



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

1 April 2018 to 31 March 2019

May 2019

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Foreword by the Chair of the Council

I am pleased to present this eighth 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 The provisions concerning the Scottish Civil Enforcement Commission were repealed, with the majority of its proposed functions being placed instead on the Advisory Council or on the Lord President and the sheriffs principal or on the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 eighth annual report and is for the period 1 April 2018 to 31 March 2019.
- 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 2018 the membership of the Council was as follows:

The Hon. Lady Wolffe (Chair)

The Hon Lord Lyon King of Arms

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 2019 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 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

Alison Gow – solicitor member

Alison Gow was appointed as a solicitor member on 17 April 2018.

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 2017-2018, on 22 October 2018. 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, the Council considered the issue of Messengers-at Arms whose commissions the Lord Lyon had amended to remove the condition that the Commission fell (or the office became vacant) upon the Messenger reaching the age of 70. The Lord Lyon provided information which informed the amendments he had made thus satisfying the Council's supervisory role.
- 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 Council's attention this year.

Future meetings

- 3.4 The Advisory Council will next meet on 7 October 2019.

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 2017- 2018 (which is the most up-to-date available) can be accessed here:

https://www.aib.gov.uk/sites/default/files/aib_scottish_diligence_statistics_2017-18.pdf

APPENDIX

ADVISORY COUNCIL ON MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

MINUTES

Meeting – Meeting 22 October 2018 at 2.15pm at Parliament House, Edinburgh

Present

The Hon. Lady Wolffe (Chair)

Sheriff Principal Murray

Mr Roderick Macpherson – Officer of Court

Mr Stuart Hamilton – Officer of Court

Ms Yvonne MacDermid- Money Advice Scotland

Ms Eileen Blackburn, CA

Ms Rachel Grant, solicitor

Ms Alison Gow, solicitor

Secretariat

Mr Edward McHugh – Deputy Secretary to the Lord President

Apologies

Sheriff Principal Turnbull

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

Mr Walter Drummond-Murray – Scottish Government

Ms Pauline Allen – Citizens Advice

Item 1: Welcome

1. The Chair welcomed members to the meeting and, in particular, welcomed Alison Gow and Eileen Blackburn to their first meeting. Apologies were

noted from Sheriff Principal Turnbull, the Lord Lyon, Walter Drummond Murray and Pauline Allen.

Item 2: Minutes of the meeting on 11 December 2017 and matters arising

2. Minutes of the meeting on 11 December 2017 had previously been approved by correspondence. Mr Macpherson proposed that the draft minutes of the October 2018 meeting should also be approved by correspondence. The Council agreed with that proposal.

3. Matters arising: the Council noted that
 - the Council secretariat has had no further contact from National Registers of Scotland regarding the Public Records (Scotland) Act 2011.
 - on the information provided by Mr Macpherson, the Lord Lyon has issued amended 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. In the amended commissions that condition has been removed.

As the Lord Lyon was not in attendance at the meeting, Mr Macpherson provided some background to what he understood the Lord Lyon's approach to have been. The Lord Lyon had issued amended commissions. He has done so in the exercise of his discretion. Mr Macpherson understood that 75 commissions had been amended in this way. Mr Macpherson indicated that he firmly agreed with that approach. In his view no more information was required. The Chair thanked Mr Macpherson for his information. She noted that in the minutes of the last meeting it was noted that the Lord Lyon wished to take advice. She explained that the Lord Lyon was on leave and that his recent communications with the Council secretariat leaves open the question of whether he may wish an opportunity to obtain advice to confirm his approach. Lady Wolffe indicated that she would follow up directly with the Lord Lyon to clarify the matter. If any further input from the Council were required that could be done by correspondence

Members also discussed whether the Council should reconsider the 2014 decision to remove the upper age limit. It was decided not to reconsider that decision at this time.

Item 3: European Union Services Regulation

4. The Council considered papers 2, 2A and 2B and agreed that the Council secretariat would write to the Scottish Government indicating the Council had no comments additional to those made by the Society of Messengers-at-Arms and Sheriff Officers ("SMASO") in its response to the Scottish Government. Mr Macpherson indicated he would identify for Sheriff Principal Murray those jurisdictions in which citizens had email addresses specifically to receive legal documents.

Item 4: SMASO Memorandum

5. Mr Hamilton provided the Council with more information about a matter referred to in the SMASO memorandum (Paper 3) in which the Information Commissioner's Office ("ICO") had, after receiving a complaint, expressed concerns about data protection compliance when an earnings arrestment was served on an employer where, it seemed, the debtor may, after all, never have been employed. The Chair asked that the Council secretariat be kept abreast of the situation, and, in particular the final decision of the ICO.
6. The Council noted that all 6 of the candidates who were presented for examination at the September 2018 diet of examinations for commission as sheriff officers had been unsuccessful. Mr Macpherson agreed that SMASO would send an update of the outcome of the March 2019 diet to the Council secretariat.
7. Mr Macpherson provided the Council with hard copies of the information booklet about messengers-at-arms and sheriff officers which had been

provided by SMASO. These booklets were positively received. A copy will be sent to absent members.

Item 5: Scottish Government Update

8. Mr Drummond-Murray had provided a short note of relevant matters for the Council' attention as follows:

- the Scottish Government is formulating commencement plans for the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018. This delivers new arrangements for group proceedings and protection for personal injury claimants through Qualified One-Way-Cost-Shifting that limits exposure to expenses for claimants.
- Simple Procedure under the Courts Reform (Scotland) Act 2014 came into effect in 2016 for most types of action. The second phase for personal injury and housing cases has been delayed pending a review of the rules currently in place for the first phase.
- the Damages (Investment Returns and Periodical Payments) (Scotland) Bill 2018 and the Progress of Prescription (Scotland) Bill are currently before Parliament for consideration.
- the Scottish Government has been engaging in significant work to prepare for the legislative and operational consequences of Brexit. This includes in particular work on service of documents and other aspects of international judicial co-operation.

Item 6: AOCB

9. The Council secretariat requested that, for the purposes of the General Data Protection Regulation, members consent to the secretariat holding their email addresses and any information provided regarding the reasons a member was unable to attend a meeting. The members present indicated their consent. Absent members will be sent an email by the secretariat.

10. Once they are identified, the secretariat will intimate dates for the proposed meetings in spring and autumn 2019.