

SCHEDULE 4

(introduced by section 13)

REGULATION OF OFFICERS OF COURT: MODIFICATIONS OF ENACTMENTS

PART 1

AMENDMENTS

Debtors (Scotland) Act 1987 (c. 18)

- 1 Part 5 of the Debtors (Scotland) Act 1987 is amended as follows.
- 2 In section 75 (regulation of organisation, training, conduct and procedure of officers of court)—
 - (a) in subsection (1)—
 - (i) after paragraph (f) insert—

“(fa) regulate their conduct in exercising their extra-official functions;”,
 - (ii) after paragraph (h) insert—

“(ha) prescribe the procedure in relation to an appeal under section 82 of this Act;”,
 - (iii) in paragraph (j) for the words “for the keeping of accounts by them and the” substitute “about their accounts and finances including the keeping and”,
 - (iv) in paragraph (m) for “necessary or proper” substitute “appropriate”,
 - (b) in subsection (3) after “to” insert “, or revoke,”.
- 3 In section 76 (Advisory Council on Messengers-at Arms and Sheriff Officers)—
 - (a) in subsection (2)(a)—
 - (i) the word “and” immediately following sub-paragraph (iii) is repealed,
 - (ii) after sub-paragraph (iv) add “; and
 - (v) such other persons (not falling within sub-paragraphs (i) to (iv) above) as the Lord President considers appropriate.”,
 - (b) in subsection (5)—
 - (i) after “under” insert “sub-paragraphs (i) to (iv) of”,
 - (ii) for “that paragraph” substitute “those sub-paragraphs.”,
 - (c) in subsection (7), for “subsection (2)(a)” substitute “subsection (2)(a)(i) to (iv)”.
- 4 In section 79 (investigation of alleged misconduct)—
 - (a) in subsection (1)—
 - (i) in paragraph (a) for “78(3) of this Act” substitute “66(3) of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#) (in this Part “the 2007 Act””,
 - (ii) the word “or” immediately following paragraph (b) is repealed,
 - (iii) after that paragraph insert—

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- “(ba) details of a complaint about an officer of court are sent to the Lord President of the Court of Session or a sheriff principal under section 64 of the 2007 Act;”,
- (iv) after paragraph (c) add “; or
- (d) any judge of the Court of Session, or a sheriff principal—
 - (i) becomes aware (whether by notification under subsection (1) of section 62 of the 2007 Act or otherwise) that an event mentioned in subsection (2) of that section has occurred in respect of an officer of court; and
 - (ii) considers that the occurrence of that event or the circumstances surrounding it, although falling short of misconduct and not involving the commission of an offence, gives rise to concerns about the officer, the officer’s exercise of official functions or the officer’s undertaking of extra-official activities.”,
- (b) subsection (7) is repealed,
- (c) in subsection (9)—
 - (i) the words from “conduct” to the end of that subsection become paragraph (a) of the subsection,
 - (ii) after that paragraph add—
 - “(b) failure to notify the Lord President of the Court of Session or the sheriff principal under subsection (1) of section 62 of the 2007 Act of the occurrence of an event mentioned in subsection (2) of that section;
 - (c) failure to provide information mentioned in subsection (1A) of section 63 of that Act required by virtue of regulations made under subsection (1) of that section;
 - (d) failure to comply with any code of practice or revised code of practice published under section 63A of that Act; and
 - (e) where a fee is due by virtue of rules made under subsection (1) of section 65A of that Act and a date as mentioned in subsection (2)(a) of that section has been specified by the rules, failure to pay the fee within 3 months of that date.”.

5 In section 80 (courts' powers in relation to offences or misconduct)—

- (a) in subsection (1)—
 - (i) the words from “an” to the end of that subsection become paragraph (a) of the subsection,
 - (ii) after that paragraph add—
 - “(b) an order mentioned in paragraph (aa) or (c) of subsection (5) below.”,

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- (b) in subsection (2)—
 - (i) the words from “an” to the end of that subsection become paragraph (a) of the subsection,
 - (ii) after that paragraph add—
 - “(b) an order in relation to the sheriff officer of a kind mentioned in paragraph (aa) or (c) of subsection (5) below.”,
- (c) after subsection (3) insert—
 - “(3A) Where—
 - (a) a solicitor is appointed to investigate a matter in respect of a messenger-at-arms under section 79(2) of this Act; or
 - (b) the Court of Session becomes aware that a messenger-at-arms has been charged with an offence,the Court of Session may make an order finding that the messenger-at-arms should be suspended from practice for such period as may be specified in the order or in an order extending such period.
 - (3B) Where—
 - (a) a solicitor is appointed to investigate a matter in respect of a sheriff officer under section 79(2) of this Act; or
 - (b) the sheriff principal from whom a sheriff officer holds a commission becomes aware that the sheriff officer has been charged with an offence,the sheriff principal may make an order suspending the officer from practice for such period as may be specified in the order or in an order extending such period in that sheriffdom.”,
- (d) after subsection (4) insert—
 - “(4A) Where the Court of Session at the end of disciplinary proceedings brought under subsection (3) of section 79 of this Act is satisfied that a concern mentioned in subsection (1)(d)(ii) of that section in relation to a messenger-at-arms is founded, the Court of Session may make an order under paragraph (a) or (aa) of subsection (5) below.”,
- (e) in subsection (5) after paragraph (a) insert—
 - “(aa) an order restricting—
 - (i) the functions which the messenger-at-arms may exercise; or
 - (ii) the activities which the messenger-at-arms may undertake,for such period as may be specified in the order;”,
- (f) after subsection (6) insert—
 - “(6A) Where the sheriff principal at the end of disciplinary proceedings brought under subsection (3) of section 79 of this Act is satisfied that a concern mentioned in subsection (1)(d)(ii) of that section in relation to a sheriff officer is founded, the sheriff principal may make, in relation to the sheriff officer, an order—
 - (a) of a kind mentioned in paragraph (aa) of subsection (5) above; or
 - (b) under paragraph (a) of subsection (7) below.”,

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- (g) in subsection (7)(b) for “subsection (5)(b)” substitute “subsection (5)(aa), (b).”.
- 6 In section 81 (provisions supplementary to section 80)—
- (a) in subsection (1)—
- (i) for “section 80(1), (4)” substitute “section 80(1)(a), (3A), (4), (4A)”,
- (ii) after paragraph (b) add—
- “(c) the professional association designated under section 63(1) of the 2007 Act.”,
- (b) in subsection (2)—
- (i) for “section 80(2), (6)” substitute “section 80(2)(a), (3B), (6), (6A)”,
- (ii) the word “and” immediately following paragraph (a) is repealed,
- (iii) after paragraph (b) add “, and
- (c) the professional association designated under section 63(1) of the 2007 Act.”,
- (c) in subsection (3)—
- (i) for “section 80(1), (2)” substitute “section 80(1)(a), (2)(a), (3A), (3B)”,
- (ii) after “thereof” insert “or of an order under subsection (4A) or (6A) of that section specified respectively in subsection (5)(a) or (7)(a) thereof”.
- 7 (1) In section 82 (appeals from certain decisions)—
- (a) the words from “An” to “Act” become subsection (1) of that section,
- (b) after “under” insert “section 77(1).”,
- (c) for the words “(4) or (6)” substitute “(3A), (3B), (4), (4A), (6), (6A) or (8) (b)”,
- (d) the words from “but” to the end of the section are repealed,
- (e) after subsection (1) (created under paragraph (a)) insert—
- “(2) The decision of the Inner House on an appeal under subsection (1) shall be final.”.
- (2) In the sidenote to section 82, for “79(5) and 80” substitute “77, 79 and 80”.
- 8 After section 86 insert—

“86A Electronic communications

In this Part, any reference to an admission in writing includes a reference to that admission being an electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 ([c. 7](#))).”.

Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)

- 9 The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.
- 10 For the title of Part 3 (“Enforcement”) substitute “Officers of court”.
- 11 (1) In section 51 (information and annual report)—
- (a) subsection (1) is repealed,
- (b) in subsection (2) for “The Commission” substitute “The Advisory Council on Messengers-at-Arms and Sheriff Officers (the “Advisory Council””,

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- (c) in subsection (3)—
 - (i) paragraph (a) is repealed,
 - (ii) in paragraph (b) for “judicial officers” substitute “officers of court”,
 - (iii) in that paragraph for “Commission” substitute “Advisory Council”,
 - (d) in subsection (4)—
 - (i) for “Commission” substitute “Advisory Council”,
 - (ii) for “a judicial officer” substitute “the professional association designated by regulations under section 63(1)(a)”,
 - (iii) for “it” substitute “provided by virtue of regulations under section 63(1A) which the Advisory Council”,
 - (e) in subsection (5) for “Commission” substitute “Advisory Council”,
 - (f) subsection (6) is repealed.
- (2) In the title to section 51 for the words “Information and” substitute “Advisory Council's”.
- (3) Immediately above section 51 insert the italic heading “Advisory Council on Messengers-at-Arms and Sheriff Officers”.
- 12 In section 53 (published information not to enable identification)—
 - (a) paragraph (b) and the word “or” immediately preceding it are repealed,
 - (b) for “judicial officers” substitute “officers of court”.
- 13 (1) In section 61 (regulation of judicial officers)—
 - (a) in subsections (1) and (2)(a) for “judicial officers” substitute “officers of court”,
 - (b) in subsection (2) paragraph (d) is repealed,
 - (c) in subsection (3) for “the Commission” substitute “—
 - (a) the Lord President of the Court of Session; and
 - (b) each sheriff principal.”.
- (2) In the title to section 61 and the italic heading immediately preceding it for “judicial officers” substitute “officers of court”.
- 14 (1) In section 62 (duty to notify Commission of bankruptcy etc.)—
 - (a) in subsection (1)—
 - (i) for “a judicial officer” substitute “an officer of court”,
 - (ii) for “notify the Commission in writing of it” substitute—
 - “(a) in the case of a messenger-at-arms, notify the Lord President of the Court of Session in writing of the event;
 - (b) in the case of a sheriff officer, notify the sheriff principal from whom the officer holds a commission in writing of the event.”,
 - (b) in subsection (2)(a), (f) and (g) for “judicial officer” substitute “officer of court”.
- (2) In the title to section 62 for “Commission” substitute “Lord President and sheriff principal”.
- 15 (1) In section 63 (judicial officers' professional association)—
 - (a) in paragraph (a) of subsection (1)—

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- (i) after “association”, where it first occurs, insert “(in this Part, the “professional association”)”,
 - (ii) for “judicial officers” substitute “officers of court”,
 - (b) after subsection (1) insert—
 - “(1A) Regulations under subsection (1) may require an officer of court to provide such information as the professional association reasonably considers necessary.”,
 - (c) for subsection (2)(a) substitute—
 - “(a) the Lord President of the Court of Session;
 - (aa) each sheriff principal;”,
 - (d) in subsection (3) for “a judicial officer” substitute “an officer of court”.
- (2) In the title to section 63 and the italic heading immediately preceding it for “Judicial officers” substitute “Officers of court's”.

16 After section 63 insert—

“63A Code of practice

- (1) The professional association—
 - (a) must prepare and publish a code of practice in relation to the functions of officers of court; and
 - (b) may prepare and publish such a code in relation to the undertaking of activities by such officers.
- (2) The professional association may revise the whole or any part of a code published under this section.
- (3) Where a code or any part of a code is revised under subsection (2), the professional association—
 - (a) in a case where the revision results in substantial changes, must publish the revised code;
 - (b) in any other case, may publish the revised code.
- (4) The professional association must not publish a code of practice or a revised code of practice under this section without the prior approval of the Lord President of the Court of Session.
- (5) The professional association must send a copy of each code of practice published under this section to—
 - (a) the Scottish Ministers;
 - (b) the Lord President of the Court of Session;
 - (c) each sheriff principal; and
 - (d) each officer of court.”.

17 (1) In section 64 (duty of professional association to forward complaints to Commission)

- (a) for “a judicial officer” substitute “an officer of court”,
- (b) for “to the Commission” substitute—
 - “(a) to the Lord President of the Court of Session;

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- (b) in the case of a complaint about a messenger-at-arms, to the sheriff principal from whom the messenger-at-arms holds a commission as a sheriff officer; and
- (c) in the case of a complaint about a sheriff officer, to the sheriff principal from whom the sheriff officer holds a commission.”.

(2) In the title to section 64 the words “to Commission” are repealed.

- 18 In section 65 (information from professional association)—
- (a) for “Commission”, where it first occurs, substitute “Lord President of the Court of Session or any sheriff principal”,
 - (b) for “Commission”, where it second occurs, substitute “Lord President or, as the case may be, sheriff principal”,
 - (c) in paragraph (b) for “67 of this Act” substitute “79(2) of the 1987 Act”,
 - (d) for paragraph (c) substitute—
 - “(c) any disciplinary proceedings brought under section 79(3) of that Act.”.

19 After section 65 insert—

“Annual fee for officers of court

65A Annual fee

- (1) The professional association may make rules requiring every officer of court holding a commission to pay an annual fee to the association.
- (2) Rules made under subsection (1) above may include provision—
 - (a) specifying the date by which the fee must be paid each year;
 - (b) specifying the manner in which it must be paid; and
 - (c) about any other matters in relation to the fee that the professional association considers appropriate.
- (3) Rules under this section may be made only with the approval of the Lord President of the Court of Session.”.

- 20 (1) In section 66 (inspection of judicial officer)—
- (a) in subsection (1)—
 - (i) for “Commission” substitute “Lord President of the Court of Session or any sheriff principal”,
 - (ii) for “a judicial officer” substitute “an officer of court”,
 - (b) in subsection (2)—
 - (i) for “Commission” substitute “Lord President or, as the case may be, the sheriff principal”,
 - (ii) for “judicial officer” substitute “officer of court”,
 - (c) in subsection (3) for “Commission” substitute “Lord President or, as the case may be, the sheriff principal”,
 - (d) in subsection (4) for “Commission” substitute “Scottish Ministers”.
- (2) In the title to section 66 for “judicial officer” substitute “officer of court”.

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- (3) In the italic heading immediately preceding section 66 for “judicial officers” substitute “officers of court”.
- 21 (1) In section 75 (judicial officer’s action void where officer has interest)—
- (a) in subsections (1), (4)(a) and (7) for “a judicial officer” substitute “an officer of court”,
 - (b) in subsection (2), for “A judicial officer” substitute “An officer of court”,
 - (c) in subsections (3)(a) and (6) for “judicial officer” substitute “officer of court”,
 - (d) in subsection (5), for “a judicial officer’s” substitute “an officer of court’s”.
- (2) In the title to section 75 for “Judicial officer’s” substitute “Officer of court’s”.
- 22 In section 77 (effect of code of practice)—
- (a) in subsection (1)—
 - (i) for “A judicial officer” substitute “An officer of court”,
 - (ii) for the words “55 or 56” substitute “63A”,
 - (b) in subsection (2), for “a judicial officer” substitute “an officer of court”,
 - (c) for paragraph (b) of subsection (4) substitute—
 - “(b) a relevant court (within the meaning of subsection (8) of section 79 of the 1987 Act (investigation of alleged misconduct)) in disciplinary proceedings under that section;”.
- 23 In section 78 (electronic publications and communications) the words “admission or representation”, in both places where they occur, are repealed.
- 24 (1) In the provisions listed in sub-paragraph (2) for “judicial officer” substitute “officer of court”.
- (2) The provisions referred to in sub-paragraph (1) are sections 83(5), 176(2), 177(1) and (3) to (8), 178(1) to (4), 179(1) to (4), 180(1), 181(1)(b) and (4), 182(1), (2), (4) and (6)(b), 183(4)(b), (11)(b) and (12)(b), 184(1), (2), (4) and (5)(c), 185(2)(b), (4)(b), (5) and (7), 186(2)(b), (3)(b) and (5)(c), 187(1)(b), (2)(a)(ii) and (3), 188(4), 189(1), (2)(a), (3)(b), (5) and (6), 191(2)(b)(i) and (4), 216(3) and 217(2).
- 25 In—
- (a) sections 117(4), 121(1), 139(1)(c), 157(1)(b) and 183(1)(a), and
 - (b) paragraph 1(j) of schedule 3,
- for “a judicial officer” substitute “an officer of court”.
- 26 In section 128(1) (interpretation of Chapter 2 of Part 4), after the definition of “notice of land attachment” insert—
- ““officer of court” means the officer of court appointed by the creditor;”.
- 27 In section 145(1) (interpretation of Chapter 3 of Part 4), after the definition of “dwellinghouse” insert—
- ““officer of court” means the officer of court appointed by the creditor;”.
- 28 In section 178(1) (presumption of ownership), for “A judicial officer” substitute “An officer of court”.
- 29 In section 198(1) (interpretation of Part 8), after the definition of “money” insert—
- ““officer of court” means the officer of court appointed by the creditor;”.

- 30 In section 221 (interpretation), after the definition of “electronic communication” insert—
 ““officer of court” means a messenger-at-arms or a sheriff officer;”.
- 31 In schedule 5 (minor and consequential amendments), in sub-sub-paragraph (c) of paragraph 7(2), for the words from “for” to the end of the sub-sub-paragraph, substitute “for “law agent” substitute “solicitor””.
- 32 In Part 1 of schedule 6 (repeals and revocations), in the entry relating to the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), before the word “Schedule” in the second column, insert “In”.

PART 2

REPEALS

- 33 The enactments mentioned in the first column of the following table are repealed to the extent specified in the second column.

<i>Enactment</i>	<i>Extent of repeal</i>
Debtors (Scotland) Act 1987 (c. 18)	Section 78. Section 83.
Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)	In section 45, in the definition of “officer”, the words from “for”, where it first occurs, to the end of that definition.
Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)	Section 50. Section 52. Sections 54 to 60. Section 61(4) to (7). Sections 67 to 74. Section 76. In section 128(1), the definition of “judicial officer”. In section 145(1), the definition of “judicial officer”. Section 189(7). In section 198(1), the definition of “judicial officer”. Section 212(7). In section 221, the definition of the “Commission”; and the definition of “judicial officer”. In schedule 1, paragraph 41(a).

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<i>Enactment</i>	<i>Extent of repeal</i>
	Schedule 2. In schedule 5, paragraphs 6(4), 7(2)(a), (b)(i) and (ii), (3)(a) and (4), 11, 16(14) (c), 21, 25, 27, 28, 30(8)(b) and (13), 31 and 33. In schedule 6, in the entry relating to the Sheriff Courts (Scotland) Act 1907, the words “In section 40, the word “officers,””; in the entry relating to the Execution of Diligence (Scotland) Act 1926, the words “Section 1”; and in the entry relating to the Debtors (Scotland) Act 1987, the words “Part V”.