



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART V

#### MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

#### **75 Regulation of organisation, training, conduct and procedure.**

- (1) The Court of Session may, by Act of Sederunt, in respect of officers of court—
- (a) regulate their organisation;
  - (b) regulate their training and the qualifications required to obtain a commission as messenger-at-arms or sheriff officer;
  - (c) regulate their conduct in exercising their official functions;
  - (d) regulate the scope of their official functions;
  - (e) make provision prohibiting the undertaking by them of activities other than their official functions (referred to in this Part of this Act as “extra-official activities”) which appear to the Court to be incompatible with their official functions;
  - (f) make provision permitting the undertaking by them for remuneration of other extra-official activities, not appearing to the Court to be incompatible as aforesaid, and the Act of Sederunt may attach conditions to any such permission;
  - (g) prescribe the procedure in respect of applications for a commission as messenger-at-arms under section 77 of this Act or as sheriff officer;
  - (h) prescribe the procedure in disciplinary proceedings against them under section 79 of this Act, and provide for the remit of any such proceedings from the Court of Session to a sheriff principal, from one sheriff principal to another sheriff principal and from a sheriff principal to the Court of Session;
  - (j) make provision for the keeping of accounts by them and the auditing of those accounts;
  - (k) make provision for the keeping of records by them and the inspection of those records;
  - (l) make provision in respect of the finding of caution by them;

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- (m) make such other provision as may appear to the Court to be necessary or proper.
- (2) No extra-official activity (not being an activity prohibited or regulated by an Act of Sederunt made under subsection (1)(e) or (f) above) may be undertaken by an officer of court for remuneration unless the officer of court obtains the permission of the sheriff principal from whom he holds a commission to his undertaking the activity, but the sheriff principal shall not withhold such permission unless it appears to him that the undertaking by the officer of court of the activity would be incompatible with the officer of court's official functions.
- (3) The sheriff principal may attach conditions to any permission granted by him under subsection (2) above.

## 76 **Advisory Council.**

- (1) There shall be a body, (to be known as “the Advisory Council on Messengers-at-Arms and Sheriff Officers” and in this section referred to as “the Advisory Council”) whose duties shall be to advise the Court of Session on the making of Acts of Sederunt under section 75 of this Act and generally to keep under review all matters relating to officers of court.
- (2) The Advisory Council shall consist of—
  - (a) the following persons appointed by the Lord President of the Court of Session—
    - (i) a judge of the Court of Session who shall act as chairman;
    - (ii) 2 sheriffs principal;
    - (iii) 2 officers of court; and
    - (iv) 2 solicitors;
  - (b) one person appointed by the Lord Advocate; and
  - (c) the Lord Lyon King of Arms.
- (3) The secretary of the Advisory Council shall be appointed by the Secretary of State.
- (4) Subject to subsections (5) and (6) below, the members of the Advisory Council appointed under paragraphs (a) and (b) of subsection (2) above shall hold office for 3 years and be eligible for reappointment.
- (5) Subsection (4) above applies to members of the Advisory Council appointed under paragraph (a) of subsection (2) above only so long as they respectively retain the offices or, as the case may be, qualification specified in that paragraph.
- (6) If the Lord President or, as the case may be, the Lord Advocate is satisfied that a person appointed by him under subsection (2) above has ceased to be a fit and proper person to hold the appointment, he may terminate that person's appointment.
- (7) Where a member of the Advisory Council appointed under subsection (2)(a) or (b) above ceases to be a member (whether by resignation or otherwise) prior to the expiry of 3 years after the date of his appointment or reappointment, the vacancy shall be filled by appointment of another person holding the same office or, as the case may be, possessing the same qualification.
- (8) Subject to subsection (6) above, any person appointed in pursuance of subsection (7) above to fill a vacancy shall remain a member of the Advisory Council only until the

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expiry of 3 years after the date of the appointment or reappointment of the member whom he succeeded, but shall be eligible for reappointment.

- (9) The Advisory Council shall have power to regulate the summoning of its meetings and the procedure at such meetings; and at any such meetings 3 members shall be a quorum.

## **77 Appointment of messenger-at-arms.**

- (1) The Court of Session, on an application made under this section by a sheriff officer, may find the applicant suitable to be appointed as a messenger-at-arms and recommend such appointment to the Lord Lyon King of Arms; and, on receipt of such a recommendation, the Lord Lyon King of Arms may grant the applicant a commission as a messenger-at-arms.
- (2) A messenger-at-arms shall not be authorised by his commission as messenger-at-arms to execute a warrant granted by a sheriff or sheriff clerk.
- (3) A messenger-at-arms shall cease to be entitled to hold a commission as messenger-at-arms if he no longer holds a commission as a sheriff officer.
- (4) Any rule of law and any other enactment regulating the appointment of messengers-at-arms shall cease to have effect.

## **78 Inspection of work.**

- (1) The sheriff principal—
- (a) may from time to time in relation to any sheriff officer who holds a commission from him, and
  - (b) shall, if directed to do so by the Court of Session in relation to any sheriff officer who is a messenger-at-arms,
- appoint such a person as he thinks fit to inspect the work or particular aspects of the work of that officer.
- (2) A person appointed under subsection (1) above may, and if the Court of Session directs the sheriff principal so to require shall, be required by the sheriff principal to make enquiry as to extra-official activities undertaken for remuneration by the officer of court concerned.
- (3) A person appointed under subsection (1) above shall make a report of his inspection and of any enquiry under subsection (2) above to the sheriff principal and, if the report is concerned with the work or extra-official activities of any messenger-at-arms, shall send a copy thereof to the Court of Session.
- (4) A person appointed under subsection (1) above shall be entitled—
- (a) to a fee, unless he is employed full-time in the civil service of the Crown; and
  - (b) to payment of his outlays incurred,
- in connection with an inspection, enquiry and report under this section.

## **79 Investigation of alleged misconduct.**

- (1) This section applies where—

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- (a) a report under section 78(3) of this Act discloses that any officer of court may have been guilty of misconduct;
  - (b) a report by a sheriff or a complaint by any other person is made—
    - (i) to the Court of Session alleging misconduct by a messenger-at-arms;
    - (ii) to the sheriff principal from whom a sheriff officer holds a commission alleging misconduct by the officer; or
  - (c) any 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.
- (2) Where this section applies, a judge nominated by the Lord President of the Court of Session, or the sheriff principal, after giving the officer of court an opportunity to admit or deny the misconduct or to give an explanation of the matter, may appoint a solicitor to investigate the matter unless the officer of court—
- (a) admits the misconduct in writing, or
  - (b) gives a satisfactory explanation of the matter.
- (3) Where the solicitor after carrying out an investigation in pursuance of subsection (2) above is of the opinion—
- (a) that there is a probable case of misconduct and that there is evidence sufficient to justify proceedings, disciplinary proceedings shall be brought at his instance against the officer of court before the relevant court;
  - (b) that there is not a probable case of misconduct or that there is insufficient evidence to justify proceedings, he shall report that fact to the relevant court.
- (4) The solicitor shall be entitled to a fee, and to payment of his outlays incurred, in connection with an investigation, and any disciplinary proceedings brought by him, under this section.
- (5) The relevant court may award expenses in any disciplinary proceedings brought under this section in favour of or against either party to the proceedings; and for the purposes of this subsection and section 45 of the <sup>M1</sup>Crown Proceedings Act 1947 the party bringing the proceedings shall be deemed to be the Lord Advocate.
- (6) Where expenses are awarded under subsection (5) above in favour of—
- (a) the officer of court, the expenses shall be recoverable by him from the Lord Advocate;
  - (b) the Lord Advocate, the expenses shall be recoverable from the officer of court by the Lord Advocate.
- (7) If the person appointed under section 78(1) of this Act is a solicitor, that person may be appointed as solicitor under subsection (2) above.
- (8) In this section “the relevant court” means whichever of the Court of Session or the sheriff principal made the appointment under subsection (2) above.
- (9) In this section and section 80 of this Act “misconduct” includes conduct tending to bring the office of messenger-at-arms or sheriff officer into disrepute.

**Marginal Citations**

**M1** 1947 c. 44.

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## **80 Courts' powers in relation to offences or misconduct.**

- (1) Where the Court of Session becomes aware that a messenger-at-arms has been convicted by a court of any offence, it may make an order finding that the messenger-at-arms should be suspended from practice for such period as may be specified in the order, or deprived of office.
- (2) Where the sheriff principal from whom a sheriff officer holds a commission becomes aware that the sheriff officer has been convicted by a court of any offence, the sheriff principal may make an order suspending the sheriff officer from practice for such period as may be specified in the order, or depriving him of office, in that sheriffdom.
- (3) Subsections (1) and (2) above are without prejudice to section 4(3)(b) of the <sup>M2</sup>Rehabilitation of Offenders Act 1974; and in those subsections “offence” means any offence of which the officer of court has been convicted before or after he was granted a commission as an officer of court, other than any offence disclosed in his application for such a commission.
- (4) Where—
  - (a) a messenger-at-arms admits in writing that he is guilty of misconduct; or
  - (b) the Court of Session at the end of disciplinary proceedings under section 79(3) (a) of this Act is satisfied that a messenger-at-arms is guilty of misconduct,the Court of Session may make one or more of the orders specified in subsection (5) below.
- (5) The orders referred to in subsection (4) above are—
  - (a) an order finding that the messenger-at-arms should be suspended from practice for such period as may be specified in the order, or deprived of office;
  - (b) an order imposing a fine on the messenger-at-arms not exceeding £2,500 or such sum as may be prescribed in regulations made by the Lord Advocate;
  - (c) an order censuring the messenger-at-arms;
  - (d) if the misconduct consists of, or includes, the charging of excessive fees or outlays, an order decerning for repayment by the messenger-at-arms of the fees or outlays, to the extent that they were excessive, to the person who paid them.
- (6) Where—
  - (a) a sheriff officer admits in writing that he is guilty of misconduct; or
  - (b) the sheriff principal at the end of disciplinary proceedings under section 79(3) (a) of this Act is satisfied that a sheriff officer is guilty of misconduct,the sheriff principal may make one or more of the orders specified in subsection (7) below.
- (7) The orders referred to in subsection (6) above are—
  - (a) an order suspending the sheriff officer from practice for such period as may be specified in the order, or depriving him of office, in that sheriffdom;
  - (b) an order in relation to the sheriff officer of a kind mentioned in subsection (5) (b), (c) or (d) above.
- (8) Where an officer of court fails to comply with an order under this section imposing a fine on him, the Court of Session or, as the case may be, the sheriff principal may make an order—

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- (a) decerning for payment of the fine, and an extract of any such order shall contain a warrant in the form prescribed by Act of Sederunt which shall have the same effect as an extract of a decree for payment of money pronounced by the Court of Session; or
  - (b) of the kind specified in subsection (5)(a) or, as the case may be, (7)(a) above.
- (9) Any fine imposed under this section shall be recoverable by the Lord Advocate.

**Marginal Citations**

M2 1974 c. 53.

**81 Provisions supplementary to section 80.**

- (1) The Court of Session shall cause intimation to be made of any order of the Court of Session under section 80(1), (4) or (8)(b) of this Act to—
  - (a) every sheriff principal from whom the messenger-at-arms holds a commission as a sheriff officer;
  - (b) the Lord Lyon King of Arms.
- (2) The sheriff principal shall cause intimation to be made of any order made by him under section 80(2), (6) or (8)(b) of this Act—
  - (a) to every other sheriff principal from whom the sheriff officer holds a commission as a sheriff officer; and
  - (b) if the sheriff officer is a messenger-at-arms, to the Court of Session and the Lord Lyon King of Arms.
- (3) On intimation under this section of an order under section 80(1), (2) or (8)(b) of this Act or of an order under subsection (4) or (6) of that section specified respectively in subsection (5)(a) or (7)(a) thereof—
  - (a) to a sheriff principal, he shall make an order suspending the sheriff officer concerned from practice until the expiry of the period for which he has been suspended by the order so intimated, or (as the case may be) depriving him of office, in the sheriffdom;
  - (b) to the Lord Lyon King of Arms, he shall—
    - (i) in the case of an order intimated under subsection (1) above, suspend the messenger-at-arms concerned from practice for the period specified in the order or (as the case may be) deprive him of office; or
    - (ii) in the case of an order intimated under subsection (2) above, suspend the messenger-at-arms from practice until the expiry of the period for which he has been suspended by the order so intimated or (as the case may be) deprive him of office.
- (4) It shall not be competent for the Lord Lyon King of Arms to discipline a messenger-at-arms or suspend him from practice or deprive him of office except in accordance with subsection (3)(b) above.

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## **82 Appeals from decisions under sections 79(5) and 80.**

An appeal to the Inner House of the Court of Session may be made against any decision of a Lord Ordinary or a sheriff principal under section 79(5) or section 80(1), (2), (4) or (6) of this Act, but the decision of the Inner House on any such appeal shall be final.

## **83 Service of charge and execution of diligence or warrant void where officer of court has interest.**

- (1) The service of a charge for payment or the execution of diligence, or of a warrant in any proceedings, by an officer of court shall be void if the subject matter of the charge, diligence or proceedings—
  - (a) is one in which the officer of court has an interest as an individual; or
  - (b) consists of or includes a debt in respect of which any of the circumstances mentioned in subsection (2) below apply.
- (2) The circumstances referred to in subsection (1)(b) above are where the debt is due to—
  - (a) a company or firm, and the officer of court—
    - (i) is a director or partner of that company or firm or holds by himself, or along with a business associate or with a member of his family, a controlling interest therein; or
    - (ii) has a pecuniary interest in that company or firm and the principal business of the company or firm is the purchase of debts for enforcement;
  - (b) a business associate of the officer of court, or to a member of the officer of court's family;
  - (c) a company or firm, and a business associate of the officer of court or a member of the officer of court's family—
    - (i) is a director or partner of that company or firm or holds a controlling interest therein; or
    - (ii) has a pecuniary interest in that company or firm and the principal business of the company or firm is the purchase of debts for enforcement.
- (3) Any reference in subsection (2) above to—
  - (a) a business associate of an officer of court shall be construed as a reference to a co-director, partner, employer, employee, agent or principal of the officer of court;
  - (b) a member of an officer of court's family shall be construed as a reference to the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the officer of court (whether of the full blood or the half-blood or by affinity);
  - (c) a controlling interest in a company shall be construed in accordance with paragraph 13(7) of Schedule 4 to the <sup>M3</sup>Finance Act 1975.
- (4) In subsection (3)(a) above “principal” does not include a principal in a contract for the service of a charge or the execution of diligence or of a warrant in relation to the debt concerned.

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**Marginal Citations**

**M3** 1975 c. 7.

**84 Collection of statistics from officers of court.**

- (1) The Lord Advocate may require any officer of court to provide information, in such form and at such times as he may specify, regarding the officer of court's official functions.
- (2) Subject to subsection (3) below, the Lord Advocate may publish, in such form as he thinks fit, information provided under subsection (1) above.
- (3) Information published under subsection (2) above shall not be in a form which identifies or enables the identification of officers of court or persons against whom diligence has been executed.

**85 Measure of damages payable by officer of court for negligence or other fault.**

There shall cease to have effect any rule of law whereby, if an officer of court has been found liable to a creditor for negligent delay or failure to execute diligence, or for other fault in the execution of diligence, the damages payable by the officer of court are determined solely by reference to the amount of the debt.

**86 Official identity card.**

- (1) An official identity card shall be issued to every officer of court by or on behalf of the person from whom he holds his commission.
- (2) When carrying out his official functions an officer of court shall exhibit his identity card on being requested to do so.



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