
STATUTORY INSTRUMENTS

1991 No. 1397

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

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⁽¹⁾ 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.

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

(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
- (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(2) 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,

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

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