

2008 No. 119

SHERIFF COURT

Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008

Made - - - - *13th March 2008*

Coming into force - - *1st April 2008*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a), sections 1A(1)(b), 14(4) and 62(2) of, and paragraph 2 of Schedule 5 to, the Bankruptcy (Scotland) Act 1985(b), and these rules making provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appearing to the Lords of Council and Session that it is expedient for the reference to Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings to be construed as a reference to that instrument as amended from time to time, under and by virtue of the powers conferred by paragraph 1A of Schedule 2 to the European Communities Act 1972(c) and under and by virtue 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 and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008 and shall come into force on 1st April 2008.

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

Bankruptcy Rules

2. The Schedule to this Act of Sederunt shall have the effect of providing rules in the sheriff court for the purpose of the Bankruptcy (Scotland) Act 1985.

Revocation and saving

3.—(1) The Act of Sederunt (Sheriff Court Bankruptcy Rules) 1996(d) is revoked.

(2) Notwithstanding sub-paragraph (1), the Act of Sederunt (Sheriff Court Bankruptcy Rules) 1996 shall continue to apply to sequestrations commenced before the coming into force of this Act of Sederunt.

(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 the Child Support Act 1991 (c.48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).

(b) 1985 c.66. Sections 1A(1)(b) and 14(4) were amended by schedule 6 to the Bankruptcy and Diligence etc. (Scotland) Act 2007.

(c) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(d) S.I. 1996/2507.

(3) For the purposes of sub-paragraph (2), a sequestration shall be taken to have commenced when a petition has been presented or an application has been made to the Accountant in Bankruptcy under section 5(2)(a) or 6(3)(a), (4)(a) or (6)(a) of the Act of 1985.

A. C. Hamilton
Lord President

Edinburgh
13th March 2008

SHERIFF COURT BANKRUPTCY RULES

Citation and interpretation

1.—(1) These Rules may be cited as the Sheriff Court Bankruptcy Rules.

(2) In these Rules—

“Act of 1985” means the Bankruptcy (Scotland) Act 1985(a);

“AIB sequestration” means the sequestration of a debtor’s estate by the Accountant in Bankruptcy following a debtor application made under section 5(2)(a) or 6(3)(a), (4)(a) or (6)(a) of the Act of 1985;

“centre of main interests” has the same meaning as in the Council Regulation;

“Council Regulation” means Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings as it may be amended from time to time(b);

“debtor application” has the same meaning as in section 73 of the Act of 1985(c);

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“establishment” has the same meaning as in Article 2(h) of the Council Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the Council Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the Council Regulation and—

- (a) in relation to England and Wales, Scotland and Northern Ireland, set out in Annex A to the Council Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex A to the Council Regulation under the heading relating to that member State;

“member State” means a member State of the European Community that has adopted the Council Regulation;

“Model Law” means the Model Law on Cross-Border Insolvency as set out in Schedule 1 to the Cross-Border Insolvency Regulations 2006(d);

“territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the Council Regulation and falling with the definition of insolvency proceedings in Article 2(a) of the Council Regulation and—

- (a) in relation to England and Wales, Scotland and Northern Ireland, set out in Annex A to the Council Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex A to the Council Regulation under the heading relating to that member State.

(3) Any reference in this Act of Sederunt to a form shall be construed as a reference to the form so numbered in Appendix 1 to these Rules or a form substantially to the same effect, with such variation as circumstances may require.

Forms of petitions etc

2.—(1) A petition, application, note, report and the like under the Act of 1985 shall be written, typed or printed on A4 size paper of durable quality and shall not be backed.

(a) 1985 c.66; amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”).

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

(c) Section 73 was amended by paragraph 60 of schedule 1 to the 1985 Act.

(d) S.I. 2006/1030.

- (2) On receipt of—
- (a) a petition for sequestration; or
 - (b) an application or appeal relating to an AIB sequestration,

the sheriff clerk shall prepare a process folder which shall include an inventory of process.

(3) The petition, application or appeal, as the case may be, and any production or part of process lodged shall be placed by the sheriff clerk in the process folder.

(4) Sub-paragraph (2)(b) shall not apply to a second or subsequent application or appeal relating to an AIB sequestration, and any such application or appeal shall be placed in the process folder of the initial application or appeal relating to that sequestration, as the case may be.

Petitions for sequestration

3.—(1) A petition by a qualified creditor under section 5(2)(b)(i) of the Act of 1985 shall be in Form 1.

(2) A petition—

- (i) under section 5(2)(ii) of the Act of 1985 by a temporary administrator;
- (ii) under section 5(2)(iii) of the Act of 1985 by a member State liquidator appointed in main proceedings; or
- (iii) under article 11 of the Model Law by a foreign representative,

shall be in Form 2.

(3) A petition by a trustee acting under a trust deed under section 5(2)(b)(iv) of the Act of 1985 shall be in Form 3.

(4) An undertaking by the trustee under section 2(3)(c) of the Act of 1985 shall be in Form 4.

Intimation of appointment of trustee

4. The sheriff clerk shall, without delay, intimate the appointment of any trustee to the person so appointed, and to the Accountant in Bankruptcy where he is not the trustee.

Applications

5.—(1) Except as otherwise provided, an application under the Act of 1985 shall be made in Form 5.

(2) An application under paragraph (1) which relates to a petition for sequestration shall be lodged in the bankruptcy process.

(3) An application under paragraph (1) which relates to an AIB sequestration shall contain—

- (a) the date of the sequestration;
- (b) the name and address of the trustee in the sequestration; and
- (c) the name and address of any former or interim trustee.

(4) Where an application referred to in paragraph (3) is made by the debtor or the Accountant in Bankruptcy, there shall be lodged with the application a copy of the debtor application to which it relates.

(5) The sheriff may order intimation of an application under paragraph (1) to such person or persons as he deems appropriate.

(6) Where an application is unopposed it shall be granted by the sheriff in chambers without the attendance of parties, unless the sheriff otherwise directs.

(7) Where the sheriff requires to hear a party on an application, the sheriff clerk shall inform that party of the date on which the application will be heard.

(8) The sheriff may order such further procedure in relation to the hearing of an application under paragraph (1) as he considers appropriate.

Application to determine amount for aliment and obligations, etc.

6. An application by the trustee under section 32(2) of the Act of 1985 (determination of suitable amount of aliment for the debtor, his relevant obligations, and to fix the amount of excess) shall include—

- (a) an extract of the statement of assets and liabilities provided to the trustee by the debtor; and
- (b) the trustee's assessment of the debtor's current income, alimentary requirements and relevant obligations.

Appeals to the sheriff

7.—(1) An appeal to the sheriff under the Act of 1985 shall be made by note of appeal in Form 6.

(2) A note of appeal under paragraph (1) which relates to a petition for sequestration shall be lodged in the bankruptcy process.

(3) A note of appeal under paragraph (1) which relates to an AIB sequestration shall contain—

- (a) the date of the sequestration;
- (b) the name and address of the trustee in the sequestration; and
- (c) the name and address of any former or interim trustee.

(4) There shall be lodged with the note of appeal referred to in paragraph (3) a copy of the debtor application to which it relates.

(5) The sheriff may order intimation of an application under paragraph (1) to such person or persons as he deems appropriate.

(6) The sheriff may order such further procedure in relation to an appeal under paragraph (1) as he considers appropriate.

Appeals to the sheriff principal and the Court of Session

8.—(1) An appeal under the following provisions of the Act of 1985 shall be made in accordance with the provisions of this rule:—

section 15(2A) (order transferring sequestration)(a);

section 15(3) (order refusing to award sequestration)(b);

section 29(4) (order of sheriff removing trustee)(c);

section 54(6) (order deferring discharge of debtor or dismissal of application to defer discharge);

section 56J(2) (refusal to annul Bankruptcy Restrictions Order, Interim Bankruptcy Restrictions Order or Bankruptcy Restrictions Undertaking)(d);

paragraph 8(3) of Schedule 4 (order approving or refusing to approve offer of composition).

(a) Section 15(2A) was inserted by section 16(2)(c) of the 2007 Act.

(b) Section 15(3) was amended by section 16(2)(d) of the 2007 Act.

(c) Section 29(4) was amended by schedule 6 to the 2007 Act.

(d) Section 56J was inserted by section 2(1) of the 2007 Act.

(2) An appeal under a provision mentioned in paragraph (1) above shall be made by note of appeal which shall be written by the appellant–

- (a) on the interlocutor sheet,
- (b) on any other written record containing the interlocutor appealed against, or
- (c) on a separate sheet lodged with the sheriff clerk

in the following terms:–

“The petitioner [*or as the case may be*] appeals to the Sheriff Principal [*or Court of Session*].”.

(3) Such a note of appeal shall–

- (a) be signed by the appellant or his solicitor;
- (b) bear the date on which it was signed; and
- (c) have appended to it the name and address of any firm of solicitors who will be acting for the appellant in the appeal.

(4) Where the Act of 1985 does not specify a period within which an appeal shall be made, such appeal shall be made within 14 days after the date of the interlocutor appealed against.

(5) The sheriff clerk shall, within four days of the note of appeal being marked–

- (a) on an appeal to the sheriff principal, transmit the process to the sheriff principal; or
- (b) on an appeal to the Court of Session, transmit the process to the Deputy Principal Clerk of Session.

(6) Within the period of four days mentioned in paragraph (5) above, the sheriff clerk shall send written notice of the appeal–

- (a) in an appeal under section 15(3) of the Act of 1985, to any concurring creditor and the debtor, as the case may be;
- (b) in an appeal under section 29(4) of the Act of 1985 to–
 - (i) the trustee,
 - (ii) the Accountant in Bankruptcy,
 - (iii) the commissioners, and
 - (iv) any person representing not less than one quarter in value of the creditors, as the case may be;
- (c) in an appeal under section 54(6) of the Act of 1985, to–
 - (i) the applicant creditor,
 - (ii) the trustee, and
 - (iii) the debtor,as the case may be;
- (d) in an appeal under section 56J(2) of the Act of 1985, to–
 - (i) the Accountant in Bankruptcy; and
 - (ii) the trustee;
- (e) in an appeal under paragraph 8(3) of Schedule 4 to the Act of 1985, to–
 - (i) the trustee,
 - (ii) the debtor, and
 - (iii) the creditors to whom notice of the hearing fixed by the sheriff was given, as the case may be.

(7) The sheriff clerk shall certify on the interlocutor sheet that he has sent the notice required under paragraph (6) above.

(8) Failure by the sheriff clerk to give the notice prescribed in paragraph (6) above shall not invalidate the appeal.

(9) Where the appeal is to the sheriff principal, the sheriff principal may make such further order as to the lodging and intimation of grounds of appeal as he considers appropriate.

Forms and register of insolvencies

9.—(1) The memorandum to be sent by the trustee to the Keeper of the Register of Inhibitions and Adjudications under section 14(4) of the Act of 1985(a) shall be in Form 7.

(2) The notice which the trustee may record in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Act of 1985 shall be in Form 8.

(3) The notice to recall the notice referred to in paragraph (2) which is to be recorded by the trustee in the Register of Inhibitions and Adjudications under paragraph 2(2) of Schedule 5 to the Act of 1985 shall be in Form 9.

(4) The register of insolvencies maintained by the Accountant in Bankruptcy under section 1A(1)(b) of the Act of 1985(b) shall contain the information specified in Appendix 2 to these Rules.

Reports

10.—(1) The report to be made by the Accountant in Bankruptcy as original trustee under section 24(3A) of the Act of 1985(c) shall be in Form 10.

(2) The report to be made by the original trustee under section 24(4)(b) of the Act of 1985(d) shall be in Form 11.

Holding of sederunt book by Accountant in Bankruptcy

11. The Accountant in Bankruptcy shall hold the sederunt book for a period of at least six months from the date he receives it from the trustee by virtue of section 57(1) of the Act of 1985 and—

- (a) shall make it available for public inspection during office hours; and
- (b) may allow such extracts to be made of entries in the sederunt book by such persons as he thinks fit.

Approved debt payment programmes

12.—(1) Where a creditor is petitioning for the sequestration of a debtor, the creditor, at the lodging of the petition, shall satisfy himself that at that date—

- (a) the debtor is not subject to an approved debt payment programme; or
- (b) if there is an approved debt payment programme in force, the creditor is entitled to the remedy sought because the debt being founded on is not one covered by section 4(5) of the Debt Arrangement and Attachment (Scotland) Act 2002(e).

(2) Having satisfied himself as referred to in paragraph (1), the creditor shall lodge a statement in the court to the effect that he has so satisfied himself; and the sheriff may not award sequestration in respect of such petition unless—

- (a) such a statement has been lodged; or
- (b) the court is otherwise satisfied that, as of the date of the award of sequestration—
 - (i) there is no such approved debt payment programme in force; or

(a) Section 14(4) was amended by schedule 6 to the 2007 Act.

(b) Section 1A(1)(b) was amended by section 18(5) of and schedule 6 to the 2007 Act.

(c) Section 24(3A) was amended by paragraph 23(4) of schedule 1 to the 2007 Act.

(d) Section 24(4) was amended by paragraph 23(5) of schedule 1 to the 2007 Act.

(e) 2002 asp 17.

- (ii) there is a debt payment programme in force but the creditor is entitled to the remedy sought because the debt being founded on is not one covered by section 4(5) of the Debt Arrangement and Attachment (Scotland) Act 2002.
- (3) The statement referred to in paragraph (2) shall be in Form 12.

UNCITRAL Model Law on Cross-Border Insolvency

13.—(1) An application under article 12 of the Model Law shall be made by note in the process of the petition to which the application relates.

(2) On receipt of a certified copy interlocutor of a Lord Ordinary ordering proceedings under these rules to be transferred to the Court of Session under paragraph 11 of Schedule 3 to the Cross-Border Insolvency Regulations 2006, the sheriff clerk shall within four days transmit the process to the Deputy Principal Clerk of Session.

Vulnerable Witnesses

14.—(1) At any hearing on an application under these Rules the sheriff shall—

- (a) ascertain whether there is or is likely to be a vulnerable witness who is to give evidence at or for the purposes of any proof or hearing;
- (b) consider any child witness notice or vulnerable witness application that has been lodged where no order has been made under section 12(1) or (6) of the Vulnerable Witnesses (Scotland) Act 2004(a); and
- (c) consider whether any order under section 12(1) of that Act requires to be made.

(2) Except where the sheriff otherwise directs, where a vulnerable witness is to give evidence at or for the purposes of any proof or hearing in an application under these Rules, any application in relation to the vulnerable witness or special measure that may be ordered shall be dealt with in accordance with the rules within Chapter 45 of the Ordinary Cause Rules in the First Schedule to the Sheriff Courts (Scotland) Act 1907(b).

(3) In this rule, “vulnerable witness” means a witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004.

Representation

15.—(1) Where the sheriff is satisfied that—

- (a) a debtor in proceedings under section 12 of the Act of 1985 is not represented by an advocate or a solicitor; and
- (b) another person is able properly to represent the debtor and is authorised by the debtor to do so,

that person may represent the debtor in those proceedings.

(2) Any party may be represented by a person authorised under any enactment to conduct proceedings in the sheriff court, in accordance with the terms of that enactment.

(3) The persons referred to in paragraphs (1) and (2) may, in representing a party, do everything for the preparation and conduct of the proceedings as may be done by an individual conducting his own action.

Expenses

16. A party who—

- (a) is or has been represented by a person mentioned in rule 15(1) or (2); and

(a) 2004 asp 3.

(b) 1907 c.51. Chapter 45 was inserted by S.S.I. 2007/463.

(b) would have been found entitled to expenses if he had been represented by a solicitor or an advocate,

may be awarded any outlays or expenses to which a party litigant may be found entitled by virtue of the Litigants in Person (Costs and Expenses) Act 1975^(a) or any enactment under that Act.

^(a) 1975 c.47.

APPENDIX 1

Schedule, Rule 1(3)

Rule 3(1)

FORM 1

**Form of petition by qualified creditor(s) under section 5(2)(b)(i) of
the Bankruptcy (Scotland) Act 1985**

SHERIFFDOM OF

AT

Court Reference No.

PETITION of *(insert name and
address of petitioner)*

Petitioner(s)

against

*(insert name and address of
debtor)*

*trading as

*(insert name and address of
business)*

Respondent

The petitioner(s) crave(s) the court:—

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.
2. To award sequestration of the estate of the respondent.
3. To declare that the said estate belongs to the creditors of the respondent.
4. To appoint *(insert name, designation and address of trustee)* *[or alternatively the Accountant in Bankruptcy] as trustee.
5. To make such other and further orders as may seem appropriate to the court.
6. To find the petitioner(s) entitled to the expenses of this application out of the respondent's estate.

STATEMENT OF FACTS

1.(a) The petitioner(s) *is [or are] as designed in the instance. The respondent habitually resides *and/or had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.

(b) As far as is within the knowledge of the petitioner(s), the centre of main interests of the debtor has been at *(state the location of the centre of main interests within the meaning of the Council Regulation)*.

***(c)** As far as is within the knowledge of the petitioner(s), the debtor has [an] establishment[s] at *(state location of all establishments within the meaning of the Council Regulation)*

(d) As far as is within the knowledge of the petitioner(s), insolvency proceedings have/have not been opened *(state the nature and location of, and court in which, any other insolvency proceedings have been opened)*.

(If sequestration is one to which the Council Regulation is relevant, give further details here)

2. The petitioner(s) *is/are [a] qualified *creditor/creditors of the respondent to the extent of £ as evidenced in the oath/s by creditor/s and supporting vouchers attached.

Attached is a statement by each of the petitioning creditors stating that *the debtor of the debt in relation to which the petitioning creditor is petitioning is not the subject of an approved debt payment programme within the meaning of section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 [*or the debtor to which the petition relates is in an approved debt payment programme but the debt in relation to which he is petitioning is not of a class covered by section 4(5)(b) of that Act.*]

3. The respondent has been rendered apparently insolvent by virtue of (*narrate appropriate ground founded on in terms of section 7 of the Bankruptcy (Scotland) Act 1985*) and that within four months of the presentation of this petition.

4. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) is/are under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.

5. (*Insert name of trustee*) satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. **[or alternatively if no nomination of trustee The petitioner(s) accept that the Accountant in Bankruptcy will be trustee in the sequestration.]*

(If appointment of interim trustee is craved, the circumstances rendering this necessary should also be narrated.)

6. A debt advice and information package was provided to the debtor on (*insert date*).
7. A copy of this petition has been sent today to the Accountant in Bankruptcy.

PLEA IN LAW

The debtor's apparent insolvency within the meaning of the Bankruptcy (Scotland) Act 1985 being constituted within 4 months before the date of presentation of this petition and the petitioner(s) being qualified creditor(s) of the respondent in terms of section 5(4) of the said Act being entitled to the remedy sought, the orders and finding requested in the crave should be granted.

Date (*insert date of petition*)

Signed

(signature of Petitioner(s)
*or Solicitor for Petitioner(s)
(*insert designation and address*))

**(delete as appropriate)*

Rule 3(2)

FORM 2

Form of petition by a temporary administrator, a member State liquidator in main proceedings or a foreign representative

SHERIFFDOM OF

AT

Court Reference No.

PETITION of *(insert name and address of petitioner)*

Petitioner(s)

against

(insert name and address of debtor)

*trading as

(insert name and address of business)

Respondent

The petitioner(s) crave(s) the court:—

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.
2. To award sequestration of the estate of the respondent.
3. To declare that the said estate belongs to the creditors of the respondent.
4. To appoint *(insert name, designation and address of trustee)* *[or alternatively the Accountant in Bankruptcy] as trustee.
5. To make such other and further orders as may seem appropriate to the court.
6. To find the petitioner(s) entitled to the expenses of this application out of the respondent's estate.

STATEMENT OF FACTS

1. The petitioner(s) *is [or are] as designed in the instance. The respondent habitually resides *and/or had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.

2.(a) As far as is within the knowledge of the petitioner(s), the centre of main interests of the debtor has been at *(state the location of the centre of main interests within the meaning of the Council Regulation)*.

*(b) As far as is within the knowledge of the petitioner(s), the debtor has [an] establishment[s] at *(state location of all establishments within the meaning of the Council Regulation)*.

(c) As far as is within the knowledge of the petitioner(s), insolvency proceedings *have/have not been opened *(state the nature and location of, and court in which, any other insolvency proceedings have been opened)*.

(If sequestration is one to which the Council Regulation is relevant, give further details here)

3. The petitioner(s) *is [or are] *a temporary administrator of the respondent/a member State liquidator appointed in main proceedings [or a foreign representative within the meaning of the Model Law on Cross-Border Insolvency as set out in Schedule 1 to the Cross-Border Insolvency Rules 2006 as evidenced in the supporting documentation attached.]

4. The respondent has been rendered apparently insolvent by virtue of (*narrate appropriate ground founded on in terms of section 7 of the Bankruptcy (Scotland) Act 1985 or article 31 of the Model Law referred to above*) and that within four months of the presentation of this petition.

5. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) is/are under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.

6. (*Insert name of trustee*) satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. *[or *alternatively if no nomination of trustee* The petitioner(s) accept that the Accountant in Bankruptcy will be trustee in the sequestration.]

7. A copy of this petition has been sent today to the Accountant in Bankruptcy.

PLEA[S] IN LAW

[*Here set out the plea(s) in law*]

Date (*insert date of petition*)

Signed

(signature of Petitioner(s))

*or Solicitor for Petitioner(s)

(*insert designation and address*)

*(*delete as appropriate*)

Rule 3(3)

FORM 3

Form of petition by a trustee under a trust deed in terms of section 5(2)(b)(iv) of the Bankruptcy (Scotland) Act 1985

SHERIFFDOM OF

AT

Court Reference No.

PETITION of *(insert name and address of petitioner)*

Petitioner(s)

against

(insert name and address of debtor)

*trading as

(insert name and address of business)

Respondent

The petitioner(s) crave(s) the court:—

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.
2. To award sequestration of the estate of the respondent.
3. To declare that the said estate belongs to the creditors of the respondent.
4. To appoint *(insert name, designation and address of trustee)* [or the Accountant in Bankruptcy] as trustee.
5. To make such other and further orders as may seem appropriate to the court.
6. To find the petitioner entitled to the expenses of this application out of the respondent's estate.

STATEMENT OF FACTS

1.(a) The petitioner(s) *is [or are] as designed in the instance. The respondent habitually resides *and/or had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.

(b) As far as is within the knowledge of the petitioner(s), the centre of main interests of the debtor has been at *(state the location of the centre of main interests within the meaning of the Council Regulation)*.

***(c)** As far as is within the knowledge of the petitioner(s), the debtor has [an] establishment[s] at *(state location of all establishments within the meaning of the Council Regulation)*

(d) As far as is within the knowledge of the petitioner(s), insolvency proceedings have/have not been opened *(state the nature and location of, and court in which, any other insolvency proceedings have been opened)*.

(If sequestration is one to which the Council Regulation is relevant, give further details here)

2. On *(insert date)* the respondent granted a trust deed in favour of the petitioner(s). A copy of the trust deed by the respondent in favour of the petitioner is attached.

3. The debtor has failed to (specify obligation, instruction or requirement with which the debtor has failed to comply as required in section 5(2C) of the Bankruptcy (Scotland) Act 1985 [*and/or* It would be in the best interests of the creditors that an award of sequestration be made (*narrate reasons for this averment*)].

4. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) is/are under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.

5. (*Insert name of trustee*) satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. *[*or alternatively if no nomination of trustee* The petitioner accepts that the Accountant in Bankruptcy will be trustee in the sequestration.]

(If appointment of interim trustee is craved, the circumstances rendering this necessary should also be narrated.)

6. A copy of this petition has been sent today to the Accountant in Bankruptcy.

PLEA IN LAW

The petitioner, as trustee of the respondent under a trust deed being entitled to have the respondent's estate sequestrated in terms of section 5 of the Bankruptcy (Scotland) Act 1985, the orders and finding requested in the crave should be granted.

Date *(insert date of petition)*

Signed

(signature of Petitioner(s))

*or Solicitor for Petitioner(s)

(insert designation and address)

**(delete as appropriate)*

Rule 3(4)

FORM 4

Form of undertaking required by section 2(3)(c) of the Bankruptcy (Scotland) Act 1985

I, *(insert full name and designation)* a qualified insolvency practitioner undertake, if appointed by the court, to act as trustee in the sequestration of *(insert full name and address of debtor)*.

Rule 5(1)

FORM 5

Form of application under the Bankruptcy (Scotland) Act 1985

SHERIFFDOM OF

AT

Court Reference No.

APPLICATION by *(insert name and designation of applicant)*

In the sequestration of

(insert full name and address of debtor)

The applicant requests the court—

(state the nature of the application)

STATEMENT OF FACTS

(here set out, in numbered paragraphs, the facts on which the application is made)

Date *(insert date of application)*

Signed *(signature of applicant)*

PLEA[S] IN LAW

[Here set out the plea(s) in law]

Date (insert date of application)

Signed

(Signature of applicant)

**or Solicitor for Applicant*

(insert designation and address)

Rule 7(1)

FORM 6

Form of note of appeal to sheriff under the Bankruptcy (Scotland) Act 1985

SHERIFFDOM OF

AT

Court Reference No.

NOTE OF APPEAL

under

(insert provision under which appeal is made)

by *(insert name and designation of appellant)*

In the sequestration of

(insert full name and address of debtor)

The appellant appeals to the sheriff on the following grounds:

[State grounds on which appeal is made]

The appellant craves the court:

[State here orders sought in respect of appeal]

Date *(insert date of appeal)*

Signed

(Signature of appellant)

**or Solicitor for Appellant*

(insert designation and address)

Rule 9(1)

FORM 7

Form of memorandum by trustee to be recorded in the Register of Inhibitions and Adjudications under section 14(4) of the Bankruptcy (Scotland) Act 1985

From: *(insert name and designation of trustee)* trustee in the sequestration of *(insert full name and address of debtor)*.

To: The Keeper of the Register of Inhibitions and Adjudications.

A certified copy of the court order of *(insert date)* awarding sequestration in respect of *(insert full name and address of debtor)* was recorded in your Register on *(insert date)*.

Record this memorandum to renew the effect of that recording for a further period of three years from the date of presentment hereof.

Date *(insert date)*

Signed *(signature of trustee or agent)*

Rule 9(2)

FORM 8

Form of notice of inhibition by trustee under trust deed to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Bankruptcy (Scotland) Act 1985

A trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 has been granted by *(insert full name and address of debtor)* and delivered to *(insert name and designation of trustee)* as trustee acting under the trust deed.

Under the trust deed the estate of *(insert full name of debtor)* has been conveyed to *(insert name of trustee)* as trustee for the benefit of the creditors generally of *(insert full name of debtor)*.

Date *(insert date)*

Signed *(signature of trustee or agent)*

Rule 9(3)

FORM 9

Form of notice of recall of inhibition to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(2) of Schedule 5 to the Bankruptcy (Scotland) Act 1985

The notice by *(insert name and designation of trustee)* as trustee under a trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 for creditors generally of *(insert full name and address of debtor)* recorded on *(insert date of recording)* is now recalled.

Date *(insert date)*

Signed *(signature of trustee or agent)*

Rule 10(1)

FORM 10

**Form of report by the Accountant in Bankruptcy under section 24(3A)
of the Bankruptcy (Scotland) Act 1985**

REPORT TO SHERIFF OF

AT

Court Reference No.

in the sequestration of
*(insert full name and address
of debtor)*

1. The Accountant of Bankruptcy as the trustee in the above sequestration reports to the sheriff that a statutory meeting was called in accordance with the provisions of section 21A of the Bankruptcy (Scotland) Act 1985.

*2. The meeting duly took place and no creditor entitled to vote in the election of the trustee attended.

OR

*2. The meeting was attended by *(insert number of creditors attending)* creditors or their representatives who were advised of their right to elect a trustee and commissioners, but no trustee was elected.

3. A copy of the record of the meeting and of the trustee's statement of the debtor's affairs are attached.

*delete as appropriate

Date *(insert date of report)*

Signed *(signature of Accountant in Bankruptcy
or person authorised by him)*

Signed *(trustee)*

Rule 10(2)

FORM 11

**Form of report by the original trustee under section 24(4)(b)
of the Bankruptcy (Scotland) Act 1985**

REPORT TO SHERIFF OF

AT

Court Reference No.

in the sequestration of
*(insert full name and address
of debtor)*

1. *(Insert name and designation of trustee)* the trustee in the above sequestration reports to the sheriff that a statutory meeting was called in accordance with the provisions of section 21 of the Bankruptcy (Scotland) Act 1985.

*2. The meeting duly took place and no creditor entitled to vote in the election of the trustee attended.

OR

*2. The meeting was attended by *(insert number of creditors attending)* creditors or their representatives who were advised of their right to elect a trustee and commissioners, but no trustee was elected.

3. A copy of the record of the meeting and of the trustee's statement of the debtor's affairs are attached.

4. A copy of this report has been sent to the Accountant in Bankruptcy in accordance with section 24(4)(a) of the Bankruptcy (Scotland) Act 1985.

*delete as appropriate

Date *(insert date of report)*

Signed *(signature of trustee or person
authorised by him)*

Rule 12(3)

FORM 12

Form of statement to be lodged by creditor in petitioning for sequestration

The petitioner states that at the date of lodging of this petition *the petitioner has checked with the DAS Register that the debtor of whom sequestration is craved is not subject to an approved debt payment programme [*or* there is a debt payment programme in force but the petitioner is entitled to the remedy sought because the debt being founded on is not one covered by section 4(5) of the Debt Arrangement and Attachment (Scotland) Act 2002].

*Delete as appropriate

APPENDIX 2

Schedule, Rule 9(4)

Information to be contained in the Register of Insolvencies

A. Sequestrations

Name of debtor

Debtor's residence and his principal place of business (if any) at date of sequestration or date of death

Date of death in case of deceased debtor

Occupation of debtor

Whether sequestration awarded by sheriff or by Accountant in Bankruptcy

Name and address of petitioner for sequestration (where applicable)

Court by which sequestration awarded (where applicable)

Date of first order (where applicable)

Date of award of sequestration

Date of recall of sequestration (where applicable)

Name and address of trustee and date of appointment

Level of debt when trustee's statement of debtor's affairs is produced

Level of assets when trustee's statement of debtor's affairs is produced

Name and address of trustee and date of confirmation of appointment

Date of debtor's discharge and whether on composition or by operation of law

Date of trustee's discharge

B. Protected trust deeds for creditors

Name and address of granter of trust deed

Address of the centre of main interests and all establishments, within the meaning of the Council Regulation (EC) No. 1346/2000, of the granter of the trust deed, unless the granter of the trust deed is an undertaking as described in Article 1(2) of the said Council Regulation

Whether the protected trust deed is considered to be main or territorial proceedings within the meaning of the said Council Regulation

The location and nature of any other insolvency proceedings

Name and address of trustee under deed

Date (or dates) of execution of deed

Date on which copy deed and certificate of accession was registered

Date of registration of statement indicating how the estate was realised and distributed and certificate to the effect that the distribution was in accordance with the trust deed

Date of trustee's discharge

Date of registration of copy of order of court that non-acceding creditor is not bound by trustee's discharge

C. Bankruptcy Restrictions Orders, Interim Bankruptcy Restrictions Orders and Bankruptcy Restrictions Undertakings

Name of debtor

Date of sequestration

Date of making of bankruptcy restrictions order or interim bankruptcy restrictions order

Date of acceptance of bankruptcy restrictions undertaking

Date of order varying bankruptcy restrictions order or bankruptcy restrictions undertaking (where applicable)

Date of annulment of bankruptcy restrictions order or bankruptcy restrictions undertaking (where applicable)

Date of discharge of bankruptcy restrictions undertaking (where applicable)

Date bankruptcy restrictions order, interim bankruptcy restrictions order or bankruptcy restrictions undertaking ceased to have effect

EXPLANATORY NOTE

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

This Act of Sederunt restates and amends the rules in the sheriff court in relation to the Bankruptcy (Scotland) Act 1985 as a result of the amendments made to that Act by the Bankruptcy and Diligence etc. (Scotland) Act 2007.

2008 No. 119

SHERIFF COURT

Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008

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