

**2003 No. 388**

**SHERIFF COURT**

**Act of Sederunt (Sheriff Court Company Insolvency Rules  
1986) Amendment 2003**

*Made*

*8th August 2003*

*Coming into force*

*15th September 2003*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation, commencement and interpretation**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Company Insolvency Rules 1986 ) Amendment 2003, and shall come into force on 15th September 2003.

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

(3) In this Act of Sederunt, “the Rules” means the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(b).

**Amendment of Part II of the Rules**

2.—(1) Part II of the Rules (administration orders) is amended in accordance with paragraphs (2) to (6).

(2) In the heading, for “ORDERS” substitute “PROCEDURE”.

(3) In rule 10—

(a) in paragraph (1), after “administration order” insert “or any other order in an administration”;

(b) for paragraph 1(c), substitute—

“(c) how the making of that order will achieve—

(i) any of the purposes specified in section 8(3) of the Act of 1986(c); or

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(a) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c.48).

(b) S.I. 1986/2297.

(c) The Insolvency Act 1986 (c.45) (“the Act of 1986”) is defined in the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 as “the Act of 1986”, and section 8 was amended by the Financial Services and Markets Act 2000 (c.8), section 359, and by S.I. 2001/3649, 2002/1240 and 1555, and applied with modifications by the Building Societies Act 1986 (c.53), Schedule 15, the Building Societies Act 1997 (c.32), Schedule 6, and S.I. 2001/1090.

- (ii) an objective specified in paragraph 3 of Schedule B1 to the Act of 1986(a);”;
  - (c) in paragraph 1(g), for “an administration” substitute “that”;
  - (d) for paragraph 1(h), substitute–
    - “(h) Council Regulation (EC) 1346/2000 of 29th May 2000 on insolvency proceedings(b)–
      - (i) that so far as known to the petitioner, there are no other proceedings; or
      - (ii) whether the present proceedings are main or territorial proceedings;”;
  - (e) omit paragraph 2(b).
- (4) In rule 11, for “2.2” substitute “2.3”.
- (5) For rule 12, substitute–

*“Applications during an administration*

- 12.** An application or appeal under any provision of the Act of 1986 or the Insolvency Rules during an administration shall be–
- (a) where no previous application or appeal has been made, by petition; or
  - (b) where a petition for an order in respect of an administration has been made, by note in the process of that petition.”.
- (6) For rule 14, substitute–

*“Report of administrator’s proposals: Schedule B1 to the Act of 1986*

**14.—**(1) Paragraph (2) shall apply where a report under paragraphs 53(2) or 54(6) of Schedule B1 to the Act of 1986 discloses a failure to approve, or to approve a revision of, an administrator’s proposals.

(2) The sheriff clerk shall appoint a hearing for determination by the sheriff of any order that may be made under paragraph 55(2) of Schedule B1 to the Act of 1986.

*Time and date of lodging in an administration*

**14A.—**(1) The time and date of lodging of a notice or document relating to an administration under the Act of 1986 or the Insolvency Rules shall be noted by the sheriff clerk upon the notice or document.

- (2) Subject to any provision of the Insolvency Rules–
  - (a) where the time of lodging of a notice or document cannot be ascertained by the sheriff clerk, the notice or document shall be deemed to be lodged at 10 a.m. on the date of lodging; and
  - (b) where a notice or document under paragraph (1) is delivered on any day other than a business day, the date of lodging shall be the first business day after such delivery.”.

**Amendment of Part V of the Rules**

- 3.—**(1) Part V of the Rules (general provisions) is amended in accordance with paragraph (2).
- (2) After rule 31, insert–

*“Applications under section 176A of the Act of 1986*

**31A.—**(1) An application by a liquidator, administrator or receiver under section 176A of the Act of 1986(c) shall be–

- (a) where there is no existing process in relation to any liquidation, administration or receivership, by petition; or

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(a) Schedule B1 was inserted into the Act of 1986 by the Enterprise Act 2002 (c.40), section 248.

(b) O.J. L 160, 30/06/2000 P. 0001-0018.

(c) Section 176A was inserted into the Act of 1986 by the Enterprise Act 2002 (c.40), section 252.

- (b) where a process exists in relation to any liquidation, administration or receivership, by note in that process.
- (2) The sheriff clerk shall–
  - (a) after lodging of any petition or note fix a hearing for the sheriff to consider an application under paragraph (1); and
  - (b) give notice of the hearing fixed under paragraph (2)(a) to the petitioner or noter.
- (3) The petitioner or noter shall not be required to give notice to any person of the hearing fixed under paragraph (2)(a), unless the sheriff directs otherwise.”.

**Consequential amendments**

- 4. The Schedule to this Act of Sederunt shall have effect.

Edinburgh  
8th August 2003

*CULLEN OF WHITEKIRK*  
Lord President  
I.P.D.

## SCHEDULE

1. The Rules are amended in accordance with paragraphs 2 to 11 of this Schedule.
2. In rule 4, in paragraph (1) for “an administration order is not in force in respect of it” substitute “is not in administration”.
3. In rule 5–
  - (a) in paragraph (1), for “there is an administration order in force in respect of it” substitute “is in administration”;
  - (b) in paragraph (2), for “an administration order” substitute “any petition in respect of an administration”; and
  - (c) in paragraph (5), for “the petition for an administration order” substitute “any petition in respect of an administration”.
4. In rule 6–
  - (a) in paragraph (a), for “an administration order is not in force in respect of it” substitute “there is no order in respect of an administration”; and
  - (b) in paragraph (b), for “for an administration order” substitute “in respect of an administration”.
5. In rule 7, in paragraph (b) for “an administration order” substitute “an order in respect of an administration”.
6. In rule 8, in paragraph (b) for “an administration order” substitute “an order in respect of an administration”.
7. In rule 9, in paragraph (2)(b) for “an administration order” substitute “an order in respect of an administration”.
8. In rule 15, in paragraph (1)(b)–
  - (a) for “an administration order” substitute “an order in respect of an administration”; and
  - (b) after “made” insert “, or an administrator has been appointed,”.
9. In rule 16–
  - (a) at the end of a paragraph 2(a), omit “and”;
  - (b) in paragraph (2)(b), for “an administration order” substitute “an order in respect of an administration”; and
  - (c) at the end of paragraph (2)(b), insert–
    - “; and
    - (c) upon an administrator”.
10. In rule 19, after paragraph (2)(d) insert–

“(dd) where a company is in administration, to serve upon the administrator;”.
11. In rule 23, in paragraph (2)(c) after “receiver” insert “or administrator”.

## EXPLANATORY NOTE

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt amends the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 (“the original rules”).

The procedure required to give effect in the sheriff court to the provisions of the Insolvency Act 1986 (“the Act of 1986”) is provided in part by the original rules, and in part by the Insolvency (Scotland) Rules 1986 (“the Insolvency Rules”).

The Enterprise Act 2002 (“the 2002 Act”) amended the Act of 1986 to provide that for most companies–

- (1) an administrator can be directly appointed to a company by the holder of a qualifying floating charge, a company, or the directors of a company, subject to notice being given to the court, and the court’s powers to make an administration order; and
- (2) where there is a floating charge, a prescribed part of the assets of a company shall be set aside for unsecured creditors, unless any liquidator, administrator or receiver can satisfy the court that the prescribed part should not apply, by making an application under section 176A of the Act of 1986.

The Insolvency (Scotland) Amendment Rules 2003 have amended court procedures, so far as specified by the Insolvency Rules. This Act of Sederunt makes the remaining procedural provision required for the sheriff court, by amending the original rules.

Insolvency procedures have also been affected by Council Regulation (EC) 1346/2000 (“the EC Regulation”), which makes rules for insolvency proceedings in different member states that relate to the same undertaking.

Article 2 amends Part II of the original rules (administration orders), by providing–

- (a) where appropriate, that any petition has averments on the further grounds for making an administration order introduced by the 2002 Act;
- (b) that any petition shall include averments relating to the EC Regulation;
- (c) a new rule 12 on appeals and applications, replacing the detailed list of such appeals and applications in the rule 12 of the original rules;
- (d) a new rule 14, which makes a similar provision for hearings on administrator’s proposals in those cases affected by the 2002 Act, as the rule 13 of the original rules makes for the original provisions of the 1986 Act where they still apply;
- (e) a new rule 14A, which provides where appropriate for the determination of the day and time of lodging of any notice or document; and
- (f) minor and consequential amendments to that Part.

Article 3 amends Part V of the original rules (general provisions), by providing that an application under section 176A of the Act of 1986 shall be by petition or note as appropriate, and that notice of a hearing on that application shall be given only to the petitioner or noter unless the sheriff directs otherwise.

Article 4 gives effect to the Schedule , which makes consequential amendments to the original rules.





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