

SPICe Briefing

The Scottish Criminal Justice System: The Public Prosecution System

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This briefing is one of six covering various aspects of the Scottish criminal justice system. It provides a brief description of the system of public prosecution in Scotland.

The other five briefings in this series are:

- [SB 12/30 The Scottish Criminal Justice System: The Prison Service](#)
- [SB 11/62 The Scottish Criminal Justice System: The Police](#)
- [SB 11/59 The Scottish Criminal Justice System: The Criminal Courts](#)
- [SB 11/54 The Scottish Criminal Justice System: Legal and Administrative Arrangements](#)
- [SB 11/53 Children and the Scottish Criminal Justice System](#)



THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Introduction

The [Crown Office and Procurator Fiscal Service](#) (COPFS) is part of the Scottish Government, with responsibility for:

- the prosecution of crime (including decisions on whether criminal prosecution is appropriate in individual cases)
- the investigation of sudden or suspicious deaths
- the investigation of complaints against the police involving allegations of criminal conduct

The COPFS is the only public prosecution authority in Scotland. Prosecutions by private individuals are possible in some circumstances, but are very rare.

Key individuals within the COPFS include:

- the Lord Advocate (currently Frank Mulholland) – head of the systems of criminal prosecution and investigation of deaths, and a member of the Scottish Government
- the Solicitor General for Scotland (currently Lesley Thomson) – assists the Lord Advocate and also a member of the Scottish Government
- the Crown Agent (currently Catherine Dyer) – civil service head of legal staff in the COPFS and legal adviser to the Lord Advocate on prosecution matters

Decisions on whether to prosecute in particular cases, as well as the actual prosecution of accused persons, are taken by lawyers within the Crown Office in Edinburgh and a network of local procurator fiscal offices:

- Crown Office – advocate deutes are appointed, for a period of around three years, to make decisions about proceedings in serious cases,¹ prosecute cases in the High Court and appear for the Crown in criminal appeals. Although advocate deutes have traditionally been experienced practising members of the Faculty of Advocates, solicitor advocates and procurators fiscal are also eligible for appointment
- procurator fiscal offices – legally qualified civil servants, known as procurators fiscal, are in charge of local offices across the country. They are responsible for decisions on whether to prosecute (subject to the role of advocate deutes in relation to serious cases) and for prosecuting cases in the sheriff and justice of the peace courts. They also have a statutory power to direct the police in the investigation of crime. Depending on the workload of the office, a procurator fiscal may be helped by one or more procurator fiscal deutes (also legally qualified civil servants)

¹ Advocate deutes provide advice on whether there should be proceedings on indictment (ie under solemn criminal procedure) in both the sheriff courts and the High Court.

Crown Office and Procurator Fiscal Offices

The headquarters of the COPFS are at the Crown Office in Edinburgh. The Lord Advocate, Solicitor General for Scotland, Crown Agent and advocate deputes are all based there.² The Crown Office is split into three main groups:³

- Operations Group – work includes preparing cases for High Court trials and appeals
- Corporate Services Group – responsibility for prosecution policy and practice, business development, finance and resources
- Strategy and Delivery Division – responsibility for leading on the management of change in the organisation

Procurator fiscal offices are set up within 11 prosecutorial areas:

- | | |
|---------------------------|--------------------------|
| (1) Argyll and Clyde | (7) Grampian |
| (2) Ayrshire | (8) Highland and Islands |
| (3) Central | (9) Lanarkshire |
| (4) Dumfries and Galloway | (10) Lothian and Borders |
| (5) Fife | (11) Tayside |
| (6) Glasgow | |

Most of these areas coincide with the boundaries of the current eight Scottish police forces. The exception relates to Strathclyde Police, which is covered by four prosecutorial areas: Argyll and Clyde; Ayrshire; Glasgow; and Lanarkshire. (The Police and Fire Reform (Scotland) Bill, which was introduced by the Scottish Government in January 2012, includes provision for a single police service for Scotland in place of the eight forces.)

Apart from Glasgow, each of the areas has a main area office (incorporating a district office) plus one or more additional district offices (eg Central has a main office in Stirling plus additional offices in Alloa and Falkirk). Glasgow has a single procurator fiscal office.

Each prosecutorial area is headed by an area procurator fiscal, based at the main area office, who is accountable to the Crown Agent for the quality and timeliness of legal decision-making in the area.

A procurator fiscal is based at each district office (including those district offices located with the main area offices). In relation to Glasgow, each division of that procurator fiscal office is headed by an assistant procurator fiscal. As noted above, a procurator fiscal may be helped by one or more procurator fiscal deputes. The volume of business dealt with by each office varies greatly. This is reflected in the numbers of staff working at those offices. For example, recent figures indicate that procurator fiscal offices at the following locations were staffed by:⁴

² The Lord Advocate, Solicitor General for Scotland and advocate deputes are known collectively as Crown Counsel.

³ Some work of the COPFS has also been organised on the basis of four federations – west, east, north and national (eg see COPFS 2011).

⁴ The figures are based on information in The Scottish Law Directory 2011 (Law Society of Scotland 2011). The figures do not include non-legally qualified support staff.

- Glasgow – one area procurator fiscal; four assistant/divisional procurators fiscal; and more than 80 procurator fiscal deposes⁵
- Dundee – one area procurator fiscal; one procurator fiscal; and 14 procurator fiscal deposes
- Elgin – one procurator fiscal; and one procurator fiscal depute
- Jedburgh – one procurator fiscal

The Lord Advocate and Solicitor General for Scotland

As noted above, the Lord Advocate is head of the systems of criminal prosecution and investigation of deaths in Scotland, and is assisted in his work by the Solicitor General for Scotland. They are both members of, and are responsible for providing legal advice to, the Scottish Government.⁶ Together, they are referred to as the Scottish Law Officers.

The Scotland Act 1998 provides that the Scottish Law Officers shall be appointed and removed from office by the Queen on the recommendation of the First Minister.⁷ Any recommendation must be with the agreement of the Scottish Parliament. Although they are members of the Scottish Government, and may speak in the Parliament, there is no requirement for the Scottish Law Officers to be members of the Parliament.⁸

The range of roles performed by the Scottish Law Officers might be seen as creating the possibility of tension between: (a) a need for them to be politically acceptable to the Scottish Government (eg in the role of legal advisers to the Government); and (b) a need for them to act free from political interference (eg when making decisions about criminal prosecutions). The Scotland Act 1998 seeks to protect the independence of the Scottish Law Officers in various ways, including:

- providing that any decision made by the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths is taken independently of any other person (and thus not subject to normal rules on collective ministerial decisions)⁹
- providing that an Act of the Scottish Parliament cannot remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths¹⁰

DECISIONS ON PROSECUTION

Although it is possible for a private individual to bring a prosecution in some circumstances, instances of this happening are very rare. Thus, virtually all prosecutions in Scotland are brought, in the public interest, by the Lord Advocate or by the local procurator fiscal acting on behalf of the Lord Advocate.

Procurators fiscal (and their deposes) generally receive reports of crimes from the police and other relevant authorities such as HM Revenue and Customs, although anyone can report a

⁵ All figures for procurator fiscal deposes include principal procurator fiscal deposes.

⁶ Section 44(1) of the Scotland Act 1998 provides that both the Lord Advocate and Solicitor General for Scotland shall be members of the Scottish Government. The UK Government's principal adviser on Scots law is the Advocate General for Scotland (the post was created as a result of the constitutional changes involved in devolution).

⁷ See section 48(1) of the Scotland Act 1998.

⁸ The current Lord Advocate and Solicitor General for Scotland are not members of the Scottish Parliament.

⁹ See section 48(5) of the Scotland Act 1998.

¹⁰ See section 29(2) of the Scotland Act 1998.

crime to the fiscal. The fiscal decides whether to prosecute, what charges should be brought, and in which court any prosecution should take place. This includes decisions on whether to prosecute under summary or solemn procedure.

Where a procurator fiscal thinks that a case may be sufficiently serious for prosecution under solemn procedure (ie before a sheriff and jury or in the High Court), the fiscal sends a report to Crown Office, where Crown Counsel will decide the procedure to be used and the appropriate court. Certain very serious crimes, including murder and rape, must be prosecuted in the High Court, and there are no powers available to the accused or his/her lawyers to specify a particular forum (eg an accused cannot demand trial by jury). The choice of court can have significant implications for any prosecution; it affects the range of sentences available on conviction and the possibility of a jury being involved.¹¹

When exercising prosecutorial discretion in individual cases (including the decision to prosecute or not) prosecution lawyers have regard to the criteria set out in the [Prosecution Code](#) (COPFS 2001). These criteria include:

- evidential considerations – is there sufficient admissible, reliable and credible evidence of a crime committed by the accused?
- public interest considerations – eg the nature and gravity of the offence, the impact of the offence on the victim, and the personal circumstances of the accused

The following options are available to prosecution lawyers considering the report of a crime:

- decision to take no proceedings (eg a decision to take no action against an alleged offender will be appropriate where there is insufficient evidence or where it is not in the public interest to take action)
- various alternatives to prosecution can be offered in certain circumstances (eg warning letters or fiscal fines)
- prosecution in one of the criminal courts

Information on the number of criminal reports received by the COPFS, together with statistics on how those reports were dealt with (eg no proceedings, alternatives to prosecution and court disposals) is set out on the COPFS website under the heading of [Case Processing – Last 5 Years](#). The statistics indicate that, in relation to just over 252,000 cases disposed of in 2010-11:

- 12% were disposed of by an initial decision to take no proceedings
- 31% were disposed of by some other non-court disposal (eg warning letter or fiscal fine)
- 13% were disposed of by a decision to take no further proceedings after an initial decision to prosecute (eg where a key witness is missing)
- 44% were disposed of in court by way of an acceptable plea or trial

¹¹ Further information on the criminal courts and criminal court procedure is set out in the SPICe briefing *The Scottish Criminal Justice System: The Criminal Courts*.

VICTIM INFORMATION AND ADVICE

[Victim Information and Advice](#) (part of the COPFS) provides a service for some victims, witnesses and bereaved relatives. Its main aims are to:

- provide general information on the criminal justice system
- provide information about the progress of particular cases
- provide information about support services
- facilitate referral to other agencies for specialist support and counselling

As indicated above, this service is not provided to all victims, witnesses and next of kin. The COPFS website indicates that a service is offered to:

- victims and vulnerable witnesses where the case involves domestic abuse, hate crime, sexual offences or children, or where any trial is likely to involve a jury
- bereaved relatives in cases of deaths which may lead to criminal proceedings, or where there is to be a fatal accident inquiry or significant further inquiries
- vulnerable victims or witnesses who may need additional support (eg a victim with a learning difficulty)

INSPECTORATE OF PROSECUTION IN SCOTLAND

The [Inspectorate of Prosecution in Scotland](#) was created in December 2003 as an independent inspectorate for the COPFS. The Criminal Proceedings etc (Reform) (Scotland) Act 2007 put it on a statutory basis:

- providing for the appointment of a Chief Inspector of Prosecution in Scotland (appointed by the Lord Advocate)
- setting out the functions and powers of the Inspector

Its main functions are: (a) to inspect or arrange for the inspection of the COPFS; and (b) to report to the Lord Advocate on matters connected with the operation of the COPFS. It seeks to make recommendations that will lead to improvements in the COPFS. It does not deal with individual complaints (eg about the conduct of a particular prosecutor in relation to a specific case). These should, instead, be referred to Crown Office or the appropriate procurator fiscal office.

SOURCES

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