

THE OFFICE OF PART-TIME SHERIFF

Introduction

The office of part-time sheriff was created in 2000 under the provisions of the Bail, Judicial Appointments etc. (Scotland) Act 2000 and replaced that of temporary sheriff which fell foul of ECHR legislation. In 1999 the use of temporary sheriffs ceased following a successful challenge in the courts. It was argued that because temporary shrieval commissions were renewed annually they had no secure tenure of office. Additionally, it was the Lord Advocate, head of the systems of criminal prosecution and the investigation of deaths in Scotland, who made recommendations on whether commissions should be renewed, therefore it was held that temporary sheriffs could not be considered fair and impartial judges under the articles of the ECHR.

The terms of the legislation which created the office of part-time sheriff provided individuals with such security of tenure as they are appointed for five years (and may therefore be reappointed) or until they reach the age of 70. They may only be removed from office if so ordered by Ministers on the recommendation of a tribunal which is to be set up for the purpose of investigating allegations of inability, neglect of duty or misbehaviour.

Under the provisions of the Act (as amended by Order) a maximum of 80 part-time sheriffs may hold office at any one time.

Function

Part-time sheriffs are utilised to assist in maintaining the throughput of business in the sheriff courts. They are most commonly used to provide cover for permanent sheriffs who may be away from business on annual or sick leave, attending judicial training and conferences and for additional work which may from time to time arise in the court programme.

Part-time sheriffs are invited to attend certain courses and events hosted by the Judicial Studies Committee, which serves to provide training for, and disseminate information to, the judiciary in Scotland on developments in the law.

Allocation of work

The Scottish Executive Justice Department directs the deployment of part-time sheriffs in response to requests for assistance submitted by court staff. Part-time sheriffs may sit in any of the sheriff courts in Scotland, except in the court district where their main place of business is situated. However, as with the permanent judiciary, they would be expected to decline jurisdiction in any case where there might arise a conflict of interest.

While some part-time sheriffs are retired permanent sheriffs, the majority are either practising advocates or solicitors. The legislation provides that the Sheriffs Principal are responsible for seeking to ensure that each part-time sheriff sit on no fewer than 20 days nor more than 100 days in any one year.

Nature of the work undertaken

Part-time sheriffs are expected to undertake the same range of business as permanent sheriffs. They may deal with all manner of summary and solemn criminal business and matters coming before the civil courts in the normal course of a day's work. They do not however deal with out of hours applications nor do they undertake the administrative and *quasi-judicial* functions permanent sheriffs may exercise. In recognition of the range of duties they do undertake, part-time sheriffs are paid a daily fee, which directly equates to one day of a permanent sheriff's salary.

For further information on the duties associated with shrieval appointment, please see the Paper "The Office of Sheriff".