



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

1 April 2019 to 31 March 2020

April 2020

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Foreword by the Chair of the Council

I am pleased to present this ninth 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.

Most of the period covered by this report occurred during the tenure of my predecessor, the Hon. Lady Wolffe. I would like to extend thanks to her for her work on the Advisory Council on Messengers-at-Arms and Sheriff Officers.

The Hon. Lady Poole
(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 five Chairs, Lord Prosser (1987-2001); Lord McEwan (2001-2009); Lord Uist (2009-2015), Lady Wolffe (2015 to 2019) and Lady Poole (appointed February 2020). 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 The provisions concerning the Scottish Civil Enforcement Commission were repealed, with the majority of its proposed functions being placed instead on the Advisory Council or on the Lord President and the sheriffs principal or on the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 ninth annual report and is for the period 1 April 2019 to 31 March 2020.
- 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 chair);
 - (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 2019 the membership of the Advisory Council was as follows:

The Hon. Lady Wolffe (Chair)

The Right Hon. the Lord Lyon (Dr Joseph Morrow)

Sheriff Principal Murray

Sheriff Principal Turnbull

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

Rachel Grant – solicitor member

2.4 As at 31 March 2020 the membership of the Advisory Council was as follows:

The Hon. Lady Poole (Chair)

The Right Hon. the Lord Lyon (Dr Joseph Morrow)

Sheriff Principal Murray

Sheriff Principal Turnbull

Mr Roderick Macpherson - officer of court

Mr David Walker - officer of court

Walter Drummond-Murray- Scottish Government

Ms Pauline Allan - Citizens Advice Scotland

Ms Yvonne MacDermid - Money Advice Scotland

Eileen Blackburn – CA member

Alison Gow – solicitor member

Fergus Thomson– solicitor member

David Walker was appointed an officer of court member on 12 September 2019, Mr Stuart Hamilton having demitted office.

Fergus Thomson was appointed as a solicitor member on 28 February 2020, Rachel Grant having demitted office.

In February 2020, Scottish Ministers appointed Edward McHugh, Deputy Legal Secretary to the Lord President as secretary of the Advisory Council. He replaces Roddy Flinn.

2.5 The Chair wishes to extend thank to Stuart Hamilton, Rachel Grant, and Roddy Flinn for their past work in connection with the Advisory Council.

3. Meetings and work of the Advisory Council

3.1 The Advisory Council met once during the year 2019-2020, on 7 October 2019. The 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. In addition, SMASO provided some information to members about its training regime and examination programme for new officers of court. The Advisory Council was grateful to the Lord Lyon for his consideration of commissions of messengers-at-arms granted between 1984 and 2014, and for advising the Advisory Council of his decision to amend those commissions to remove a condition that the office was to become vacant when the messenger-at-arms attained the age of 70 years.

3.3 In relation to advising the Court of Session on the making of Acts of Sederunt under section 75 of the 1987 Act, there were no instruments that came to the Advisory Council's attention this year.

Future meetings

- 3.4 The Advisory Council will next meet in October 2020, on a date to be determined.

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 2018- 2019 (which is the most up-to-date available) can be accessed here:

<https://www.aib.gov.uk/scottish-diligence-statistics-2018-19>

APPENDIX

ADVISORY COUNCIL ON MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

Meeting 7 October 2019 at 2.15pm at Parliament House, Edinburgh

Present

- The Hon. Lady Wolffe (Chair)
- Sheriff Principal Murray
- Mr. Roderick Macpherson - Officer of Court
- Mr. David Walker - Officer of Court
- The Right Hon. the Lord Lyon (Dr Joseph Morrow)
- Ms. Yvonne MacDermid - Money Advice Scotland
- Ms. Pauline Allan - Citizens Advice Scotland
- Walter Drummond-Murray - Scottish Government
- Eileen Blackburn, CA

Secretariat

Mr Edward McHugh – Deputy Secretary to the Lord President

Apologies

Sheriff Principal Turnbull

Item 1: Welcome and apologies

1. The Chair welcomed members to the meeting and, in particular, welcomed David Walker to his first meeting. Apologies were noted from Sheriff Principal Turnbull.

Item 2: Minutes of the meeting on 22 October 2018 and matters arising

2. Minutes of the meeting on October 2018 had previously been approved by correspondence. The Lord Lyon expressed his concern that the Council had

sought clarification at that meeting of his proposal, in respect of commissions to messengers-at-arms whose original commissions had included a condition that the office was to become vacant when the messenger reached the age of 70, to issue amended commissions deleting that condition. The Chair assured the Lord Lyon that, in her view, the matter having been brought to the Council's attention in October 2017, and having regard to the Council's statutory remit^[1], the scrutiny at the meeting in October 2018 (which the Lord Lyon had not been able to attend) and the subsequent exchange of correspondence to clarify the Lord Lyon's position was appropriate.

Item 3: Membership of the Council

4. The resignation of Stuart Hamilton and his replacement as an officer of court member by David Walker was noted. Mr Hamilton was thanked for his years of service to the Council.

Rachel Grant has resigned as a solicitor member of the Council. The Law Society of Scotland has been approached to nominate a replacement.

The Chair informed members that Roddy Flinn, the Legal Secretary to the Lord President, who is also the secretary to the Council (appointed by Scottish Ministers under section 76 (3) of the Debtors (Scotland) Act 1987) will be leaving his post in early November 2019. He will therefore be resigning his position as secretary to the Council. A letter to that effect will be sent shortly to Scottish Ministers.

Item 4: Scottish Government Update

^[1] To advise the Court of Session on the making of Acts of Sederunt under section 75 of the Debtors (Scotland) Act 1987 Act and generally to keep under review all matters relating to officers of court.

5. Mr Drummond-Murray provided a short oral update of relevant matters for the Council's attention as follows:

- In the event of a no deal Brexit the Service of Documents and Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provisions) (EU Exit) Regulations 2018 will come into force. These regulations revoke the EU Service Regulation and make saving and transitional arrangements. Service requests from EU MSs received before exit day should be dealt with under the EU regulations. After exit day requests should not be dealt with under the EU Regulation. Where EU MSs are signatories to the 1965 Hague Convention, service requests will be transmitted under the Convention. Under the convention requests are sent to the Central Authority (Scottish Ministers) of the receiving country, although the sender can opt to use judicial officers if they wish (Article 10). Article 12 states that payment is only permissible if a judicial officer is used. As such, people can continue to use SOs for service in Scotland under the 1965 Hague Convention; however they will have the option to send it to the Central Authority for service without charge.
- Scottish Government may introduce legislation on moveable transactions. (No timescale was mentioned).
- Implementation is ongoing in respect of Civil Litigation Group Proceedings.
- The 2nd phase of Simple Procedure rules (for personal injury and housing cases) will not be introduced until the ongoing review by SCTS of the first set is complete.

Item 5: SMASO Memorandum

6. The Chair drew attention to two matters highlighted in the memorandum:
- **Membership of the Society:** Rules made under s65A of the Bankruptcy and Diligence (Scotland) Act 2007 (annual fee charged by SMASO) need to be approved by the Lord President. The Lord President's Private Office (LPPO) has asked for reassurance that SMASO is satisfied that the change to its rules to remove the abatements for part-time working is compliant with any duties it may have under the Equality Act 2010. SMASO was encouraged by members to engage with LPPO to resolve matters, it being observed that the concern may well be indirect discrimination against those with child-care responsibilities.
 - **EU Service Regulation:** in the event of a no deal Brexit there will be a requirement to amend Item 13(h) in the table of fees payable to messengers-at-arms. The Council noted that that is a matter for the Scottish Civil Justice Council. SMASO was invited to send the request for this minor amendment to the SCJC secretariat for incorporation in the SCJC's work planning.
 - Members asked Mr Walker and Mr Macpherson for some information about SMASO's training regime and examination programme for new officers of court. Mr Macpherson informed the Council that SMASO was intending to engage with a specialist in education and training to review its training (which is mainly done through member firms) and examinations. SMASO is open to the modernisation of both, provided that there is no decline in standards. Mr Macpherson agreed that SMASO would provide an update to the Council secretariat in spring 2020 regarding the training and examination review.

Item 6: AOCB

7. Sheriff Principal Murray informed the Council that he had dealt with one misconduct complaint (in respect of 4 officers). He had been satisfied with the explanations offered by the officers.
8. The Chair informed the Council of her intention to resign as Chair after 4 years in post. Members thanked her for her contributions.
9. Once a new Chair has been appointed, the secretariat will intimate dates for the proposed meetings in spring and autumn 2020, with the usual proviso that the spring meeting will only take place if there is sufficient business to justify it.