

EXECUTIVE NOTE

THE OFFICERS OF COURT'S PROFESSIONAL ASSOCIATION (SCOTLAND) REGULATIONS 2011

SSI 2011/90

1. The above instrument was made in exercise of powers conferred on the Scottish Ministers by sections 63(1) and (1A) and 224(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 and is subject to negative resolution procedure.

Background and Policy Objective

2. In 2002, the Scottish Executive issued a consultation paper entitled 'Enforcement of Civil Obligations in Scotland', which set out proposals to reform the law of diligence (the enforcement of court orders and formal documents of debt) in Scotland. Part of that consultation examined the structure and organisation of the enforcement system. At the same time it was recognised that if officers of court were to be required to adhere to arrangements established to maintain and enhance standards of professionalism, consideration should be given to whether membership of their professional organisation should also be made compulsory.

3. Provision for a professional association to which all officers of the court must be members was subsequently made in the Bankruptcy and Diligence etc. (Scotland) Act 2007 ("the 2007 Act") as part of the reforms to ensure an effective and well regulated court enforcement system which enjoys public confidence, and amended by the Public Services Reform (Scotland) Act 2010 as a result of abolition of the Scottish Civil Enforcement Commission.

4. This instrument exercises the powers to designate a professional association. A professional association for officers of court already exists and has done for over 80 years - the Society of Messengers-at-Arms and Sheriff Officers ("the Society"). The Society has a long established representative role. It is by necessity very familiar with the work of the profession and has over the years contributed in policy terms to the development of the profession.

5. A clear majority of respondents to the public consultation were in favour of the Society becoming the designated professional association. Regulation 3 designates the Society of Messengers-at-Arms and Sheriff Officers as the professional association for officers of court.

6. Regulations 4 and 5 makes provision for the functions and constitution of the Society respectively. The association must prepare a scheme for its constitution, which must include provision for compulsory continuous professional development.

7. Because of the compulsory membership aspect of the regime in the 2007 Act, regulation 6 provides that the association may not remove an officer, which will instead be done by the disciplinary authorities of a judge or the sheriff principal. This recognises that to deprive an officer of court of their membership also deprives them of their ability to operate as an officer of court, allowing this to be decided at the

appropriate level, but informed by the professional association as necessary under the regime in the Act.

7. Regulation 9 makes transitional provisions in relation to the constitution. Regulation 9(1) establishes the current constitution of the Society as the constitution of the professional association on a transitional provision to allow the association to put the new constitutional arrangements in place and 9(3) requires them to put a new constitution in place by 30 September 2011. If they do not their designation will cease to have effect after that date.

8. Regulation 10 requires officers to provide information to the Society on request, for example for the purposes of carrying out an investigation into a complaint about an officer of court.

9. Regulation 11 makes transitional provision for officers who are not currently members to become members of the Society, and restricts those officers' liability for 2011 fees of the Society to the balance due from the coming into force of these Regulations.

Consultation

10. The Scottish Ministers issued a public consultation entitled [*Officers of Court – Designation of a Professional Association*](#) on 1 November 2010. They also consulted the Society, sheriffs principal and all other interested parties as required by section 63 of the 2007 Act. Consultees supported the designation of the Society.

Financial Effects

11. This SSI will have no financial effect on the Scottish Government, local government or business.

Legal System Division
Justice Directorate
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