

Changes north of the border



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The Scottish Parliament

The Scottish justice of the peace celebrates 400 years in June this year – a momentous occasion in itself, but perhaps more momentous considering the history of the commission in Scotland and the opposition to a lay judiciary.

The commission of the peace had been in England for some 300 years previously when, in 1603, the crowns of Scotland and England joined under King James VI of Scotland who also took the title of James I of England. He had firsthand experience of the justice of the peace in England and thought the idea of an unpaid, voluntary, dedicated group of people to enforce the peace was excellent – particularly for a poor country – so he imported it to Scotland in 1609.

However, as an English invention it was viewed with great suspicion and, coming from a 'foreign' jurisdiction, it took some time to integrate with the very different Scottish legal system and the use of lay people as justices. Over the years the system has proved it is flexible and has been tweaked and reformed and has adapted fluidly to changing circumstances.

Some 400 years later the justice of the peace in Scotland remains a dedicated, unpaid but enthusiastic lay judge dealing with summary justice. Although it began in the same vein as justices over the border, the Scottish justice has grown from being the county administrator, to become a fully independent judge in the summary court, albeit that jurisdiction has never attained that of the English JP. Summary justice in Scotland accounts for 96% of criminal prosecutions and covers both the justice of the peace court and the sheriff court when sitting without a jury. The percentage dealt with by justices as opposed to sheriffs is changing daily as summary justice reforms settle in.

Johan Findlay JP explores summary justice in Scotland

REFORMS PAST AND PRESENT

There have been several reviews over the centuries, with two Royal Commissions held in the last century, and local government reform has also seen changes as the courts and justices have been under the auspices of the local authorities in Scotland until now.

Since 1911 the appointment of justices was by the Secretary of State for Scotland after recommendation by the local justice of the peace advisory committee (JPAC) who could interview potential justices if they wished to do so. Every commission area had its own JPAC, comprising the Lord Lieutenant as chairman, and five members, some being justices. The JPACs were first established after a Royal Commission Report on the Selection of Justices of the Peace, published in 1911 and the system was continued after a further Royal Commission of 1946, then modified following legislation in 1973 and 1975. Interestingly, it was only after the 1911 Commission report that the appointment of females was allowed although it took another eight years to achieve this under the rather wonderfully titled Sex Disqualification (Removal) Act.

Summary justice in Scotland has recently undergone radical reform under the Criminal Proceedings etc (Reform) (Scotland) Act 2007 whereby the justice of the peace court will now be under the auspices of the Scottish Courts Service – soon to be managed by a judicially led board chaired by the Lord President under the Judiciary and Courts (Scotland) Act 2008. Justices are now based in one of the six sheriffdoms in Scotland and led by the Sheriff Principal.

Sir Thomas Skyrme in his book *The Changing Image of the Magistracy* commented that, after the 1975 reorganisation when justices were left under the local authority: '...Scotland was left with a system more outdated than the one that Parliament had rejected seven years ago as being no longer suitable for England and Wales.' We are now, at last, truly modernised. The outcome of the latest reform means full integration into the judicial hierarchy.

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The method of recruitment, appointment and training of justices is now a much more open and transparent public appointment, while training is under the auspices of the Judicial Studies Committee who are responsible for the training of the professional judiciary. However, the justice in Scotland now has only a five-year appointment renewable by the Sheriff Principal unless there has been good reason in his eyes not to reappoint. Appointment is now made through application to the Judicial Appointments Board, with a sift and interview. The potential justice will be trained over about six months, with local training under a plan created by the Judicial Studies Committee and approved by the Lord President, followed by a national induction course; on successful completion the applicant will be appointed as a justice. There are two justices on the JSC while a sub-committee with a justice from each sheriffdom has been set up to deal with justices' training needs.

INCREASED JURISDICTION

The reforms are being phased in sheriffdom by sheriffdom and, due to be completed in 2010, have already radically altered the way in which summary crimes are dealt with by giving more powers to justices. Sheriffs are now able to impose a five-year custodial sentence and deal with much of the work done in the High Court so there has been a downward shift in allocation of cases to courts. Justices now deal with all speeding cases; careless driving; taking and driving away; driving with no insurance; and have powers of discretionary disqualification.

Also introduced is a much wider range of alternatives to prosecution with the Procurator Fiscal (the Crown Prosecution in Scotland) now able to offer a fiscal fine up to £300; to offer compensation to victims; and to make work orders. There are of course, concerns that the prosecution have such wide powers and more disposals than we have but it is good to keep those offenders out of court *where appropriate* and we will watch this with interest.

Justices are being asked to undertake a minimum of 12 hours training per year as well as 12 sittings per year and to undertake appraisal twice in the five-year appointment. Added to that, sheriffdom training and appraisal committees and appointment committees have created a vast amount of work although the committees are not compulsory. A large recruitment campaign has just been undertaken and monitoring and evaluating this will enable us to plan for the future.

Dealing with more serious crimes has been embraced enthusiastically by justices in Scotland and it is hoped that the criminal jurisdiction of the Scottish justice may soon reach that of the English magistrate. Scottish justices are rightly proud of their 400-year heritage as unpaid, voluntary, and dedicated people, ready, willing and capable of taking on any challenges ahead and proving the continuing flexibility of the commission of the peace.

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