

2014 No. 119

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session and Sheriff Court
Company Insolvency Rules Amendment) (Miscellaneous) 2014**

<i>Made</i> - - - -	<i>1st May 2014</i>
<i>Laid before the Scottish Parliament</i>	<i>2nd May 2014</i>
<i>Coming into force</i> - -	<i>30th May 2014</i>

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), section 5 of the Court of Session Act 1988(b) and of all other powers enabling them in that behalf, having approved with such modifications as they think appropriate draft rules submitted to them by the Scottish Civil Justice Council in accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(c), do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session and Sheriff Court Company Insolvency Rules Amendment) (Miscellaneous) 2014.

(2) It comes into force on 30th May 2014.

(3) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(4) In this Act of Sederunt—

“the Rules of the Court of Session” means the Rules of the Court of Session 1994 in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(d);

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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; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c. 14), section 16(4); the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3), section 33 and schedule 5, paragraph 10 (in part); the Legal Services (Scotland) Act 2010 (asp 16), section 127(a); the Children’s Hearings (Scotland) Act 2011 (asp 1) section 185; and the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 15(2).
- (b) 1988 c. 36. Section 5 was amended by the Civil Evidence (Scotland) Act 1998 (c. 32), section 2(3); the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2007 (asp 6), section 46(3); and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).
- (c) 2013 asp 3.
- (d) S.I. 1994/1443, last amended by S.S.I. 2014/15.

“the Sheriff Court Company Insolvency Rules” means the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(a).

Amendment of Chapter 74 of the Rules of the Court of Session

2.—(1) Chapter 74 of the Rules of the Court of Session (companies)(b) is amended in accordance with the following subparagraphs.

(2) In rule 74.28 (appeals against adjudication of claims), for paragraph (1) substitute—

“(1) An appeal under rule 4.16B(6) of the Insolvency Rules (adjudication of claims)(c) by a creditor or any member or contributory of the company against a decision of the liquidator shall be made by note in process.”

(3) For rule 74.32A (replacement liquidators)(d), substitute—

“Replacement liquidators: block transfer orders

74.32A.—(1) This rule applies to an application under rule 4.26B(1) of the Insolvency Rules (application for block transfer order)(e).

(2) An application mentioned in paragraph (1) shall be made by petition.

(3) Paragraph (4) applies where an application includes the name of one or more sheriff court petition.

(4) The Deputy Principal Clerk shall notify the sheriff clerk of every sheriff court listed in the application that an application has been made.

(5) Where the court grants an application, it may order the replacement liquidator to be appointed in any or all of the cases listed in the application.

(6) Where the court pronounces an interlocutor granting a block transfer order—

(a) the Deputy Principal Clerk shall send a certified copy of that interlocutor to the replacement liquidator;

(b) the court may direct that a copy of the interlocutor is—

(i) to be put in the process of every Court of Session petition where the replacement liquidator has been appointed;

(ii) to be sent to the sheriff clerk to be put in the process of every sheriff court petition where the replacement liquidator has been appointed; and

(c) the court may make such orders as it thinks fit for the intimation and advertisement of the appointment of the replacement liquidator.”.

Amendment of Sheriff Court Company Insolvency Rules

3.—(1) The Sheriff Court Company Insolvency Rules are amended in accordance with the following subparagraphs.

(2) In rule 25 (appeals against adjudication of claims), for paragraph (1) substitute—

“(1) An appeal under rule 4.16B(6) of the Insolvency Rules (adjudication of claims)(f) by a creditor or any member or contributory of the company against a decision of the liquidator shall be made by note in the process of the petition.”.

(a) S.I. 1986/2297, last amended by S.S.I. 2013/171.
(b) Chapter 74 was last amended by S.S.I. 2013/162.
(c) S.I. 1986/1915. Rule 4.16B was inserted by S.S.I. 2014/114.
(d) Rule 74.32A was inserted by S.S.I. 2006/83.
(e) Rule 4.26B was inserted by S.S.I. 2014/114.
(f) Rule 4.16B was inserted by S.S.I. 2014/114.

(3) After rule 31A (applications under section 176A of the Act of 1986)(a), insert—

“Limited disclosure of statement of affairs

31AA. Any application under rules 1.50, 2.22, 3.2A or 4.8A of the Insolvency Rules (orders of limited disclosure etc.)(b) shall be made—

- (a) where there is no existing process in relation to any liquidation, administration or receivership, by petition; or
- (b) where a process exists in relation to any liquidation, administration or receivership, by note in that process.”.

BRIAN GILL
Lord President
I.P.D.

Edinburgh
1st May 2014

(a) Rule 31A was inserted by S.S.I. 2003/388.

(b) Rule 1.50 was inserted by S.I. 2010/688; rule 2.22 was substituted by S.I. 2003/2111 and amended by S.I. 2010/688; and rules 3.2A and 4.8A were inserted by S.S.I. 2014/114.

EXPLANATORY NOTE

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

This Act of Sederunt amends Chapter 74 of the Rules of the Court of Session 1994 and the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 in consequence of the amendments made to the Insolvency (Scotland) Rules 1986 (“the Insolvency Rules”) by the Insolvency (Scotland) Amendment Rules 2014.

Paragraph 2(3) substitutes a new rule 74.32A (replacement liquidators: block transfer orders) into Chapter 74. The new rule specifies that applications under rule 4.26B(1) of the Insolvency Rules are to be made by petition. Where the application relates to one or more sheriff court petition, the Deputy Principal Clerk of Session is required to notify the sheriff clerk of every sheriff court where an affected petition is proceeding. It also enables the Court to give directions to ensure that a copy of the block transfer order is put in the process of every affected sheriff court and Court of Session petition, and to make such orders as the Court sees fit for the intimation of advertisement of the replacement liquidator’s appointment.

Paragraph 3(3) inserts a new rule into Part V (general provisions) of the Sheriff Court Company Insolvency Rules. This is as a result of the extension of applications for limited disclosure of the statement of affairs to petitions involving the appointment of a receiver or the winding-up of a company. New rule 31AA provides that such an application is to be made by petition where there are no existing proceedings in relation to any liquidation, administration or receivership, or otherwise by note in the process of the existing petition.

Paragraphs 2(2) and 3(2) make consequential amendments to rule 74.28 (appeals against adjudication of claims) of the Rules of the Court of Session 1994 and rule 25 (appeals against adjudication of claims) of the Sheriff Court Company Insolvency Rules as a result of changes made to the right of appeal against the liquidator’s decision to accept or reject a claim. That appeal is now provided for in rule 4.16B(6) of the Insolvency Rules and so the previously-mentioned provisions, which specify the form of such an appeal, are being amended to reflect the change to the Insolvency Rules.

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