



Judicial Appointments Board
for Scotland

THE OFFICE OF SUMMARY SHERIFF ROLE PROFILE

This paper was provided by the Judicial Office for Scotland.

Thistle House,
91 Haymarket Terrace,
Edinburgh,
EH12 5HE
Telephone: 0131 528 5101
Email: mailbox@jabs.gsi.gov.uk

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A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SUMMARY SHERIFF IN SCOTLAND

Introduction

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

A summary sheriff sits in the sheriff court, but with a more restricted jurisdiction than a sheriff in both civil and criminal matters, as specified in the Courts Reform (Scotland) Act 2014. A sheriff can exercise the jurisdiction of a summary sheriff. A summary sheriff may exercise the jurisdiction of a justice of the peace.

Appointment

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

A summary sheriff must have been an advocate or solicitor for at least 10 years. Those appointed should be practitioners of standing; Queen's Counsel, advocates or solicitors with considerable court experience.

A summary sheriff will need to have a grasp of those aspects of the law, both civil and criminal, commonly encountered as well as a firm knowledge of the rules of evidence and procedure. Each will be expected to devote time to maintaining an up-to-date awareness of the relevant law, evidence and procedure. Each will need to keep abreast of the changes that occur. Summary sheriffs should be aware of relevant new legislation, significant case law and developing jurisprudence in the Scottish Courts.

A summary sheriff requires to be versatile and able to deal with whatever type of case is put before him or her at short notice. He or she must maintain a sound judicial temperament at all times. Many summary sheriffs require to deal with different types of business during the course of a single working day.

Primary Functions

The primary function of the summary sheriff is as a judge of the first instance.

Attendance at Court

The summary sheriff will normally commence the formal court sitting by 10.00 am. In some areas courts routinely start at 9.30 am. He or she may be required to sit at least until 4.00 pm and often much later. Judicial business extends well beyond normal court sitting times.

There may be occasions when the business of a summary sheriff at a particular court is completed early in the day. In order to maximize the efficiency of the courts, a summary sheriff may be required to travel to another court, if need be in another sheriffdom, to deal with the business of that court.

Before sitting, a summary sheriff will be expected to read reports or other court papers in connection with the day's business. These reports can be lengthy and complicated. Many, such as criminal justice social work and psychiatric reports, require to be given careful consideration. Most summary sheriffs will need to consider such reports on the day or, more usually, the night before the case calls.

A summary sheriff will often require to preside at hearings in chambers in respect of various types of business before the formal start of court.

Out of court, the summary sheriff will undertake written and chambers work, including:

- Writing civil judgments.
- Dealing with interlocutory matters, including unopposed motions and warrants for arrestment or inhibition.
- Preparation of stated cases and reports in criminal or civil appeals or children's referral cases.
- Applications for special arrangements for vulnerable witnesses.
- Applications for adoption and permanence orders.
- undefended divorces based on affidavit evidence.
- Consideration of reports of breaches of community disposals and applications for initiating criminal warrants.

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

Nature of Work

Criminal Proceedings

The criminal jurisdiction of the summary sheriff is almost exclusively summary prosecutions. In addition, a summary sheriff will have competence over certain procedural matters in solemn cases prior to the First Diet. These include: the grant of warrants for arrest and production of documents, custody, bail and bail review hearings.

The maximum penalty, except where lower penalties are prescribed, is 12 months imprisonment and a fine of £10,000. There is a wide range of non custodial sentences, including Community Payback Orders which may involve detailed conditions, drug treatment and testing orders, restriction of liberty orders, supervised attendance orders, compensation, football banning orders, non-harassment orders, anti-social behaviour orders, disqualification, and forfeiture of vehicles or other property.

In some courts, especially in the major cities, a substantial volume of business is handled in the custody and procedural summary criminal courts. The volume is high and the situations with which the summary sheriff has to deal with are as diverse as they are unpredictable. They involve bail decisions, bail reviews, and unexpected pleas on

charges both common and uncommon. In the midst of a cited court, there may be a plea of guilty in the Health and Safety prosecution of a major company following a high profile accident which attracts press attention. Situations can arise which will demand that the summary sheriff exerts control over his or her court, such as disruptive accused or those with an overtly political or other agenda. Accused might appear under the influence of drink or drugs. Other behaviour can challenge the court, and the summary sheriff may not know whether the behaviour is a deliberate affront to the court or as a result of mental health.

A summary sheriff conducts summary trials and imposes appropriate sentences. Some of these will result in appeals. In appeals against sentence, the summary sheriff will require to prepare a report for the Sheriff Appeal Court, providing a sufficient record of all relevant circumstances and the reasons for the sentence. Appeals against conviction involve drafting a stated case setting out all the relevant findings-in-fact, together with a detailed note in support and explanation of them, and posing an appropriate question.

Civil Proceedings

Schedule 1 of the Courts Reform (Scotland) Act 2014 details the civil proceedings in which a summary sheriff has competence. These are: family; domestic abuse; adoption; children's hearings; forced marriages; warrants and interim orders; diligence; extension of time to pay debts and simple procedure.

The sheriff court deals with almost all family actions in Scotland. This involves divorces, defended and undefended; disputes over parental responsibilities and rights; adoptions including contested adoptions; permanence orders and permanence orders with authority to adopt. Cases involving residence and contact orders and permanence orders can last for several days and involve difficult issues especially where both parties adduce conflicting evidence from experts.

A summary sheriff is expected to issue civil judgments with the least possible delay. It can be difficult to consider cases and prepare judgments in the course of the working day. As a result it is common to undertake this task outwith normal court hours.

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

Simple Procedure

Civil cases were divided into small claims, summary causes and ordinary causes. The Courts Reform (Scotland) Act 2014 introduces a new "simple procedure". This creates a single set of rules to deal with most cases under the value of £5,000. Especially in these low value cases, summary sheriffs may require to ensure that party litigants are not unfairly disadvantaged.

Children's Referrals

Children 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. In many cases the Children's Hearing will refer the case to the sheriff for proof. A summary sheriff has concurrent jurisdiction with a sheriff to deal with referrals. It will be for the summary sheriff to decide whether what is alleged by the Reporter is established. These cases

require priority. If the child is detained in a place of safety, time limits for hearing and disposing of the case apply. Many of these cases involve serious allegations of physical or sexual abuse. Some involve allegations that a child has committed a crime. Many are hotly contested. 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.

Sensitivity of Judgments

The range of decision-making is very broad, and may include matters of local or public interest. Sensitivity and tact must often be applied in dealing with such matters. A summary sheriff may issue a sentencing statement, which will be published on the Judiciary for Scotland website, where such considerations are involved.

The demands of shrieval life

The working life of a summary sheriff is demanding.

Summary sheriffs may have to work long hours, often under pressure, with a varied workload. On one day, or a succession of days, a summary sheriff may have to concentrate on the evidence in a single case. On another day he or she may have to deal with a number of cases, in different legal fields. On yet another day he or she may need to work through a busy summary criminal court. In each case a summary sheriff needs to be able to concentrate and to switch from one task to another without flagging.

A summary sheriff may hear distressing evidence and may be required to deal with that evidence in an emotionally charged atmosphere. In some cases emotions run high and a summary sheriff will have to retain professional detachment, and deal with victims and witnesses sensitively.

A summary sheriff has to maintain a sound knowledge of the law. He or she may be called upon to deal with a case without the benefit of argument from parties' lawyers.

After a day hearing cases, a summary sheriff may have to produce a written judgment setting out the facts and law, or to write a note for a children's hearing, or to approve the terms of an intricate interlocutor. A summary sheriff will have writing days, but, even so, he or she may have to write after business hours to meet the deadlines. A summary sheriff must have the self-discipline necessary to keep his or her work up to date.

An error, such as one of law or a mistaken exercise of discretion, may result in an appeal. A summary sheriff's decision will be scrutinised and, if need be, criticised by an appeal court. The possibility of being successfully appealed can be a source of stress.

The personal life of a summary sheriff should be circumspect. He or she requires to command public respect, and conduct on and off the bench may be the subject of public scrutiny.

While the post of summary sheriff has its challenges, the work provides intellectual satisfaction and an important service to society; ensuring that justice is being done.