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:

- The Scottish Criminal Justice System: Legal and Administrative Arrangements
- The Scottish Criminal Justice System: The Police
- The Scottish Criminal Justice System: The Criminal Courts
- The Scottish Criminal Justice System: The Prison Service
- Children and the Scottish Criminal Justice System
THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Introduction

The Crown Office and Procurator Fiscal Service (COPFS) is Scotland’s prosecution service, with responsibility for:

- the prosecution of crime (including decisions on whether criminal prosecution is appropriate in individual cases)
- the investigation of sudden, suspicious or unexplained deaths
- the investigation of complaints of criminal conduct by police officers in the course of their duties

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 – head of the systems of criminal prosecution and investigation of deaths, and a member of the Scottish Government
- the Solicitor General for Scotland – assists the Lord Advocate and is also a member of the Scottish Government
- the Crown Agent – civil service head of legal staff in the COPFS and principal legal adviser to the Lord Advocate on prosecution matters

The prosecution of accused persons is handled by lawyers based at the Crown Office in Edinburgh and a network of local procurator fiscal offices across Scotland (organised into three regional federations):

- Crown Office – advocate deputes are appointed (on renewable three year contracts) to make decisions about proceedings in serious cases, advise on complex and sensitive matters, prosecute cases in the High Court and appear for the Crown in criminal appeals (in both the High Court and Sheriff Appeal Court). Although advocate deputes have traditionally been experienced practising members of the Faculty of Advocates, solicitor advocates and procurators fiscal are also eligible for appointment
- Procurator fiscal offices – procurators fiscal and procurator fiscal deputes (both legally qualified civil servants) are based in procurator fiscal offices across the country. They are responsible for decisions on whether to prosecute (subject to the role of advocate deputes 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

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1 In such cases, the COPFS may direct the Police Investigations and Review Commissioner to investigate on its behalf and prepare a report for the relevant procurator fiscal.
2 Advocate deputes provide advice on whether there should be proceedings on indictment (ie under solemn criminal procedure) in both the sheriff courts and the High Court.
Organisation

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. In addition, there are currently 38 procurator fiscal offices spread across the country.

In 2012, procurator fiscal offices were grouped into three regional federations (East, North and West). This structure replaced previous arrangements based on 11 prosecutorial areas. The change supported a move to greater specialisation, with some procurators fiscal and their deputes focusing on particular areas of work (e.g. initial case processing). Casework with a national dimension and corporate functions were organised within a fourth national federation.

From April 2016, the COPFS started to replace the federation model with a new set of four nationally managed functions:

- National Local Court – handling all summary and sheriff solemn cases. The function is managed nationally but delivered locally through a geographical structure based on the six sheriffdoms. Each of six sheriffdom business units is headed by a senior prosecutor who has responsibility for all cases prosecuted in justice of the peace and sheriff courts within that area. The National Local Court function also includes a national case processing unit (based at two hubs in Stirling and Paisley) with responsibility for the initial decisions in relation to summary level crime reports.

- National High Court – dealing with the preparation and presentation of High Court cases. Case preparation is dealt with by the High Court division in Crown Office and at four major case preparation locations (Edinburgh, Glasgow, Dundee and Aberdeen). The senior management of this function is organised by discipline (e.g. sexual offences).

- Specialist Casework Division – the units within this division cover a broad range of work, including wildlife & environmental crime, international cooperation, serious & organised crime and the Scottish Fatalities Investigation Unit. The existing management and business unit structures in this area are currently being reviewed with the aim of establishing new arrangements during 2016-17.

- Common & Corporate Services Group – deals with all common services within two divisions (policy & engagement and business services).

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. Together, they are referred to as the Scottish Law Officers.

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

4 Procurator fiscal offices are listed on the COPFS website under the heading of Our Offices.

5 Information on sheriffdoms is set out in another of the SPICe briefings in this series – The Scottish Criminal Justice System: The Criminal Courts.

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).
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. The range of roles performed by the Scottish Law Officers requires them to be free from political interference and independent in taking decisions about criminal prosecutions, but also to act as legal advisers to the Scottish Government. 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)
- 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 deaths

**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 deputes) receive reports of crimes from the police and other relevant authorities such as HM Revenue and Customs. 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 considers 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. There are no powers available to accused persons, or their legal representatives, to specify a particular forum (eg an accused cannot demand trial by jury). The choice of court is important for each prosecution as it affects the range of sentences available on conviction and the possibility of a jury being involved.

When exercising prosecutorial discretion in individual cases (including the decision to prosecute or not) prosecutors 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 – including 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 prosecutors considering the report of a crime:

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7 See section 48(1) of the Scotland Act 1998.
8 See section 48(5) of the Scotland Act 1998.
9 See section 29(2) of the Scotland Act 1998.
10 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*. 
• 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 Statistics on Case Processing Last 5 Years. The statistics indicate that, in relation to 232,331 cases disposed of in 2014-15:

• 12% were disposed of by an initial decision to take no proceedings
• 32% were disposed of by some other non-court disposal (eg warning letter or fiscal fine)
• 14% were disposed of by a decision to take no further proceedings after an initial decision to prosecute (eg where a key witness is missing)
• 43% were disposed of in court by way of an acceptable plea or trial

The victim of an offence (or alleged offence) can ask the COPFS to review a decision, made on or after 1 July 2015, not to prosecute a case. The Victims and Witnesses (Scotland) Act 2014 provides that:

“The Lord Advocate must make and publish rules about the process for reviewing, on the request of a person who is or appears to be a victim in relation to an offence or alleged offence, a decision of the prosecutor not to prosecute a person for the offence or alleged offence.” (section 4(1))

Further information is set out in Lord Advocate’s Rules: Review of a Decision not to Prosecute (COPFS 2015). It notes that the right to review applies to COPFS decisions:

• to take no action in a criminal case reported by Police Scotland or other reporting agency
• to stop or discontinue a case once court proceedings have been started

VICTIMS AND WITNESSES

The work of the COPFS includes providing support and advice for victims and prosecution witnesses. This aspect of its work includes the services provided for some victims, witnesses and bereaved relatives by the Victim Information and Advice Service (VIA).

The VIA (part of the COPFS) offers services to:

“Victims of crime in cases of domestic abuse, hate crime, sexual offences or where it is likely that any trial will involve a jury.

Child victims and child witnesses in any type of case.

Other victims or witnesses with additional support needs.

Nearest relatives in the case of deaths where there may be criminal proceedings, a Fatal Accident Inquiry or significant further inquiries.” (COPFS 2010, p 9)

It can provide information on and/or discuss:
• how the criminal justice system works
• the progress of particular cases
• other support services
• the support available to victims and witnesses if a case goes to trial

Further information on the work of the COPFS in this area is set out in the COPFS information booklet *Our Commitments to Victims and Prosecution Witnesses* (2010) and on the COPFS website under the headings of *Victims* and *Witnesses*.

### 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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