

# **PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### ***Schedule 4 - Regulation of Officers of Court: Modifications of Enactments***

##### **Part 1 - Amendments**

374. **Part 1** amends the rules in relation to officers of court in Part V of the Debtors (Scotland) Act 1987 (“the 1987 Act”) and confers functions upon the Lord President, the Court of Session and Sheriffs Principal in order to implement provisions of Part 3 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (“the 2007 Act”).
375. **Paragraph 2** amends section 75 of the 1987 Act (regulation of organisation, training, conduct and procedure). New powers are given to the Court of Session, allowing it to regulate by Act of Sederunt court rules the conduct of officers of court when exercising their extra-official functions and to prescribe the procedure in relation to appeals under section 82 of the 1987 Act. Additional powers are also given to Sheriffs Principal allowing them to revoke permissions for remuneration under section 75(2).
376. **Paragraph 3** amends section 76 of the 1987 Act (Advisory Council on Messengers at Arms and Sheriff Officers) so as to allow the Lord President to make additional lay appointments to the Advisory Council as considered appropriate.
377. **Paragraph 4** amends section 79 of the 1987 Act (investigation of alleged misconduct). The amendments to section 79(1) extend the application of section 79 and expand the definition of “misconduct” as it applies under sections 79 and 80 to match its scope under the 2007 Act.
378. **Paragraph 5** amends section 80 of the 1987 Act (courts’ powers in relation to offences or misconduct). The Court of Session’s powers and the powers of Sheriffs Principal under section 80(1) and (2) are extended to include powers to restrict the functions and activities of messengers-at-arms and sheriff officers respectively. New powers are introduced under section 80(3A) and (3B) giving the Court of Session and Sheriffs Principal the power to suspend messengers-at-arms and sheriff officers placed under investigation or charged with an offence. Section 80(4A) is introduced to give the Court of Session powers to restrict the functions and activities of, or suspending, messengers-at-arms at the end of disciplinary proceedings under section 79(3). Section 80(6A) is introduced to give Sheriffs Principal powers to make orders restricting the functions and activities of, or suspending, sheriff officers.
379. **Paragraph 6** amends section 81 (provisions supplementary to section 80) to ensure that any orders in relation to offences or misconduct made under section 80(1)(a), (2)(a), (3A), (3B), (4), (4A), (6), (6A) or (8)(b) are intimated to the professional association designated under section 63(1) of the 2007 Act. Subsection (3) of section 81 is amended to give Sheriffs Principal power, on receipt of intimation of an order under section 80(3A), (3B), (4A) or (6A), to make an order suspending a sheriff officer.

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2010 (asp 8) which received Royal Assent on 28 April 2010*

380. [Paragraph 7](#) amends section 82 (appeals from certain decisions under sections 79(5) and 80) so as to extend the remit for appeals to the Inner House of the Court of Session to include appeals from the decision of a Lord Ordinary or Sheriff Principal in relation to section 77(1) (appointment of messengers-at-arms) and section 80(3A), (3B), (4A), (6A) or (8)(b) (various orders in relation to officers' misconduct).
381. [Paragraph 8](#) introduces a new section 86A (Electronic communications) so as to include within the scope of Part V admissions (e.g. in section 79(2)) given in electronic format.
382. [Paragraph 9](#) introduces the amendments to the Bankruptcy and Diligence etc. (Scotland) Act 2007.
383. [Paragraph 11](#) amends section 51 of the 2007 Act (information and annual report) so as to require the Advisory Council on Messengers at Arms and Sheriff Officers ("the Advisory Council"), as opposed to the Scottish Civil Enforcement Commission ("the Commission"), to prepare an annual report on its activities. The report may contain statistical analysis in relation to officers of court. The professional association designated under section 63 has a duty to provide information for the report if asked to do so by the Advisory Council. The report must be published and a copy given to the Scottish Ministers.
384. [Paragraph 13](#) amends section 61 of the 2007 Act (regulation of judicial officers). Powers allowing the Scottish Ministers to make regulations in relation to fees and charges levied by an officer of court under section 61(2)(d) and the obligation to consult the Commission before making such regulations under section 61(3) are removed. There are, however, existing powers in relation to fees levied by officers of court under the Sheriff Courts (Scotland) Act 1907, the Execution of Diligence (Scotland) Act 1926 and the 1987 Act as with the current Act of Sederunt (Fees of Sheriff Officers). The obligation to consult the Commission otherwise under section 61(2) becomes an obligation to consult the Lord President of the Court of Session ("the Lord President") and each Sheriff Principal.
385. [Paragraph 14](#) amends section 62 of the 2007 Act (duty to notify Commission of bankruptcy etc.) so as to make the obligation to notify the Commission under section 62(1) an obligation to notify the Lord President or the Sheriff Principal from whom an officer holds a Commission.
386. [Paragraph 15](#) amends section 63 of the 2007 Act (judicial officers' professional association). Section 63 gives the Scottish Ministers powers to designate and make provision for a professional association for officers of court. Section 63(1A) extends these powers by allowing the Scottish Ministers to include provision requiring officers of court to provide information to the professional association (for statistical purposes related to the Advisory Council power in section 51). The obligation to consult the Commission prior to making such regulations becomes an obligation to consult the Lord President and each Sheriff Principal.
387. [Paragraph 16](#) introduces section 63A (code of practice), replacing the Commission's duty under section 55. The professional association must, subject to prior approval of the Lord President, prepare and publish a code of practice in relation to the functions of officers of court and may prepare and publish a code of practice in relation to the undertaking of activities by officers of court. Either code may be revised. Where revisions are substantial, the code must be published; otherwise, it may be published. Copies must be sent to the Scottish Ministers, the Lord President, each Sheriff Principal and each officer of court.
388. [Paragraph 17](#) amends section 64 of the 2007 Act (duty of professional association to forward complaints to Commission). The professional association's duty to forward complaints to the Commission will become a duty to forward complaints to the Lord President and the appropriate Sheriff Principal.

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389. [Paragraph 18](#) amends section 65 of the 2007 Act (information from professional association connected with discipline). The Lord President or any Sheriff Principal, as opposed to the Commission, may require the professional association to provide information under section 65.
390. [Paragraph 19](#) introduces section 65A (annual fee) to replace provision in the 2007 Act. The professional association may, subject to the approval of the Lord President, make rules requiring officers of court who hold a commission to pay an annual fee. Rules made under this provision may make provision in relation to when and in what manner the fee must be paid, and other matters the professional association considers appropriate.
391. [Paragraph 20](#) amends section 66 of the 2007 Act (inspection of judicial officer). The Commission's powers to appoint a person to inspect and report back on the works or particular aspects of the work of an officer of court will be transferred to the Lord President or any Sheriff Principal. The obligation to pay a person appointed will be borne by the Scottish Ministers, as opposed to the Commission.
392. This part also replaces various references to "judicial officers" in the 2007 Act with references to messengers-at-arms and sheriff officers.