



Judicial Studies Committee

The Work of the JSC





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by

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The photograph on the front cover shows the “Kirking of the Court” at St Giles’ Cathedral, Edinburgh, at the beginning of the legal year in September for judges and members of the legal profession. Original photograph by Ciaran Donnelly.

CONTENTS

	Page
The Judicial Studies Committee	1
The Judiciary and the Courts	3
The Supreme Courts	3
The Sheriff Court	4
The District Court	5
The Land Court and administrative tribunals	6
The Judicial Appointments Board	6
Training of the Judiciary	7
Introduction	7
Help on appointment	7
Information services	7
The courses	8
Other activities of the JSC	11
European Judicial Training Network	11
UK Judicial Studies Council	11
Training for trainers	11
Sub-committees	11
Local facilitators	11

THE JUDICIAL STUDIES COMMITTEE

In any true democracy, judges must enjoy a high degree of autonomy so that they can exercise their judicial powers independently without others, including organisations of the State such as the Executive and Parliament, being able to control their decision making. Unless judges have such independence, the public will not be able to have confidence in the administration of justice.

Judicial training itself, in so far as it seeks to influence how judges carry out their duties, might be thought to compromise judicial independence. In order to ensure that it does not, it has to be recognised, in all democratic countries, that the overall control and direction of judicial training and awareness requires to be in the hands of the judges. This also ensures that judicial training has credibility among the judges. The composition of the Judicial Studies Committee recognises the importance of these principles.

Induction and continuation training of the judiciary is the responsibility of the Judicial Studies Committee (the "JSC"). This body was set up in 1997 by the then Secretary of State for Scotland, Mr Michael Forsyth, MP. The remit of the JSC is to promote training for the judiciary. This gives the JSC wide scope to meet the training needs of the judiciary. It also recognises the prime need that judicial training should remain the exclusive responsibility of the judiciary.

The responsibility of the JSC currently extends only to the judges in the Supreme Courts (senators) and the sheriff court (sheriffs), including the retired senators who sit in the supreme courts, and the temporary judges and part-time sheriffs in those courts.

Eventually, as the JSC grows and develops, it may acquire responsibilities for the justices and magistrates in the district court and in relation to chairmen and members of administrative tribunals.

The JSC has a board of nine members and, since the summer of 2003, a full-time staff of five people. The part-time chairman is a senator. The full-time Director of Judicial Studies is a sheriff who is seconded to this post for a period of about three years. The other members of the Committee, who are all part time, are another senator, a sheriff principal, two sheriffs, a part-time sheriff, a lay member (currently an advocate with experience in continuation training for members of the Bar) and the head of the Justice Department. A member serves for three years, though the appointment may be extended for a further three years.

In addition to the Director, there is currently a full-time staff of four. Two of these are qualified legal assistants.

The JSC maintains a website (www.judicialstudies-scotland.org.uk) to keep the public aware of its activities. The JSC also publishes an annual report and business plans which can be viewed on the website.

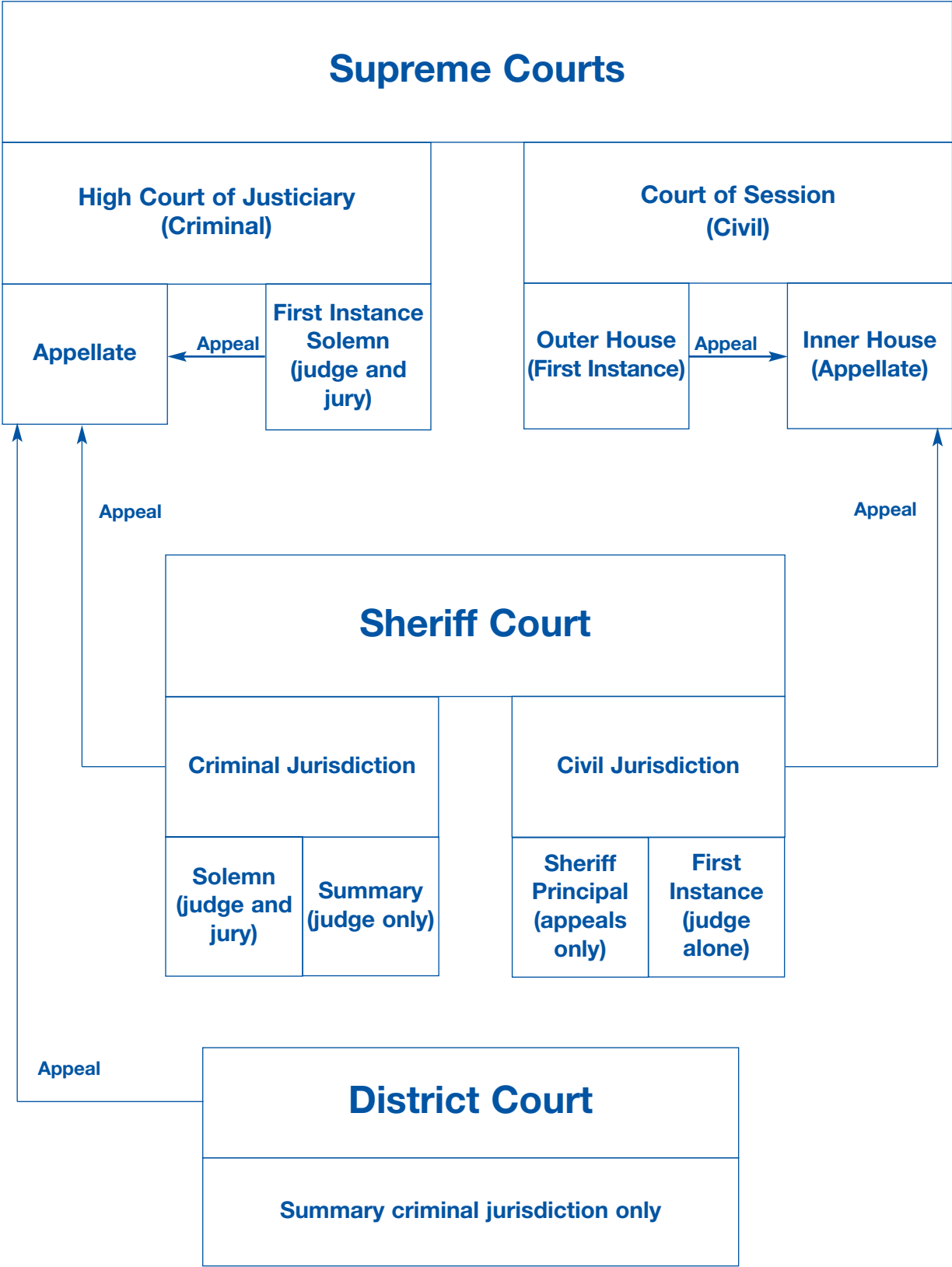


Figure 1

THE JUDICIARY AND THE COURTS

Before looking at the work of the JSC, it is helpful to describe the structure of the courts in Scotland and the judges who sit in those courts. Figure 1 on page 2 is a diagram of the structure of the courts.

The Supreme Courts

There are two supreme courts in Scotland. They are the High Court of Justiciary (the supreme criminal court), and the Court of Session (the supreme civil court). Both these courts exercise appellate functions and also sit at first instance. The appellate courts sit in benches of at least three judges. At first instance in criminal cases, a judge sits with a jury of 15 lay people (members of the public on the voters roll). At first instance in civil cases, the judge sits alone or, in certain cases, with a jury of 12 lay people.

The Court of Session sits only in Edinburgh. Civil cases at first instance are heard in the Outer House of the Court of Session. At first instance a judge sits alone or with a jury of 12 lay people. Civil jury trials are not common; but a pursuer has a right to jury trial in actions for personal injuries or other delicts, defamation or reduction of a document on the ground that the pursuer who signed it was under incapacity, error or subjected to force. Some appeals from statutory bodies are first heard in the Outer House by one judge. There is a right of appeal from the Outer House, or from the sheriff court, to the Inner House of the Court of Session. Although primarily an appellate court, the Inner House does deal with certain cases relating to trusts at first instance. The Inner House has two permanent Divisions, the First Division chaired by the Lord President of the Court of Session and the Second Division chaired by the Lord Justice Clerk. Extra Divisions may sit when required. There are five judges in each of the two permanent Divisions. Three judges normally sit in a Division, although larger benches of odd numbers may sit to reconsider an earlier decision of a smaller bench. There is a further appeal from the Inner House to an Appellate Committee of the House of Lords of the UK Parliament (the House of Lords). As a general rule, civil actions not exceeding £1,500 cannot be brought in the Court of Session and must be brought in the sheriff court.

The High Court of Justiciary, sitting at first instance, goes out on circuit to hear criminal cases in certain towns and cities around the country. In Edinburgh and Glasgow, the court sits at first instance every week of the year. At first instance, the judge sits with a jury of 15 lay people. There is a right of appeal from the High Court sitting at first instance to that court sitting as an appellate court with three judges (or more odd numbers of judges if there is a need to reconsider a decision of a smaller court). The appellate division of the High Court, commonly called the Court of Criminal Appeal for solemn cases and the Justiciary Appeal Court for summary cases, also hears appeals from the lower criminal courts. See figure 1.

The same judges sit in both courts. A person appointed to be a judge in the Supreme Courts is called a Senator of the College of Justice. When sitting in the High Court, that person is called a Lord Commissioner of Justiciary; when sitting in the Court of Session, that person is referred to as a Lord of Council and Session.

The head of the judiciary is the Lord Justice General of Scotland (in his capacity as head of the High Court of Justiciary) and the Lord President of the Court of Session (in his capacity as head of the Court of Session). The second most senior judge is the Lord Justice Clerk. There are 30 other senators. At present three of the senators are women.

Appointment as a senator is governed by Article XIX of the Union with England Act 1707 (which gives effect to the Treaty of Union between Scotland and England), the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and the Scotland Act 1998. To be appointed a senator a person must be (a) an advocate of at least five years' standing, (b) a sheriff principal or sheriff who has held office for not less than five years, or (c) a solicitor-advocate who has had a right audience in both supreme courts for not less than five years. An advocate is rarely appointed with less than 20 years' practice at the Bar. One former sheriff principal who was also a sheriff for 18 years and two former sheriffs are currently senators; but no solicitor-advocate has yet been appointed. The appointments of the Lord President and the Lord Justice Clerk are made by Her Majesty the Queen on the recommendation of the Prime Minister of the United Kingdom. The appointment of the other senators is by the Queen on the recommendation of the First Minister of the Scottish Executive on the recommendation of the Judicial Appointments Board.

A senator may be removed from office only on the ground that he or she is unfit by reason of inability, neglect of duty or misbehaviour. A recommendation must be made to Her Majesty the Queen by the First Minister on resolution by the Scottish Parliament, such a resolution may only be made on the motion of the First Minister following an investigation and report by a tribunal that the judge is unfit. The tribunal is chaired by a judicial member of the Judicial Committee of the UK Privy Council.

Retired senators may be appointed to facilitate the disposal of business in the Supreme Courts, but not beyond the age of 75. Appointment is made under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 by the Lord President of the Court of Session with the consent of the Scottish Ministers. Such judges are not subject to the protection from removal from office enjoyed by senators who have not retired.

To assist with the pressure of the business in the Supreme Courts, a few practising lawyers, sheriffs principal and sheriffs are appointed to be part-time judges, called temporary judges, in the Supreme Courts. Appointment of a temporary judge is made under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 by the First Minister after consulting the Lord President of the Court of Session. Appointment is for such period as the Scottish Ministers shall determine but not beyond the age of 70. Exceptionally, a temporary judge may have an appointment extended to the age of 75, on a year-by-year basis, where Ministers consider that the appointment would be in the public interest. Temporary judges are not entitled to the protection from removal from office enjoyed by senators.

The Sheriff Court

The country is divided into six sheriffdoms. Each sheriffdom is headed by a sheriff principal. He has responsibility for ensuring the speedy and efficient disposal of business in his sheriffdom. The sheriff principal also exercises an appellate function in civil cases. There are six sheriffs principal.

There are 49 sheriff courthouses. Most courthouses have more than one court room; for example, Edinburgh has 16, and Glasgow has 23, courtrooms. There are 137 sheriffs for the whole country. There is not an equal number of sheriffs in each sheriffdom.

Appointment as a sheriff principal or sheriff is governed by the Sheriff Courts (Scotland) Act 1971. To be appointed, a person must have been legally qualified for at least 10 years as an advocate or solicitor. Appointment is made by Her Majesty the Queen on the recommendation of the First Minister on the recommendation of the Judicial Appointments Board.

A sheriff principal or sheriff may be removed from office only on the ground that he or she is unfit by reason of inability, neglect of duty or misbehaviour. The First Minister may only remove such a judge following a report by the two senior judges, the Lord President of the Court of Session and the Lord Justice Clerk, that the judge is unfit. An order by the First Minister removing such a judge from office may be annulled by the Scottish Parliament.

The sheriff court has jurisdiction in civil and criminal matters.

The civil jurisdiction is almost unlimited, that is, at first instance it is almost the same as the Court of Session. Some civil matters are reserved to the Court of Session and some are reserved to the sheriff court. As a general rule, causes with a value not exceeding £1,500 must be dealt with in the sheriff court. There is an appeal from a decision of a sheriff in a civil case to the sheriff principal or to the appellate division of the Court of Session (called the Inner House). Where an appeal has been made to the sheriff principal, there is a further right of appeal from the sheriff principal to the Inner House of the Court of Session. See figure 1.

In criminal matters, the sheriff exercises a summary jurisdiction (when the sheriff sits alone) and a solemn jurisdiction (when the sheriff sits with a jury of 15). The maximum sentence in solemn cases is three years' imprisonment (to be increased to five years from April 2004) or an unlimited fine or both. In summary cases, the maximum sentence is generally three months' imprisonment or a fine up to £5,000 or both. In some instances the maximum period of imprisonment may be six months (for a second or subsequent offence of violence or dishonesty), nine months (for assault of a police officer) or 12 months (for some drug offences). There is an appeal from a decision of a sheriff in a criminal case to the appellate division of the High Court of Justiciary. See figure 1.

To assist with the pressure of business and judges' holidays in the sheriff courts, a number of advocates or solicitors are appointed as part-time sheriffs. Appointment as a part-time sheriff is made under the Sheriff Courts (Scotland) Act 1971 as amended by the Bail, Judicial Appointments etc. (Scotland) Act 2000. Appointment is made by the Scottish Ministers on the recommendation of the Judicial Appointments Board. The maximum number that may be appointed is 60. Appointment is for five years. Re-appointment is automatic at the end of five years unless the part-time sheriff has reached the age of 70, he or she has not sat for at least 50 days in that time or a sheriff principal has made a recommendation against re-appointment. A part-time sheriff may be removed from office by a tribunal consisting of a senator or sheriff principal, an advocate or solicitor of 10 years standing and one other person, all appointed by the Lord President of the Court of Session.

The District Court

There are district courts in each local authority area. They deal only with minor summary criminal matters.

The judges of the district court are lay justices of the peace, although a local of authority may appoint a full time stipendiary (that is salaried) magistrate under the District Courts (Scotland) Act 1975. A person must be an advocate or solicitor of at least five years to be a stipendiary magistrate. He or she may only be removed from office in the same way as a sheriff.

In Glasgow there are four stipendiary magistrates. Otherwise, all the judges in the district court are lay justices, that is, they are not legally qualified. They are drawn from all walks of life.

There are between 3,500 and 4,000 lay justices of the peace, although fewer than 2,000 are authorised to sit in court and try cases. Those who do not sit in court are known as signing justices: they may sign documents and warrants but do not sit in court. Those who may sit in court are known as full justices.

Stipendiary magistrates sit alone. Lay justices sit singly or in twos or threes, according to the tradition of the particular court, but usually singly. Lay justices have a legally qualified clerk.

The powers of punishment of a lay justice are limited to a maximum of 60 days' imprisonment or a fine up to £2,500 or both. A stipendiary magistrate has the same powers as a sheriff exercising summary jurisdiction.

There is an appeal from the district court to the appellate division of the High Court of Justiciary.

The Land Court and administrative tribunals

The Land Court, created in 1912, deals with cases relating to property held under crofting law or agricultural tenancies. That law concerns tenure and rents of agricultural land in the North and North West of Scotland. The chairman of that court has the rank and tenure of a judge of the Court of Session. The chairman, who must be an advocate of at least 10 years' standing, is appointed under the Small Land Holdings (Scotland) Act 1911. The other members of the court are people of practical experience in agriculture or crofting.

There is, at present, no single unified structure for administrative tribunals in the UK. There are at least 36 different administrative tribunals in Scotland, 21 of which are all-UK tribunals. They range from Employment Tribunals to the Plant Varieties and Seed Tribunal. Often the chairman of the tribunal is a lawyer. Some tribunals have their own appellate tribunal, such as the Employment Appeal Tribunal or the Social Security or Child Support Commissioners. There is an appeal from a tribunal or, if the tribunal system has an appeal tribunal, from its appeal tribunal, to a court. The court is usually the Court of Session; but some appeals are to the sheriff court, for example, appeals from Children's Hearings.

The Judicial Appointments Board

The Judicial Appointments Board is currently a non-statutory body which considers applications from lawyers for appointment as Senator of the College of Justice, sheriff principal, sheriff or part-time sheriff. Vacancies for these appointments are advertised. The Board recommends persons to the First Minister who in turn makes a recommendation to Her Majesty the Queen. The Board has 10 members and, unusually for a body of this kind elsewhere in the world, there are an equal number of judges and lay people on the Board and the chairman is one of the lay members.

The Judicial Appointments Board has its own website which provides further information about its work (www.judicialappointmentscotland.gov.uk).

TRAINING OF THE JUDICIARY

Introduction

Unlike legal systems in which people begin their careers in the judiciary after university, judges in Scotland have had careers as lawyers for about 20 years before elevation to the Bench. They therefore have a wide experience of life and the law before becoming judges. They do not require the same training that people starting their careers require. They do need to be aware of developments and trends in society, to keep up to date with legal developments and to augment their skills in familiar areas of work and to develop new skills in relation to new areas of work.

The JSC is confident that judicial training has many benefits that help to provide a more effective and efficient justice system. These include:

- enhancement of judges' skills and techniques in the courtroom and an understanding by judges of how, most effectively, to fulfil their role;
- greater awareness of the needs of court users, including witnesses and victims, and how to ensure that respect for each individual is combined with effective administration of justice;
- more efficient use of court and judicial time through better handling of cases and hearings;
- greater awareness of current developments in the law and society as a whole and how these can be applied to the benefit of all using the courts;
- savings in time and other resources and greater consistency of approach.

Help on appointment

On appointment, every judge has a meeting with the Director of Judicial Studies. The role of the JSC is explained, he or she is given some practical advice and is given a "starter pack" of material. This material includes Bench books, briefing papers and other guidance issued to judges to help them perform their duties. The new judge spends five days sitting with an experienced judge of the court in which he or she will sit. For example, a new senator or temporary judge will sit with an experienced senator.

A mentor, a judge of the same rank, must be appointed for each new judge. A mentor is someone to whom the new judge may turn for practical help in his or her new duties. The mentor does not, of course, help the new judge make decisions.

Information services

Every judge is issued with a laptop computer. He or she has access to the Internet and to the judicial Intranet system. As well as maintaining a website (www.judicialstudies-scotland.org.uk), the JSC maintains a site on the private judicial Intranet. The JSC uses the Intranet to keep judges up to date with developments in the law. Information about new legislation and important decisions of the courts are posted on the Intranet and brought to the attention of all judges. Written material, such as Bench books, briefing papers and papers delivered at JSC courses, checklists on various court procedures, which are issued to judges, are available to judges on this Intranet site. The JSC also issues to judges detailed written material, called briefing papers, informing them about important new law, and significant cases which affect the application of the law.

Two Bench books have so far been produced by the JSC for the judiciary. One is the *Jury Manual*. This contains some guidance to the judges for instructing a jury in a criminal trial on the law and how to go about their task of deciding whether the accused is guilty or not. The other is the *Equal Treatment Bench Book*. This book contains guidance on all aspects of equal treatment such as racial and gender issues, people with disabilities, children and other vulnerable witnesses and litigants who appear for themselves without lawyers.

The JSC produces an annual report and a business plan. Notice of its courses is given about a year in advance.

The courses

The JSC currently runs four types of course. These are induction courses, refresher courses, skills courses and special courses. The JSC has its own offices in Bearford House, 39 Hanover Street, Edinburgh. The JSC does not have its own premises for training: all courses are held at hotels or conference centres. Judges cannot be required to attend any course, but they usually do.

All judges, whether senators, sheriffs, retired senators, temporary judges or part-time sheriffs are treated in the same way in relation to training. They are all entitled to attend any course.

The induction course. This course is held when there is a sufficient number of new judges to attend it. That is because there are usually only one or two appointments at any time and these occur infrequently. Each judge should attend such a course after his appointment. There may be some months between appointment and attendance at an induction course, during which time the new judge may have already undertaken judicial duties. Normally there is only one induction course a year.

An induction course may include new judges who have been appointed as full-time senators or sheriffs, temporary judges and part-time sheriffs.

An induction course is a residential course that extends for five days. From 2003 the induction course will normally include the elements of the skills course (see below). In addition, there will be a visit to a prison. There are sessions in small groups (syndicate sessions) on sentencing in which participants discuss what sentences they would impose in a number of actual previous cases given to them as an exercise. There is then a sentencing plenary session for discussion of the sentences they would have imposed, including disclosure of the actual sentence and the decision of the appellate court. There are syndicate sessions in which participants discuss a number of examples of problems that may arise in court followed by a plenary session. In both these plenary sessions there is a panel of senior judges who give their opinions. There are also talks on topics such as drugs, judicial duties and responsibilities, how to preside over and conduct a jury trial, human rights, and dealing with particular types of case or procedure.

Speakers are drawn from the judiciary and from legal or non-legal professional experts in the topics concerned.

The refresher course. This course is a residential course that lasts for three days. Every judge should attend a refresher course every three years. About 26 judges attend each course. We also include two judges from other jurisdictions in the UK or elsewhere. Of the Scottish judges, there is always a mixture of senators (usually three), sheriffs principal, sheriffs, temporary judges and part-time sheriffs.



A session at a refresher course in 2004.

This course includes talks and discussions on areas of topical interest. The subjects in recent years have included equal treatment and cultural awareness, domestic abuse, risk assessment of offenders, rehabilitation of offenders, developments in criminal law and procedure, the proceeds of crime, and the interviewing and questioning of children. There are also two sessions for small groups of participants on sentencing in which participants discuss what sentences they would impose in a number of actual previous cases given to them as an exercise. There is then a sentencing plenary session for discussion of the sentences they would have imposed including disclosure of the actual sentence and the decision of the appellate court. There are also syndicate sessions in which participants discuss a number of examples of problems arising in court followed by a plenary session. In both these plenary sessions there is a panel of senior judges who give their views.

Speakers are drawn from the judiciary and from legal or non-legal professional experts in the topics concerned.

The skills course. This course is a residential course that lasts for three days. It is attended by eight (or 12) judges, two of whom are senators and six (or 10) are sheriffs. There is a mix of experienced and inexperienced judges. When all existing, full-time judges have attended, it will not be necessary to continue this course in the current form because this course will be included in the induction course. It is planned to invite those who have attended such a course to a follow-up skills course from time to time.



A session at a skills course in 2004.

The course is designed to improve a judge's skills in communication orally in court and in written judgments, and in court craft. The purpose is for participants to practice their skills and discover what does work and what does not work. There are seminars and discussions on effective communication, judicial writing, charging juries (explaining to them the law and their functions), taking notes in court and on the sentencing process. There is also a seminar and discussion on dealing with vulnerable witnesses and party litigants. There are workshops on dealing with situations in court where each participant is video-taped handling an event which is played out in front of him or her by actors. There are workshops on charging a jury and passing sentence. Each participant has a private discussion with a senior judge about his or her performance using the video-tape. There is also an exercise in which the participants have to write a judgment which they then discuss with a senior judge. The emphasis throughout this course is on evaluation and assessment of judicial performance.

Speakers are drawn from the judiciary and from legal or non-legal professional experts.

Special courses. These are usually one-day seminars. They are on particular subjects that are looked at in detail. Judges are invited to apply to attend if they are interested in the subject. The maximum number of judges who attend is usually 30. Each of these courses may be repeated until all who are interested have attended, others may be a regular feature of JSC courses. For some of these courses it may be that all judges will be expected to attend the course. Some of these seminars are of interest only to a particular category of judge.

Recent courses include a course for senators on legal aid, and courses on small claims procedure, and also on dealing with cases about adults with incapacity, which are of interest only to sheriffs and part-time sheriffs. Seminars on dealing with victims and sexual offence cases, on bankruptcy and insolvency law, children, and European law are planned. The number and frequency of these courses are expected to increase when the JSC is able to increase its staff to deal with them.

Speakers are drawn from the judiciary and from legal or non-legal professional experts in the topics concerned.

Seminars are also arranged from time to time with the Judicial Studies Boards of England and Wales and Northern Ireland or other members of the European Judicial Training Network.

OTHER ACTIVITIES OF THE JSC

European Judicial Training Network

The European Judicial Training Network (“EJTN”) was founded in October 2000 at Bordeaux. The members consist of the judicial training organisations of the Member States of the European Union and the European Academy of Law at Trier in Germany. At Copenhagen, in December 2002, it was agreed by the members of the EJTN to revise the Bordeaux Charter so that the EJTN could become an association having legal personality under Belgian law. The EJTN is now governed by Articles of Association agreed at Copenhagen. The purpose of acquiring legal personality is to enable the EJTN to receive funding directly from the EU.

The principal aims of the EJTN are:

- To promote a training programme for judges with a genuine European dimension.
- To co-operate with candidate countries of the EU especially in the field of judicial co-operation.
- To provide expertise and know-how to European, national or international institutions in all questions of judicial co-operation.
- To facilitate the participation in the national training activities for judges from other countries.

There are three working groups. One for the programmes or seminars organised by the members, one for development of, and maintaining, the website (www.ejtn.net) and one for external contacts with EU candidate and other countries. The JSC represents the UK in the programmes working group. The purpose of this group is to co-ordinate or initiate seminars on topics in the areas of judicial co-operation in criminal and civil matters in the EU.

UK Judicial Studies Council

The JSC and the Judicial Studies Boards of England and Wales, and Northern Ireland, meet every year to discuss matters of mutual interest, exchange ideas and co-operate in judicial training within the UK.

Training for trainers

The JSC offers training courses from time to time to those judges who assist with training other judges.

Sub-committees

There are a number of working groups or sub-committees of the JSC. Two of the sub-committees are concerned with updating the two Bench books. Another sub-committee is working on a Bench book and other material about guidance for judges on children in court.

Local facilitators

The JSC intends soon to appoint a sheriff in each shire as a local facilitator. This person will arrange local training events of interest to sheriffs in the locality and promote activities of the JSC.

