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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 313**

**Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016**

**CHAPTER 12**

**WITHDRAWAL OF SOLICITORS**

**Interpretation of this Chapter**

**12.1.** In this Chapter, “peremptory hearing” means a hearing at which a party whose solicitor has withdrawn from acting must appear or be represented in order to state whether or not the party intends to proceed.

**Giving notice of withdrawal**

**12.2.—**(1) Where a solicitor withdraws from acting on behalf of a party, the solicitor must give notice in writing to the sheriff clerk and to every other party.

(2) Paragraph (1) does not apply if the solicitor withdraws from acting at a hearing in the presence of the other parties or their representatives.

(3) Paragraph (4) applies if a solicitor who withdraws from acting is aware that the address of the party for whom the solicitor acted has changed from that specified in the instance of the appeal, application, petition or answers.

(4) The solicitor must disclose to the sheriff clerk and every other party the last known address of the party for whom the solicitor acted.

**Arrangements for peremptory hearing**

**12.3.—**(1) On notice being given under rule 12.2(1), the sheriff is to make an order—

- (a) ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a peremptory hearing;
- (b) fixing a date and time for the peremptory hearing;
- (c) appointing any other party to the proceedings to intimate the order and a notice in Form 12.3 to that party within 7 days after the date of the order.

(2) A peremptory hearing is to be fixed no sooner than 14 days after the date on which an order is made under paragraph (1).

(3) The sheriff may vary the period of 7 days mentioned in paragraph (1) or the period of 14 days mentioned in paragraph (2)—

- (a) of the sheriff’s own accord; or
- (b) on cause shown, on the application of any other party to the proceedings.

(4) Where any previously fixed hearing is to occur within 14 days after the date on which the sheriff clerk is given notice under rule 12.2(1), the sheriff may continue consideration of the withdrawal to that previously fixed hearing instead of making an order under paragraph (1).

(5) Where an order and a notice in Form 12.3 are intimated under this rule, the party appointed to intimate them must lodge a certificate of intimation in Form 5.7—

- (a) within 14 days from the date of intimation; or
- (b) before the peremptory hearing,

whichever is sooner.

### **Peremptory hearing**

**12.4.—**(1) At a peremptory hearing, the party whose solicitor has withdrawn from acting must appear or be represented in order to state whether the party intends to proceed.

(2) Where the party fails to comply with paragraph (1), the sheriff may make an order mentioned in paragraph (3) only if the sheriff is satisfied that the order and notice in Form 12.3 have been intimated to that party.

(3) The orders are—

- (a) if the party is the appellant, applicant or petitioner, an order refusing the appeal, application or petition; or
- (b) if the party is the respondent and the condition in paragraph (4) is satisfied, an order allowing the appeal, application or petition.

(4) The condition is that the appellant, applicant or petitioner must show cause why the appeal, application or petition should be allowed.

(5) If the sheriff is not satisfied that the order and notice in Form 12.3 have been intimated to that party, the sheriff may make—

- (a) an order fixing a further peremptory hearing;
- (b) any other order that the sheriff considers appropriate to secure the expeditious disposal of the proceedings.