffs Principal and Sheriffs, Summary Sheriffs are prohibited from engaging in any business activity which might compromise their impartiality.

Qualifications and Experience

To be eligible for appointment, a person must be, and have been for at least 10 years, an advocate or a solicitor. Those applying should have substantial court experience.

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

Primary Functions

The function of the summary sheriff is to act as a judge at first instance in summary criminal, 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. Some Summary Sheriffs will exercise quasi-judicial functions in conducting Fatal Accident Inquiries.

Each summary sheriff has the same powers and responsibilities throughout Scotland. In

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SUMMARY SHERIFF

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.

Attendance at Court

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 summary sheriff should be at the court building well before he or she is due to sit. Summary sheriffs normally sit until at least 4.00 pm. Judicial business can extend beyond that time in order to accommodate witnesses or to complete a trial or proof.

There may be occasions when the business at a particular court is completed early in the day. In order to maximize efficiency, a 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 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.

Summary 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 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;
- e. Considering reports of breaches of community disposals and applications for initiating criminal warrants.

Due to the current COVID pandemic the way in which a variety of hearings are conducted has changed and many are now conducted remotely by either telephone or video conference.

A summary sheriff may be called on to consider urgent applications for various criminal warrants, civil interdicts and child protection orders outwith court hours. There may be a rotation for this duty.

Nature of Work

Criminal Proceedings

The criminal jurisdiction of the summary sheriff is generally restricted to summary prosecutions. In addition, a summary sheriff has competence over certain procedural matters prior to the first diet in potentially solemn cases. These can include the granting of

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SUMMARY SHERIFF

warrants for arrest and the production of documents, consideration of the 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 £10,000. There are other discretionary sentences, including Community Payback, drug treatment and testing, 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 the 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 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 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 has to draft a stated case setting out relevant findings-in-fact, together with a note in their support and explanation.

Civil Proceedings

A summary sheriff has competence to deal with: family cases; domestic abuse; adoption; children's hearings; warrants and interim orders; diligence; extensions of time to pay; summary cause 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 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.

Simple Procedure

Non-family civil cases are divided into simple procedure, summary cause and ordinary causes. The summary sheriff's jurisdiction relates to simple procedure and summary cause, which often involves party litigants. It can be difficult to deal with party litigants because of a summary sheriffs' duty to act impartially in what remains nevertheless an adversarial

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SUMMARY SHERIFF

system.

Children's Referrals

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. 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 part of the summary sheriff's work. These involve residence, contact and related orders. The rules require the sheriff to secure quick resolution of these disputes.

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 summary sheriff is required to make findings and recommendations which might avoid a recurrence of death in similar situations.

Other Activities

Summary sheriffs are expected, and are frequently called upon, to serve, and in some instances are required by statute to be represented, on a variety of quasi-judicial, administrative and advisory or consultative bodies.

These include the Scottish Sentencing Council, the Judicial Institute Advisory Committee, the Scottish Courts and Tribunals Service Board, sub-committees for the Judicial Council, Justice of the Peace Training Committees, court user groups, criminal justice bodies and research groups.

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 summary sheriff's appointment date and the work undertaken and submitted to the JI is then built on during a training course taking place over a maximum of five days.

For summary sheriffs appointed following the current competition, unless physical distancing and other restrictions are relaxed substantially, this training will be conducted via the WebEx audio/video platform and will take place for the entire week commencing Monday 4 October 2021. This includes presentations, problem exercises and facilitated

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SUMMARY SHERIFF

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 summary sheriffs will already have acquired or will be capable of acquiring. Induction is designed to provide support to the new sheriff in making the transition from practice to the new judicial role.

All new appointees must complete at least three sitting-in days with an experienced summary 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. Sitting in is organised through the relevant Sheriff Principal.

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

The demands of shrieval life

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

A 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 approve the terms of an interlocutor. A summary sheriff must have the self-discipline necessary to keep his or her work up to date.

While the post of 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.

Judicial Office for Scotland