

**CIVIL JUSTICE REVIEW CONSULTATION PAPER**  
**RESPONSE BY SHERIFFS PRINCIPAL**

**Introduction**

In its introduction the consultation paper emphasises the importance of an effective and efficient civil justice system and, in approaching the issues raised, we have sought to identify those areas in which current practice might be thought to fall short of a fully effective and efficient civil justice system. We then discuss what steps might be taken to address such a shortfall while indicating some of the consequences for the wider justice system which in our view merit further examination. Thereafter we go on to answer so far as relevant the actual questions posed in the consultation paper.

**Areas for improvement within the existing system**

1. The present system does little to meet a growing demand for cases in certain categories to be heard by judges having a particular expertise in that field of law (for example commercial, personal injury and family). In addition the most able candidates presenting themselves for judicial appointment nowadays usually come from some background of specialist practice.
2. The current system of shrieval appointment does not assist any attempt to promote the provision of suitably skilled sheriffs to particular posts in particular courts.
3. The present system allows too many cases to be raised in a forum at an inappropriate level in the hierarchy of courts.
4. In many sheriff courts the allocation of diets for longer civil cases results in a disjointed sequence of hearings over a long period with consequent loss of continuity.

5. Rules of court governing civil cases are excessively diverse and unduly complex.
6. The present system of written pleadings fails to discriminate between those cases where control is required and those where sufficient management of the case can be achieved by other means.
7. The case flow management procedures under the current Ordinary Cause Rules 1993 are insufficiently effective and after the options hearing leave the progression of the case too much in the hands of the parties rather than the court.
8. The expense of civil litigation is often disproportionate to the sum of money at stake.
9. The courts are insufficiently empowered to constrain where appropriate the activities of certain party litigants who in consequence cannot be prevented from taking up an unwarranted and excessive share of court resources.
10. The co-location of civil and criminal courts in many court buildings in Scotland can present an unduly intimidating environment for the court user attending for civil business.
11. In the smaller sheriff courts interruption of the flow of civil work occurs when the demands of criminal business intrude (for example custodies).
12. The unfettered rights of appeal in the present system can afford the opportunity for unwarranted delay in bringing an unmeritorious case to a conclusion.
13. In the Court of Session the length of time required to obtain a diet of appeal is unduly long unless the case falls within a recognised urgent category.

## **Models for Change**

We take the view that many of the shortcomings identified above could be addressed by a revised court structure. The most obvious concept involves the complete separation of civil and criminal business with the creation of civil courts centres, one or more being in each sheriffdom in major centres of population. Civil centres would provide a focus for expertise in particular areas of the law, and would afford greater opportunity for consistent judicial handling of business and continuity of hearings uninterrupted by criminal business. The existence of such centres would also address the problem faced by those attending hearings in sensitive civil matters, or for that matter for routine civil business, from confrontation with the intimidating atmosphere which often surrounds criminal courts. We think it likely, however, that such a proposal, whilst on the face of it an attractive one, would be too expensive in terms of initial capital outlay. It would also restrict access to justice at a local level on matters of a routine nature and may render a number of existing sheriff courts unviable. It would also result in a reduction in the flexibility which the present sheriff court system provides with inevitable financial consequences for the disposal of business.

An alternative model might see the establishment of civil justice centres to deal only with significant civil cases. Civil cases of a routine nature would continue to be dealt with in local sheriff courts. We consider however that there would be difficulty, with this model, in identifying the types of cases which would be allocated between the sheriff court and the civil justice centre. For example, a commercial case might be of some complexity but of low value. Moreover, aside from the continuing problem of capital expenditure, and the impact on viability of existing sheriff courts by removing a portion of business from them, we consider that such a solution would not lead to efficiency or cost effectiveness. It is not difficult to conceive of a situation in which all cases scheduled before the civil justice centre did not proceed whilst the local sheriff court remained overburdened. Experience of the commercial court in Glasgow showed that judicial time could be used most effectively if summary cause and small claim proofs were transferred to a sheriff scheduled to hear commercial proofs when that business went down.

What is required therefore is a solution which takes into account on the one hand (a) the demand by litigants and the profession for cases to be dealt with by judges who have a background of experience in particular areas and (b) the increased specialisation of those applying for judicial office; and on the other hand (c) continues to meet the demand for a generalist judiciary at local level and (d) provides sufficient flexibility within the system to enable the most efficient use of the available resources. In seeking to strike the right balance we have come to the conclusion that the existing structure of the sheriff court ought to be retained and that in particular the requirement of flexibility dictates against a division in the sheriff court judiciary between those who sit in criminal cases and those who sit in civil. It seems to us that the objectives we have identified at the start of this paragraph could be best met by a more effective scheme of allocation of business among the sheriffs involving a system of designation of sheriffs to deal with particular classes of case. The precise manner in which such a scheme could be formalised will require careful consideration but we would draw attention to the provisions of section 16(1)(a) of the Sheriff Courts (Scotland) Act 1971 and suggest that this might be appropriately adapted. As to those classes of case which could benefit from such a system we would suggest that these would include (i) commercial cases, including insolvency and personal bankruptcy, (ii) personal injury cases, (iii) family actions including adoptions and (iv) those civil cases which do not readily fall into the foregoing categories but which can nonetheless be considered complex. Designated sheriffs would deal with the interlocutory work in their sphere as we consider that matters which fall within that category are often of difficulty and significance. The numbers of designated sheriffs would reflect the business demand for each sheriffdom. This should enable there to be continuity of sheriff in most cases. We return to deal with this in the section on case management later in the paper.

Cases within the designated categories of business would be processed in the court within the sheriffdom in which the designated sheriff normally sits. We would anticipate that virtually all procedural hearings would be conducted by conference calls using video conferencing where appropriate. Should the case have a debate or proof assigned to it the norm would be that the proof or debate would take place in the court where the sheriff normally sits. We have given consideration to the possibility of a sheriff travelling to another court within the jurisdiction to hear a proof but concluded that this would lead to considerable inefficiency.

Virtually all of the sheriff court estate is fully utilised. If a sheriff moved from his base court to another court he would be displacing a sheriff. Whilst it might be proposed that the “displaced” sheriff would move to the base court of the designated sheriff he would probably pick up or leave behind continued business as such part heard trials, deferred sentences part heard proofs etc. In consequence the management of the displaced sheriff’s diary would become impossible.

We appreciate that this proposed system would probably require some expansion of the sheriff court estate but it would do so to a much lesser extent than would be the case if there were to be a move to civil justice centres. Accommodation of more work of a particular type in a particular sheriff court would undoubtedly require a degree of flexibility which does not exist in the system at present. This could be achieved by giving to Sheriffs Principal the power to transfer civil cases to courts other than those in which they had been processed. This could include receiving courts outwith the sheriffdom boundaries. A further benefit of our proposal is that a move could be made to the new system without a major upheaval in existing shrieval establishment.

We accept that such a system would have consequences for the manner in which sheriffs are recruited. The approach of the Judicial Appointments Board would require to change to take account of particular needs in particular sheriffdoms as well as the special skills of individual candidates. We believe that the office of sheriff would be more attractive to those from a specialised background if it became clear that they could receive immediate designation to conduct that category of business best suited to their expertise. There would be no reason for sheriffs to consider that they would be restricted to only one designation at any one time, or for that matter that they would be restricted to dealing with one category of business in all time coming. We envisage a system in which sheriffs would move to different designated areas as part of career development. For the sake of completeness we would add that “designation” would be a matter for the Lord President in consultation with the relevant Sheriff Principal.

We recognise that the introduction of such a structure would have significant implications for programming, deployment of sheriffs as well as the capacity of the court estate. It seems to

us necessary therefore to have some modelling work undertaken which would enable an informed view to be taken of the balance of advantage and disadvantage of what we propose.

### **Areas for Improvement Addressed**

We now consider each of those areas in which we have identified a need for improvement in the current civil justice system to see whether the model which we have suggested will be of benefit. In those instances in which we merely refer back to the text of what we propose as a model, we would suggest that our proposal addresses, in whole or in part, the perceived deficiencies.

1. **The need for judges with particular expertise.** This is addressed by our proposals.
2. **The appointment of suitable sheriffs with particular skills.** See penultimate paragraph of our proposals.
3. **The raising of cases at an inappropriate level.** This would be addressed by our proposed model, and by the suggested powers of transfer.
4. **The disjointed hearing of long cases.** This difficulty occurs at present in most smaller courts where criminal business often requires the use of the single courtroom for two or more days in any week. The problem however would be largely removed or at least ameliorated by the transfer of more important civil cases to a larger sheriff courthouse to be heard by an appropriately designated sheriff. Other causes exist (for example the failure of parties to estimate the duration of the hearing correctly) but insofar as controllable by the court these can be met by increased judicial expertise and by better case management.
5. **Complexity of rules.** We consider that there should be one set of rules for small claims up to a value of £5,000. For all other proceedings in both the Court of Session and the sheriff court there should be a single set of rules. This in turn would render it necessary to

have only a single Rules Council for both courts in future (with appropriate representation from each).

6. **Identification of cases requiring case management.** We would favour an abbreviated system of pleadings coupled with case management which would allow the court to direct the production of further pleadings as necessary. For children's referrals and adoption cases a system of written pleadings should be introduced in order to enhance the control of the case at proof.

7. **Ineffective case management procedures.** This would be addressed by our proposed model, providing for designated sheriffs and hearings by telephone. We consider that provision should be made in the Ordinary Cause Rules for the holding within a fortnight of the lodging of defences of a hearing by phone between the parties and the designated sheriff to whom the case has been allocated in order to focus the issues in the case and determine the full course of further procedure.

8. **Disproportionate expenses.** We do not have a complete or even partial solution to this difficulty. Research however suggests that proper case management can be effective in at least reducing the cost of litigation to the parties.

9. **Party litigants with unreasonable causes.** In our view the sheriff court approach to this matter should be made conform to that of the Court of Session whereby a party litigant may raise an action only on obtaining leave first from a Lord Ordinary. See also our answer to question 23 of chapter 4 of the Consultation Paper below. Thereafter financial sanctions including orders for the finding of caution may provide a practical solution.

10. **The intimidating nature of "criminal" courthouses.** A major improvement could be effected only by the creation of separate civil justice centres. Otherwise we would hope for some degree of improvement in respect that designated civil sheriffs would have cases set down before them which would not be intermingled with the criminal business of the court.

11. **The effect of criminal work on civil business.** Our proposed model would address this and designation of civil sheriffs will largely obviate the difficulty for larger cases.

12. **Unfettered rights of appeal.** See our answer to question 23 of chapter 4 of the consultation paper below.

13. **Appellate delays in the Court of Session.** Some assistance in this area will be derived from (a) the introduction of a requirement for leave to appeal and (b) the raising of the privative limit for litigation in the sheriff court to £50,000 or more. See our answers to questions 6 and 23 of chapter 4 of the consultation paper below.

## **Civil Justice Review**

### **Answers to consultation questions**

#### **Chapter 1 - Introduction**

1. We are not in favour of any system of compulsory mediation. Beyond that we have nothing to add.
2. We agree that the principles and assumptions discussed in paragraphs 1-11 to 1-14 are a sound basis for the development of the Review's recommendations. We can suggest no other factors.
3. We have no concerns other than those identified in our introduction.

#### **Chapter 2 – Access to justice**

1. No comment.
2. No comment.
3. We believe that rules for small claims should make it easier for litigants to take part in the process without legal representation.
4. No comment.
5. No comment.
6. We accept that there may be a case for a new method of dealing with low value cases. That could easily be accommodated in the court structure which we propose. We do not think that the establishment of a separate system, such as tribunals, would be cost effective.

### **Chapter 3 – The cost and funding of litigation**

We have no comments to make on the 10 questions posed for discussion on these topics.

### **Chapter 4 – The structure and jurisdiction of the civil courts.**

1. Yes, especially in the smaller sheriff courts.
2. As already indicated, we consider that in our alternative model it would be appropriate to designate certain sheriffs to deal with specified types of civil business.
3. To a certain extent such division already takes place in the larger sheriff courts such as Glasgow and Edinburgh. In smaller, local sheriff courts we do not consider that such a division would be practicable given the flexibility that is required of the local sheriff to deal with whatever business is brought before the court. The advantage of such a separation would be that criminal business would not impinge on civil business, or vice versa.
4. Yes. We refer to our opening response.
5. This is a matter for practitioners. But plainly the perceived competence or otherwise of the judge or sheriff to deal with a case is bound to be a key factor
6. In our view there must always be scope for substantial cases to be taken at first instance by judges of the Court of Session, perhaps only with the leave of the Lord Ordinary and on cause shown. We would suggest that the current limit of the privative jurisdiction of the sheriff court should be raised to at least £50,000. This may require an increased capacity in the sheriff court estate.
7. We do not see what advantage would accrue from such a unification in the Scottish context.

8. See answer 6 above.

9. See answer 6 above.

10. Yes, it is broadly satisfactory but we consider that the sheriff principal should have authority where the administration of justice so requires to direct that a case raised in one sheriff court district in the sheriffdom should be transferred to another sheriff court district in the same sheriffdom or, with the agreement of the relevant sheriff principal, to a sheriff court district in another sheriffdom.

11. See opening response.

12. See opening response.

13. It does not create any significant difficulties in our experience. It has the obvious advantage that it divides the country into manageable units in each of which justice is administered by resident sheriffs who are familiar with local conditions. It is recognised in the consultation paper that under any other proposal there would require to be local units of administration, and from our experience of overseeing such units (ie sheriffdoms) we are well placed to endorse that view. But we see no advantage in departing from the existing sheriffdoms since these are very largely coterminous with other units of administration such as the police and local authorities with whom valuable working relationships have been created over many years to the benefit of the administration of justice. The development of these relationships has received recent increased impetus from the establishment of Local Criminal Justice Boards in each of the sheriffdoms. There seems to us to be little point in creating new units of management when the existing units are proving effective. Even if there were a national system of administration of the sheriff courts, there would have to be a division of these into units of administration and, however these were divided, it is inevitable that such a division between them might set up anomalies to some extent. Our answer to question 10 would take care of any perceived deficiencies in this respect in the present structure of the sheriffdoms. In passing, we note in this context from Annex D that the civil

business of the sheriff courts in Scotland is already divided more or less equally among the existing six sheriffdoms, and further that the population of each sheriffdom is broadly similar.

14. We are not aware of any significant problems here.

15. We think that issues of public or administrative law which are of national significance should continue to be dealt with by the Court of Session, but that where such issues are of local significance only they should be dealt with at sheriff court level.

16. We are not aware of any major concerns in this respect. The present arrangements appear to us to be satisfactory and we do not see what advantage would accrue from establishing a separate administrative framework for dealing with commissary and other business

17. We cannot envisage a national sheriff court which dealt with civil cases only. We therefore assume that what is proposed here is a sheriff court organised on a national basis to deal with both civil and criminal cases. For the reasons given in our answer to question 13 we are opposed to such a suggestion. It should also be noted that sheriffs principal have recently been given responsibility for the organisation of the JP courts within their respective sheriffdoms in addition to their existing responsibilities in relation to the sheriff courts. This structure will be preserved in all its essentials if the current Judiciary and Courts (Scotland) Bill becomes law. It has the obvious merit of allowing for the management at local level of both civil and criminal business, and we do not believe that a central bureaucracy would be capable of responding to local needs and problems nearly as effectively as the current system allows. In any event it would mean the adoption of a new set of administrative criteria for the distribution of business among sheriff courts throughout Scotland and the abandonment of existing well understood rules of jurisdiction. In our view a movement from the application of these legal rules of jurisdiction to a system of ad hoc bureaucratic criteria would be a retrograde step. We have difficulty in seeing how a centralised system which involved allocating cases to particular sheriff courts for hearing of proofs would work, having regard to uncertainties which would face practitioners and witnesses. At the same time we can see

the advantage in a Sheriff Principal having the ability to exercise the power referred to in answer 10 above when little practical inconvenience would result.

If, contrary to our view, a national sheriff court were to be established, we would prefer to see the retention of local appeals in the sheriff court as at present - see answer 20 below.

18. No. We are in no doubt about the value of a locally based judiciary, and we think that it would be quite impracticable, and an inefficient use of resources, to expect the majority of sheriffs to sit in courts which are at a significant distance from their respective home courts. Perhaps one solution might be to provide that, if both the relevant sheriffs principal agreed, the sheriff in one sheriffdom might be authorised to sit in another sheriffdom for a limited period of time or to deal with a particular case or cases as a temporary expedient and where necessary. Already resident sheriffs move from one court to another within the sheriffdom to which they have been appointed, and also occasionally, with the authority of the Scottish Ministers, to other sheriffdoms.

19. We agree that there should be a power in the Court of Session to transfer a case to the sheriff court. On the other hand we do not consider that the sheriff should have the power *ex proprio motu* to transfer a case to the Court of Session, even with the leave of that court. The exercise of such a power would have the effect of compelling parties to litigate at a level and at an expense which they were not willing to undertake. We are content with the existing provisions for a transfer to the Court of Session from the sheriff court on the motion of one or both of the parties.

20. It has long been recognised that the system of appeals from one professional judge to another is a constitutional anomaly. Despite this, we note with interest the recent movement in this direction in England and Wales. Besides, the fact remains that the appeal to the sheriff principal is popular and has stood the test of time, chiefly because, in contrast to an appeal to the Court of Session, it is economical, expeditious and local (since, for the most part, a sheriff principal will travel to the court from which an appeal has emanated). In practice only a small percentage of cases are appealed from the sheriff principal to the Court of Session.

21. It is perhaps invidious for us to seek to answer this question. We would merely wish to draw attention to what we see as the obvious advantages of a system of local appeals and local administration of the sheriff courts. In addition, if the office of sheriff principal were to be abolished, careful consideration would have to be given to the question who would discharge the multitude of functions currently discharged by the sheriffs principal. These are listed in the appendix to this document.

22. We have no view on the allocation of statutory appeals as between the Inner and Outer Houses of the Court of Session. There is already a wide range of statutory appeals which are dealt with at sheriff court level and we are not aware of any dissatisfaction with these arrangements.

23. On the assumption that the small claim and summary cause procedures are retained, we think that the appeal provisions under these procedures should remain as at present. In the case of appeals in ordinary actions and summary applications we think that all appeals should be taken in the first instance to the sheriff principal subject to the qualification that, on cause shown, he might grant authority for an appeal which raises an issue of particular importance or difficulty to be taken direct from the sheriff to the Inner House. Where an appeal has been taken to the sheriff principal, a further appeal to the Inner House should be permitted, but only with the leave of the sheriff principal or the Inner House. In proposing that leave should be sought in these situations we have in mind in particular the additional expense to which a party who has so far been successful in a litigation might be put by the pursuit of a frivolous or vexatious appeal.

24. The advantages are obvious in that they allow for flexibility in the use of judicial resources. The reliance on temporary judges appointed from the ranks of serving sheriffs carries with it the obvious disadvantage that it deprives the sheriff courts, and in particular Glasgow, of much-needed shrieval resources. The use of part-time sheriffs has a variety of disadvantages. It can result in a lack of continuity in the disposal of business, churning of cases, unfamiliarity with local conditions, resources and agencies and an excessive burden on resident sheriffs who commonly find that they are left to deal with all the chambers work of the court.

## **Chapter 5 – Principles for reforms to civil procedure and key procedural issues**

1. We see no advantage in rules of civil procedure having an overriding objective or statement of philosophy and answer this question in the negative.
2. Whilst we consider that rules of court should facilitate mediation or other forms of dispute resolution, we do not consider it to be the function of the court to encourage or require parties to take that course.
3. No further comment.
4. No comment.
5. No comment.
- 6, 7 & 8 We refer to our proposals for a revised model of operation and to the management of cases within that structure.

## **Chapter 6 – Working methods of the civil courts**

- 1, 2 & 3 We have no experience of pre-action protocols and make no comment on these questions.
4. In our view it would be appropriate for a similar rule to exist in the Sheriff Court as in the Court of Session whereby a party litigant must seek leave of the court to commence an action. It is unfair for defenders to be faced with actions which are fundamentally misconceived, often with no hope of recovering expenses. Beyond observing that the existing arrangements requiring leave to appeal from procedural interlocutors by in large work satisfactorily we do not wish to comment further.

5 & 6. We repeat our view that there should be a single set of rules for civil procedure in both courts. On that basis the existence of only one Rules Council would be necessary. We would suggest that this should be modelled on the Sheriff Court Rules Council which consists of experienced representatives of a variety of constituencies operating in the sheriff court (including lay representatives) and which currently generates well-informed discussion (both in full Council meetings and in working groups) about a whole range of issues bearing on the practice and procedure of the sheriff court.

7. We think that there should be a single initiating document for small claims and, subject to certain exceptions, a single initiating document for all other types of action both in the Court of Session and in the sheriff court. The exceptions would apply in certain specialised forms of action such as adoptions, commercial causes and personal injury claims.

8. It is certainly our experience that the pleadings in some actions are quite unnecessarily long. We have in mind in particular family actions which often consist of pages and pages of material that is of no relevance to the issues which the court has to decide. In principle we think that our system of written pleadings is a sound one and that the real problem is not with the system itself but with the inability of practitioners to focus their thoughts and express clearly and concisely what they want the court to do, and upon what factual and legal basis. It is for this reasons that we consider that every case should commence with abbreviated pleadings which set out the essential elements of it. At the same time we do think that the court should be able to direct parties to particular issues which their pleadings should address, and to expand these if necessary. We consider that some types of action would benefit from the introduction of a requirement, currently lacking, for proper written pleadings (notably adoptions and child social work referrals).

9. We see merit in the proposal in paragraph 6.49 whereby there should be a procedure for either party to apply for summary disposal of an action.

10. For the sheriff court we have proposed a system of designated sheriffs dealing with significant civil cases. The procedure would involve an early case management conference

before the designated sheriff. Part of the purpose of such a system would be to provide for continuity of management in which the interjection of procedural hearings would be neither welcome or necessary.

11. We think that much of the routine procedural business which is currently dealt with in open court could just as easily, and more cheaply, be dealt with in chambers using modern IT facilities such as e-mail and telephone and video conferencing.

12. In our view the court should have a greater degree of input in allocating the length of time to be set aside for a hearing as part of its case management function. Whilst we have no experience of a system of time limited hearings we can see that it would have advantages.

13. We favour the use of summary notes of argument, but not detailed written submissions which in our experience create undue expense for parties and can divert attention from the main issues.

14. We consider that the present rules of disclosure are adequate.

15. The court should have control over the use of expert and other evidence as part of its case management function, but it is difficult to envisage rules of general application.

16. We agree in principle with a system of pursuer offers.

17. No comment.

18. We see no cause to change the existing rules for the sheriff court.

19. We are not persuaded that there is a need for greater powers than already exist.

20. We have already proposed that party litigants should be required to obtain leave of the court to commence proceedings in the sheriff court. We have further proposed, in answer 23

of Chapter 4 that appeals from the Sheriff Principal to the Inner House should be permitted only with leave.

21. We agree with the concerns expressed in paragraph 6.87. In particular we agree that there ought to be a system of control over the vexatious continuation of existing proceedings and the making of vexatious applications in the course of proceedings. We would envisage that the matter could be dealt with by way of a report to the Inner House.

22. There are already provisions, for example in the Summary Cause and Small Claim Rules, for a party to be represented by a lay person and we see no reason to alter these provisions. In addition, there are certain situations in which an organisation may be represented by someone other than a qualified lawyer, for example HMRC. We are less comfortable with these situations since in our experience the authorised representative may not be well qualified to deal with the matter in hand. We see no justification for an extension of rights of audience beyond those provided for in the existing rules.

23. We consider that it would be desirable to introduce separate procedures for multi-party litigation.

24. No comment.

## **Appendix 1**

### **The Duties of a Sheriff Principal**

#### **Appellate Functions**

1. The primary appellate function of a Sheriff Principal is to hear appeals from the sheriff courts situated within his 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.

In addition to preparing for a hearing, hearing parties and writing a judgement where appropriate, a 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.

2. 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.

3. 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.

## **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. Most notable have been the FAIs following the Lockerbie disaster; the e-coli outbreak in Lanarkshire and the related deaths of 27 heroin addicts in the Glasgow area.

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. A private inquiry into fitness for office of the holder of a quasi-judicial office was conducted by the Sheriff Principal of South Strathclyde in the latter part of 2007.

## **Administrative Functions.**

7. The main administrative functions arise by virtue of the duty of a Sheriff Principal, under section 15 of the Sheriff Courts (Scotland) Act 1971, to secure the speedy and efficient disposal of the business of the sheriff courts within the sheriffdom. The volume and form of workload required to discharge this duty will vary to an extent from sheriffdom to sheriffdom, but broadly involves the following core activities:

- maintaining a general oversight of the admin 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, in Glasgow and Edinburgh, 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 Systems Board

8. From time to time the Sheriff Principal will require 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 were introduced through the impetus of the Sheriff Principal.

9. 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 attention by sheriffs, along with discussions about career prospects, potential transfers and matters of that nature. He will also receive and 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.

10. Although there is provision for centralised judicial training through the medium of the Judicial Studies Committee, it is common for Sheriffs Principal to organise one or two training, or “away days”, 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.

11. 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 within buildings, together with requests from outside agencies (e.g. schools, Law Faculties, Social Work departments) for the use of court facilities.

12. The Sheriff Principal is at the interface between the Scottish Government Justice Department and the court system. When any initiative is proposed, whether by government or by others (including the Sheriff Principal himself) 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.

13. 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. Having responsibility for the efficient operation of both the Sheriff and JP Courts brings with it a responsibility to monitor the flow of business to both courts. This will involve an additional need to consult with Procurators Fiscal along with the Sheriffdom Legal Adviser and representatives of the JPs. It is likely

that JPs will look to the Sheriff Principal to provide leadership to them in a range of matters, such as continuing the functions of the former Justices Committees.

14. 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. It was thought that this area of responsibility would disappear following creation of a Scottish Civil Enforcement Commission. The Scottish Government has, however, recently indicated that it does not intend to implement that proposal. The overseeing of the profession of Sheriff Officer, and the activities of members of it, will continue to remain vested in the Sheriffs Principal, possibly with enhanced powers and responsibilities.

15. 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.

16. 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. Two Sheriffs Principal are members of the Advisory Council of Messenger at Arms and Sheriff Officers. A Sheriff Principal is a member of the Strategic Board of Scottish Court Service.

17. 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 chaired the committee charged with examining Summary Justice Reform.

A Sheriff Principal is on the Policy Group of the Civil Justice Review. A recently retired Sheriff Principal chaired the committee which recommended reform of Licensing Law.

18. Other miscellaneous duties which have been delegated to Sheriffs Principal include:

- (a) ad hoc appointment as Deputy Chairman of the Scottish Land Court (to deal with one case in Skye where the members of the court have all had to decline jurisdiction);
- (b) an inquiry under sections 268/9 of the Merchant Shipping Act 1995 and
- (c) an appeal under the Police (Scotland) Regulations.

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