

2015 No. 119

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session and Sheriff Court
Bankruptcy Rules Amendment) (Bankruptcy and Debt Advice
(Scotland) Act 2014) 2015**

Made - - - - *18th March 2015*
Laid before the Scottish Parliament *19th March 2015*
Coming into force - - *1st April 2015*

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 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 etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session and Sheriff Court Bankruptcy Rules Amendment) (Bankruptcy and Debt Advice (Scotland) Act 2014) 2015.

(2) It comes into force on 1st April 2015.

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

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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 etc. (Scotland) Act 2007 (asp 3), section 33 and Schedule 5, paragraph 10 (in part); the Legal Services (Scotland) Act 2010 (asp 6), section 127(a); the Children's Hearings (Scotland) Act 2011 (asp 1), section 185; the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 15(2); and the Bankruptcy and Debt Advice (Scotland) Act (asp 11), Schedule 3, paragraph 1.
- (b) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (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 2008 (asp 6), section 46(3); and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).
- (c) 2013 asp 3.

Amendment of Chapter 72 of the Rules of the Court of Session

2.—(1) Chapter 72 of the Rules of the Court of Session 1994 in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(a) is amended in accordance with the following subparagraph.

(2) For rule 72.2 (applications for replacement of trustee under section 28A of the Act of 1985), substitute—

“Determination etc. under section 28A of the Act of 1985: appeals and referrals

72.2.—(1) This rule applies to a petition containing—

- (a) an appeal under section 28B(4) of the Act of 1985 (as read with section 28B(6)(a)); or
- (b) a referral for a direction under section 28B(5) of the Act of 1985 (as read with section 28B(6)(a)).

(2) A petition to which this rule applies shall include a list of the sequestrations to which the petition relates.

(3) Where the court allows an appeal under section 28B(4)—

- (a) the Accountant in Bankruptcy shall intimate a certified copy of the interlocutor of the court to the persons specified in section 28A(12) of the Act of 1985; and
- (b) the court may make such orders as it thinks fit for the intimation and advertisement of its decision.”.

Amendment of the Sheriff Court Bankruptcy Rules

3.—(1) The Sheriff Court Bankruptcy Rules in the Schedule to the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008(b) are amended in accordance with the following subparagraphs.

(2) In rule 1 (citation and interpretation), in the definition of “AIB sequestration”, for “section 5(2)(a) or 6(3)(a), 4(a) or 6(a)” substitute “section 5(2)(a) or (3)(a) or section 6(3)(a), 4(za), 4(a) or 6(a)”.

(3) In rule 3(2) (petitions for sequestration)—

- (a) in subparagraph (i), for “section 5(2)(ii)” substitute “section 5(2)(b)(ii)”;
- (b) in subparagraph (ii), for “section 5(2)(iii)” substitute “section 5(2)(b)(iii)”.

(4) In rule 5 (applications)—

(a) after paragraph (1) insert—

“(1A) An application by the Accountant in Bankruptcy for a direction under the following provisions of the Act of 1985 shall be in Form 5C—

- (a) section 3(6) (trustee application to the sheriff for directions in relation to any particular matter)(c)
- (b) section 3A(3) (application to Accountant in Bankruptcy for a direction)(d);
- (c) section 28B(5) (replacement of trustee: application for direction)(e);
- (d) section 29(6I) (removal of trustee and trustee not acting: application for direction)(f);
- (e) section 42(2E) (contractual powers of trustee: application for direction)(g);

(a) S.I. 1994/1443, last amended by S.S.I. 2015/35.

(b) S.S.I. 2008/119, last amended by S.S.I. 2011/289.

(c) 1985 c.66. Section 3(6) was amended by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 25(1).

(d) 1985 c.66. Section 3A was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 25(2).

(e) 1985 c.66. Section 28B(5) was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 29.

(f) 1985 c.66. Section 29(6I) was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 30.

(g) 1985 c.66. Section 42(2E) was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 32.

- (f) paragraph 3(7) of Schedule 1 (debts depending on contingency: application for direction)(a).
- (1B) Where the Accountant in Bankruptcy—
- (a) remits an application made under section 17A of the Act of 1985 to the sheriff under section 17F(1); or
- (b) before deciding under section 17E(6) whether to grant a recall of an award of sequestration, remits the case to the sheriff,
- the remit shall be in Form 5D.”.
- (b) in paragraph (2), for “An application under paragraph (1)” substitute “An application under paragraphs (1) or (1A) or a remit under paragraph (1B)”;
- (c) in paragraph (3), for “An application under paragraph (1)” substitute “An application under paragraphs (1) or (1A) or a remit under paragraph (1B)”;
- (d) in paragraph (5), for “an application under paragraph (1)” substitute “an application under paragraphs (1) or (1A) or a remit under paragraph (1B)”;
- (e) in paragraph (8), for “an application under paragraph (1)” substitute “an application under paragraphs (1) or (1A) or a remit under paragraph (1B)”.
- (5) Omit rule 6 (application to determine amount for aliment and obligations, etc.).
- (6) For rule 8(1) (appeals to the sheriff principal and the Court of Session), substitute—
- “(1) An appeal under the following provisions of the Act of 1985 shall be made in accordance with the provisions of this rule—
- (a) section 15(2A) (order transferring sequestration)(b);
- (b) section 15(3) (refusing to award)(c);
- (c) section 30(8) (removing commissioner)(d);
- (d) section 56J(2) (refusal to annul bankruptcy restrictions order or interim bankruptcy restrictions order)(e).”.
- (7) For rule 8(6) (appeals: written notice of appeal), substitute—
- “(6) Within the period of four days mentioned in paragraph (5), the sheriff clerk shall send written notice of 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 30(8) of the Act of 1985, to the trustee, the Accountant in Bankruptcy, any commissioner and any creditor;
- (c) in an appeal under section 56J(2) of the Act of 1985, to the Accountant in Bankruptcy and the trustee.”.
- (8) In rule 12 (approved debt payment programmes)—
- (a) in paragraph (1) after “at that date” insert “the debtor has not given a notice to the Accountant in Bankruptcy in accordance with section 4A(1) of the Act of 1985, and”;
- (b) the heading to the rule becomes “Statement to be lodged by creditor”.
- (9) In rule 15(1)(a) (representation), after “section 12” insert “or section 54B(6)”.
- (10) In Appendix 1—

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- (a) 1985 c.66. Paragraph 3(7) of Schedule 1 was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 37.
- (b) 1985 c.66. Section 15(2A) was inserted by the Bankruptcy and Diligence (etc.) (Scotland) Act 2007 (asp 3), part 1, section 16(2)(c).
- (c) 1985 c.66. Section 15(3) was inserted by the Bankruptcy and Diligence (etc.) (Scotland) Act 2007 (asp 3), part 1, section 16(2)(d), and schedule 6(1), paragraph 1.
- (d) 1985 c.66. Section 30(8) was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 31.
- (e) 1985 c.66. Section 56J(2) was inserted by the Bankruptcy and Diligence (etc.) (Scotland) Act 2007 (asp 3), part 1, section 2(1).

- (a) in Form 1 (form of petition by qualified creditor(s) under section 5(2)(b)(i) of the Bankruptcy (Scotland) Act 1985)(a), for statement 2 of the Statement of Facts, substitute—

“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 has not given notice to the Accountant in Bankruptcy in accordance with section 4A(1) of the Bankruptcy (Scotland) Act 1985, and further stating that *the debtor 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 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*].”.

- (b) after Form 5B (form of certificate of citation)(b), insert Forms 5C and 5D set out in the Schedule to this Act of Sederunt;
- (c) for Form 12 (form of statement to be lodged by creditor petitioning for sequestration), substitute Form 12 set out in the Schedule to this Act of Sederunt.

Saving provision

4. The Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008 and Chapter 72 of the Rules of the Court of Session 1994 as they applied immediately before 1st April 2015 continue to apply to any sequestration where—

- (a) the petition was presented before that date; or
- (b) an application to the Accountant in Bankruptcy under section 5(2)(a) or section 6(3)(a), (4)(a) or (6)(a) of the Bankruptcy (Scotland) Act 1985 was made before that date.

BRIAN GILL
Lord President
I.P.D.

Edinburgh
18th March 2015

(a) Form 1 was inserted by S.S.I. 2011/289.
(b) Form 5B was inserted by S.S.I. 2011/289.

SCHEDULE

Paragraph 3(10)

Form 5C

Rule 5(1A)

Form of referral for a direction from the sheriff under the Bankruptcy (Scotland) Act 1985

SHERIFFDOM OF

AT

Court Reference No

REFERRAL by the Accountant in Bankruptcy

for a direction under *(insert provision of the Bankruptcy (Scotland) Act 1985 under which a direction is sought)*

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

The Accountant in Bankruptcy requests the sheriff to give a direction on *(state the nature of the direction sought)*.

STATEMENT OF FACTS

(here set out, in numbered paragraphs, the facts relevant to the matter on which the direction is sought)

Date *(insert date)*

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

Form 5D

Rule 5(1B)

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

SHERIFFDOM OF

AT

Court Reference No

REMIT by the Accountant in Bankruptcy

to the sheriff under *(insert provision of the Bankruptcy (Scotland) Act 1985 under which remit is made)*

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

The Accountant in Bankruptcy remits the application [*or case*] to the sheriff, as set out below.

STATEMENT OF FACTS

(here set out, in numbered paragraphs, the facts relevant to the application/case which is being remitted)

Date *(insert date)*

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

Form 12

Rule 12(1)

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

The petitioner states that, at the date of lodging this petition, the petitioner has checked the Register of Insolvencies and the DAS Register and is satisfied that the debtor whose sequestration is craved has not given notice to the Accountant in Bankruptcy in accordance with section 4A(1) of the Act of 1985.

The petitioner further states that at that date of lodging this petition, the petitioner has checked the DAS Register and is satisfied that—

- (a) the debtor whose sequestration is craved is not subject to an approved debt payment programme; or
- (b) 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 (a) or (b) as appropriate)

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008 (“the Sheriff Court Bankruptcy Rules”) and Chapter 72 of the Rules of the Court of Session 1994 (“the RCS”) in consequence of amendments to the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) made by the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”).

Certain functions that were previously carried out by the court have been transferred by the 2014 Act to the Accountant in Bankruptcy.

To reflect this, Rule 72.2 of the RCS (applications for replacement of trustee under section 28A of the 1985 Act) has been amended to make provision for (i) specified persons to make an appeal under section 28B(4) of the 1985 Act; and (ii) the Accountant in Bankruptcy to refer a case to the court for a direction under section 28B(5) of the 1985 Act.

Rule 5 (applications) of the Sheriff Court Bankruptcy Rules have similarly been amended to provide a mechanism for the Accountant in Bankruptcy to (i) make a referral for a direction from the sheriff under various provisions of the 1985 Act; and (ii) in relation to a recall of an award of sequestration, to remit an application or case to the sheriff. New Forms 5C (referral) and 5D (remit) are set out in the Schedule to this Act of Sederunt. Rule 12(1) (approved debt payment programmes) has been expanded to oblige the creditor to check that, at the date of lodging the petition, the debtor has not given a notice to the Accountant in Bankruptcy in accordance with section 4A(1) of the 1985 Act.

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