

# ***JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND***

## **THE OFFICE OF SHERIFF PRINCIPAL**

**This paper was prepared with assistance from the Judicial Office for Scotland.**

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## **Introduction**

1. The Sheriff Principal must first and foremost be a lawyer of sufficient standing to command confidence in his or her legal and judicial ability. That said, the Sheriff Principal must also, given his or her statutory responsibilities, be able to undertake satisfactorily a range of tasks in addition to hearing and determining appeals. This paper seeks to describe fully the range of responsibilities which a Sheriff Principal will undertake once in office.

## **Administrative Functions**

2. The administrative functions of the Sheriff Principal have increased considerably to the extent that the time which requires to be allocated to administrative matters now exceeds the time spent hearing appeals and writing the consequent judgments. The statutory responsibility imposed by section 15 of the Sheriff Court (Scotland) Act 1971 is to secure the efficient disposal of the business of the sheriff courts within the sheriffdom. This responsibility is subject to the Lord President's responsibility under section 2 of the Judiciary and Courts (Scotland) Act 2008 for ensuring the efficient disposal of business in the Scottish Courts. Each Sheriff Principal therefore has a direct responsibility to the Lord President for the efficient disposal of business in his or her sheriffdom, and makes a report to him each year concerning the disposal of business during the preceding year.
3. The efficiency of the courts depends upon the approach adopted by a wide range of agencies over which the Sheriff Principal has no executive authority. The majority of the work of the sheriff court is criminal. In criminal cases the efficiency of the courts depends to a significant extent on the efficiency of the procurator fiscal's office. In turn, the procurator fiscal is dependant upon the Police efficiently investigating and timeously reporting crimes. The approach taken by the local bar also influences the ability of a court to operate in an efficient manner. It is axiomatic that the attitude of the bench also affects the ability of a court to process cases efficiently. Thus the role of the Sheriff Principal is to keep under review the efficiency of the various courts within his or her jurisdiction, to highlight problems within the system to the relevant parties, suggest means by which the problem might be resolved and, if necessary, to persuade organisations to re-allocate resources in order that a resolution of the problem causing the inefficiency can be achieved. This requires the Sheriff Principal to be able to analyse and understand statistical information and to have the necessary powers of persuasion to bring about effective change. The Local Criminal Justice Board, chaired by the Sheriff Principal and upon which the Scottish Court Service, Crown Office & Procurator Fiscal Service, the Police and sometimes the Social Work Department are represented is the vehicle for many such discussions. Some of the more routine activities of the Sheriff Principal include:

- maintaining a general oversight of the administration of the Sheriffdom wide court programming and the allocation of sheriffs to each court to secure achievement of the programme.
- arranging and confirming sitting dates and court holidays.
- regularly confirming that the shrieval complement is adequate and properly deployed, and preparing when necessary in conjunction with the sheriffdom business manager a business case for the increase in judicial complement.
- allocating sheriffs to particular duties, e.g. adoptions, commissary, insolvencies.
- monitoring shrieval leave; and dealing with exceptional requests for leave or problems arising from over-demand for leave at critical times.
- dealing with requests from sheriffs for leave of absence to engage in official activities such as judicial training, meetings with local authorities and other agencies and conferences.
- monitoring cases at avizandum, dealing with requests for writing time and taking action to deal with unacceptable delays.
- addressing the demands of Mental Health Tribunals and the High Court of Justiciary for shrieval assistance.
- dealing with crises when insufficient shrieval cover is available by re allocation of sheriffs to deal with the most compelling matters.
- meeting regularly, or at least from time to time, with the local procurator fiscal to discuss levels of business and anticipated developments.
- chairing the Local Criminal Justice Board.
- managing the use and deployment of part-time sheriffs.

#### **Non-appellate judicial or quasi-judicial functions**

4. Sheriffs Principal have in recent years, as a matter of practice, assumed responsibility for hearing inquiries brought under the Fatal Accident & Sudden Deaths Inquiry (Scotland) Act 1976 where the circumstances raise significant issues of public interest or importance.
5. Sheriffs Principal have, as a matter of convention, undertaken the role of Assistant Commissioners for the purposes of conducting parliamentary

boundary inquiries under the provisions of section 6 of The Parliamentary Constituencies Act 1986.

6. Sheriffs Principal are required from time to time to conduct inquiries into fitness for office of Sheriff Officers (section 79 of the Debtors (Scotland) Act 1987); Justices of the Peace (section 71 of the Criminal Proceedings etc Reform) (Scotland) Act 2007); and other miscellaneous office holders.
7. From time to time the Sheriff Principal will be required to take the initiative in driving through procedural change. This may involve no more than altering the balance of particular types of work within court programmes, for example between solemn and summary criminal work. However it is not uncommon for more fundamental changes to be called for. Thus the specialised Commercial Court, Family Courts and Personal Injury procedures in Glasgow and Strathkelvin were introduced through the impetus of the Sheriff Principal.
8. As the senior member of the judiciary within the sheriffdom, the Sheriff Principal inevitably has to deal with issues of health and welfare brought to his or her attention by sheriffs, along with discussions about career prospects, potential transfers and matters of that nature. He or she will also receive and, in most cases, deal with complaints about members of the judiciary from aggrieved litigants and court users; court staff; members of the legal profession; and other judicial office holders.
9. Although there is provision for centralised judicial training through the medium of the Judicial Studies Committee, it is common for Sheriffs Principal to organise a training, or “away day”, annually to enable sheriffs to be trained, or to discuss matters of current or impending importance. The arrangements for such training days, and responsibility for the content of the programme, usually rest with the Sheriff Principal.
10. The Sheriff Principal has a responsibility for controlling activities within courthouses. This may involve regular meetings and liaison with Court Service officials, Police and Reliance staff on issues of courthouse security and the arrangements for the movement of prisoners to and within court buildings, together with requests from outside agencies (e.g. schools, Law Faculties, Social Work Departments) for the use of court facilities.
11. The Sheriff Principal is at the interface between the Scottish Government Justice Directorate and the court system. When any initiative is proposed, whether by Government or by others (including the Sheriff Principal himself or herself) which requires the provision or re-allocation of resources, the Sheriff Principal will be fully involved in preliminary consultations, and planning and implementing the proposals when it is considered appropriate to proceed. Sheriffs Principal have been centrally involved in establishing Drugs Courts, Domestic Abuse Courts and Youth Courts.

12. Sheriffs Principal have responsibility for the administration of the Justice of the Peace Courts within the sheriffdom by virtue of section 61 of the Criminal Proceedings (Reform) (Scotland) Act 2007. This has brought a new range of responsibilities. Sheriffs Principal have been involved in selecting those persons who will sit on the Sheriffdom JP Advisory Committee (with responsibility for recruitment), and the Sheriffdom Training and Appraisal Committees. The Sheriff Principal chairs the JPAC which will require to meet regularly to monitor patterns of business and JP availability. He or she also has a responsibility for the interviewing and recommending the appointment of Justices of the Peace and, in Glasgow, Stipendiary Magistrates.
13. Sheriffs Principal have significant duties in relation to Sheriff Officers in terms of the provisions of Part V of the Debtors (Scotland) Act. Prospective Sheriff Officers must petition the Sheriff Principal for appointment, and must satisfy the Sheriff Principal as to their suitability for appointment. Thereafter the work of Sheriff Officers is subject to inspection at the instance of the Sheriff Principal, and all complaints relating to the work of Sheriff Officers are received by and investigated by him or her.
14. By virtue of the provisions of section 49 of the Local Government etc (Scotland) Act 1994, Sheriffs Principal have responsibility for the appointment of members of Valuation Appeal Committees and for maintaining membership of those committees at a level sufficient to dispose of business needs. Following appropriate consultation Sheriffs Principal appoint Honorary Sheriffs (who are regularly called upon to assist in the remoter courts and so must be selected with care), and are consulted about appointments to the panels of Safeguarders and Curators ad litem.
15. Two Sheriffs Principal have as a matter of routine been Chairman and Vice-Chairman respectively of the Sheriff Court Rules Council. (See section 33(4) of the Sheriff Courts (Scotland) Act 1971). A Sheriff Principal serves on the Judicial Appointments Board for Scotland. Two Sheriffs Principal are members of the Advisory Council of Messenger at Arms and Sheriff Officers. A Sheriff Principal is a member of the Board of Scottish Court Service. A Sheriff Principal sits on the Judicial Studies Committee.
16. Sheriffs Principal are regularly called upon to consider proposals for legislative change, or to take a leading part in the process of procedural and substantive law reform. A Sheriff Principal is often called upon to be a member of working groups and committees established for these purposes.
17. Other miscellaneous duties which have been delegated to Sheriffs Principal include:
  - (a) ad hoc appointment as Deputy Chairman of the Scottish Land Court;
  - (b) an inquiry under sections 268/9 of the Merchant Shipping Act 1995 and
  - (c) an appeal under the Police (Scotland) Regulations.

18. Fulfilment of these, and a number of representational and ceremonial duties, brings the Sheriffs Principal into frequent contact with community representatives, thereby providing an important link between the judiciary and communities.

### **Appellate Functions**

19. The primary appellate function of the Sheriff Principal is to hear appeals from the sheriff courts situated within his or her sheriffdom. Chapter 8 of Appendix D of the Civil Courts Review Consultation Document sets out that in 2006 there were 275 Ordinary Cause, 67 Summary Cause, and 12 Small Claim appeals disposed of by Sheriffs Principal.
20. In addition to preparing for a hearing, hearing parties and writing a judgment where appropriate, the Sheriff Principal would ordinarily be involved in examining a process when an appeal is marked to determine questions such as competency of the appeal; its likely duration; whether all appropriate procedure such as extension of notes of evidence have been complied with; and liaising with clerks of court to confirm the availability of parties and courtrooms. For the most part Sheriffs Principal will travel to the court from which the appeal originates for the hearing thereby minimising expenses for parties.
21. Sheriffs Principal have the responsibility of hearing appeals from Mental Health Tribunals brought under section 320 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
22. A new appellate jurisdiction under section 131 of the Licensing (Scotland) Act 2005 has just come into effect. This will transfer the burden of appellate work in licensing matters from Sheriffs to Sheriffs Principal.