Finance Committee
Public Services Reform (Scotland) Bill
Submission from the Society of Messengers-at-Arms and Sheriff Officers

Executive Summary

The Society welcomes the opportunity to present evidence to the Finance Committee at Stage 1 of the Public Services Reform (Scotland) Bill. Our evidence is restricted to Part 1, section 9 and Schedule 2 of the Bill relating to Regulation of Officers of Court, the sections of the Act in which the Society has a specific interest and more particularly the qualifications to provide evidence to the Committee.

The Society supports the general principle of the Bill in the areas mentioned and in particular supports the Scottish Governments proposals to:

- Not proceed with implementation of the Scottish Civil Enforcement Commission
- Take up the alternative solution first proposed by the Society of a modernised Advisory Council
- Utilise a cost neutral solution of a modernised Advisory Council supported by the Society providing secretariat, administrative and reporting functions
- Increase transparency through
- An open and transparent complaints route
- A publicly available code of conduct applicable to all officers
- Extension of membership of the Advisory Council to include other interested stakeholders including representation from the Money Advice sector as well as creditors
- Publication of an annual report on the Advisory Council and officer activities.
- Establish compulsory membership of the professional association leading to self-financing of the above elements.

We expand on our reasons for supporting the Scottish Government position below but would agree that the provisions of the Bill referred to are likely to “help simplify and improve the landscape of Scottish public bodies, to deliver more effective, co-ordinated government that can better achieve its core functions for the benefit of the people of Scotland”

As far as regulation of officers of court is concerned, the current financial situation means this is very much the appropriate time to be pursuing measures in the Bill as these will lead to ongoing savings for the Scottish Government. Following on from that the retention of the links between officers and the courts is a form of simplification of public bodies in line with the policy objectives of the Bill.
SCEC

The Society raised concerns about the cost to the Scottish Government of the implementation of the Scottish Civil Enforcement Commission when the proposed budget for this body was first published during the passage of the Bankruptcy and Diligence Scotland etc. (Scotland) Act 2007. These estimated costs are detailed in paragraphs 448-450 of the Financial Memorandum and referred to in section 78 of the policy memorandum. SCEC would have been taking over functions of other bodies where the cost to the Scottish Government was negligible. The courts had an existing supervisory and disciplinary role over officers. The Advisory Council took officer activities into consideration when advising the Lord President on issues of regulation of officers of court. The Society of Messengers-at-Arms and Sheriff Officers (SMASO) operated a complaints system as well as an examination system. The Society exercised these functions on a budget of £60,000.00 financed by member subscriptions and at no cost to the public purse.

The Society saw and still sees no logical argument for imposing a burden on the public purse. We are accordingly in complete agreement with the views of the Scottish Government in both the Policy and Financial Memorandum that expenditure on SCEC is unnecessary while the aims of achieving regulation of officers of court can be achieved by other methods.

Alternative Version – Advisory Council & the Courts

One of the primary functions of the proposed SCEC was the production of an Annual Report. That function can very easily be fulfilled by the Advisory Council with the support of SMASO. It was perceived by the Scottish Government and agreed by SMASO that the Advisory Council, as constituted, did not have the input of a full range of interested stakeholders. The Bill proposes that the Lord President may also appoint such persons as he considers appropriate to be members of the Advisory Council. This will enable representation on the Advisory Council from the money advice sector and creditors organisations in addition to current representation from the judiciary, legal profession, officers of court and the Scottish Government. We would submit that this will add further authority to the annual report which will be issued by a body made up of a wide range of interested parties. All of this is achieved at no additional cost to the public purse. SMASO will be assisted financially by the introduction of compulsory membership as more fully discussed below.

Discipline and regulation of officers of court will remain with the courts. This is the correct constitutional approach to discipline and regulation of officers of court. They are appointed by the courts, answerable to the courts for the execution of their official duties and, as a result, should be overseen by the judiciary. Any other system entails the danger of the independence of the officer of court being prejudiced. We presented this argument in full during the passage of the Bankruptcy and Diligence etc. (Scotland) Act 2007 and do not propose to go into the same detail here. We can provide further information at the Committee’s request. The significant point about the retention of the courts’ powers in this regard is that it is of no further cost to the public purse. It also fulfills the purpose of the Bill in achieving simplification of Public Bodies.
Increased Transparency

Members of SMASO are subject to a code of professional Ethics. As membership is not compulsory, and not all officers are members, the code does not currently apply to all officers of court. It has to be conceded that the public may not be aware of the existence of the code and, even if they are, they may well be unaware that the code does not apply to all officers. A universally applicable and available Code of Conduct will accordingly lead to greater transparency within the profession and bring greater public awareness in the public mind of the standards to be expected of officers of court. We should point out that we consider officers of court do currently meet these standards but we are very open to greater transparency. SMASO has taken the initiative in this matter and has submitted a draft Code of Conduct to the Advisory Council for consideration, as well as consulting with the money advice sector and creditors’ representatives as to its content.

Complaints and disciplinary procedures are made clear in the Bill and the Society is pleased to see that the professional organisation will be involved in that procedure.

Professional Organisation

The Act requires Scottish Ministers to designate an organisation to be the professional association for officers of court. We would submit that SMASO is the appropriate organisation to be designated under the Act. The Society has been in existence since 1922 and has been, and remains, the only professional association for officers of court. As well as representing the interests of members, it has long developed disciplinary procedures and has put itself forward at all times to assist the courts and government in implementing both primary and secondary legislation. It has also, through the Committee of Examiners, set up a robust examination system for new entrants to the profession, which has led to a significant increase in standards. This is recognised by the Scottish Government in paragraph 74 of the Policy Memorandum. In line with the spirit of the Bill it would seem logical to designate SMASO as the professional organisation in terms of the Bill.

Compulsory Membership

The bill, in conjunction with the 2007 Act, makes provision for compulsory membership of the professional association. Compulsory membership has been a goal of SMASO for some time and we wholeheartedly welcome this proposal. We had discussed all matters raised in this paper with both the Scottish Government and with the Sheriffs Principals Association. It is worth mentioning that the Sheriff Principals have indicated their support for compulsory membership.

As previously indicated, this will further assist the Society in self-financing so it can carry out its current functions as well as further supporting the functions to the Advisory Council as mentioned above. It brings greater benefits to the area of transparency and also to the raising of standards as detailed below.
Advisory Council

The Society has been in discussion with the Advisory Council and the Scottish Government as to how changes in the role of the Advisory Council might be implemented. It was commented upon that the current secretarial services provided to the Advisory Council might require to be increased and the Society has suggested it might provide some, if not all, of the services currently provided by Parliament House. Much of the detail which will be required by the Advisory Council in relation to annual reporting and matters relating to complaints will require input from the Society in any event.

There may be a suggestion that the Society providing secretarial services to the Advisory Council could result in a conflict of interests if the same organisation was involved in the running of two different bodies. However, a similar situation already exists. At the present time the Society provides the resources and staff for the running of the Society and also the Committee of Examiners. The Committee of Examiners is a completely separate body from the Society and operates independently. The Society has no control over the actions of this Committee. However, the secretarial and backup services are provided by the Society.

The current Administrative Secretary, Mr Alan Hogg, in addition to carrying out his duties for the Society is also employed to provide the support and services to the Committee of Examiners. Whilst doing so he operates under the title of the Secretary to the Committee of Examiners and operates exclusively under the instructions of the Committee.

This would be likely to place some additional demands upon the Society, but the cost of this could most likely be met by the Society if it had compulsory membership. It must also be stressed this would be achieved with little or no cost to the public purse.

Training/Examinations

The Society is legally bound to provide training and examinations for the profession. This is open to employees of all firms, whether they are members or not, but these services have to be subsidised by the subscriptions of paying members.

It was calculated a few years ago that it costs approximately £3,000 to run an examination, of which there are two per year (This does not take into account the vast amount of free input of time by members of the Committee of Examiners). However, candidates are only charged £200 to register for the examination. On many occasions only one or two candidates may register for an exam.

Training costs are also another item which must be funded by the Society. The Society currently has to pay a fee of £1,600 per training course to the training officer and provide the additional backup costs of accommodation, etc. Candidates are charged £400 per course, even if there is only one candidate.
Compulsory Membership would assist the Society in maintaining the training and examination system which has contributed to the raising of standards noted by the Scottish Government in its policy memorandum

**Employment of Consultants**

The Society recently had to make submissions to the Lord President in relation to a problem that had been created within the Table of Fees for sheriff officers. This had been brought about by a change in the jurisdiction levels in the sheriff court, a matter outwith the control of the Society. The Society was requested by the Lord President to support its submissions for a change to the Table of Fees with a report from a firm of accountants. The subsequent cost to the Society for this service was £8,000, which had to be met from Society funds. These submissions were successful and this has benefitted both members and non members alike.

Of greater concern is the fact that there is currently a suggestion that the Tables of Fees for officers should be fully reviewed. The Society’s concerns in relation to this is that it will cost many thousands of pounds which the Society would presently be unable to fund from the subscriptions, as the funds held are currently dropping year on year.

These exercises have always been a problem for the Society, as the employment of outside assistance can be extremely expensive and the Society’s income is limited. Compulsory membership would enable the Society to self-finance the employment of experts or consultants. As will be seen from the example, the requirement for this type of expenditure can come from the judiciary. It may be argued that the costs of such an exercise might be met by the public purse. The more sensible solution from the public perspective would be to make them self-financing through increased subscription income by way of compulsory membership.

**Complaints**

The Society has a Constitution which sets out how complaints against officers are dealt with. However, the Society can only deal with complaints against officers who are members of the Society. This restricts the power the Society has to deal with officers if regulations have been breached. The ultimate sanction of the Society is to withdraw membership. However, many officers do not see this as a penalty and can easily continue to function as an officer along with others in their firm, who might still be members.

Unfortunately, the vast majority of complaints received by the Society relate to administrative matters and the actions of administrative staff. In these cases the Society’s policy is to try to act as a mediator in order to resolve the issues in dispute, more often than not satisfactorily. However, should the Society be unable to resolve the issues, it is unable to take any action and on many occasions can only suggest the complainer direct their complaint to the Sheriff Principal. This is unfortunate, because the Society has always tried to act as a filter to enable trivial or unfounded complaints to be dealt with before a complainer feels they have to resort to lodging a complaint with the Sheriff Principal. Probably ninety percent or
more of complaints relate to disputes between debtors and firms of officers and are often regarding payments or disagreement over the amount actually due, officers' fees, etc. For this reason, the Society considers it is in the best position to deal with such complaints because these are matters dealt with on an almost daily basis, certainly by the larger firms. Therefore those considering the complaint on behalf of the Society are probably better qualified to grasp the nature of the complaint and assist in resolving any differences between the parties. Whilst it is accepted complainers should have the option to lodge a complaint with the Sheriff Principal, Sheriffs Principal have indicated they would prefer that trivial matters be filtered by the profession, rather than have their valuable time taken up by matters that can be dealt with administratively. In addition, some members of the public appear to think that taking the time to lodge another complaint with the Sheriff Principal would simply again result in rejection of the complaint because it is all 'one big closed shop'. Consequently, a complainer may be left feeling dissatisfied with the system.

While the Society can act on behalf of the courts in providing this valuable filtering service, it cannot currently always provide this service due to the simple fact that not all officers are members and also the fact that the code of conduct does not apply to the actions of staff employed by non-members.

The lack of authority the Society has when dealing with complaints has been of concern over a period of many years. The ultimate sanction for the Society is to withdraw an officer's membership. However, many officers do not see this as a penalty and in the past there have been members who have voluntarily resigned their membership if they have been unhappy with a decision by the Society's Executive Council. This can be in respect of disciplinary issues or a matter where an officer might simply disagree with a course of action taken by the Society following a decision taken by the majority of the membership.

Should there be compulsory membership, then the Society will have greater powers to deal with internal problems and be able to present a better face to members of the public. As explained above, at the present time the Society often has to advise complainers it is unable to deal with complaints because the complaint is not directed against an officer who is a member of the Society. This can result in an adverse response from a complainer, who finds it difficult to comprehend why there is a professional body set up and yet this body is unable to discipline firms of officers or non members and to satisfactorily deal with complaints against them. Some complainers find it difficult to differentiate between 'firms of officers' and 'officers', members and non-members, and in the past comments have been made to the effect that the Society is simply trying to 'look after its own'.

Should compulsory membership be introduced, this will enable the Society to deal with every complaint it received and would give it greater authority and scope when dealing with complaints. It will also assist in producing the 'transparency' which the Scottish Government initially said was a goal in the modernisation of the profession.
Continuing Professional Development

The Society is always keen to attempt to improve the service provided by officers and for officers to improve their technical skills. Accordingly, in October 1998 the Society introduced a Continuing Professional Development Scheme which it was hoped would encourage officers to keep up to date with new legislation and improve their overall performance.

The Society produced a CPD record card with a view to each officer completing it and submitting it at the end of the year, detailing how he had carried out the requirements of the scheme. Unfortunately, as membership of the Society is not compulsory, it was not possible for the Society to insist that all officers complete and submit a record card and, due to the fact it is not compulsory, it has not even been possible for this condition to be applied to every officer who is a member of the Society.

Since the introduction of our CPD scheme in 1998, the Society has developed a regular programme of CPD training events for members, with sessions being run on a wide variety of topics. Speakers from various external organisations have been invited to give presentations together with representatives from our own Society, running sessions reviewing the impact of operational procedures in light of new legislation etc. Organisations who have recently attended sessions include - Money Advice Scotland, the Scottish Executive Justice Dept., Strathclyde Police, H M Revenues & Customs, the Proceeds of Crime Unit and Registers of Scotland. This is another service that is subsidised by members’ subscriptions.

Compulsory membership would enable the Society to make the Continuing Professional Development scheme applicable to all officers and make completion of CPD requirements a condition of membership. In conjunction with the training and examination system for new entrants, this would contribute to the overall aim of the Society of continuing to raise standards.

Compulsory membership would increases the funding available to the Society and enable yet further development of what has been a successful CPD scheme.

Technical Handbook

For some years the Society has had under consideration the publication of a Technical Handbook to assist officers in the carrying out of their duties and to try to standardise the way in which officers operate.

The Society recently commissioned the production of the handbook which has been issued to members. In addition, the Society has retained the services of an officer to regularly update the handbook in the light of the introduction of new legislation. This is yet another service which is subsidised by the Society.

Compulsory Membership will contribute to the raising of standards by making the technical handbook available to all officers of court and the additional funding will provide the Society with the ability to engage outside technical assistance to enable the handbook to be kept up to date.
**Society Intranet**

The Society currently has a web site which it maintains that provides basic information to officers and members of the public. In a further effort to boost standards, the Society is currently in the process of setting up an Intranet site which will provide additional facilities for members and hopefully be able to provide a better service to the public and outside bodies.

It is intended that items such as the Code of Conduct, the Society’s Constitution, complaints procedures, the Society publication on How to Enforce Your Small Claim Decree, Frequently Asked Questions, etc. will be included in the site to improve public access to relevant information.

All of the above has a cost factor involved and, in order to ensure the various areas referred to above can be properly maintained and serviced, the Society will require additional funds. Again, compulsory membership will fill this funding gap to provide a public service at no cost to the public purse.

**Background Information**

The Society currently has 116 members, although there are a total of approximately 222 commissions on the books of the Sheriffs Principal. Fourteen of these are retired officers. There are thirty five officers who are not currently practising (it is likely a large majority of these do not intend to return to the profession). However, there are fifty nine officers currently practising who are not members of the Society. The vast majority of these officers are employees of firms who have one or more officers as members. It is thought by some of our members that a commercial decision might have been made by some of the firms who wish to obtain the advantages of the work carried out by the Society on behalf of the profession but do not wish to pay for all the officers within their organisation. Although the Society is made up of individual members, when it comes to the payment of their subscriptions, historically this has always been paid by the firm.

Dorothy Lowe  
President  
Society of Messengers-at-Arms and Sheriff Officers