



**Annual Report of the Advisory Council on
Messengers-at-Arms and Sheriff Officers**

1 April 2016 to 31 March 2017

July 2017

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Foreword by the Chair of the Council

I am pleased to present this sixth Annual Report of the Advisory Council on Messengers-at-Arms and Sheriff Officers.

Officers of court are the executive arm of the courts in Scotland and as such they make a vital contribution to the delivery of justice by ensuring that obligations are met and rights can be enforced. The public must have confidence in them as a profession and it is right that they are properly regulated both by the courts they serve and by their professional association.

I am confident that the Advisory Council continues to make a meaningful contribution to this regulation.

The Hon. Lady Wolffe
(Chair)

1. Introduction

Establishment

- 1.1 Section 76(1) of the Debtors (Scotland) Act 1987 (“the 1987 Act”) established the Advisory Council on Messengers-at-Arms and Sheriff Officers (“the Advisory Council”) whose functions are to advise the Court of Session on the making of Acts of Sederunt under section 75 of the 1987 Act and generally to keep under review all matters relating to officers of court.

History

- 1.2 The Advisory Council first met on 2 November 1987. The Advisory Council has had four Chairs, Lord Prosser (1987-2001); Lord McEwan (2001-2009); Lord Uist (2009-2015) and Lady Wolffe (2015 to date). The Advisory Council meets at Parliament House, Edinburgh.

Increased role

- 1.3 Part 3 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 sought to effect a fundamental reform of the regulation of messengers-at-arms and sheriff officers. It sought to unify those two offices and establish a Scottish Civil Enforcement Commission with regulatory functions in respect of them.
- 1.4 These reforms were never brought into force. Instead, by way of the Public Services Reform (Scotland) Act 2010, significant modification of the reforms was effected. The unification of the two offices was reversed. The provisions concerning the Scottish Civil Enforcement Commission were repealed, with the majority of its proposed functions being placed instead on the Advisory Council or on the Lord President and the sheriffs principal or on the professional association for officers of court. The Society of Messengers-at-Arms and Sheriff Officers (“SMASO”) was designated as the professional association for officers of court by the Scottish Ministers on 1 April 2011.

Annual report

1.5 Section 51 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (as amended) provides that the Advisory Council must prepare a report on its activities during the whole of each financial year as soon as practicable after the end of the period to which the report relates. This is the Advisory Council's sixth annual report and is for the period 1 April 2015 to 31 March 2016.

1.6 The Advisory Council must send a copy of the report to the Scottish Ministers and publish the report.

2. Membership

2.1 Section 76(2) of the 1987 Act provides that the Advisory Council shall consist of –

(a) the following persons appointed by the Lord President of the Court of Session –

- (i) a judge of the Court of Session (who shall act as chairman);
- (ii) two sheriffs principal;
- (iii) two officers of court;
- (iv) two solicitors; and
- (v) such other persons (not falling within sub-paragraphs (i) to (iv) above) as the Lord President considers appropriate;

(b) one person appointed by the Lord Advocate; and

(c) the Lord Lyon King of Arms.

2.2 Section 76(3) provides that the Secretary of the Advisory Council shall be appointed by the Scottish Ministers.

2.3 As at 1 April 2016 the membership of the Council was as follows:

The Hon. Lady Wolffe (Chair)
The Lord Lyon King of Arms
Sheriff Principal Scott QC
Sheriff Principal Murray
Mr Frank McConnell - Solicitor
Ms Angela McCracken - Solicitor
Mr Roderick Macpherson - Officer of Court
Mr Stuart Hamilton - Officer of Court
Ms Kay McCorquodale - Scottish Government
Ms Pauline Allan - Citizens Advice Scotland
Ms Yvonne MacDermid - Money Advice Scotland

2.4 As at 31 March 2017 the membership of the Council was as follows:

The Hon. Lady Wolffe (Chair)
The Lord Lyon King of Arms
Sheriff Principal Murray
Sheriff Principal Turnbull
Mr Frank McConnell - Solicitor
Mr Roderick Macpherson - Officer of Court
Mr Stuart Hamilton - Officer of Court
Walter Drummond-Murray- Scottish Government
Ms Pauline Allan - Citizens Advice Scotland
Ms Yvonne MacDermid - Money Advice Scotland
Eileen Blackburn – CA member

Angela McCracken resigned as a member on 23 February 2017. She has not yet been replaced. Kay McCorquodale resigned on 30 March 2017 and has

been replaced by Walter Drummond-Murray. Eileen Blackburn was appointed as the CA member of the Council on 24 February 2017.

The Secretary is Roddy Flinn, Legal Secretary to the Lord President, who is assisted by Edward McHugh, Deputy Legal Secretary to the Lord President.

3. Meetings and work of the Advisory Council

3.1 The Advisory Council met once during the year 2016-2017, on 3 October 2016. The draft minutes of the meeting are attached as an appendix to this report.

3.2 In so far as keeping under review all matters relating to officers of court was concerned, the Advisory Council received updates from SMASO and the Scottish Government.

3.3 In relation to advising the Court of Session on the making of Acts of Sederunt under section 75 of the 1987 Act, the Advisory Council reviewed Rule 8 (3) (b) of the Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 (“the 1991 Rules”) with a view to considering whether the advertising requirements set out therein remain appropriate. Following a short consultation, the Advisory Council instructed the Lord President’s Private Office to prepare an instrument amending the 1991 Rules. This amendment will replace the requirement that an applicant for commission as a sheriff officer advertise in local newspapers with requirements that:

- an enhanced disclosure certificate be obtained: and
- the application be advertised on the website of the Society of Messengers at Arms and Sheriff Officers (SMASO) for a period of no less than 28 days.

The amending instrument will be made over the summer of 2017 and is expected to come into force in October 2017.

Future meetings

3.4 The Advisory Council will next meet on 9 October 2017.

4. Statistical Information

The Advisory Council previously indicated an intention to include in its report a statistical analysis of the performance by officers of court of their functions as envisaged by section 51 of the 2007 Act. This takes the form of a report from the Accountant in Bankruptcy containing the statistics provided by officers of court under section 84 of the 1987 Act. The report for 2015- 2016 (which is the most up-to-date available) can be accessed here:

<https://www.aib.gov.uk/aib-policydevelopmentscottishdiligencestatistics2015-2016>

The 2016-2017 report is expected to be available in December 2017.

APPENDIX

DRAFT MINUTES

ADVISORY COUNCIL ON MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

Meeting – 3 October 2016, 2.30pm at Judges' Conference Room, Parliament House, Edinburgh

Present

The Hon. Lady Wolffe (Chair)
The Right Hon. the Lord Lyon
Sheriff Principal Murray
Mr Roderick Macpherson – Officer of Court
Mr Stuart Hamilton – Officer of Court
Ms Kay McCorquodale – Scottish Government
Ms Pauline Allan, Citizens Advice Scotland

Secretariat

Mr Edward McHugh – Deputy Legal Secretary to the Lord President

Apologies

Frank McConnell

Item 1: Welcome

1. The Chair welcomed members to the meeting.

Item 2: Minutes of the meeting on 5 October 2015 and matters arising

2. Certain minor changes to the draft minutes were proposed by Mr Macpherson and agreed by the Council. The October 2015 minutes were thereafter approved.
3. Matters arising. The Council noted:

- that Scottish Civil Justice Council (“SCJC”) awaits a request from SMASO for an amendment to the court rules regarding proof of delivery. The Council noted that SMASO would make such a request as soon as possible;
 - that a fee increase of 1.3% took effect from 1 April 2016;
 - that, although the question of local authority council tax collection had been raised with the Cost and Funding Committee (“ CAFC”) of the SCJC , CAFC did not consider that it had the power to regulate the fees in question; and
 - that the possible commencement of section 220 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (to the extent that it had not been commenced) was part of the diligence consultation recently commenced by the Accountant –in-Bankruptcy.
4. The Council requested that the Secretariat identify dates for a meeting in spring 2017 and October 2017 on the understanding that the spring 2017 meeting would proceed only if there was sufficient business to justify it. Members of the Council will be advised about a month in advance if the proposed spring meeting is not required. Otherwise an agenda and papers will be sent out in the usual way.

Item 3: Consultation on replacing advertisement requirement with disclosure requirement

5. Following discussion of the consultation responses, the Council agreed with Sheriff Principal Murray’s proposal that he discuss with the Sheriffs Principal the proposal that applications for commission as sheriff officer be advertised on the SMASO website and that the applicant be subject to an

enhanced disclosure check. It is anticipated that, subject to the views of the Sheriffs Principal, a final decision on this issue might be reached by correspondence.

Item 4: SMASO Memorandum

6. Mr Hamilton spoke to this paper. The Council noted SMASO's concerns about the lack of engagement by the SCJC with SMASO during the finalisation of Simple Procedure forms.

Item 5: Membership

7. Following discussion, the Council requested the secretariat to pursue the identification of a suitable Chartered Accountant for recommendation to the Lord President for appointment to the Council.

Item 6: Scottish Government Update

8. Ms McCorquodale confirmed that Expenses and Funding of Civil Litigation Bill would be in the government's legislative programme for the 2016-2017.

Item 7: AOCB

9. None

10. Once they are identified, the secretariat will intimate dates for the proposed meetings in spring and autumn 2017.