
STATUTORY INSTRUMENTS

1991 No. 1413 (S.134)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of the Court of Session
Amendment No.6) (Discharge of Judicial Factors) 1991**

Made - - - - 11th June 1991

Coming into force - - 1st September 1991

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 34A of the Judicial Factors Act 1849⁽¹⁾, section 5 of the Court of Session Act 1988⁽²⁾, and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No.6) (Discharge of Judicial Factors) 1991 and shall come into force on 1st September 1991.

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

Amendment of Rules of the Court of Session

2. The Rules of the Court of Session⁽³⁾ shall be amended by inserting after rule 201R (appeals against determination of Accountant of Court under section 18 of Criminal Justice (Scotland) Act 1987⁽⁴⁾) ⁽⁵⁾ the following Section and rules:—

“SECTION 2B

DISCHARGE OF FACTORS, TUTORS AND CURATORS

Interpretation and application

201S.—(1) In this Section—

“judicial factor” includes tutor and curator;

(1) 1849 c. 51; section 34A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 67.
(2) 1988 c. 36.
(3) S.I.1965/321; a relevant amending instrument is S.I. 1990/705.
(4) 1987 c. 41.
(5) Rule 201R was inserted by S.I. 1990/705.

“judicial factory” includes tutory and curatory.

- (2) This Section shall apply only to a judicial factor appointed as a—
- (a) curator or *curator bonis*;
 - (b) tutor;
 - (c) factor *loco tutoris* or *loco absentis*; or
 - (d) commissary factor.

Applications for certificate of discharge

201T. Where a judicial factory is terminated by reason of its recall or the death or coming of age of the ward, or by reason of the exhaustion of the estate, the judicial factor or, where he has died after the termination of the judicial factory, his representatives may apply in writing to the Accountant of Court for a certificate of discharge.

Notices to cautioner and interested parties

201U.—(1) The judicial factor shall give notice by post by the first class recorded delivery service of an application under rule 201T to—

- (a) the cautioner; and
 - (b) any person with an interest in the estate of the ward.
- (2) Such a notice shall contain information about—
- (a) the availability for inspection in the office of the Accountant of Court of the audited accounts of the judicial factor;
 - (b) the time within which any party may make representations under rule 201V; and
 - (c) the effect of the issue of a certificate of discharge.

Representations to Accountant of Court

201V. Any person to whom notice has been given under rule 201U may make written representations relating to the application to the Accountant of Court within 21 days from the date of notice to him under that rule.

Determination of Accountant of Court

- 201W.** On the expiry of the period specified in rule 201V, the Accountant of Court shall—
- (a) consider the application and any representations made; and
 - (b) intimate to the factor, to the Deputy Principal Clerk of Session and to any party who has made representations, a copy of his determination to issue or refuse to issue a certificate of discharge together with a note of his reasons for making that determination.

Certificates of discharge

- 201X.**—(1) The Accountant of Court—
- (a) shall not sign a certificate of discharge until the time for lodging an appeal under rule 201Y has expired; and
 - (b) shall, on issuing a certificate of discharge, give notice that he has issued it to the Deputy Principal Clerk of Session.

(2) The issue of a certificate of discharge shall be sufficient authority for the judicial factor to uplift his bond of caution.

Appeals

201Y.—(1) The judicial factor, or any person who has made representations under rule 201V, may, within 14 days of intimation under rule 201W, appeal against the determination of the Accountant of Court to the Lord Ordinary.

(2) An appeal under paragraph (1) shall be—

- (a) by letter to the Deputy Principal Clerk containing a statement of the grounds of appeal; and
- (b) intimated to the Accountant of Court.

(3) On receipt of an appeal under paragraph (1) the Deputy Principal Clerk shall place the papers before a Lord Ordinary in chambers for determination of the appeal.

(4) On disposing of the appeal, the Lord Ordinary shall—

- (a) direct the Accountant of Court to sign the certificate of discharge;
- (b) appoint the factor to lodge a petition for discharge; or
- (c) make such further order as he considers appropriate.”.

Edinburgh
11th June 1991

J.A.D. Hope
Lord President, IPD

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session by making provision for the discharge of certain appointments of judicial factors by application in writing to the Accountant of Court instead of by petition to the court.