

2011 No. 90

COURT OF SESSION

SHERIFF COURT

**The Officers of Court's Professional Association (Scotland)
Regulations 2011**

Made - - - - *10th February 2011*

Laid before the Scottish Parliament *14th February 2011*

Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 63(1) and (1A) and 224(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007(a) and all other powers enabling them to do so.

In accordance with section 63(2) of that Act(b), they have consulted with the Lord President of the Court of Session, each sheriff principal, representatives of the proposed professional association and such other bodies or persons who appear to them to have an interest.

Citation and commencement

1. These Regulations may be cited as the Officers of Court's Professional Association (Scotland) Regulations 2011 and come into force on 1st April 2011.

Interpretation

2. In these Regulations—

“the 1987 Act” means the Debtors (Scotland) Act 1987(c); and

“the 2007 Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007.

(a) 2007 asp 3 (“the 2007 Act”). Section 63 was amended by the Public Services Reform (Scotland) Act 2010 (asp 8) (“the 2010 Act”), section 13(b) and schedule 4, paragraph 15(1)(a), (b) and (d). Part 3 of the 2007 Act (“Officers of court”) was amended (and renamed) by paragraphs 9 to 33 of that schedule.

(b) Section 63(2) was amended by the 2010 Act, schedule 4, paragraph 15(1)(c).

(c) 1987 c.18 (“the 1987 Act”). The 1987 Act is significantly amended by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 58(2), schedule 3, Part I, paragraph 17 and by the 2007 Act, sections 169 and 170, 199 to 205, 206, 209(2) to (5), schedule 5, paragraph 16 and schedule 6, Part 1. Part 5 of the 1987 Act (Messengers-at-arms and Sheriff Officers) was amended by the 2010 Act, section 13(a) and schedule 4, paragraphs 1 to 8.

Officers of court’s professional association

3. The Society of Messengers-at-Arms and Sheriff Officers^(a) (“the Society”) is designated as the professional association for officers of court in accordance with section 63 of the 2007 Act, subject to regulation 9(4).

Functions of the professional association

- 4.—(1) The functions of the professional association include the promotion of—
- (a) the interests of the officer of court profession in Scotland; and
 - (b) the interests of the public in relation to that profession.
- (2) In particular, those functions include—
- (a) promoting for trainee officers of court a curriculum and standards of qualification;
 - (b) improving the training, education and professional status of officers of court (including compulsory continuous professional development);
 - (c) promoting strict adherence to—
 - (i) the duties owed by officers of court by virtue of exercising their legal powers; and
 - (ii) the scale of remuneration as may be fixed by Act of Sederunt or otherwise;
 - (d) maintaining the duty of officers of court to serve the public; and
 - (e) handling complaints about officers of court impartially and transparently.
- (3) In carrying out its functions, the association has power to do anything which is calculated to further its functions or is conducive or incidental to doing so, including—
- (a) promoting conferences, meetings, discussions and lectures; and providing information and assistance with the work of officers of court; and
 - (b) cooperating or associating with any kindred society.
- (4) The other functions of the association are those conferred or imposed by or under Part 5 of the 1987 Act^(b), Part 3 of the 2007 Act^(c), these Regulations and rules of court.

Constitution of the professional association

- 5.—(1) The constitution of the professional association must make provision for—
- (a) the constitution of, election to, and proceedings of the association (including voting rights and quorums);
 - (b) the meetings of the association;
 - (c) the appointment of officers and employees of the association; and
 - (d) the appointment of members of and the constitution of committees.
- (2) The constitution may contain such other provisions with respect to the administration, management and proceedings of the association as are necessary or proper and which are consistent with the provisions of Part 5 of the 1987 Act, Part 3 of the 2007 Act, these Regulations and rules of court.
- 6.—(1) The constitution of the professional association may not make provision for removing messengers-at-arms or sheriff officers from membership of the association.

(a) The Society of Messengers-at-Arms and Sheriff Officers was established in 1922 and has functions under rules of court, see the Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 (S.I. 1991/1397).

(b) Part 3 of the 2007 Act was amended by the Public Services Reform (Scotland) Act 2010 (asp 8) (“the 2010 Act”), schedule 4, paragraphs 9 to 33.

(c) Part 5 of the 1987 Act was relevantly amended by the 2010 Act, section 13(a) and schedule 4, paragraphs 1 to 8.

(2) The constitution of the professional association must contain provision so that when a messenger-at-arms or sheriff officer no longer holds a commission (on being deprived of office under section 80 of the 1987 Act^(a) or otherwise) that person ceases to be a member of the professional association.

7. The constitution of the professional association must contain provision for the administration and supervision by the association of compulsory continuous professional development by its members.

8. The constitution of the professional association, and any amendments to be made to that constitution, have effect when approved by a resolution passed by a majority of the members of the association present in person or by proxy at an extraordinary general meeting of the association or at an adjournment of such a meeting.

Constitution – transitional provision

9.—(1) Subject to paragraph (2), the constitution of the Society as immediately before the coming into force of these Regulations shall have effect as the constitution of the professional association until the new constitution takes effect in accordance with paragraph (3).

(2) The constitution of the Society applies under paragraph (1)—

- (a) only so far as consistent with the provisions of Part 5 of the 1987 Act, Part 3 of the 2007 Act and rules of court; and
- (b) as if the provision required to be made by regulation 6 had been made.

(3) The professional association must prepare a new constitution to have effect before 30th September 2011.

(4) The designation of the Society ceases to have effect on 30th September 2011 unless the draft constitution has effect under regulation 8 before that date.

Provision of information by officers of court

10.—(1) Officers of court must provide such information as the professional association reasonably considers necessary.

(2) In particular, they must, within 20 working days of a written request, provide information in connection with—

- (a) the investigation of any alleged misconduct by an officer of court under section 79(2) of the 1987 Act; and
- (b) any disciplinary proceedings under section 79(3) of the 1987 Act.

Transitional arrangements

11.—(1) All messengers-at-arms and sheriff officers who were not members of the Society immediately before the date of coming into force of these Regulations become members of the professional association from that date.

(2) The Society may only require an annual membership fee from those messengers-at-arms and sheriff officers for the 2011 calendar year—

- (a) by virtue of the resolution agreed by the Society on 15th January 2011 or as that resolution may be amended at an extraordinary general meeting of the Society in respect of that year; and

(a) Section 80 was amended by section 13(a) and schedule 4, paragraph 5 to the 2010 Act.

- (b) only for the balance of that fee payable in respect of the period after 1st April 2011 (designation of the association), prior to the coming into force of the first set of rules made under section 65A(1) of the 2007 Act^(a).

St Andrew's House,
Edinburgh
10th February 2011

FERGUS EWING
Authorised to sign by the Scottish Ministers

(a) Section 65A was inserted by the 2010 Act, section 13(b) and schedule 4, paragraph 19.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the designation of the Society of Messengers-at-Arms and Sheriff Officers (“the Society”) as the professional association for the regime for supervising officers of court (messengers-at-arms and sheriff officers) (“officers”) under Part 5 of the Debtors (Scotland) Act 1987 (“the 1987 Act”) and Part 3 of the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Regulation 4 makes provision for the functions of the association.

Regulation 5 requires the constitution of the association to make provision for elections and meetings and related matters. The constitution must include provision that the Society may not remove an officer, which will instead be done by the disciplinary authorities of a judge or the sheriff principal under Part 5 of the 1987 Act, and must also include provision for compulsory professional development (regulations 6 and 7). The constitution has effect when approved by a resolution of a majority of its members present in person or by proxy at an extraordinary general meeting (regulation 8).

Regulation 9(1) and (2) makes provision for the constitution of the association to be the constitution of the Society from its designation until the new constitution has effect. The Society is designated only until 30th September 2011 unless it makes provision for a new constitution before that date (regulation 9(3) and (4)).

Regulation 10 requires officers to provide information to the Society on request.

Regulation 11 puts in place transitional arrangements for all current officers to be members of the Society and restricts those officers’ liability for fees of the Society for the 2011 calendar year to the balance due after the coming into force of these Regulations.

Messengers-at-arms and sheriff officers are also regulated by rules of court, in particular by the Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 (S.I. 1991/1397).

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