
 STATUTORY INSTRUMENTS

1986 No. 517 (S. 51)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Bankruptcy) 1986

Made - - - - - 11th March 1986

Coming into Operation 1st April 1986

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 1, 14, 25 of, and paragraph 2(2) of Schedule 2 and paragraph 2(1) and 2(2) of Schedule 5 to, the Bankruptcy (Scotland) Act 1985(b), and of all other powers competent to them in that behalf, do hereby enact and declare -

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Bankruptcy) 1986 and shall come into operation on 1st April 1986.

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

(3) In this Act of Sederunt -

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985.

Revocation

2. The Act of Sederunt (Summary Sequestrations) 1937(c) is revoked.

Appeals

3.—(1) An appeal under section 13(8) (against appointment by court of interim trustee), 15(3) (against order refusing to award sequestration), 29(4) (against order of the sheriff removing a permanent trustee), 54(6) (against order deferring discharge of debtor or dismissal of an application to defer discharge) or under paragraph 8(3) of Schedule 4 (against order approving or refusing to approve offer of composition) of the 1985 Act shall be taken by note of appeal which shall be written by the appellant on the interlocutor sheet, or other written record containing the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk; and such note of appeal shall be as nearly as may be in the following terms:-

“The (*state appellant*) appeals to the (*Sheriff Principal/Court of Session*),”

and such note of appeal shall be signed by the appellant or his solicitor and shall bear the date on which it is signed.

(a) 1971 c.58.

(b) 1985 c.66.

(c) S.R. & O. 1937/550.

(2) Where the 1985 Act does not specify the time within which an appeal shall be taken, such appeal shall be taken within fourteen days of the date of the interlocutor appealed against.

(3) Where the appeal is an appeal to the Court of Session the note of appeal shall specify the name and address of the solicitors in Edinburgh who will be acting for the appellants in the appeal.

(4) On an appeal being taken to the Sheriff Principal the sheriff clerk shall transmit the process within four days to the Sheriff Principal, and on an appeal to the Court of Session he shall transmit the process within four days to the Deputy Principal Clerk of Session.

(5) Within the period of four days referred to in sub-paragraph (4) the sheriff clerk shall send written notice of the appeal -

(a) in the case of any appeal under section 13(8) of the 1985 Act, to such other party as shall be specified by the court from which the appeal is made;

(b) in the case of an appeal under section 15(3) of the 1985 Act, to any concurring creditor and the debtor, as the case may be;

(c) in the case of an appeal under section 29(4) of the 1985 Act, to the permanent trustee, the Accountant in Bankruptcy, the commissioners and any person representing not less than one quarter in value of the creditors, as the case may be;

(d) in the case of an appeal under section 54(6) of the 1985 Act, to the applicant creditor, the permanent trustee and the debtor, as the case may be;

(e) in the case of an appeal under paragraph 8(3) of Schedule 4 of the 1985 Act, to the permanent trustee, the debtor and the creditors to whom notice of the hearing fixed by the sheriff was given, as the case may be,

and shall certify on the interlocutor that he has done so.

(6) Failure by the sheriff clerk to give notice prescribed in sub-paragraph (5) shall not invalidate the appeal.

Forms

4.—(1) The register of insolvencies maintained by the Accountant in Bankruptcy under section 1(1)(c) of the 1985 Act shall be as nearly as may be in accordance with Form 1 as set out in the Schedule to this Act of Sederunt.

(2) The memorandum to be sent by a permanent trustee to the Keeper of the register of inhibitions and adjudications under section 14(4) of the 1985 Act shall be as nearly as may be in accordance with Form 2 as set out in the Schedule to this Act of Sederunt.

(3) The act and warrant issued by the sheriff clerk under section 25(2) or paragraph 2(2) of Schedule 2 to the 1985 Act shall be as nearly as may be in accordance with Form 3 as set out in the Schedule to this Act of Sederunt.

(4) A notice by a trustee under a trust deed for creditors to be recorded in the register of inhibitions and adjudications under paragraph 2(1) of Schedule 5 to the 1985 Act shall be as nearly as may be in accordance with Form 4 as set out in the Schedule to this Act of Sederunt.

(5) A notice under paragraph 2(2) of Schedule 5 to the 1985 Act recalling a notice referred to in sub-paragraph (4) shall be as nearly as may be in accordance with Form 5 as set out in the Schedule to this Act of Sederunt.

Amendment

5. In sub-section 4 of section 47 of the 1985 Act, the words from “Rule 65” to the words “(recording of evidence)” shall be omitted and there shall be substituted the words “The rules relating to the recording of evidence in ordinary causes specified in the First Schedule to the Sheriff Courts (Scotland) Act 1907”(a).

Emslie,
Lord President,
I.P.D.

Edinburgh.
11th March 1986.

(a) 1907 c.51 (First Schedule substituted by S.I. 1983/747 and amended by S.I. 1984/255).

SCHEDULE

Para 4(1)

Form 1

Form of 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

Name and address of petitioner for sequestration

Court by which sequestration awarded

Sheriff court to which sequestration remitted (where applicable)

Date of first order

Date of award of sequestration

Date of recall of sequestration (where applicable)

Name and address of interim trustee and date of appointment

Name and address of permanent trustee and date of confirmation of appointment

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

Date of interim trustee's discharge

Date of permanent trustee's discharge

B. Protected Trust Deeds for Creditors

Name and address of granter of trust deed

Name and address of trustee under the deed

Date (or dates) of execution of deed

Date on which copy deed and certificate of accession were 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

Form 2

Para 4(2)

**Form of memorandum by permanent trustee to be recorded in the register of
inhibitions and adjudications under section 14(4) of the Bankruptcy (Scotland)
Act 1985**

From: A.B. (*name and address*) trustee in the sequestration of C.D. (*name and address*)

To: Keeper of register of inhibitions and adjudications

A certified copy of the order of the court awarding sequestration on (*date*) in respect of C.D. is recorded in your Register on (*date*).

Record this memorandum to renew the effect of that recording for a further period of 3 years.

(Signed) A.B. [*or* E.F., Solicitor for A.B.]

(Date)

Para 4(3)

Form 3

Form of Act and Warrant on confirmation or appointment of the trustee under section 25(2) or paragraph 2(2) of Schedule 2 respectively to the Bankruptcy (Scotland) Act 1985

(Place and Date)*

The Sheriff of the Sheriffdom of *(insert Sheriffdom)* has *[confirmed/appointed] and hereby *[confirms/appoints] A.B. *(insert name and designation)* as permanent trustee on the sequestrated estate of C.D. *(insert name and designation)*; and the whole estate wherever situated of C.D. at *(insert date of sequestration)* is vested in and now belongs to A.B. as trustee for the benefit of the creditors of C.D. in terms of the Bankruptcy (Scotland) Act 1985.

(Signed) E.F. Sheriff Clerk

* Delete as appropriate

Form 4

Para 4(4)

**Form of notice of inhibition by trustee under trust deed to be recorded in 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 C.D. (*name and address*) and delivered to A.B. (*name and address*) as trustee acting under the trust deed.

Under the trust deed the estate of C.D. has been conveyed to A.B. as trustee for the benefit of the creditors generally of C.D.

(Signed) A.B. [*or* E.F., Solicitor for A.B.]

(Date)

Para 4(5)

Form 5

**Form of notice of recall of inhibition under paragraph 2(2) of Schedule 5 to the
Bankruptcy (Scotland) Act 1985 to be recorded in the register of inhibitions and
adjudications**

The notice by A.B. (*name and address*) as trustee under the trust deed for creditors of
C.D. (*name and address*) recorded on (*date*) is now recalled.

(*Signed*) A.B. [*or* E.F., Solicitor for A.B.]

(*Date*)

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt introduces procedures and forms in respect of proceedings under the Bankruptcy (Scotland) Act 1985.

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