



(Map source : Europa)

Scotland



Population: 5 054 000 habitants
Surface area: 78 772 Km²
Capital: Edinburgh
Currency: Pound sterling
Official languages: English – Scots Gaelic
Form of government: Parliament democracy
Membership in the EU: 1973
Membership in the UIHJ: 1979

The Messengers-at-Arms

Who are the professional officers charged with the enforcement of court judgments, the service of writs, or with debt collection?

There are two kinds of professional officers in Scotland: the Messengers-at-Arms (Supreme Court enforcement officers), attached to the Supreme Court, and the Sheriff Officers (Local Court enforcement officers), attached to the local courts). The two types of professional officers exercise a monopoly on the enforcement of judgments and can proceed to the physical act of serving judicial and extra-judicial documents. The officers can also conduct legally enforced public auction sales at the debtor's place of domicile.

What is the status of these professional officers?

The Messengers-at-Arms and the Sheriff Officers are appointed each year by the Senior Sheriff possessed of the juridical competence. Independent professionals, they operate under a liberal system. They are subject to deontological, disciplinary, and professional rules of the profession, for which they are required to take out liability insurance coverage.

How are the judicial officers organised?

One hundred and sixty-three in number, they cover the entire territory of Scotland (one officer for approximately every 31 000 inhabitants). They may act on their own or as a company. Currently, there are 24 such

companies. The profession is almost strictly male (only 9 women).

The Messengers-at-Arms and the Sheriff Officers are given a territorial competence that is limited to jurisdiction over the district of their domicile. The **Society of Messengers-at-Arms and Sheriff Officers** represents the profession at the national level but membership in the society is not mandatory.

Contact:

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How can one join the profession?

The candidate is appointed by the Senior Sheriff of the constituent jurisdiction. An on-going training programme is organised by the profession. This training is expected to become mandatory. Aside from possessing the British nationality, the candidate must offer proof of an exemplary moral character. He must have passed through a trainee programme of three-year duration in a judicial officer's practice and have successfully completed a professional examination organised by the Society of Messengers-at-Arms and Sheriff Officers.



The enforcement of court judgments

Who is charged with the enforcement of court judgments in Scotland?

Only the Messengers-at-Arms and the Sheriff Officers are empowered to proceed to the enforcement of judgments as well as writs of execution. They have the competence to proceed to the enforced execution against the debtor's possessions.

Can one contact a judicial officer directly to have a court order enforced?

Yes, but only the Messenger-at-Arms or the Sheriff Officer possessed of the territorial competence in the district of the execution is entitled to proceed with the enforcement of a judgment.

Is the judicial officer empowered to enforce execution against the entire debtor estate?

The Messenger-at-Arms or the Sheriff Officer may proceed to the enforcement of a judgment against the debtor's movable or immovable estate, tangible and intangible both.

Is the judicial officer responsible for taking charge of the enforcement procedure?

The Messenger-at-Arms or the Sheriff Officer charged with the execution assumes responsibility for the enforcement procedure. He is entitled, when permitted or demanded by law, to request the judge to issue the authorisation needed to make the execution possible.

Is it possible for the judicial officer to obtain personal information about the debtor and his estate?

The judicial officer does not have direct access to information files.

Who pays for the judicial officer's intervention costs?

The debtor assumes the costs for the intervention within the context of the enforcement act. In the event that the debtor is insolvent, it is the creditor who must assume the expense. The creditor must also pay a collection charge to the Messenger-at-Arms.

The service of writs

Are judicial officers entitled to proceed to the service of writs?

The Messengers-at-Arms and the Sheriff Officers have a monopoly on the physical presentation of judicial and extra-judicial writs. Other practitioners in the legal profession (lawyers and solicitors) may also notify instruments but these are forwarded by registered mail.

What are the physical steps involved in serving a writ?

The writ is physically handed over by the Messenger-at-Arms or by the Sheriff Officer or by one of their assistances that are so authorised and are acting under their control. In the addressee's absence at the time the writ is presented, it may be presented at the latter's domicile to a person present there (family member, friend, servant,...), or to a caretaker. When the addressee is absent and the judicial officer has received confirmation that he is at the right place, the writ may be left behind in the letter box. In such an event, a copy of the writ is also being forwarded to the addressee by mail.

What is the force in law of a writ?

The Messenger-at-Arms or the Sheriff Officer draws up a report on his activities (Certificate of execution of service). This document states the name and the address of the Messenger-at-Arms or of the Sheriff Officer, as well as where, when, and how the document was served. This certificate confirms that the document was indeed served and officially attests to the regularity of the procedure. This is only valid in the case where the Messenger-at-Arms or the Sheriff Officer is a member of the Society of Messenger-at-Arms or Sheriff Officers.

Does the judicial officer's intervention fall within the framework of the Council regulation (EC) N° 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters?

The Messengers-at-Arms are both transmitting and receiving agencies in Scotland, jointly with the Accredited Solicitors.



Debt Collection

Is the judicial officer empowered to proceed towards the collection of debts?

The Messengers-at-Arms or the Sheriff Officers may not proceed directly in their own name to the amicable collection process or to the collection of a judgment debt. However, they are allowed to form distinct companies specifically for that purpose. These companies are especially prominent in the large urban centres. Currently, discussions are underway on the possibility for the Messengers-at-Arms or the Sheriff Officers to proceed directly, in their own name, to an amicable collection process or to the collection of judgment debts.

Is it possible to contact a judicial officer directly for the purpose of collecting a debt?

It is possible as of the moment when the rules relative to the separation of activities of the Messenger-at-Arms or of the Sheriff Officer are respected.

How much will it cost a creditor to have a debt collected?

The applicable rate is left open but depends on the free competitive forces.

Other areas of intervention

May the judicial officer arrange for sales by public auction?

The Messenger-at-Arms or the Sheriff Officer may proceed to sale by public auction, at the debtor's place of domicile, of the goods he has seized from the debtor.

May the judicial officer engage in formulating legal findings and observations, such as statements of facts?

In principle, yes, but this an activity as yet little developed and in effect mostly at the request of lawyers, in the instance of a litigation.

May the judicial officer represent the parties before the courts?

Neither the Messenger-at-Arms nor the Sheriff Officer may represent his client before a court except in so far as the case is linked to an enforcement procedure (petition, appearance at the request of the magistrate, ...).

Is the judicial officer entitled to offer legal advice?

The legal recommendations or advice given by the Messenger-at-Arms or the Sheriff Officer must be relative to the enforcement that is contemplated or in progress.

Is the judicial officer entitled to engage in other activities?

The Messenger-at-Arms or the Sheriff Officer is not permitted to engage in other activities in his professional capacity but he may do so in a personal capacity in his name and on his own behalf.

