
STATUTORY INSTRUMENTS

1991 No. 1397 (S.132)

**COURT OF SESSION, SCOTLAND
SHERIFF COURT, SCOTLAND**

Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991

Made - - - - *11th June 1991*
Coming into force - - *15th July 1991*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 75 of the Debtors (Scotland) Act 1987(1) and of all other powers enabling them in that behalf, do hereby enact and declare:

**PART I
INTRODUCTORY**

Citation, commencement and revocation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 and shall come into force on 15th July 1991.

(2) The Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1988(2) is hereby revoked.

(3) This Act of Sederunt shall be inserted in the Books of Sederunt.

Interpretation

2.—(1) In this Act of Sederunt unless the context otherwise requires

“the Act of 1987” means the Debtors (Scotland) Act 1987;

“committee of examiners” means the committee appointed under rule 6(1) below;

“Lyon Clerk” means the Lyon Clerk and Keeper of the Records;

“Lord Lyon” means the Lord Lyon King of Arms;

(1) 1987 c. 18.
(2) S.I.1988/2097.

“Lord President” means the Lord President of the Court of Session;

“Policy” means, except in Schedule 2, the single document referred to in rule 9(2) below;

“regional sheriff clerk” means a sheriff clerk appointed by the Secretary of State to be a regional sheriff clerk;

“sheriff clerk” means the sheriff clerk of the sheriff court in which the application for a commission as a sheriff officer was granted; and

“the Society” means the Society of Messengers-at-Arms and Sheriff Officers.

(2) A reference to a specified form in this Act of Sederunt means the form so specified in Schedule 1 to this Act of Sederunt or a form substantially to the same effect with such variation as circumstances may require.

PART II

QUALIFICATIONS, TRAINING AND EXAMINATIONS

Qualification as officer of court

3.—(1) Subject to paragraph (3) below, a person may not be an officer of court unless—

- (a) he has attained the age of 20 years;
- (b) he is not over the age of 70 years;
- (c) subject to rule 5(2) below, he has undergone a period of training for three years with a person who is in practice as an officer of court;
- (d) the officer of court with whom he has undergone a period of training has issued a certificate stating that the period of training has been completed satisfactorily;
- (e) within five years before applying for a commission as a sheriff officer, he has passed all such examinations as may be required by the committee of examiners; and
- (f) he has attained the educational standard determined by the committee of examiners.

(2) An officer of court shall retire from practice as an officer of court on attaining the age of 70 years.

(3) Paragraph (1) of this rule shall not apply to a person who was in practice as an officer of court on 30th November 1988.

(4) Paragraph (2) of this rule shall not apply to a person who was—

- (a) in practice as an officer of court, and
- (b) aged 70 years or over,

on 30th November 1988.

Qualification as messenger-at-arms

4.—(1) A sheriff officer may not become a messenger-at-arms unless—

- (a) subject to paragraph (2) below, he has been in practice as a sheriff officer for a period of not less than two years; and
- (b) within five years before applying to the Court of Session for recommendation for appointment as a messenger-at-arms, he has passed all such examinations as may be required by the committee of examiners.

(2) The Court of Session may, in an application to which rule 7 below applies, on special cause shown, reduce the period of practice required under paragraph (1)(a) above.

Training

5.—(1) An officer of court shall be responsible for the training required by rule 3(1)(c) above of any person whom he employs for the purpose of becoming an officer of court.

(2) The sheriff principal of the sheriffdom to whom an application for a first commission as a sheriff officer under rule 8(1) below is made may, having regard to the previous experience of the applicant, on the written application of that person, reduce the period of training to a period of not less than one year.

Examinations

6.—(1) The Society shall appoint a committee of examiners to examine any person who seeks to apply to become an officer of court.

(2) The committee of examiners shall consist of not more than five persons of whom—

- (a) not more than three shall be members of the Society nominated by the Society;
- (b) one shall be a solicitor nominated by the Law Society of Scotland; and
- (c) one shall not be a member of the Society but shall be nominated by the Society,

in consultation with the sheriff's principal and approved by the Lord President.

(3) The committee of examiners, in consultation with the Society, shall be responsible for—

- (a) determining the educational standard required of candidates;
- (b) setting examination papers; and
- (c) regulating and fixing fees for examinations.

PART III

APPLICATIONS FOR COMMISSION

Applications for recommendation for commission as messenger-at-arms

7.—(1) An application by a sheriff officer for recommendation for a commission as a messenger-at-arms under section 77(1) of the Act of 1987 shall be by petition presented to the Outer House of the Court of Session in Form 1 and signed by the petitioner or his solicitor.

(2) There shall be lodged with a petition under paragraph (1) above—

- (a) an inventory of productions;
- (b) a copy of the entry in the Register of Births relating to the petitioner;
- (c) a certificate from the Society that the petitioner has passed such examinations as may be required by the committee of examiners; and
- (d) a certificate from another officer of court stating the period that the petitioner has been in practice as a sheriff officer.

(3) A petition under paragraph (1) above shall not require a process and shall not be intimated on the walls of court, served or advertised.

(4) Where the court grants the prayer of such a petition, the clerk of the Petition Department of the Court of Session shall send a copy of the petition, with interlocutor granting the prayer written on it, to the Lyon Clerk.

(5) Subject to rule 11(10) below, the Lord Lyon shall not issue a commission to a sheriff officer as a messenger-at-arms until the sheriff officer has lodged with the Lyon Clerk—

- (a) a copy letter of receipt of a premium receipt issued by a regional sheriff clerk in terms of rule 10(3) below; and
- (b) such further evidence as the Lord Lyon may require that the Policy in respect of which the premium receipt was issued is in force and applies to the commission of the sheriff officer as a messenger-at-arms.

(6) When the Lord Lyon issues a sheriff officer with a commission as a messenger-at-arms under section 77(1) of the Act of 1987, he shall administer to him the oath or declaration of allegiance to the Sovereign and the oath or declaration *de fidei administratione officii*.

(7) A commission as a messenger-at-arms shall cease to have effect when the holder of it attains the age of 70 years.

(8) Paragraph (7) of this rule shall not apply to a person who was—

- (a) in practice as a messenger-at-arms, and
- (b) aged 70 years or over,

on 30th November 1988.

Application for commission as sheriff officer

8.—(1) An application by a person for a commission as a sheriff officer in a particular sheriffdom or a particular district of a sheriffdom shall be by initial writ in a summary application in Form 2 to the sheriff principal in such sheriff court as the sheriff principal shall direct and shall be signed by the applicant or his solicitor.

(2) There shall be lodged with an initial writ under paragraph (1) of this rule—

- (a) an inventory of productions;
- (b) a copy of the entry in the Register of Births relating to the applicant;
- (c) the certificate required by rule 3(1)(d) above;
- (d) a certificate from the Society to the effect that the applicant has passed such examinations as may be required by the committee of examiners; and
- (e) two references of good character.

(3) An application under paragraph (1) above shall not be served but shall be ordered to be—

- (a) intimated on the walls of every sheriff court in the sheriffdom or district of the sheriffdom for which appointment as a sheriff officer is sought; and
- (b) advertised once in Form 3 in such newspapers circulating in the sheriffdom as the sheriff principal shall require.

(4) A person who intends to object to such an application shall lodge answers to the application with the sheriff clerk within thirty days from the date of such intimation and advertisement.

(5) Where the sheriff principal is satisfied that the applicant is suitably qualified, and is a fit and proper person, to be a sheriff officer, he may grant to the applicant a commission as a sheriff officer in his sheriffdom or a district within that sheriffdom.

(6) Subject to paragraph (7) and rule 11(11) below the sheriff principal shall not issue a commission to a sheriff officer until the sheriff officer has sent to the sheriff principal—

- (a) the Policy required under rule 9 below; or
- (b) evidence satisfactory to the sheriff principal that the sheriff officer is covered by an existing Policy,

together with such further evidence as the sheriff principal may require that the Policy is in force and applies to the sheriff officer.

(7) In the application of paragraph (6) above in a case where the sheriff officer already holds a commission as a sheriff officer, it shall be sufficient for the sheriff officer to send to the sheriff principal—

- (a) a copy letter of receipt of a premium receipt, issued by the regional sheriff clerk under rule 10(3) below; and
- (b) such further evidence as the sheriff principal may require that the Policy in respect of which the premium receipt was issued is in force and applies to the commission of the sheriff officer in his sheriffdom.

(8) When the sheriff principal issues a commission to a sheriff officer he, or a sheriff, shall administer to the sheriff officer the oath or declaration *de fidei administratione officii*.

(9) Where a person intends to apply to be a sheriff officer in more than one sheriffdom, he shall make a summary application under paragraph (1) of this rule in each sheriffdom in which he seeks to be appointed as sheriff officer.

(10) Where a sheriff officer is issued with a further commission as a sheriff officer in a sheriffdom other than the sheriffdom in which he first obtained a commission, he shall intimate a copy of his subsequent commission, certified by the sheriff clerk, to the sheriff principal of each sheriffdom in which he already holds a commission as a sheriff officer.

(11) Where a messenger-at-arms is issued with a further commission as a sheriff officer he shall intimate a copy of that commission, certified by the sheriff clerk, to the Lord Lyon.

(12) A commission as a sheriff officer shall cease to have effect when the holder of it attains the age of 70 years.

(13) Paragraph (12) of this rule shall not apply to a person who was—

- (a) in practice as a sheriff officer, and
- (b) aged 70 years or over,

on 30th November 1988.

PART IV

THE POLICY

Caution and professional indemnity insurance

9.—(1) An officer of court and any partnership of officers of court shall be covered by—

- (a) a bond of caution to the value of not less than £50,000 in respect of each claim covering each commission held by each officer of court to whom the bond of caution applies as a sheriff officer and, where applicable, as a messenger-at-arms, and
- (b) a policy of professional indemnity insurance for not less than £100,000 in respect of each claim—
 - (i) in the case of an officer of court, covering each commission held by him as a sheriff officer and, where applicable, as a messenger-at-arms, and any employee of the officer of court; and
 - (ii) in the case of a partnership of officers of court, covering the firm, any partner of the firm in respect of each commission held by him as a sheriff officer and, where applicable, as a messenger-at-arms, and any employee of the firm.

(2) The bond of caution and policy of professional indemnity insurance required under paragraph (1) above shall be incorporated in a single document and shall be—

- (a) in such terms as may be approved by the sheriff's principal and the Lord Lyon;
- (b) obtained from a company on the list of guarantee companies approved by the Lord President under rule 200(e)(iv) of the Rules of the Court of Session(3); and
- (c) renewed annually.

Renewals of Policy

10.—(1) Each year every officer of court shall, within 30 days after the expiry of the current Policy, lodge, in accordance with the following paragraphs of this rule, a premium receipt from a company approved under rule 9(2)(b) above stating that he is covered by a Policy in accordance with rule 9 above.

(2) There shall be sent to the sheriff principal of the sheriffdom in which the first current commission of the officer of court as a sheriff officer was granted—

- (a) the premium receipt referred to in paragraph (1) above; and
- (b) such further evidence as the sheriff principal may require that the Policy in respect of which the premium receipt was issued is in force and applies to the sheriff officer.

(3) On being satisfied as to the premium receipt and any further evidence sent to him under paragraph (2) above, the sheriff principal shall cause the premium receipt to be lodged with the regional sheriff clerk who shall issue to the officer of court a letter of receipt of such premium receipt and such copy letters of receipt as may reasonably be required by the officer of court.

(4) Where an officer of court holds a commission as a sheriff officer in more than one sheriffdom, he shall send to the sheriff principal of every sheriffdom in which he holds a commission (other than the first current commission)—

- (a) a copy letter of receipt of such a premium receipt issued by the regional sheriff clerk; and
- (b) such further evidence as the sheriff principal may require that the Policy in respect of which the premium receipt was issued is in force and applies to the commission of the sheriff officer in his sheriffdom.

(5) Where an officer of court is also a messenger-at-arms, he shall send to the Lyon Clerk—

- (a) a copy letter of receipt of such a premium receipt issued by the regional sheriff clerk in respect of his commission as a sheriff officer; and
- (b) such further evidence as the Lord Lyon may require that the Policy in respect of which the premium receipt was issued is in force and applies to the commission of the officer of court as a messenger-at-arms.

(6) Where an officer of court fails to lodge a premium receipt under paragraph (1) above—

- (a) in respect of any commission as a sheriff officer, the sheriff principal may suspend the officer of court from practice as a sheriff officer; and
- (b) where applicable, in respect of his commission as a messenger-at-arms, a Lord Ordinary may, following a report sent to the Deputy Principal Clerk of Session by the Lyon Clerk, suspend the officer of court from practice as a messenger-at-arms.

(7) Where an officer of court has been suspended under paragraph (6) above, and sub-sequently lodges a premium receipt under paragraph (1) above, the sheriff principal and, where applicable, in respect of his commission as a messenger-at-arms a Lord Ordinary may recall his suspension.

Transitional provisions

11.—(1) This rule applies to officers of court who are in practice on the date on which this Act of Sederunt comes into force.

(2) In this rule—

- (a) “the operative date” means the date on which this Act of Sederunt comes into force;
- (b) “the compliance date” in respect of an officer of court means whichever shall first occur of—
 - (i) the date on which the bond of caution in respect of that officer of court current on the operative date expires;
 - (ii) where more than one bond of caution is current in respect of that officer of court on the operative date, the date on which the first such bond expires;
 - (iii) the date on which the policy of professional indemnity insurance current in respect of that officer of court on the operative date expires; and
 - (iv) where more than one such policy of professional indemnity insurance is current in respect of that officer of court on the operative date, the date on which the first such policy expires; and
- (c) “the prescribed documents” means—
 - (i) a copy letter of receipt issued by a regional sheriff clerk in respect of the bond of caution required under paragraph 1 of Schedule 2; and
 - (ii) a copy letter of receipt issued by a regional sheriff clerk in respect of a copy premium receipt from an insurance company for the policy of professional indemnity insurance required under paragraph 2 of Schedule 2.

(3) Within thirty days of the compliance date an officer of court shall send a Policy, together with such further evidence as the sheriff principal may require that the Policy is in force and applies to the officer of court, to the sheriff principal of the sheriffdom in which his first current commission as a sheriff officer was granted.

(4) On being satisfied as to the Policy and any further evidence furnished under paragraph (3) above, the sheriff principal shall cause the Policy and any such further evidence to be transmitted to the regional sheriff clerk who shall issue to the officer of court a letter of receipt of the Policy and such copy letters of receipt as may reasonably be required by the officer of court.

(5) Where an officer of court holds a commission as a sheriff officer in more than one sheriffdom, he shall send to the sheriff principal of every sheriffdom in which he holds a commission (other than the first current commission)—

- (a) a copy letter of receipt of the Policy issued by the regional sheriff clerk under paragraph (4) above; and
- (b) such further evidence as the sheriff principal may require that the Policy is in force and applies to the commission of the sheriff officer in his sheriffdom.

(6) Where an officer of court is also a messenger-at-arms, he shall send to the Lyon Clerk—

- (a) a copy letter of receipt of the Policy issued by the regional sheriff clerk in respect of his commission as a sheriff officer; and
- (b) such further evidence as the Lord Lyon may require that the Policy is in force and applies to the commission of the officer of court as a messenger-at-arms.

(7) Where an officer of court fails to lodge a Policy under paragraph (3) above—

- (a) in respect of any commission as a sheriff officer, the sheriff principal may suspend the officer of court from practice as a sheriff officer; and

(b) where applicable, in respect of his commission as a messenger-at-arms, a Lord Ordinary may, following a report sent to the Deputy Principal Clerk of Session by the Lyon Clerk, suspend the officer of court from practice as a messenger-at-arms.

(8) Where an officer of court has been suspended under paragraph (7) above and sub-sequently lodges a Policy under paragraph (3) above the sheriff principal and, where applicable, in respect of his commission as a messenger-at-arms, a Lord Ordinary may recall his suspension.

(9) Until the compliance date, an officer of court shall comply with Schedule 2 to this Act of Sederunt.

(10) Where an officer of court—

(a) applies for recommendation for a commission as a messenger-at-arms; and

(b) the prayer of the petition under rule 7(1) above is granted before the compliance date in respect of that officer of court,

notwithstanding rule 7(5) above, the Lord Lyon shall not issue a commission to that officer of court as a messenger-at-arms until that officer of court has lodged with the Lyon Clerk

(i) the prescribed documents; or

(ii) the copy letter of receipt and further evidence referred to in rule 7(5) above.

(11) Where an officer of court—

(a) applies for a commission as a sheriff officer in a particular sheriffdom or a particular district of a sheriffdom, and

(b) his application is granted before the compliance date in respect of that officer of court,

notwithstanding rules 8(6) and 8(7) above, the sheriff principal shall not issue a commission to the officer of court in respect of that sheriffdom or district until the officer of court has sent to the sheriff principal

(i) the prescribed documents; or

(ii) the copy letter of receipt and further evidence referred to in rule 8(7) above.

PART V

ACCOUNTS

Officers of court to keep accounts

12. Every officer of court shall keep—

(a) written books and accounts, separately in respect of each client creditor, to show all monies collected by him from the creditor's debtor; and

(b) a separate bank account in respect of client creditors.

Accountant's certificate

13.—(1) Every officer of court shall deliver annually to every sheriff principal from whom he holds a commission and, if he is a messenger-at-arms, to the Lyon Clerk a certificate by an accountant within six months of the end of his accounting year in respect of that year.

(2) Such a certificate shall state that in the opinion of the accountant satisfactory accounts have been kept in accordance with rule 12 above.

(3) In order to enable an accountant to grant such a certificate, every officer of court shall make available to the accountant such books and accounts as the accountant may reasonably require.

(4) If, after making the examination referred to in paragraph (3) above, it appears to the accountant that he is not able to sign such a certificate, he shall prepare a report giving his reasons.

(5) Where an accountant prepares a report under paragraph (4) above, he shall send a copy of it—

- (a) in the case of a sheriff officer, to every sheriff principal who has granted a commission to the sheriff officer;
- (b) in the case of a messenger-at-arms, to the Lyon Clerk; and
- (c) to the officer of court concerned.

(6) In this rule, “an accountant” means an accountant in public practice as a professional accountant who is a member of one or more of the following bodies:—

- (a) the Institute of Chartered Accountants of Scotland;
- (b) the Institute of Chartered Accountants in England and Wales;
- (c) the Institute of Chartered Accountants in Ireland; and
- (d) the Chartered Association of Certified Accountants.

(7) Where an officer of court fails to deliver to the sheriff principal or the Lyon Clerk a certificate by an accountant under paragraph (1) above—

- (a) in respect of his commission as a sheriff officer, the sheriff principal may suspend the officer of court from practice as a sheriff officer; and
- (b) where applicable, in respect of his commission as a messenger-at-arms, a Lord Ordinary may, following a report sent to the Deputy Principal Clerk of Session by the Lyon Clerk, suspend the officer of court from practice as a messenger-at-arms.

(8) Where an officer of court has been suspended under paragraph (7) above and sub-sequently lodges a certificate by an accountant under paragraph (1) above, the sheriff principal and, where applicable, in respect of his commission as a messenger-at-arms, a Lord Ordinary may recall his suspension.

PART VI

OFFICIAL FUNCTIONS AND EXTRA-OFFICIAL ACTIVITIES

Official functions

14.—(1) Without prejudice to rule 16 in the First Schedule to the Sheriff Courts (Scotland) Act 1907⁽⁴⁾, rule 11 of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976⁽⁵⁾, section 91(2) of the Act of 1987, and any functions under any other enactment, an officer of court may exercise the following official functions—

- (a) subject to paragraph (2) below, collect any debt constituted by decree or recoverable by summary warrant;
- (b) execute diligence; or
- (c) execute a citation or serve any document required under any legal process,

in any place in respect of which he holds a commission as an officer of court.

(2) A debt constituted by decree or recoverable by summary warrant may be collected—

- (a) in the case of a decree or summary warrant of the sheriff court, by a sheriff officer; or

(4) 1907 c. 51 (7 Edw. 7); the First Schedule was substituted by S.I. 1983/747.

(5) S.I. 1976/476; rule 11 was substituted by S.I. 1980/455.

(b) in the case of a decree or summary warrant of the Court of Session, by a messenger-at-arms.

(3) Without prejudice to rule 16 in the First Schedule to the Sheriff Courts (Scotland) Act 1907, rule 11 of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976, section 91(2) of the Act of 1987, and any functions under any other enactment, a person who holds a commission as a sheriff officer may practise as a sheriff officer only in the sheriffdom or district of a sheriffdom in respect of which he has been granted a commission under rule 8(5) above.

(4) An officer of court may refuse to execute a citation, serve any document required under any legal process or execute diligence where—

- (a) the prescribed, or reasonable, expenses have not been tendered to him or secured by or on behalf of the person instructing him; or
- (b) it is not reasonably practicable for him to carry out his instructions and this has been intimated forthwith on receipt of the instructions to the person instructing him.

(5) An officer of court may not—

- (a) form a company within the meaning of section 735(1) of the Companies Act 1985⁽⁶⁾ for the purpose of exercising any of his official functions; or
- (b) exercise any of his official functions as an employee of a company within the meaning of section 735(1) of the Companies Act 1985.

Extra-official activities

15.—(1) Subject to paragraph (2) below, the extra-official activities of an officer of court may include—

- (a) collection for remuneration of any debt not constituted by decree where authorised to do so under rule 16 below; or
- (b) in the absence of any statutory provision to the contrary, service on a person for remuneration of any notice which is required to be served under any enactment.

(2) An officer of court who performs an extra-official activity under paragraph (1) above shall not state or imply that he is acting in his capacity as an officer of court.

(3) An officer of court may not be—

- (a) an auctioneer with his own auction room;
- (b) an elected or appointed member of a public or local authority;
- (c) a house factor;
- (d) a member of the Faculty of Advocates;
- (e) a member of the Law Society of Scotland;
- (f) a member of the United Kingdom, or European, Parliament;
- (g) a money lender; or
- (h) a police officer.

Applications for authorisation to collect debts not constituted by decree

16.—(1) A sheriff principal may, on the application of a sheriff officer who has his principal place of business in the sheriffdom and holds a commission from the sheriff principal, authorise that sheriff officer for remuneration to collect or be engaged in the collection of debts not constituted by decree on such conditions as the sheriff principal may consider appropriate.

(6) 1985 c. 6.

(2) An application by a sheriff officer under paragraph (1) above shall be made in writing and shall disclose any material interest held by the sheriff officer, a member of his family or a business associate in any organisation on behalf of which he seeks authority to collect debts.

(3) Where a sheriff officer, a member of his family or a business associate acquires an interest mentioned in paragraph (2) above, after authorisation under paragraph (1), above, and intends to collect debts not constituted by decree on behalf of that organisation, the sheriff officer shall make a further application to the sheriff principal under paragraph (1) above.

PART VII

REGISTERS OF OFFICERS OF COURT

Keeping of registers

17. There shall be kept—

- (i) by the regional sheriff clerk in respect of every sheriff officer who holds a commission in the sheriffdom; and
- (ii) by the Lyon Clerk in respect of every messenger-at-arms,

a record book in which there shall be registered in respect of each officer of court—

- (a) the address of his principal, and any other, place of business or employment, his private address and any change of such address;
- (b) every commission held by him as an officer of court;
- (c) any extra-official activities carried on by him for remuneration, and any authorisation by a sheriff principal in respect of any such activity;
- (d) any interest disclosed by him under rule 16(2) or (3) above;
- (e) any suspension or deprivation of office and any recall of suspension or deprivation of office;
- (f) the date on which he ceased to practise where notice to that effect has been given;
- (g) the dates of his accounting year; and
- (h) the renewal date in each year of the Policy currently in force in respect of each commission held by him as an officer of court.

Intimation of information by officers of court for registers

18.—(1) An officer of court shall intimate any change of his employment, business or private address within 21 days of such change—

- (a) to the regional sheriff clerk of each sheriffdom in which he holds a commission as a sheriff officer; and
- (b) in the case of a messenger-at-arms, to the Lyon Clerk.

(2) An officer of court who engages in extra-official activities (whether an activity under rule 15(1) above or otherwise) shall intimate such activities and any authorisation and interests disclosed by him under rule 16(2) or (3) above—

- (a) to the regional sheriff clerk of each sheriffdom in which he holds a commission as a sheriff officer; and
- (b) in the case of a messenger-at-arms, to the Lyon Clerk.

(3) An officer of court who intends to cease to practise as a sheriff officer shall, before the date on which he ceases to practise, give notice of the date on which he will cease to practise—

- (a) in the case of a sheriff officer, to the sheriff principal of each sheriffdom in which he holds a commission as a sheriff officer; and
- (b) in the case of a messenger-at-arms, to the Lyon Clerk.

(4) An officer of court shall give notice of the dates of his accounting year and of the renewal date in each year of the Policy currently in force in respect of each commission held by him as an officer of court—

- (a) in the case of a sheriff officer, to the regional sheriff clerk of each sheriffdom in which he holds a commission as a sheriff officer; and
- (b) in the case of a messenger-at-arms, to the Lyon Clerk.

PART VIII

REPORTS AND INVESTIGATIONS OF CONDUCT OF OFFICERS OF COURT

Reports and complaints

19.—(1) A copy of a report prepared under section 78(3) of the Act of 1987 in respect of a messenger-at-arms shall be sent to the Deputy Principal Clerk of Session who shall put the copy report before a judge nominated by the Lord President.

(2) Where a judge of the Court of Session or a sheriff principal has reason to believe that an officer of court may have been guilty of misconduct as provided in section 79(1)(c) of the Act of 1987, he shall put the allegation in writing.

(3) A report or complaint under section 79(1)(b)(i) of the Act of 1987 in respect of a messenger-at-arms shall be sent to the Deputy Principal Clerk of Session who shall put the report or complaint, as the case may be, before the judge nominated under section 79(2) of that Act.

Opportunity to officer of court to reply to allegation of misconduct

20. Where a report or complaint under section 79(1)(a) or (b), or a complaint under section 79(1)(c), of the Act of 1987 has been made, the judge nominated under section 79(2) of that Act or the sheriff principal, as the case may be, shall cause a copy of the report or complaint to be sent to the officer of court about whom an allegation of misconduct has been made together with a letter requesting him to reply within 14 days admitting, denying or giving an explanation of the alleged misconduct.

PART IX

DISCIPLINARY PROCEEDINGS

Disciplinary proceedings against messengers-at-arms

21.—(1) Disciplinary proceedings under section 79(3)(a) of the Act of 1987 against a messenger-at-arms shall be by petition presented to the Outer House of the Court of Session in which the messenger-at-arms complained against shall be made the respondent.

(2) Subject to the following provisions of this rule, rules 191 to 198 of the Rules of the Court of Session⁽⁷⁾ shall apply to a petition under this rule.

(3) A petition under paragraph (1) above shall include—

(a) averments specifying—

(i) the alleged misconduct;

(ii) the facts established by the investigation under section 79(2) of the Act of 1987 alleged to be the probable cause of misconduct; and

(b) a prayer praying the Lords of Council and Session to order—

(i) service of the petition on the respondent;

(ii) the respondent to lodge answers within 21 days from the date of service;

(iii) intimation of the petition to the Lord Advocate;

(iv) a date for a hearing for further procedure; and

(v) in the event of the respondent being found guilty of misconduct, such order under section 80(5) of the Act of 1987, if any, as the court considers appropriate.

(4) When making the first order for service and intimation, the Lord Ordinary shall fix a date for a hearing for further procedure; and the petitioner shall intimate that date to the respondent and the Lord Advocate.

Procedure in proceedings against messengers-at-arms

22.—(1) This rule applies to a petition under rule 21 above.

(2) Subject to the following provisions of this rule, the Lord Ordinary shall determine the procedure to be followed in such a petition.

(3) Where the respondent fails to appear or be represented at the hearing for further procedure, the Lord Ordinary may grant the prayer of the petition.

(4) Where a further hearing or a proof is ordered, the petitioner shall fix a date with the Keeper of the Rolls of the Court of Session, and the Keeper of the Rolls shall fix an early date.

(5) Where a proof is fixed—

(a) the interlocutor allowing the proof shall be sufficient warrant for the citation of witnesses on not less than seven days' notice; and

(b) the parties may agree to dispense with the services of a shorthand writer.

(6) After a hearing on the question whether there was misconduct by the respondent, the Lord Ordinary may give his decision orally or make avizandum and issue his decision in writing at a later date.

(7) Where the Lord Ordinary pronounces an interlocutor under paragraph (3) or (6) above, or issues his decision in writing under paragraph (6), the clerk of court shall send a copy of the interlocutor or a copy of the decision, as the case may be, to the respondent.

(8) Where the respondent is found guilty of misconduct after a hearing to determine that matter, the court shall make no order under section 80(5) of the Act of 1987 without first giving the respondent an opportunity to be heard, or to make representations in writing, in mitigation.

(9) A hearing of a petition under section 79(3)(a) of the Act of 1987 shall be held in public unless—

(a) the respondent requests that it be held in private; or

(7) S.I. 1965/321; relevant amending instruments are S.I. 1978/799, 1986/514 and 1941, 1987/1206 and 2160 and 1990/705.

- (b) the judge considers that it would be prejudicial to the interests of justice if the hearing were not held, in whole or in part, in private.
- (10) Where—
 - (a) a fine is imposed on the respondent, the clerk of court shall intimate details of the fine to the Lord Advocate;
 - (b) an order is made for repayment under section 80(5)(d) of the Act of 1987, the clerk of court shall intimate the order to the person to whom repayment is to be made; and
 - (c) an order is made under section 80(1), (4) or (8)(b) of the Act of 1987, the clerk of court shall intimate the order to the company from which the Policy currently in force in respect of the respondent was obtained.
- (11) The warrant attached to an extract of a decree for payment of a fine shall be in the following terms:— “and the Lords grant warrant for all lawful execution hereon”.

Disciplinary proceedings against sheriff officers

23.—(1) Disciplinary proceedings under section 79(3)(a) of the Act of 1987 against a sheriff officer shall be by initial writ in a summary application, to the sheriff principal who appointed the solicitor under section 79(2) of the Act of 1987 to investigate, in which the sheriff officer complained against shall be made the respondent.

- (2) An application under paragraph (1) above shall include—
 - (a) averments specifying—
 - (i) the alleged misconduct;
 - (ii) the facts established by the investigation under section 79(2) of the Act of 1987 alleged to be the probable cause of misconduct; and
 - (b) a crave seeking the sheriff principal to order—
 - (i) service of the application on the respondent;
 - (ii) the respondent to lodge defences within 14 days from the date of service;
 - (iii) intimation of the application to the Lord Advocate;
 - (iv) a date for a hearing for further procedure; and
 - (v) in the event of the respondent being found guilty of misconduct, such order under section 80(7) of the Act of 1987, if any, as the court considers appropriate.
- (3) When making the first order for service and intimation, the sheriff principal shall fix a date for a hearing for further procedure; and the applicant shall intimate that date to the respondent and the Lord Advocate.

Procedure in proceedings against sheriff officers

- 24.**—(1) This rule applies to an application under rule 23 above.
- (2) Subject to the following provisions of this rule, the sheriff principal shall determine the procedure to be followed in such an application.
- (3) Where the respondent fails to appear or to be represented at the hearing for further procedure, the sheriff principal may grant the crave of the application.
- (4) Where a proof is fixed—
 - (a) the interlocutor allowing the proof shall be sufficient warrant for the citation of witnesses on not less than seven days' notice; and
 - (b) the parties may agree to dispense with the services of a shorthand writer.

(5) After a hearing on the question whether there was misconduct by the respondent, the sheriff principal may give his decision orally or make avizandum and issue his decision in writing at a later date.

(6) Where the sheriff principal pronounces an interlocutor under paragraph (3) or (5) above, or issues his decision in writing under paragraph (5), the clerk of court shall send a copy of the interlocutor or a copy of the decision, as the case may be, to the respondent.

(7) Where the respondent is found guilty of misconduct after a hearing to determine that matter, the court shall make no order under section 80(7) of the Act of 1987 without first giving the respondent an opportunity to be heard, or to make representations in writing, in mitigation.

(8) A hearing of an application under section 79(3)(a) of the Act of 1987 shall be held in public unless—

- (a) the respondent requests that it be held in private; or
- (b) the sheriff principal considers that it would be prejudicial to the interests of justice if the hearing were not held, in whole or in part, in private.

(9) Where—

- (a) a fine is imposed on the respondent, the sheriff clerk shall intimate details of the fine to the Lord Advocate;
- (b) an order is made for repayment under section 80(7)(b) of the Act of 1987, the clerk of court shall intimate the order to the person to whom repayment is to be made; and
- (c) an order is made under section 80(2), (6) or (8)(b) or 81(3) of the Act of 1987, the clerk of court shall intimate the order to the company from which the Policy currently in force in respect of the respondent was obtained.

(10) The warrant attached to an extract of a decree for payment of a fine shall be in the following terms:— “and the Sheriff Principal grants warrant for all lawful execution hereon”.

Remits of disciplinary proceedings

25. Where it is considered appropriate in the circumstances of a particular case, -disciplinary proceedings may be remitted—

- (a) by the Court of Session, to a sheriff principal to report; or
- (b) by a sheriff principal, to another sheriff principal.

Opportunity to officer of court to make representations where order considered under section 80(1) and (2) of the Act of 1987

26. Where the Court of Session under section 80(1), or a sheriff principal under section 80(2), of the Act of 1987 considers making an order under one of these sub-sections, the Court of Session or the sheriff principal, as the case may be—

- (a) shall give the officer of court an opportunity to make representations orally or in writing; and
- (b) may ordain the officer of court to appear,

before making such an order.

Appeals

27.—(1) An appeal from a Lord Ordinary or sheriff principal to the Inner House of the Court of Session under section 82 of the Act of 1987 shall be made within 21 days of the date of the decision appealed against.

(2) Subject to paragraph (1) above, rule 290 of the Rules of the Court of Session⁽⁸⁾ shall apply to an appeal under section 82 of the Act of 1987.

Suspension under particular rules

28.—(1) Where the sheriff principal suspends an officer of court from practice as a sheriff officer under rule 10(6)(a), 11(7)(a) or 13(7)(a) above, he shall cause intimation to be made—

- (a) to every other sheriff principal from whom the sheriff officer holds a commission as a sheriff officer; and
- (b) where the sheriff officer is also a messenger-at-arms, to the Deputy Principal Clerk of Session and the Lord Lyon.

(2) Where the Court of Session suspends an officer of court from practice as a messenger-at-arms under rule 10(6)(b), 11(7)(b) or 13(7)(b) above, it shall cause intimation to be made to the Lord Lyon, who shall cause intimation thereof to be made to every sheriff principal from whom the officer of court holds commission as a sheriff officer.

(3) Where a sheriff principal receives intimation under paragraph (1)(a) or (2) above, he may suspend the officer of court from practice as a sheriff officer.

(4) Where the Deputy Principal Clerk of Session receives intimation under paragraph (1)(b) above, he shall place the intimation before a Lord Ordinary, who may suspend the officer of court from practice as a messenger-at-arms.

(5) Where, after an officer of court has been suspended under rule 10(6), 11(7) or 13(7) above, that officer of court subsequently lodges the premium receipt, Policy or certificate, as the case may be, the regional sheriff clerk of the sheriffdom in which the officer of court's first current commission as a sheriff officer was granted shall intimate that fact to—

- (a) every other sheriff principal from whom the officer of court holds a commission as a sheriff officer; and
- (b) where the sheriff officer is also a messenger-at-arms, to the Deputy Principal Clerk of Session and the Lord Lyon,

and each sheriff principal and, where applicable, in respect of his commission as a messenger-at-arms, a Lord Ordinary, may recall his suspension.

PART X

MISCELLANEOUS

Mandate to recover debt in diligence

29. Instructions to an officer of court to execute diligence in execution shall, unless the contrary intention is expressed, include a mandate to recover payment for, or on account of, any debt in respect of which the diligence is executed.

Dealings in goods pointed or sold by virtue of diligence

30. An officer of court shall not—

- (a) himself or through an agent, purchase any goods pointed or sold by virtue of a diligence in which he has acted in course of one of his official functions;

(8) [S.I. 1965/321](#); relevant amending instruments are [S.I. 1973/540](#), [1982/1825](#), [1984/449](#) and [1986/1955](#).

- (b) share with the creditor any goods of a debtor or the proceeds of sale of such goods adjudged to the creditor of the debtor by virtue of a diligence in which the officer of court has acted in course of one of his official functions; or
- (c) share with the purchaser any profit made by the purchaser in re-selling any goods bought at a sale carried out by virtue of diligence in which the officer of court has acted in course of one of his official functions.

Official identity card

31. An officer of court shall forthwith upon ceasing to practise as an officer of court deliver the official identity card issued to him under section 86 of the Act of 1987 to the person from whom he holds his commission.

Edinburgh
11th June 1991

J.A.D. Hope
Lord President, IPD

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Rule 2(2)

FORMS

Form 1 FORM OF PETITION TO THE COURT OF SESSION FOR RECOMMENDATION FOR
A COMMISSION AS A MESSENGER-AT-ARMS

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 7(1)

UNTO THE RIGHT HONOURABLE
THE LORDS OF COUNCIL AND SESSION

PETITION

[AB] (address)

for

Recommendation for a commission as a messenger-at-arms

HUMBLY SHEWETH

1. That the petitioner was born on _____ and is a sheriff officer.
2. That the first current [or only] commission of the petitioner as a sheriff officer was granted by the sheriff principal of (name of sheriffdom) at (name of court) on (insert date).
3. That the petitioner has been in practice as a sheriff officer for a period of years. [The petitioner seeks to have the period of practice required under rule 4(1)(a) of the Messengers-at-Arms and Sheriff Officers Rules 1991 reduced from two years to (state period). He does so on the following grounds, namely (state grounds).]
4. That the petitioner holds a certificate from the Society of Messengers-at-Arms and Sheriff Officers that he has passed the examinations of that Society.
5. That the petitioner has not been convicted of any offence [except (state any convictions which are not spent convictions by virtue of the Rehabilitation of Offenders Act 1974)(a)].
6. That the petitioner is a fit and proper person to be granted a commission as a messenger-at-arms and makes this application for a recommendation to the Lord Lyon King of Arms for a commission as a messenger-at-arms.
7. That this petition is presented under section 77(1) of the Debtors (Scotland) Act 1987 and rule 7 [or rules 4(2) and 7] of the Messengers-at-Arms and Sheriff Officers Rules 1991.

MAY IT THEREFORE please your Lordships [to reduce the period of practice required under rule 4(1)(a) of the Messengers-at-Arms and Sheriff Officers Rules 1991 from two years to (insert period) and] to recommend the petitioner to the Lord Lyon King of Arms for a commission as a messenger-at-arms; or to do otherwise in the premises as to your Lordships shall seem proper.

ACCORDING TO JUSTICE, &c

(a) 1974 c.53.

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Form 2FORM OF INITIAL WRIT IN SUMMARY APPLICATION TO THE SHERIFF PRINCIPAL FOR A COMMISSION AS A SHERIFF OFFICER

Rule 8(1)

SHERIFFDOM OF AT

INITIAL WRIT

in causa

[AB] (address)

Applicant

for

A commission as a sheriff officer

The applicant craves the court to grant to him a commission as a sheriff officer in the [(name of district(s)) district of the] sheriffdom of (name of sheriffdom).

CONDESCENDENCE

1. The applicant was born on
2. The applicant has [or proposes to have] a principal place of business [or is to be employed] at (insert address). [He has (an)other place(s) of business at (insert address(es)).] [The applicant holds a commission as a sheriff officer in the following sheriffdom(s) [or districts of sheriffdoms]]. [He holds a commission as a messenger-at-arms].
3. The applicant has undergone a period of training with [CD], sheriff officers, (insert business address) for a period of years. [The period of training was reduced to year(s) by the sheriff principal on (date). A [certified] copy of the relevant interlocutor is produced].
4. The applicant holds a certificate of completion of training issued by [CD]. He also holds a certificate from the Society of Messengers-at-Arms and Sheriff Officers that he has passed the examinations of that Society.
5. The applicant is of good character as endorsed by the two character references produced. The applicant has not been convicted of any offence [except (state any convictions which are not spent convictions by virtue of the Rehabilitation of Offenders Act 1974)].
6. The applicant is a fit and proper person to hold a commission as a sheriff officer in the sheriffdom [of (insert name of district) district of the sheriffdom] and makes this application for a commission.
7. This application is made under rule 8 of the Messengers-at-Arms and Sheriff Officers Rules 1991.

PLEA-IN-LAW

The applicant being a fit and proper person to hold a commission as a sheriff officer, the application should be granted as craved.

IN RESPECT WHEREOF

Applicant [or [EF]
(insert business address)
Solicitor for applicant]

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Form 3NOTICE OF ADVERTISEMENT IN NEWSPAPER OF APPLICATION FOR COMMISSION AS A SHERIFF OFFICER

Rule 8(3)(b)

APPLICATION by [AB]

for

COMMISSION AS A SHERIFF OFFICER

NOTICE is hereby given that application has been made to the sheriff principal of (name of sheriffdom) at (name of court) by [AB] (address or business address) for a commission as a sheriff officer in (name of sheriffdom or district of sheriffdom). The sheriff principal, by interlocutor (insert date), ordered any person who wishes to object to the application of [AB] to lodge answers to the application with the sheriff clerk at (name and address of court) within thirty days from the date of this notice.

(name and address of solicitor)
Solicitor for applicant

SCHEDULE 2

Rule 11(9)

TRANSITIONAL PROVISIONS

Bonds of caution

1.—(1) An officer of court shall be covered by a bond of caution in the form set out in sub-paragraph (2) of this paragraph to the value of £50,000 from a company on the list of guarantee companies approved by the Lord President under rule 200(e)(iv) of the Rules of the Court of Session in respect of any commission held by him as—

- (a) a sheriff officer; and
- (b) where applicable, a messenger-at-arms,

and the bond of caution shall be renewed annually.

(2) The form referred to in sub-paragraph (1) of this paragraph is as follows—
“BOND OF CAUTION

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We, (name of cautioner), having a registered office at (insert address), hereby BIND and OBLIGE ourselves and our whole funds and property as cautioner and surety for the period from _____ to _____; for (name and address of officer of court) as OFFICER OF COURT that he shall faithfully, truly and honestly use and exercise the duties of the office of OFFICER OF COURT to ALL and SUNDRY without fear and favour upon payment of his reasonable expenses and if he fails to execute these duties, we shall incur whatsoever damages, interest and expenses any person shall happen to sustain through the dishonest, illegal or fraudulent actions or omissions of (name of officer of court). I, (name of officer of court), as principal, do hereby BIND and OBLIGE myself, my heirs, executors and successors and we, (name of cautioner), as cautioner, do hereby BIND and OBLIGE ourselves jointly and severally to pay and make good the same to any person interested and wronged by declaring that the obligation on us, the cautioner, is (in accordance with [paragraph 1 of Schedule 2] [rule 9] of the Messengers-at-Arms and Sheriff Officers Rules [1991] [1988]) restricted to, and shall not exceed the sum of, £50,000.

We, (name of cautioner) accordingly, hereby BIND and OBLIGE ourselves, within the aforementioned limits of the cautionary obligation, for the damages, interest and expenses any such person shall sustain hereby:

And we consent to the registration hereof for preservation and execution: IN WITNESS WHEREOF

Policies of professional indemnity insurance

2.—(1) An officer of court and any partnership of officers of court shall be covered by a policy of professional indemnity insurance from an insurance company to a minimum limit of £100,000 in respect of—

- (a) the officer of court in respect of any commission as—
 - (i) a sheriff officer; and
 - (ii) where applicable, a messenger-at-arms;
- (b) the partnership of officers of court in respect of the firm; and
- (c) the partnership of officers of court in respect of its employees,

and the policy shall be renewed annually.

(2) Every policy of professional indemnity insurance shall be in such terms as may be approved by the sheriff's principal and the Lord Lyon.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt revokes the Messengers-at-Arms and Sheriff Officers Rules 1988. It re-enacts these Rules with a number of amendments. In particular it—

- (a) amends the definition of Lyon Clerk (rule 2(1));
- (b) provides for a sheriff officer to make a further oath or declaration *de fidei administratione officii* on becoming a messenger-at-arms (rule 7(6));

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- (c) provides that a commission as a messenger-at-arms or sheriff officer ceases to have effect on the holder attaining the age of 70 years (rules 7(7), 8(12));
- (d) provides that a certificate of examination passes shall be issued by the Society of Messengers-at-Arms and Sheriff Officers and not by its committee of examiners (rules 7(2)(c), 8(2)(d));
- (e) provides for the bond of caution and policy of professional indemnity insurance in respect of an officer of court to be provided in the form of a single document (Part IV), and provides transitional provisions (rule 11 and Schedule 2);
- (f) provides for suspension of an officer of court for failure to lodge a certificate by an accountant (rule 13(7));
- (g) provides for intimation of suspension of an officer of court pending lodging of certain documents to other relevant persons and for suspension by them (rule 28).