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Introduction

“Scotland’s legal system is a vital public service. Each and every day it protects individual rights, settles day-to-day disputes, and ensures that crimes against person or property are punished. This strong and enduring system has been a cornerstone of Scottish life for centuries.

“Today, that proudly independent legal system is as important to our daily lives as it has ever been. Society is changing. Public scrutiny is high. The national and international context ever more complex and challenging. That is why it must continue to change and reform to better meet the challenges of modern laws and modern life.

“Reforms already underway will bring faster trials, a stronger voice for victims, more support for vulnerable witnesses, more efficient use of time for jurors, lawyers, and the police. Welcome changes that will also support the fundamental principle of the right to a full and fair trial for those who stand accused of crime.”



Cathy Jamieson MSP

Justice Minister



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Scots Law

Scots Law and the Scottish Legal system has a long history, dating back to the medieval era. Its integrity and independence were acknowledged in the 1707 Act of Union which abolished the Scottish Parliament and created a new UK Parliament at Westminster. Scots Law shares many statutory provisions with the law of England and Wales, but Scots civil law remains substantially based on Scots common law rather than statute, and Scots civil law contains elements that have origins in Roman Dutch Law rather than English Common Law traditions.

In the criminal justice system, the role of the public prosecutor is critical. The position of the Lord Advocate, as head of criminal prosecution in Scotland, is protected by the 1998 Scotland Act which led to the establishment of the new Scottish Parliament in 1999.

The Crown Office and Procurator Fiscal Service provides Scotland's independent public prosecution and deaths investigation service. It is a Department of the Scottish Executive.

The service is headed by the Lord Advocate, assisted by the Solicitor General for Scotland. They are the Scottish Law Officers and members of the Scottish Executive.

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The Legal Profession

The legal profession in Scotland includes:

Solicitors deal with all manner of legal affairs including litigation, conveyancing, executry, trust work and general advice.

The profession is regulated by statute (currently the Solicitors (Scotland) Act 1980) and is governed by the Council of the Law Society of Scotland which promotes the interests of the solicitor's profession and the interests of the public in relation to the profession.

The Scottish Legal Services Ombudsman, an independent lay appointee, can investigate complaints regarding the Law Society's handling of a complaint.

Advocates are members of the Scottish Bar which is constituted by the Faculty of Advocates, as part of the College of Justice. Since 1892 a roll of Queen's Counsel 'learned in the law' has existed. Advocates have universal rights of audience before courts and tribunals unless excluded by statute. The Faculty maintains the distinction between senior and junior members.

Until recently they had exclusive rights of audience before the House of Lords, the Judicial Committee of the Privy Council and the Court of Session.

Solicitor-advocates are members of the Law Society of Scotland. They are experienced solicitors who, since 1990, have equal rights of audience in the Court of Session and High Court.

There are other non-statutory groups within the legal profession, including the ancient Society of Writers to HM Signet, a part of the College of Justice, which allows members to use the initials WS after their name. There is a Royal Faculty of Procurators in Glasgow, and a Society of Advocates in Aberdeen.

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Courts - Criminal

Criminal justice procedure is divided into **Solemn** – the most serious cases involving trial on indictment before a judge or sheriff sitting with a jury, and **Summary** – less serious offences involving a trial before a sheriff, stipendiary magistrate or Justice of the Peace sitting alone.

A Scottish jury - for a criminal case - is made up of 15 people and a simple majority (8-7) is sufficient to establish guilt or innocence. Three verdicts are available to a jury: guilty, not guilty, or not proven. A not proven verdict is the equivalent of not guilty in that it is an acquittal.

The High Court of Justiciary, established in 1672, is the country's supreme criminal court. It handles the most serious crimes such as murder and rape. It is peripatetic, sitting in cities and larger towns as required. It is the final court of appeal for criminal cases. It comprises the Lord Justice General, the Lord Justice Clerk, and another 30 judges known formally as Lords Commissioners of Justiciary.

Judges, appointed by The Queen on the recommendation of the First Minister, take the courtesy title of Lord or Lady followed by their surname or a territorial title. Judges can preside over both criminal and civil courts.

All criminal prosecutions are brought in the name of the Lord Advocate and prosecuted by his appointed Advocate Deputes. Private prosecutions are possible but rare.

There are 49 Sheriff Courts, arranged into six geographical areas known as Sheriffdoms, each of which is overseen by a Sheriff Principal. Sheriffs have limited sentencing powers. At present these are: up to three years imprisonment and/or an unlimited fine in solemn cases; and up to six months imprisonment and/or £5000 fine for summary cases. If the court considers its sentencing powers to be insufficient it can remit a case to the High Court.

District Courts (the replacement for Burgh Police Courts since 1975) sit in each local authority area under summary jurisdiction only. Each comprises one or more Justices of the Peace (lay magistrates) who sit alone or in threes with a qualified legal assessor as convener or clerk of court. They handle many cases of breach of the peace, drunkenness, minor assaults, petty theft, and offences under the Civic Government (Scotland) Act 1982.

There are currently pilot schemes under way in Fife and Glasgow to assess the effectiveness of specialist Drug Courts which can offer non-custodial Drug Treatment and Testing Orders (DTTOs) as alternatives to traditional sentences for convicted drug-related offenders.

A special Youth Court is operating in Hamilton as a pilot project over the next two years until 2005. It provides fast-track procedures to deal with persistent offenders aged between 15 and 17. The court has four designated sheriffs and a range of disposals designed for young offenders.

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Courts - Civil

The Court of Session, Scotland's supreme civil court, can trace its history back to the 16th century. It sits in Parliament House in Edinburgh as a court of first instance and a court of appeal. Decisions of this court can be appealed to the House of Lords.

The court presently consists of 32 judges who are designated Senators of the College of Justice or Lords of Council and Session.

The court is headed by the Lord President, assisted by the Lord Justice Clerk.

To hear cases, the court is divided into an Outer House and Inner House. The Outer House consists of 19 Lords Ordinary sitting alone or, in certain cases, with a jury. They hear cases at first instance on a wide range of matters, including cases based on delict (tort) and contract, commercial cases and judicial review. Designated judges deal with intellectual property disputes.

The Inner House is in essence the appeal court, though it has a small range of first instance business.

It is divided into the First and the Second Divisions, of equal authority, and presided over by the Lord President and the Lord Justice Clerk respectively. Each division is made up of four judges, but the quorum is three.

The divisions hear cases on appeal from the Outer House, the Sheriff Courts and certain tribunals and other bodies. On occasion, if a case is particularly important or difficult, or if it is necessary to overrule a previous binding authority, a larger court of five or more judges may be convened.

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Children's Hearings

Children's hearings are unique to Scotland and combine justice and welfare for children and young people.

The children's hearing is a lay tribunal made up of members of the Children's Panel, which comprises trained voluntary members of the public. There is a separate panel for each local authority area. Children referred to hearings are first referred to a professional Reporter. The referral may be made on offence grounds and/or care and protection grounds. The Reporter, who works for the Scottish Children's Reporter Administration, investigates the case and if s/he decides that compulsory measures of supervision may be required, s/he convenes a hearing. Around one in five children referred to the Reporter are referred to a hearing.

The children's hearings system was initiated by the Social Work (Scotland) Act 1968, now incorporated in the Children (Scotland) Act 1995. It followed a report in April 1964 of a committee set up by the Secretary of State for Scotland under the chairmanship of Lord Kilbrandon, a senior Scottish judge, to examine how young offenders were dealt with.

The juvenile courts were regarded as unsuitable because they had to combine the characteristics of a criminal court with those of a treatment agency. Separation of functions was recommended. The establishment of the facts (where disputed) was to remain with the courts but decisions on treatment were to be the responsibility of a new and unique kind of tribunal, which would be neither a court of law nor a local authority committee. On April 15, 1971, hearings took over from the courts most of the responsibility for children under 16.

Now, a child under the age of 16 who offends is referred to a hearing unless the procurator fiscal decides that prosecution in the criminal court is required. Hearings have power to make a wide range of conditions on a disposal – called a supervision requirement. These may range from attendance on a particular programme, contact with a social worker, or, if necessary, placement in foster care, residential accommodation or, in certain circumstances, secure accommodation.

For the hearing itself, the children's hearing or business meeting have power to appoint a legal representative from panels of Safeguarders and Curators ad Litem when it is considered necessary to protect the child's rights in the proceedings. The role of the legal representative is to attend the hearing with the child to protect the child's rights. The basis of all decisions made by children's hearings is the welfare of the child.

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Legal organisations and contacts

Crown Office and Procurator Fiscal Service

www.crownoffice.gov.uk

Scottish Court Service

Information relating to all civil and criminal courts, including; Court of Session, High Court of Justiciary, Sheriff Courts and District Courts.

www.scotcourts.gov.uk

Law Society of Scotland

The governing body of Scottish solicitors.

www.lawscot.org.uk

Faculty of Advocates

Information and contact details on the Scottish Bar

www.advocates.org.uk

Scottish Legal Aid Board

Responsible for the management of legal aid.

www.slab.org.uk

Children's Hearings

The unique system of care and justice for children and young people

www.childrens-hearings.co.uk

Victim Support Scotland

www.victimsupportsco.demon.co.uk

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