

1988 No. 2097 (S.204)

COURT OF SESSION, SCOTLAND

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

Made - - - - - *29th November 1988*

Coming into force

All rules except rules 11, 12, 14 and 15 *30th November 1988*

Rules 11 and 12 *30th January 1989*

Rules 14 and 15 *6th April 1989*

ARRANGEMENT OF RULES

PART I

INTRODUCTORY

1. Citation, commencement and revocation
2. Interpretation

PART II

QUALIFICATIONS, TRAINING AND EXAMINATIONS

3. Qualifications as officer of court
4. Qualifications as messenger-at-arms
5. Training
6. Examinations

PART III

APPLICATIONS FOR COMMISSION

7. Applications for recommendation for commission as messenger-at-arms
8. Applications for commission as sheriff officer

PART IV

CAUTION AND PROFESSIONAL INDEMNITY INSURANCE

9. Bonds of caution
10. Renewal of bonds of caution

11. Policies for professional indemnity insurance
12. Renewals of professional indemnity insurance
13. Transitional provisions

PART V

ACCOUNTS

14. Officers of court to keep accounts
15. Accountant's certificate

PART VI

OFFICIAL FUNCTIONS AND EXTRA-OFFICIAL ACTIVITIES

16. Official functions
17. Extra-official activities
18. Applications for authorisation to collect debts not constituted by decree

PART VII

REGISTERS OF OFFICERS OF COURT

19. Keeping of registers
20. Intimation of information by officers of court for registers

PART VIII

REPORTS AND INVESTIGATIONS OF CONDUCT OF OFFICERS OF COURT

21. Reports and complaints
22. Opportunity to officer of court to reply to allegation of misconduct

PART IX

DISCIPLINARY PROCEEDINGS

23. Disciplinary proceedings against messengers-at-arms
24. Procedure in proceedings against messengers-at-arms
25. Disciplinary proceedings against sheriff officers
26. Procedure in proceedings against sheriff officers
27. Remits of disciplinary proceedings
28. Opportunity to officer of court to make representations where order considered under section 80(1) or (2) of the Act of 1987
29. Appeals

PART X

MISCELLANEOUS

30. Mandate to recover all debts in diligence
31. Dealings in goods pointed or sold by virtue of diligence

SCHEDULE

Forms

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(a) 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) 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)(b) 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.

(a) 1987 c.18.

(b) S.I. 1965/321.

(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

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 (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 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 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

12.—(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(a) 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.

(a) 1985 c.6.

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^(a) 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.

(a) 1987 c.18.

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

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

- (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 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(a) 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) 1987 c.18.

- (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(a) 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.

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;

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

- (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.

Edinburgh
29th November 1988

Emslie
Lord President, I.P.D.

SCHEDULE

FORMS

Form 1

Rule 7(1)

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

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. 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 Rule 1988 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 Committee of Examiners of the Society of Messenger-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 1988.

MAY IT THEREFORE please your Lordships [to reduce the period of practise required under rule 4(1)(a) of the Messengers-at-Arms and Sheriff Officers Rules 1988 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 permises as to your Lordships shall seem proper.

ACCORDING TO JUSTICE, &c

(a) 1974 c.53.

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

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. That 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)*). [He proposes to have (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 officer, (*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 Committee of Examiners of 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 [*or (insert name of district) district of the sheriffdom*] and makes this application for a commission.
7. This the application is made under rule 8 of the Messengers-at-Arms and Sheriff Officers Rules 1988.

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]

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

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 dated (*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 one month from the date of this notice.

(*name and address of solicitor*)
Solicitor for applicant

FORM OF BOND OF CAUTION

BOND OF CAUTION

We, (*name of cautioner*), having a registered office at (*insert address*) [*in the case of a cautioner having a registered office furth of Scotland and a place of business in Scotland 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 rule 9 of the Messengers-at-Arms and Sheriff Officers Rules 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

EXPLANATORY NOTE

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

This Act of Sederunt makes provision for rules for messengers-at-arms and sheriff officers under the Debtors (Scotland) Act 1987.