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STATUTORY INSTRUMENTS

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**1988 No. 2097**

**Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1988**

**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) 1988 and shall come into force as follows:—

- (a) all rules except rules 11, 12, 14 and 15 on 30th November 1988;
- (b) rules 11 and 12 on 30th January 1989; and (c) rules 14 and 15 on 6th April 1989.

(2) Rules 47 to 62 of the Rules of the Court of Session (Messenger-at-Arms)(1) are hereby revoked.

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

**Interpretation**

**2.** In these Rules, unless the context otherwise requires “the Act of 1987” means the Debtors (Scotland) Act 1987; “the Lyon clerk” means the clerk to the Lord Lyon; “the Lord Lyon” means the Lord Lyon King of Arms; “the Lord President” means the Lord President of the Court of Session; “regional sheriff clerk” means a sheriff clerk appointed by the Secretary of State to be a regional sheriff clerk; “the sheriff clerk” means the sheriff clerk of the sheriff court in which the application for a commission as a sheriff officer was granted; “the Society” means the Society of Messengers-at-Arms and Sheriff Officers.

**PART II**  
**QUALIFICATIONS, TRAINING AND EXAMINATIONS**

**Qualifications as officer of court**

**3.**—(1) Subject to paragraph (3) of this rule, 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) he has passed all such examinations as may have been set by the committee of examiners of the Society within five years before applying for a commission as a sheriff officer; and
  - (f) he has attained the educational standard fixed 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 is in practice as an officer of court on the date on which these Rules come into force.

#### **Qualifications as messenger-at-arms**

- 4.—(1) A sheriff officer may not become a messenger-at-arms unless —
- (a) subject to paragraph (2) of this rule, he has been in practice as a sheriff officer for a period not less than two years; and
  - (b) he has passed all such examinations as may have been set by the committee of examiners of the Society within five years before applying to the Court of Session for recommendation for appointment as a messenger-at-arms.
- (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) of this rule.

#### **Training**

- (1) (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 (the “committee”) to examine any person who seeks to apply to become an officer of court.
- (2) The committee 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 is not a member of the Society but is nominated by the Society, in consultation with the sheriffs principal and approved by the Lord President.
- (3) The committee, in consultation with the Society, shall be responsible for—
- (a) the educational standard required for candidates;
  - (b) the setting of 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) of this rule—

- (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 the examinations set by the committee of examiners of the Society; and
- (d) a certificate from another officer of court specifying the period that the petitioner has been in practice as a sheriff officer.

(3) A petition under paragraph (1) to this rule 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 the interlocutor granting the prayer written on it, to the Lyon clerk.

(5) 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 issued by a regional sheriff clerk in respect of the bond of caution required under rule 9 below; and
- (b) a copy letter of receipt issued by a regional sheriff clerk in respect of a copy premium receipt from an insurance company for professional indemnity insurance required under rule 11(1)(a) below.

(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 the sheriff officer the oath or declaration of allegiance to the Sovereign.

#### **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 petitioner 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 committee of examiners of the Society to the effect that the applicant has passed the examinations set by the committee of examiners; and
- (e) two references of good character.

(3) An application under paragraph (1) of this rule 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 appoint.
- (4) A person who intends to object to such an application shall lodge answers to the application with the sheriff clerk within one month 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) The sheriff principal shall not issue a commission to a sheriff officer until the sheriff officer has lodged with the sheriff clerk—
- (a) subject to paragraph (7) of this rule, a bond of caution required under rule 9 below; and
  - (b) subject to paragraph (7) of this rule, a premium receipt from an insurance company for professional indemnity insurance required under rule 11(1)(a) below.
- (7) In the application of paragraph (6) of this rule in a case where the sheriff officer already holds a commission as a sheriff officer, it shall be sufficient for the sheriff officer to lodge with the sheriff clerk a copy letter of receipt, of the bond of caution and of the premium receipt, issued by the regional sheriff clerk.
- (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 fideli 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 a 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 every other sheriffdom in which he 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 his commission, certified by the sheriff clerk, to the Lord Lyon.

## PART IV

### CAUTION AND PROFESSIONAL INDEMNITY INSURANCE

#### **Bonds of caution**

**9.** An officer of court shall be covered by a bond of caution in form 4 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.

#### **Renewals of bonds of caution**

**10.—(1)** Each year every officer of court shall lodge, in accordance with the following paragraphs of this rule, a premium receipt for the renewal of the first bond of caution as required by rule 9 above within 30 days after the expiry of any current bond.

(2) Such a premium receipt shall be sent to the sheriff principal of the sheriffdom in which the sheriff officer's first current commission as a sheriff officer was granted.

(3) On being satisfied as to the bond of caution sent to him under paragraph (2) of this rule, the sheriff principal shall cause the premium receipt for the renewal of a bond of caution to be lodged with the regional sheriff clerk who shall issue to the sheriff officer a letter of receipt and such copy letters of receipt as may be required by the sheriff officer.

(4) Where a sheriff officer 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 such a commission (other than the first current commission) a copy letter of receipt of such a premium receipt of the bond of caution issued by the regional sheriff clerk.

(5) Where a sheriff officer is also a messenger-at-arms, he shall send to the Lyon clerk a copy letter of receipt of such a premium receipt of the bond of caution issued by the regional sheriff clerk in respect of his commission as a sheriff officer.

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

- (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 until such a premium receipt has been lodged; and
- (b) where applicable, in respect of his commission as a messenger-at-arms, the Court of Session 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 until such a premium receipt has been lodged.

### **Policies for professional indemnity insurance**

**11.**—(1) An officer of court and any partnership of officers of court shall be covered by a policy for 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 for professional indemnity insurance shall be in such terms as may be approved by the sheriffs principal and the Lord Lyon.

### **Renewals of professional indemnity insurance**

(1) (1) Each year every officer of court shall lodge, in accordance with the following paragraphs of this rule, a premium receipt from an insurance company stating that he is covered for professional indemnity insurance to a minimum of £100,000 within 30 days after the date of expiry of any current premium receipt.

(2) Such a premium receipt shall be lodged with the regional sheriff clerk of the sheriffdom in which the sheriff officer's first current commission as a sheriff officer was granted.

(3) The regional sheriff clerk shall issue to the sheriff officer a letter of receipt of such a premium receipt and such copy letters of receipt as may be required by the sheriff officer.

(4) Where a sheriff officer 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 such a commission (other than the first current commission) a copy letter of receipt of such a premium receipt issued by the regional sheriff clerk.

(5) Where a sheriff officer is also a messenger-at-arms, he shall send to the Lyon clerk a copy of letter of receipt of such a premium receipt issued by the regional sheriff clerk in respect of his commission as a sheriff officer.

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

- (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 until such a premium receipt has been lodged; and
- (b) where applicable, in respect of his commission as a messenger-at-arms, the Court of Session 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 until such a premium receipt has been lodged.

### **Transitional provisions**

**13.**—(1) Where a person is in practice as an officer of court on the date on which these Rules come into force, the following paragraphs of this rule shall apply in the application of rules 9 to 12 above.

(2) Within 30 days after—

- (a) the expiry of the bond of caution current on the date on which these rules come into force; or
- (b) where more than one bond of caution has been obtained and is current on the date on which these Rules come into force, the date on which the first bond expires, the officer of court shall send a bond of caution as required under rule 9 above to the sheriff principal of the sheriffdom in which his first current commission as a sheriff officer was granted.

(3) Within two months after the coming into force of rule 11 above, the officer of court shall lodge a premium receipt in respect of a policy for professional indemnity insurance as required by that rule to the regional sheriff clerk of the sheriffdom in which his first current commission as a sheriff officer was granted.

## **PART V**

### **ACCOUNTS**

#### **Officers of court to keep accounts**

**14.** 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**

**15.**—(1) Every officer of court shall deliver annually to every sheriff principal from whom he holds a commission 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 14(1) 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) of this rule, 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) of this rule, 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.

## PART VI

### OFFICIAL FUNCTIONS AND EXTRA-OFFICIAL ACTIVITIES

#### Official functions

16.—(1) Without prejudice to any functions under any other enactment, an officer of court may—

- (a) subject to paragraph (2) of this rule, 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
- (b) in the case of a decree or summary warrant of the Court of Session, by a messenger-at-arms.

(3) A person who holds a commission as a sheriff officer may practice 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;
- (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 private or public company within the meaning of the Companies Act 1985(2) for the purpose of exercising any of his official functions; or
- (b) exercise any official functions as an employee of a private or public company within the meaning of the Companies Act 1985.

### **Extra-official activities**

**17.**—(1) Subject to paragraph (2) of this rule, the extra-official activities of an officer of court may include—

- (a) the collection for remuneration of any debt not constituted by decree where authorised to do so under rule 18 below; or
- (b) in the absence of any statutory provision to the contrary, the service of any notice on a person for remuneration which is required to be served under any statute.

(2) An officer of court who performs an extra-official activity under paragraph (1) of this rule 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**

**18.**—(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.

(2) An application by a sheriff officer under paragraph (1) of this rule 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), after authorisation under paragraph (1), of this rule, 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) of this rule.



## PART VII

### REGISTERS OF OFFICERS OF COURT

#### Keeping of registers

19. There shall be kept—

- (i) by the regional sheriff clerk in respect of every sheriff officer who holds a commission in the sheriffdom;
- (ii) by the Lyon clerk in respect of every messenger-at-arms, a record book in which there shall be registered in respect of every 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 18(2) or (3) above;
  - (e) any suspension or deprivation of office;
  - (f) the date on which he ceased to practice where notice to that effect has been given; and
  - (g) the dates of his accounting year.

#### Intimation of information by officers of court for registers

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

- (a) in the case of a sheriff officer, to the regional sheriff clerk of every 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 17(1) above or otherwise) shall intimate such activities and any authorisation and interests disclosed in an application under rule 18(1) above

- (a) in the case of a sheriff officer, to regional sheriff clerk of the sheriffdom in which he is authorised to practice; and
- (b) in the case of a messenger-at-arms, to the Lyon clerk.

(3) An officer of court who intends to give up practice 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 and the regional sheriff clerk of every 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—

- (a) in the case of a sheriff officer, to the regional sheriff clerk of every sheriffdom in which he holds a commission as 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

**21.**—(1) A copy of a report prepared under section 78(3) of the Act of 1987<sup>(3)</sup> 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

**22.** 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

**23.**—(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<sup>(4)</sup> shall apply to a petition under this rule.

(3) A petition under paragraph (1) of this rule 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;

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<sup>(3)</sup> 1987 c. 18

<sup>(4)</sup> S.I. 1965/321; relevant amending instruments are, S.I. 1978/799, 1986/514, 1941, 1987/1206

- (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 shall think proper.

(4) When making the first order for service and intimation, the Lord Ordinary shall fix the date for the 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**

24.—(1) This rule applies to a petition under rule 23 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 (1), or issues his decision in writing under paragraph (2), of this rule, 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
- (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;
- (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 cautioner for the respondent and the company with which the respondent has a policy for professional indemnity insurance.

(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**

**25.**—(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) of this rule 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 shall think proper.

(3) When making the first order for service and intimation, the sheriff principal shall fix the date for the hearing for further procedure; and the applicant shall intimate that date to the respondent and the Lord Advocate.

### **Procedure in proceedings against sheriff officers**

**26.**—(1) This rule applies to an application under rule 25 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 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 (1), or issues his decision in writing under paragraph (2), of this rule, 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(5) 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 cautioner for the respondent and the company with which the defender has a policy for professional indemnity insurance.
- (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**

27. 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**

28. 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**

- 29.—(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) of this rule, rule 290 of the Rules of the Court of Session<sup>(6)</sup> shall apply to an appeal under section 82 of the Act of 1987.

## **PART X**

### **MISCELLANEOUS**

#### **Mandate to recover debt in diligence**

30. 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.

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(6) S.I. 1965/321; relevant amending instructions are, 1973/540, 1982/1825, 1984/449

**Dealings in goods pointed or sold by virtue of diligence**

**31.** 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;
- (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.

29th November 1988

*Emslie*  
Lord President, I.P.D. Edinburgh