

1990 No. 379 (S.36)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Fees of Messengers-at-Arms) 1990

Made - - - - 27th February 1990

Coming into force 2nd April 1990

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 6 of the Execution of Diligence (Scotland) Act 1926(a), section 5 of the Court of Session Act 1988(b) and of all other powers enabling them in that behalf, do hereby, with the consent of the Lord Lyon King of Arms, enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Fees of Messengers-at-Arms) 1990 and shall come into force on 2nd April 1990.

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

Fees of messengers-at-arms

2. Schedule 1 to this Act of Sederunt shall have effect in respect of work carried out by a messenger-at-arms in relation to causes in, or work authorised by, the Court of Session, and the fees specified are the fees payable to a messenger-at-arms in respect of that work.

Application, revocation and saving

3.—(1) Schedule 1 to this Act of Sederunt applies to work done on or after the date on which this Act of Sederunt comes into force.

(2) The Acts of Sederunt specified in Schedule 2 to this Act of Sederunt are hereby revoked.

(3) Notwithstanding the revocation in paragraph (2), the Act of Sederunt (Fees of Messengers-at-Arms) 1978(c) shall continue to have effect in respect of work done before the date on which this Act of Sederunt comes into force.

Edinburgh
27th February 1990

J.A.D. Hope
Lord President, IPD

(a) 1926 c.16.
(b) 1988 c.36.
(c) S.I. 1978/1424, as amended by S.I. 1988/1503, 2166 and 1989/1019.

GENERAL REGULATIONS

1. Subject to the following paragraphs, the fees payable to a messenger-at-arms shall be calculated in accordance with the Table of Fees in this Schedule and shall be payable in respect of all forms of service or intimation of a document, citation of a person or execution of diligence and all other work authorised by the court and executed by a messenger-at-arms during the normal business hours of 9.00 am to 5.00 pm.

2. Fees in relation to service or intimation of a document, citation of a person or diligence which, of necessity, is executed outwith normal business hours shall be surcharged by the levying of an additional fee of—

- (a) 33½ per cent of the fee specified in the Table of Fees, where it is executed on a week day between the hours of 5.00 pm and 10.00 pm; and
- (b) 75 per cent of the fee specified in the Table of Fees, where it is executed on a week day after 10.00 pm or before 9.00 am or on a Saturday, Sunday or a public holiday.

3.—(1) There shall be three bands of charge in the Table of Fees in accordance with which fees shall be payable.

(2) The three bands of charge shall be—

- (a) Band 1—up to 12 miles;
- (b) Band 2—over 12 miles and up to 18 miles; and
- (c) Band 3—over 18 miles.

(3) A fee is payable in respect of one band of charge only for any item.

(4) Unless by special arrangement between a messenger-at-arms and the instructing agent, the bands of charge shall be calculated according to the distance from the place of business of the nearest messenger-at-arms to the place of execution.

4. An additional fee may be negotiated between the messenger-at-arms and the instructing agent by prior agreement in the following circumstances:—

- (a) where the messenger-at-arms is standing by awaiting the delivery or uplifting of a document for immediate service;
- (b) where the messenger-at-arms has to instruct an huissier or other officer of court outwith Scotland to serve a document; or
- (c) where there is no prescribed fee and the importance, urgency and value of the work involved necessitates an additional fee.

5. All reasonable outlays, excluding postage, necessarily incurred by a messenger-at-arms in carrying out lawful instructions shall be charged in addition to a fee specified in the Table of Fees.

6. Every fee note rendered by a messenger-at-arms shall be so detailed that the fees charged by him may be easily checked against the Table of Fees; and any fees agreed under paragraph 4 above and any allowable outlays shall be clearly narrated as such. The fee note shall be reviewed by the messenger-at-arms to ensure that it is fair and reasonable in the circumstances and shall be adjusted by him if necessary.

7. Discounting of fees is permitted only between messengers-at-arms.

8. Any restriction or modification made by a messenger-at-arms of fees recoverable from a person shall be passed on to that person only.

9. Time shall be charged in units of 30 minutes or part thereof and, except in relation to time under paragraph 10, 11 or 12 below—

- (a) time shall apply from the end of the first hour at the place of execution until completion; or
- (b) time shall apply after the messenger-at-arms has travelled a distance of 30 miles from his place of business until he returns to a distance of 30 miles from that place.

10. Where a messenger-at-arms has to use a ferry, he and any witness shall be allowed the necessary cost of the ferry, all reasonable subsistence and the time for boarding, crossing and returning, which shall be charged on a time basis.

11. Where a messenger-at-arms is required to attend before a notary public, commissioner or other person or as a witness, a fee for such attendance by the messenger-at-arms and any witness shall be chargeable on a time basis.

12. Where enquiries are necessary in order to execute service, intimation, citation, diligence or any other work authorised by the court, a fee for such enquiries shall be chargeable on a time basis.

13.—(1) Where, in a pouncing, the appraised value of an article exceeds the sum recoverable, the fee specified in the Table of Fees shall be calculated in accordance with the sum recoverable and not the appraised value.

(2) Where, in a pouncing, a debtor or other occupier of the premises claims that goods are subject to a hire purchase agreement or are otherwise the property of someone other than the debtor but refuses, or is unable, to produce evidence to that effect, the messenger-at-arms may pounce the goods and shall add a note on the schedule of the pouncing stating that the debtor has claimed that the goods are subject to a hire purchase agreement or are otherwise the property of someone other than the debtor, as the case may be.

14. A messenger-at-arms supplying services to any person in respect of which fees are payable to him under this Schedule shall—

(a) if he is a taxable person within the meaning of the Value Added Tax Act 1983(a); and

(b) if the supply is a taxable supply within the meaning of that Act,

make charges to that person in addition to the charges in respect of that fee, being such additional charge as amounts to the value added tax payable under that Act in respect of the supply of those services.

15. In this Schedule, unless the context otherwise requires—

“the Act of 1987” means the Debtors (Scotland) Act 1987(b)

“apprehension” means apprehending, detaining and taking to and from court or prison;

“arranging” means accepting instructions, checking for competency, reserving time, advising instructing agent, making all necessary arrangements, intimation and service (where necessary) prior to execution;

“possession” means searching, taking possession and delivery;

“postal diligence” means service of any diligence, which may be served by post, by registered post or the first class recorded delivery service;

“postal service” means service or intimation by registered post or the first class recorded delivery service;

“service” means service or intimation of any document under a rule of court or an order of the court and includes accepting instructions, preparation, postage and service or intimation of any ancillary form or other ancillary document.

TABLE OF FEES

<i>Item</i>	<i>Band 1</i>	<i>Band 2</i>	<i>Band 3</i>
1. <i>Service or intimation of a document</i>			
(a) <i>Service</i>			
(i) each person at a different address	24.39	41.32	52.22
(ii) each additional person at the same address or additional copy required to be served or intimated under the Act of 1987	8.13	8.13	8.13
(b) <i>Postal service</i>	12.20	12.20	12.20
(c) <i>Postal diligence</i>	18.29	18.29	18.29
2. <i>Inhibitions</i>			
(a) <i>Inhibition only</i>			
(i) each person at a different address	25.61	41.32	52.21
(ii) each additional person at the same address	13.31	13.31	13.31
(b) <i>Inhibition and service</i>			
(i) each person at a different address	33.74	49.45	60.34
(ii) each additional person at the same address	21.44	21.44	21.44

(a) 1983 c.55.

(b) 1987 c.18

<i>Item</i>	<i>Band 1</i>	<i>Band 2</i>	<i>Band 3</i>
(c) Inhibition, service and interdict			
(i) each person at a different address	81.94	81.94	81.94
(ii) each additional person at the same address	34.75	34.75	34.75
3. <i>Interdicts</i>			
(a) Interdict only			
(i) each person at a different address	60.50	60.50	60.50
(ii) each additional person at the same address	13.31	13.31	13.31
(b) Interdict and service			
(i) each person at a different address	68.63	68.63	68.63
(ii) each additional person at the same address	21.44	21.44	21.44
(c) Interdict, service and inhibition			
(i) each person at a different address	81.94	81.94	81.94
(ii) each additional person at the same address	34.75	34.75	34.75
4. <i>Poidings</i>			
(a) Serving notice of entry	4.55	4.55	4.55
(b) Arranging poiding and endeavouring but being unable to execute same for whatever reason	34.27	34.27	34.27
(c) Arranging and executing poiding where appraised value is—			
(i) £300 or under	40.10	40.10	40.10
(ii) over £300 and up to £1,200	62.10	62.10	62.10
(iii) over £1,200 and up to £12,100—10% of the appraised value only			
(iv) over £12,100 and up to £60,500—10% of the first £12,100, 5% thereafter up to £60,500 of the appraised value			
(v) over £60,500—10% of the first £12,100, 5% thereafter up to £60,500 and 1% of the appraised value over £60,500			
(d) Reporting poiding	3.85	3.85	3.85
5. <i>Poidings of motor vehicles, heavy plant or machinery</i>			
(a) Arranging and executing poiding where appraised value is—			
(i) £300 or under	40.10	40.10	40.10
(ii) over £300 and up to £1,330	62.10	62.10	62.10
(iii) over £1,330 and up to £60,500—5% of the appraised value only			
(iv) over £60,500—5% of the first £60,500 and 1% thereafter of the appraised value			
(b) Reporting poiding	3.85	3.85	3.85
6. <i>Sequestrations for rent, poiding of the ground</i>			
(a) Arranging for the sequestration or poiding of the ground and endeavouring but being unable to execute same for whatever reason	32.67	32.67	32.67
(b) Arranging and effecting sequestration or poiding of the ground	60.50	60.50	60.50
7. <i>Sales</i>			
(a) (i) Application for warrant of sale or variation of a warrant of sale	7.65	7.65	7.65
(ii) Intimating application—as in item 1(a) or (b) above, as the case may be			
(b) (i) Arranging warrant sale, preparing advertisement and giving public notice	9.85	9.85	9.85

<i>Item</i>	<i>Band 1</i>	<i>Band 2</i>	<i>Band 3</i>
(ii) Serving copy of warrant of sale and intimating the place and date of sale and if necessary the date of removal of poinded effects—as in item 1(a) or (b) above, as the case may be			
(c) Attending warrant sale alone conducted by auctioneer	17.20	29.14	36.83
(d) (i) Attending warrant sale with witness and being unable to execute same for whatever reason	32.67	32.67	32.67
(ii) Conducting warrant sale with witness where the appraised value is—			
£300 or under	38.50	38.50	38.50
Over £300	60.50	60.50	60.50
8. <i>Ejections</i>			
(a) Arranging ejection	32.67	32.67	32.67
(b) Arranging and executing ejection	50.82	50.82	50.82
9. <i>Taking possession of effects</i>			
(a) Arranging possession	32.67	32.67	32.67
(b) Arranging and effecting possession	60.50	60.50	60.50
10. <i>Apprehensions</i>			
(a) Arranging apprehension	32.67	32.67	32.67
(b) Arranging and apprehending	60.50	60.50	60.50
11. <i>Taking possession of children</i>			
(a) Arranging to take possession	32.67	32.67	32.67
(b) Taking possession of each child	60.50	60.50	60.50
12. <i>Arresting vessels, aircraft and cargo</i>			
(a) Arranging to arrest	32.67	32.67	32.67
(b) Arranging and effecting arrestment	100.00	100.00	100.00
13. <i>Miscellaneous</i>			
(a) Making any report or application under the Act of 1987 with the exception of reporting a poiding	7.60	7.60	7.60
(b) Granting any receipt required to be issued under the Act of 1987	3.85	3.85	3.85
(c) Arranging locksmith or tradesman to be in attendance	2.45	2.45	2.45
(d) Granting certificate of dispenishment or providing any other certificate or report, registering any document or making any application to a court or the creditor	7.60	7.60	7.60
(e) Executing warrant to open lockfast places	7.60	7.60	7.60
(f) Time			
(i) with witness—£12.10 per unit			
(ii) without witness—£9.08 per unit			
(g) Photocopies			
(i) first copy—£0.80			
(ii) subsequent copies, per sheet—0.40			

REVOCATIONS

<i>Act of Sederunt revoked</i>	<i>Reference</i>
Act of Sederunt (Fees of Messengers-at-Arms) 1978	1978/1424
Act of Sederunt (Fees of Messengers-at-Arms) 1988	1988/1503
Act of Sederunt (Fees of Messengers-at-Arms) (No.2) 1988	1988/2166
Act of Sederunt (Fees of Messengers-at-Arms) 1989	1989/1019

EXPLANATORY NOTE

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

This Act of Sederunt provides for regulations to apply to the charging of fees by, and for fees of, Messengers-at-Arms and revokes the Act of Sederunt (Fees of Messengers-at-Arms) 1978 and the Acts of Sederunt which amended it. The Table of Fees in the Act of Sederunt (Fees of Messengers-at-Arms) 1978 has been restructured in this Act of Sederunt, but the overall level of fees in the Table of Fees in this Act of Sederunt should remain the same because no percentage increase in fees has been applied to those fees chargeable since the Act of Sederunt (Fees of Messengers-at-Arms) 1989.

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