

## The Bar in Scotland

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The title "advocate" describes a member of the Bar in Scotland. All advocates are members of the Faculty of Advocates which is the body of independent lawyers who have been admitted to practise before the courts of Scotland. They may also be referred to as "counsel". Faculty records date as far back as 1532 when the College of Justice was established by an Act of the Scottish Parliament, though its origins are believed to predate that event. Although similar in appearance to systems based on the English common law, the origins of Scots law lie in Roman Dutch law, and Scotland is not truly a common law jurisdiction. The legal profession is divided into advocates, who must practise as individuals and not in partnership, and act only on instructions from another professional, and who are the equivalent of barristers in other jurisdictions, and solicitors, who may practise in partnership.

An advocate is an officer of the court. Advocates are entitled to practise before all civil and criminal courts. The supreme civil court is the Court of Session, which sits only in Parliament House in Edinburgh. The supreme criminal court is the High Court of Justiciary, which sits as a court of first instance and as an appeal court in Edinburgh, and as a court of first instance on circuit in the cities and certain major towns of Scotland. The local court which sits in the cities and in many towns is the Sheriff Court, which exercises both civil and criminal jurisdiction, and there is also a local District Court in many towns for minor criminal matters. Until the early 1990s, members of the Faculty of Advocates had exclusive rights of audience in the supreme courts, although certain solicitors now also have such rights.

Membership of the faculty has expanded considerably in recent years and currently stands at over 710 members. Approximately 440 of these are practising advocates, the remaining 270 include judges, sheriffs, academics and retired members. Senior Counsel or "QCs"

make up around one fifth of the practising membership. Of the practising membership, 98 are female. Although advocates represent clients in courts throughout Scotland, all are based in the Advocates Library in Edinburgh which is part of Parliament House. Each practising advocate is required to have a clerk, almost all of whom are also situated in Parliament House. A group of advocates who share the same clerk is known as a "stable". Most advocates work from the library and do not have offices or chambers, and consultation rooms are available within accommodation belonging to the faculty in the vicinity of the Advocates Library.

The Advocates Library is considered to be the finest working law library in the British Isles. The library was formally inaugurated in 1689. From the start the collection was a general one. In 1709 the status of the collection was confirmed when Queen Anne's Copyright Act gave the Keeper of the Library the right to claim a copy of every book published in the British Isles. The collection was increased by purchase and donation, particularly of continental imprints and of manuscripts. The Advocates Library came to be recognised as the natural depository for literary materials of national importance. By the 1850s the library had become in effect Scotland's national library. In 1925 the National Library of Scotland was established when the faculty gifted to the nation its whole non-law collection comprising 750,000 books, pamphlets, manuscripts, maps and sheet music. The Advocates Library has retained the copyright privilege for law publications.

As a working library, the Advocates Library provides accommodation for all members to conduct their practices. Members pay for the library at rates dependent upon their incomes, and no member is provided with an exclusive place. In recent years the Advocates Library has expanded to take account of the increase in the membership of the Bar by providing additional places, and advances in technology have allowed the installation of a new library management system, incorporating an on-line catalogue. Members have access to the library's materials in print and electro-

nic format, 24 hours a day, 365 days a year. Collections are also maintained in the high court buildings in Edinburgh and Glasgow and in the House of Lords in the Palace of Westminster, where the final right of appeal lies in civil cases from Scotland.

In the early 1970s, the faculty established a service company, Faculty Services Limited, which employs almost all of the clerks, and provides services to members such as fee rendering and collection, secretarial services, and the administration of the telephone system. The faculty also has an information technology department which administers the computer systems which are now provided for the library and the clerks.

The faculty is a democratic body led by the dean. The Dean of Faculty is elected by the whole membership and is assisted by five other office bearers, the vice-dean, treasurer, clerk, keeper of the Advocates Library and chairman of Faculty Services Limited, all of whom are elected by the practising membership. These office-bearers remain in practice as advocates and receive no remuneration. The office-bearers are assisted in their work by an elected Faculty Council and by a wide range of committees. The faculty is self-regulating and controls its own admissions and disciplines. A person wishing to become an advocate must generally have obtained an honours degree and the Diploma in Legal Practice from a Scottish University, which is required by all those who wish to practise law as an advocate or a solicitor. Before seeking admission to the faculty, an intransit (as a person seeking admission is known) must serve for a period in a solicitor's office, and undertake a period of pupillage (known as "devilling") with an experienced junior counsel. During devilling, the faculty provides a foundation course teaching advocacy skills and matters such as ethics. An intransit is admitted at a meeting of the faculty, and is then required to swear an oath of allegiance before a judge of the Court of Session in open court. Upon admission, every advocate is entitled to commence practice immediately and use the Advocates Library, and will be provided with the services of a clerk. 