

THE OFFICE OF SHERIFF PRINCIPAL

IN SCOTLAND

Introduction

1. The office of sheriff principal is unique within the judicial structure of the United Kingdom, and it cannot therefore readily be compared with any other judicial office. It is one of great antiquity in Scotland, having existed continuously since around the 11th century. It has gradually developed over the centuries, and is still developing, into an office of some complexity and considerable weight. As will be seen, some of the duties of sheriffs principal to-day are directly influenced by contemporary events and circumstances while others are the result of decisions which were taken more than 200 years ago but which are still of relevance at the present time.

2. Until about the middle of the 19th century there were 30 sheriffs principal (or sheriffs, as they were then known). Of those sheriffs principal two (Glasgow and Edinburgh) were effectively full-time appointments while the remainder were part-time appointments filled by senior advocates in practice at the Scottish Bar. Over the years there was a gradual amalgamation of sheriffdoms, with a consequential diminution in the number of sheriffs principal. The final amalgamation occurred in 1975 when Scotland was divided into six sheriffdoms, with each one presided over by a full-time sheriff principal. That remains the position at the present time.

3. It is sometimes said that the work of a sheriff principal is partly judicial and partly administrative, but that is an over-simplistic assessment. Partly for historical reasons it is much more complex and varied, and it is suggested that the work of a sheriff principal to-day can more accurately be described under the following headings:

- (a) conventional judicial duties;
- (b) judicial and quasi-judicial work arising under various statutes;
- (c) administrative functions in relation to the courts within a sheriff principal's sheriffdom;
- (d) miscellaneous statutory functions including powers of appointment;
- (e) other powers of appointment;
- (f) statutory and other appointments and functions by virtue of holding office as sheriff principal;
- (g) miscellaneous advisory and consultative functions;
- (h) ceremonial functions.

Each of the foregoing will now be examined in greater detail.

(a) Conventional judicial duties

4. A sheriff principal sometimes sits in criminal courts or conducts major fatal accident inquiries. A recent high-profile example of that was the fatal accident inquiry into the deaths of a large number of people in Lanarkshire as a result of e-coli poisoning which was conducted in 1999 by the then Sheriff Principal of South Strathclyde, Dumfries and Galloway. However, a sheriff principal is primarily an appellate judge who sits alone to determine appeals from the decisions of sheriffs in civil matters. An appeal lies from the sheriff principal to the Inner House of the Court of Session and thereafter to the House of Lords.

5. Other than geographically the civil jurisdiction of the sheriff courts is virtually co-extensive with that of the Court of Session, and in particular it is not subject to any upper financial limit. Consequently, appeals coming before a sheriff principal may arise from a wide variety of actions including commercial cases or actions for damages of any amount. Appeals also arise in family actions, including divorce, financial settlement on divorce, and adoption, nearly all of which are now raised in the sheriff courts. Many of those cases involve difficult and anxious questions in relation to the welfare of children. Moreover, it is increasingly common for the sheriff courts to be used for the resolution of disputes under relatively modern statutes such as the Race Relations Act, the Sex Discrimination Act, and the Disability Discrimination Act. All of the foregoing are potentially the subject of an appeal to the sheriff principal. Additionally, the Children (Scotland) Act 1995 provides that appeals against the decision of a sheriff in relation to an appeal from a children's hearing may go before a sheriff principal and not, as was formerly the case, only to the Court of Session. It also seems likely that in future sheriffs principal will be involved in the disposal of appeals which raise issues under the Human Rights Act.

6. As a general rule an appellant in a sheriff court civil case has a choice between appealing to the sheriff principal or appealing directly to the Court of Session. In practice, however, more than 90% of sheriff court appeals are taken to the sheriff principal, and only a small handful of those are thereafter appealed to the Court of Session. The actual number of appeals heard by sheriffs principal varies from year to year. A few years ago they collectively heard around 1,000 appeals per year. In recent years that number has diminished to about 500 or 600, but it could well rise again in the future. On average more than half of the appeals heard by sheriffs principal result in reserved written judgments which can often be lengthy. Because of the pressure of other duties most judgments require to be prepared and drafted by sheriffs principal at home in the evenings or at weekends. The judgments of sheriffs principal are often reported in one or more of the standard law reports and on the Scottish Court Service website. Decisions by a sheriff principal are binding within his own sheriffdom, and they are considered as persuasive authority elsewhere.

7. The arrival of the Scottish Parliament seems likely to increase the workload of sheriffs principal in a variety of ways; and one of those which has so far emerged will

enlarge their appellate functions. The Ethical Standards in Public Life etc (Scotland) Act 2000 makes provision for the creation and enforcement of codes of conduct for local authority councillors and members of devolved public bodies. More than 40 classes of devolved public bodies are specified in the Act, including health boards, National Health Service trusts, boards of management of colleges of further education, the Parole Board for Scotland, Scottish Enterprise, and many others. A Standards Commission for Scotland is to be established, and it will have various powers of investigation and of censure and suspension from office. Similar powers are conferred on the Accounts Commission for Scotland in respect of financial irregularities in the handling and control of local authority accounts. The Act provides that there is to be a right of appeal from a decision of either Commission to the sheriff principal of the area where the authority or body in question is located.

8. It is impossible at the moment to predict how much additional appellate work is likely to arise as a consequence of this legislation. However, the very substantial scope of the legislation itself suggests that it might lead to a considerable amount of additional work. It is also probable that appeals arising under this legislation will attract a considerable amount of interest in the media and elsewhere.

9. It has always been seen as desirable that a sheriff principal should, so far as practicable, hear appeals in the particular sheriff court where the case in question was heard at first instance. This not only ensures that justice is seen to be done locally but also gives the sheriff principal concerned an opportunity to discuss local problems with the staff at the court in question. This does not, of course, arise in the sheriffdom of Glasgow and Strathkelvin which is a single, very large, court; and it only arises to a limited extent in the sheriffdom of Lothian and Borders where the majority of the work originates in Edinburgh. However, in the other four sheriffdoms, and particularly in the sheriffdom of Grampian, Highland and Islands, this practice involves a great deal of travelling on the part of the sheriff principal with, on occasions, the need to stay overnight in remote locations.

10. A further judicial duty which has emerged in recent times arises from appointment as a temporary judge in the High Court of Justiciary. This involves sitting both as a trial judge and from time to time as an additional judge in the Court of Criminal Appeal. Currently one sheriff principal holds office as a temporary judge.

(b) Judicial and quasi-judicial work arising under various statutes

11. Apart from the conventional judicial duties which have just been described, sheriffs principal are from time to time required or invited to conduct a variety of inquiries and to preside over a variety of tribunals under the provisions of particular statutes. The most common examples are:

- Inquiries into proposed new UK and European parliamentary constituencies on behalf of the Boundary Commission for Scotland;
- Election courts, hearing petitions in respect of local government elections;
- Inquiries under the Merchant Shipping Act into fitness to hold certificates as a master or deck officer;

Appeal tribunals under the Social Work (Scotland) Act 1968, hearing appeals against the deregistration of residential homes;
Independent schools tribunals;
Inquiries into proposed local bye-laws; and
Inquiries in respect of police disciplinary appeals.

12. Inquiries and appeal tribunals of the kind just mentioned frequently last for several days or even much longer, and they invariably require the preparation of lengthy written judgments or reports.

13. Under this heading, also, the advent of the Scottish Parliament has brought about legislation which is likely to increase the workload of sheriffs principal. The Bail, Judicial Appointments etc. (Scotland) Act 2000 makes provision for the removal from office of part-time sheriffs and justices of the peace on the ground of unfitness for office by reason of inability, neglect of duty or misbehaviour. In the case of part-time sheriffs this task is to be undertaken by a tribunal presided over by a Senator of the College of Justice or a sheriff principal, with the actual appointment being made in each case by the Lord President of the Court of Session. In the case of justices of the peace the task is to be undertaken by a tribunal presided over by a sheriff principal who will normally be the sheriff principal for the sheriffdom which includes the commission area for which the justice in question was appointed. For the moment it is impossible to predict how much additional work is likely to flow from the foregoing provisions.

(c) Administrative functions in relation to the courts within a sheriff principal's sheriffdom

14. In terms of the Sheriff Courts (Scotland) Act 1971 sheriffs principal are charged with a number of duties in respect of the courts for which they are responsible, including in particular a duty "to secure the speedy and efficient disposal of business in the sheriff courts of that sheriffdom" (s. 15(1)). Section 15(2) of the Act goes on to provide that a sheriff principal "..... may give such instructions of an administrative nature as appear to him to be necessary or expedient, and any sheriff appointed for that sheriffdom, and any officer or servant engaged in the administration of the sheriff courts in the sheriffdom, to whom an instruction is given under this section shall ... give effect to that instruction".

15. At its simplest, compliance with the foregoing statutory duties can result in a sheriff principal being involved in the overall programming of business in the courts for which he is responsible; in controlling the times when sheriffs take annual leave (in respect of which there is express statutory provision); in issuing practice notes regulating the conduct of business in the courtrooms; and in discussing the general progress of business with senior staff. In practice, however, a sheriff principal's duties in respect of the courts for which he is responsible are much more complex. Some examples will illustrate this –

From time to time it may be seen as necessary or desirable for consideration to be given to the redistribution of business between different courts. This can involve

extensive consultation and discussion with prosecutors, local lawyers, local authorities, the police, social workers, and other interested parties.

The construction of new courthouses, and the refurbishment of existing ones, is an ongoing process in Scotland. This inevitably requires sheriffs principal to engage in considerable discussion with officials, government departments, local authorities, and others

Some sheriff courthouses have to share their accommodation with the local district court (for which the local authority is responsible). Moreover, some courthouses have to accommodate the High Court of Justiciary when it is on circuit. All of that can give rise to various problems which require to be resolved.

Although sheriffs principal do not themselves exercise any budgetary control of expenditure (other than in respect of sheriff court libraries), they are frequently involved in discussions with senior staff, both locally and centrally, regarding the way in which resources are to be used. They are also from time to time involved in discussions about other resource considerations, for example those involving the police.

Sheriffs principal are required to deal with representations and complaints made by outside bodies and individuals – which are not infrequent. All such matters require to be investigated and dealt with in a thorough manner.

Judicial Studies in Scotland has, since 1997, been the responsibility of a central committee chaired by the former Lord Justice Clerk. This has led to a considerable increase in the amount of training and study provided for the judiciary, but that in turn has increased the workload of sheriffs principal in terms of making sheriffs available for training days; making other arrangements for the work of the courts to be dealt with; providing accommodation for training and study events; and so on. It also involves the sheriffs principal directly in that one of them has been a member of the Judicial Studies Committee since its formation in 1997, and another is a member of a Human Rights Sub-committee which has been established for the purpose of organising study and training in relation to the Human Rights Act.

Sheriffs principal have a general supervisory role in relation to the work and behaviour of the sheriffs for whom they are responsible. That can simply involve chasing up written work which is not produced on time, but it can also involve matters of a more sensitive and difficult kind such as, for example, dealing with a sheriff who has a drink problem. Thankfully, a problem of that kind arises only very infrequently but, when it does, it can be very stressful and demanding for all concerned.

For many years a significant amount of the work of the sheriff courts was undertaken by temporary sheriffs, that is to say advocates and solicitors who held a commission enabling them to sit from time to time on a daily basis. In November 1999 the office of temporary sheriff was successfully challenged by reference to the European Convention on Human Rights (which had by then been introduced into Scotland by virtue of the Scotland Act 1998). The consequence of this was that the sheriff courts instantly lost between 20 and 30% of their previous judicial resources. For many months thereafter the sheriffs principal were heavily engaged in setting priorities and in making alternative arrangements for the disposal of business.

The Bail, Judicial Appointments etc. (Scotland) Act 2000, to which reference has already been made, now makes provision for the appointment of part-time sheriffs

who will perform a similar function to the former temporary sheriffs, but with their appointments regulated by statute in a way which is seen as compatible with the provisions of the ECHR. It is the statutory duty of the sheriffs principal to ensure that the new part-time sheriffs are employed in a manner which is consistent with the new legislation.

Many new initiatives are currently taking place in the sheriff courts. These include, for example, witness support schemes and in-court advice services for party litigants. Sheriffs principal are heavily involved in the development of such initiatives.

(d) Miscellaneous statutory functions including powers of appointment

16. Under various statutory provisions a sheriff principal is required to perform a number of functions, including the following –

He is required to maintain lists of potential jurors both for trials in the sheriff courts and for trials in the High Court.

He is required to approve persons on a list of nautical assessors for the purposes of the Nautical Assessors (Scotland) Act 1894.

He is required to approve a list from which assessors are appointed for the purpose of appeals by persons deemed not to be fit persons to hold air travel organisers' licences.

He must be consulted by the local authority about the composition and membership of panels of reporters and curators *ad litem* for the purposes of child adoption.

He must be consulted about the composition of panels of persons appointed to safeguard the interests of children at hearings before children's panels and before a sheriff.

He appoints members of local valuation appeals panels after consultation with such persons as he thinks fit.

In directing the constables of a police force in the performance of their functions a Chief Constable must comply with all lawful instructions, whether general or special, which he may receive from the sheriff principal.

Sheriffs principal commission, and regulate the conduct of, sheriff officers. The relevant statute (the Debtors (Scotland) Act 1987) makes detailed provision regarding the investigation of the work of sheriff officers and the taking of disciplinary proceedings against them, all at the instance of the sheriff principal. Of the various miscellaneous statutory functions just outlined the commissioning and supervision of sheriff officers is probably the most onerous and time-consuming.

(e) Other powers of appointment

17. Apart from the statutory powers of appointment which have just been mentioned sheriffs principal also have a power to appoint –

Honorary sheriffs in any court within their sheriffdom. Particularly in smaller courts in more remote areas, where the resident sheriff may not sit every day, honorary sheriffs play an important part in the administration of justice.
Auditors of court.

(f) Statutory and other appointments by virtue of holding office as sheriff principal

18. Under a variety of statutes sheriffs principal hold numerous offices *ex officio*. The most important of these are as follows.

Sheriff of Chancery

19. The Sheriff Principal of Lothian and Borders is the Sheriff of Chancery for the whole of Scotland. As such he disposes of petitions for rights of succession to land and intestate estates.

Northern Lighthouse Board

20. In terms of what is now the Merchant Shipping Act 1995 all of the sheriffs principal are Commissioners of the Northern Lighthouse Board. That body is the Scottish counterpart of Trinity House in London, and it has responsibility for the provision of aids to navigation around the coast of Scotland and the Isle of Man. Sheriffs principal have, by statute, been members of the Board since its creation in 1786. The Board is not a devolved body, and accordingly Ministerial responsibility remains with the Department of the Environment, Transport and the Regions.

21. The Northern Lighthouse Board employs some 365 staff of whom about 150 are part-time staff. It is responsible for 200 lighthouses and 117 buoys. It has two ships, one of which was built in 1993 at a cost of £14m and the other of which was built in 2000 at a cost of around £8m. In addition to conventional aids to navigation the Board also provides a differential global positioning system in the waters for which it is responsible. The Northern Lighthouse Board's annual operating costs are around £20m; and the Board, along with Trinity House and the Commissioners of Irish Lights is answerable to the Department of the Environment, Transport and the Regions for the use made of the General Lighthouse Fund the reserve fund of which currently amounts to around £54m.

22. Notwithstanding the fact that *ex officio* Commissioners receive no remuneration the sheriffs principal have always taken the view that the requirements of the Merchant Shipping Acts must be observed in a responsible manner. Consequently, they regularly attend Board meetings, and they play a full part in a variety of committees established by the Board. Furthermore, if invited to do so by the Board, they undertake the duties of Vice-Chairman and Chairman of the Board from time to time. In the last 10 years five different sheriffs principal have held office as

Vice-Chairman and four of them have gone on to hold office as Chairman. This involves a great deal of work, and also involves frequent meetings with the other General Lighthouse Authorities and with the Department of the Environment, Transport and the Regions.

General Commissioners of Income Tax

23. Each sheriff principal is a general commissioner of income tax for any division wholly or partly within his sheriffdom.

Sheriff Court Rules Council

24. By virtue of provisions in the Sheriff Courts (Scotland) Act 1971 two sheriffs principal are members of the Sheriff Court Rules Council which has the duty of formulating and, as necessary, modifying rules of procedure for use in the sheriff courts. Of the two sheriff principal members of the Rules Council one is, in terms of the statute, always the chairman. This is a very onerous duty which can consume a great deal of time for the two sheriffs principal concerned, and in particular for the one who is chairman. Each of them normally holds office as a member of the Rules Council for a period of three years, with the possibility of a further three years as chairman thereafter.

Advisory Council on Messengers-at-Arms and Sheriff Officers

25. Two sheriffs principal are members of the Advisory Council on Messengers-at-Arms and Sheriff Officers.

Other bodies

26. From time to time sheriffs principal are appointed as members of various other bodies. Currently, these include the Criminal Justice Forum, which is chaired by either the First Minister for Scotland or the Minister for Justice. One sheriff principal is a member of the Forum. Reference has already been made in paragraph 15 above to the Judicial Studies Committee and its Human Rights Sub-Committee. In addition one sheriff principal is currently the Vice President of the Security Service Tribunal and of the Intelligence Services Tribunal both of which are based in London.

Trusteeships

27. For largely historical reasons all of the sheriffs principal are *ex officio* trustees of bequests, bodies and establishments in their respective sheriffdoms. Many of the trusts were created in the 19th century, and they are of many kinds. At least one involves an art collection of significant value. Some involve sites or buildings of local historical or cultural importance; some are educational in character; and some are wholly charitable. Nearly all of them involve additional duties for sheriffs principal.

(g) Miscellaneous advisory and consultative functions

28. As members of the senior judiciary the sheriffs principal are regularly approached for advice, or as part of a general consultation process, often at the highest levels. In recent times Scottish Ministers have directly sought the views of sheriffs principal on a range of matters related to the business of the Scottish Parliament. Similarly, requests for advice and assistance are frequently received from senior officials in Government Departments. Examples of matters on which advice

has been sought in recent times include: proposals to give sheriffs principal an appellate function under what has become the Ethical Standards in Public Life etc (Scotland) Act 2000 (see para. 7 above); proposals to create tribunals for the removal of part-time sheriffs and justices of the peace (see para. 13 above); proposals to create part-time sheriffs (see para. 15 above); and proposals for the creation of a Judicial Appointments Board in Scotland. In addition, sheriffs principal are regularly consulted in relation to proposals to carry out research projects relating to the business of the courts.

29. Sheriffs principal are regularly consulted (under current judicial appointments procedures) regarding appointments to the sheriff court bench, and it is likely that that will continue to be the case when a Judicial Appointments Board comes into existence (probably in the latter part of 2001). Prior to that happening, some of the sheriffs principal are actively involved in current selection procedures. When a Judicial Appointments Board comes into existence in the future it is possible that one sheriff principal may be a member of that Board.

30. In addition to the foregoing sheriffs principal are regularly consulted by a range of other bodies including, in particular, the Scottish Law Commission. Moreover, they are sometimes invited by Ministers to chair, or to be members of, *ad hoc* committees which have been established for various purposes.

(h) Ceremonial functions

31. By virtue of an Order of Precedence established by King Edward VII a sheriff principal, in his own sheriffdom, ranks in precedence immediately after the Royal family and the Lord Lieutenant of the County. For that reason sheriffs principal are from time to time expected, and are occasionally commanded, to be present at Royal and other ceremonial functions within their sheriffdoms.