



**MODERNISING THE EFFECTIVE PROSECUTION  
OF SERIOUS CRIME**

**APPOINTMENT AND ROLE OF ADVOCATE DEPUTES:  
THE WAY FORWARD**

## **Introduction**

1. In September, the Lord Advocate issued for consultation proposals to change the appointment and role of Advocate Deputes. These were being proposed against the background of Sir Anthony Campbell's report into Crown decision making in the case of Surjit Singh Chhokar, the significant increase in the number of solemn prosecutions, and the widely held view that, in addition to ensuring there are sufficient numbers of experienced staff, the system for prosecuting serious crime needed to be adapted to suit modern requirements.

2. The introduction to the consultation paper referred to the review commissioned by the Lord Advocate of the way in which High Court cases are precognosed (i.e. investigated by a Procurator Fiscal), prepared for prosecution and support provided at Court. The recommendations of that review, carried out by the Crown Office Quality and Practice Review Unit (QPRU), are now being implemented, in tandem with the conclusions of the Pryce-Dyer review of the allocation of resources and management of the Crown Office and Procurator Fiscal Service (COPFS). The changes proposed to the appointment and role of Advocate Deputes should be viewed as a key and integral part of the wider initiatives intended to modernise the effective prosecution of serious crime.

3. The proposed changes are designed to promote a system which will continue to attract able and experienced lawyers to serve as prosecutors in the High Court whilst, at the same time, preserving the essential safeguards in the system. The new approach seeks at the same time to set out a structure which will provide more flexible arrangements to encourage members of the Bar to gain experience of prosecuting in the High Court and which will free up Senior Advocate Deputes to permit them to prosecute the most serious, complex and difficult cases with appropriate preparation and support rather than under the present constraints and pressures. The proposals also recognised that there are able members of COPFS who are experienced in advocacy before sheriffs and juries, who would constitute a further resource from which to draw Advocate Deputes. After gaining experience prosecuting in the High Court, such staff would enrich COPFS as a whole.

4. The Lord Advocate recognises and appreciates the concerns regarding the independence of the system of prosecution in Scotland. However he also notes that members of the Crown Office and Procurator Fiscal Service are trained to undertake prosecution independently in the public interest, that they are subject both to COPFS and Civil Service codes of conduct and that virtually all summary and the majority of solemn cases (cases with a jury) are prosecuted by members of the Crown Office and Procurator Fiscal Service without concern over their integrity and impartiality.

5. Nevertheless he recognises that Crown Counsel bring to their office a further degree of independence which helps to underwrite and reinforce a fair and effective system of prosecution in Scotland. He is committed to maintaining the independence of Crown Counsel and where members of the Crown Office and Procurator Fiscal Service or other solicitor advocates are appointed as Crown Counsel appropriate arrangements will be put in place to secure that independence.

## **The Way Forward**

6. Having considered the consultation responses, the Lord Advocate has decided to commence implementing the key elements of the proposals. Of course, further work will be required to implement the details, and this will be taken forward over the next few months under the direction of the Lord Advocate and the senior management of COPFS.

7. There will be 3 categories of High Court prosecutors – Senior Advocate Deputes, Advocate Deputes and ad hoc Advocate Deputes. Senior Advocate Deputes will prosecute cases of a serious, complex or sensitive nature, deal with conviction appeals and decide which cases should be indicted in the High Court. Advocate Deputes will prosecute the majority of cases in the High Court, and have opportunity to prosecute in serious and complex cases and undertake some appeal work. Ad hoc Advocate Deputes will, as now, prosecute cases in the High Court, conduct some sentence appeals and be used to respond to variations in workload during the year.

8. A key element of the proposals would widen the pool of eligible candidates from which Advocate Deputes may be selected, to include solicitor advocates and Procurators Fiscal. This proposal will be implemented, with appropriate arrangements introduced to secure the independence of those who are appointed who are not members of the Bar. Also, although the Lord Advocate retains the right to appoint any person as a Depute, it is intended that Fiscals appointed as Advocate Deputes would have rights of audience, or would acquire them as soon as possible after appointment as an Advocate Depute.

9. A number of the consultation proposals are linked closely to recommendations made by the Crown Office Quality and Practice Review Unit report on how High Court cases are prepared. For instance, the proposal that decisions in Sheriff and Jury cases are taken by permanent COPFS staff, subject to guidelines issued by the Lord Advocate and to monitoring and auditing by Senior Advocate Deputes, will be implemented. Also, Senior Advocate Deputes will mark only those death cases where a fatal accident inquiry or criminal proceeding is a realistic possibility, with other death cases being marked by COPFS staff. These changes will permit Senior Advocate Deputes to devote more time to the marking of cases to be prosecuted in the High Court, to be more closely involved at an early stage of serious, complex or sensitive cases, and have sufficient time to consider case papers and prepare before a case calls for trial.

10. The proposals relating to the introduction of more flexible working patterns for Advocate Deputes, and to the need to improve the training and induction of all categories of prosecutors, will be taken forward over the next few months.

11. The consultation proposals also considered how the arrangements for appointing Advocate Deputes might be adjusted to introduce more transparency. Although it will be important to retain in any such arrangements a personal link with the Lord Advocate - as Advocate Deputes prosecute on his behalf and are personally responsible to him for the conduct of proceedings - it is envisaged that revised procedures will be developed for use when new Advocate Deputes are appointed.

## **Implementation**

12. Implementation of the new arrangements will be taken forward over the next few months, and they should be in place by Spring 2003.

**Crown Office and Procurator Fiscal Service, December 2002**