SCOTTISH STATUTORY INSTRUMENTS

2002 No. 566

COURT OF SESSION

Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002

Made - - - -	*20th December 2002*
Coming into force - -	*30th December 2002*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 6 of the Execution of Diligence (Scotland) Act 1926(**1**), section 5 of the Court of Session Act 1988(**2**) and of all other powers enabling them in that behalf, with the concurrence of the Lord Lyon King of Arms do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 and shall come into force on 30th December 2002.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Fees of messengers-at-arms

2. Schedule 1 to this Act of Sederunt shall have effect in respect of work carried out by a messenger-at-arms in relation to causes in, or work authorised by the Court of Session, and the fees specified are the fees payable to a messenger-at-arms in respect of that work.

Application, revocation and saving

3.—(1) Schedule 1 to this Act of Sederunt applies to work done on or after the date on which this Act of Sederunt comes into force.

(2) The Acts of Sederunt specified in Schedule 2 to this Act of Sederunt are hereby revoked.

(3) Notwithstanding the revocation in sub-paragraph (2), the Act of Sederunt (Fees of Messengers-at-Arms) 1994(**3**) shall continue to have effect in respect of work done—

(a) before the date on which this Act of Sederunt comes into force; and

(**1**) 1926 c. 16.
(**2**) 1988 c. 36.
(**3**) S.I. 1994/391, amended by S.I. 1994/3268, S.I. 1995/3094, S.I. 1996/2855, S.I. 1997/2825, S.I. 1998/3256, 1998/2668, S.S.I. 1999/151, S.S.I. 2000/421, S.S.I. 2001/440 and S.S.I. 2002/513.

(b) in relation to enforcement of a debt by poinding or warrant sale insofar as such enforcement continues to be competent by virtue of section 57 of the Debt Arrangement and Attachment (Scotland) Act 2002.

Edinburgh
20th December 2002

W. Douglas Cullen
Lord President I.P.D.

SCHEDULE 1

Paragraph 2

GENERAL REGULATIONS

(a)

1. Subject to the following paragraphs, the fees payable to a messenger-at-arms shall be calculated in accordance with the Table of Fees in this Schedule and shall be payable in respect of all forms of service or intimation of a document, citation of a person or execution of diligence and all other work authorised by the court and executed by a messenger-at-arms during the normal business hours of 9.00am to 5.00pm.

2. Fees in relation to service or intimation of a document, citation of a person or diligence which, of necessity, is executed outwith normal business hours shall be surcharged by the levying of an additional fee of–

(a) 331/3 per cent of the fee specified in the Table of Fees, where it is executed on a week day between the hours of 5.00pm and 10.00pm; and

(b) 75 per cent of the fee specified in the Table of Fees, where it is executed on a week day after 10.00pm or before 9.00am or on a Saturday, Sunday or a public holiday.

3.—(1) There shall be three bands of charge in the Table of Fees in accordance with which fees shall be payable.

(2) The three bands of charge shall be–

(a) Band 1 – up to 12 miles;

(b) Band 2 – over 12 miles and up to 18 miles; and

(c) Band 3 – over 18 miles.

(3) A fee is payable in respect of one band of charge only for any item.

(4) Unless by special arrangement between a messenger-at-arms and the instructing agent, the bands of charge shall be calculated according to the distance from the place of business of the nearest messenger-at-arms to the place of execution.

4. An additional fee may be negotiated between the messenger-at-arms and the instructing agent by prior agreement in the following circumstances:

(a) where the messenger-at-arms is standing by awaiting the delivery or uplifting of a document for immediate service;

(b) where the messenger-at-arms has to instruct an huissier or other officer of court outwith Scotland to serve a document; or

(c) where there is no prescribed fee and the importance, urgency and value of the work involved necessitates an additional fee.

5. All reasonable outlays, excluding postage, but including any recorded delivery costs exclusive of postage in respect of items 1(b) and 1(c) in the Table of Fees, necessarily incurred by a messenger-at-arms in carrying out lawful instructions shall be charged in addition to a fee specified in the Table of Fees.

6. Every fee note rendered by a messenger-at-arms shall be so detailed that the fees charged by him may be easily checked against the Table of Fees; and any fees agreed under paragraph 4 above and any allowable outlays shall be clearly narrated as such. The fee note shall be reviewed by the messenger-at-arms to ensure that it is fair and reasonable in the circumstances and shall be adjusted by him if necessary.

7. Discounting of fees is permitted only between messengers-at-arms.

8. Any restriction or modification made by a messenger-at-arms of fees recoverable from a person shall be passed on to that person only.

9. Time shall be charged in units of 30 minutes or part thereof; and, except in relation to time under paragraph 10, 11 or 12 below–

(a) time shall apply from the end of the first hour at the place of execution until completion; or

(b) time shall apply after the messengers-at-arms has travelled a distance of 30 miles from his place of business until he returns to a distance of 30 miles from that place.

10. Where a messenger-at-arms has to use a ferry, he and any witness shall be allowed the necessary cost of the ferry, all reasonable subsistence and the time for boarding, crossing and returning, which shall be charged on a time basis.

11. Where a messenger-at-arms is required to attend before a notary public, commissioner or other person or as a witness, a fee for such attendance by the messenger-at-arms and any witness shall be chargeable on a time basis.

12. Where enquiries are necessary in order to execute service, intimation, citation, diligence or any other work authorised by the court, a fee for such enquiries shall be chargeable on a time basis.

13.—(1) Where, in an attachment, the appraised value of an article exceeds the sum recoverable, the fee specified in the Table of Fees shall be calculated in accordance with the sum recoverable and not the appraised value.

(2) Where, in an attachment, a debtor or other occupier of the premises claims that goods are subject to a hire purchase, agreement or are otherwise the property of someone other than the debtor, but refuses, or is unable, to produce evidence to that effect, the messenger-at-arms may attach the goods and shall add a note on the schedule of the attachment stating that the debtor has claimed that the goods are subject to a hire purchase agreement or are otherwise the property of someone other than the debtor, as the case may be.

14. A messenger-at-arms supplying services to any person in respect of which fees are payable to him under this Schedule shall–

(a) if he is a taxable person within the meaning of the Value Added Tax Act 1983; and

(b) if the supply is a taxable supply within the meaning of that Act,

makes the charges to that person in addition to the charges in respect of that fee, being such additional charges as amounts to the value added tax payable under that Act in respect of the supply of those services.

15. In this Schedule, unless the context otherwise requires–

"the Act of 1987" means the Debtors (Scotland) Act 1987 (c. 18);

"the Act of 2002" means the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17);

"apprehension" means apprehending, detaining and taking to and from court or prison;

"arranging" means accepting instructions, checking for competency, reserving time, advising instructing agent, making all necessary arrangements, intimation and service (where necessary) prior to execution;

"possession" means searching, taking possession and delivery;

"postal diligence" means service of any diligence, which may be served by post, by registered post or the first class recorded delivery service;

"postal service" means service or intimation by registered post or the first class recorded delivery service;

"service" means service or intimation of any document under a rule of court or an order of the court and includes accepting instructions, preparation, postage and service or intimation of any ancillary form or other ancillary document.

TABLE OF FEES PAYABLE TO MESSENGERS-AT-ARMS

Item	*Band 1* *£*	*Band 2* *£*	*Band 3* *£*
1. Service or intimation of a document			
(a) (a) Service			
(i) each person at a different address	£42.15	£71.50	£90.30
(ii) each additional person at the same address or additional copy required to be intimated under the Act of 1987 and the Act of 2002	£14.10	£14.10	£14.10
(b) (b)Postal service	£20.65	£20.65	£20.65
(c) (c)Postal diligence	£31.25	£31.25	£31.25
2. Inhibitions			
(a) (a) Inhibition only			
(i) each person at a different address	£44.40	£71.50	£90.30
(ii) each additional person at the same address	£23.00	£23.00	£23.00
(b) Inhibition and service (b)			
(i) each person at a different address	£58.45	£85.45	£104.65
(ii) each additional person at the same address	£37.15	£37.15	£37.15