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STATUTORY INSTRUMENTS

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**1991 No. 145 (S.10)**

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Applications under Part VII of the Companies Act 1989) 1991**

*Made* - - - - - *30th January 1991*

*Coming into force* - - - - - *25th February 1991*

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<sup>(1)</sup> and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Applications under Part VII of the Companies Act 1989) 1991 and shall come into force on 25th February 1991.

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

(3) In this Act of Sederunt, “insolvency proceedings” means proceedings commenced by a petition in accordance with rules 10 (administration orders), 15 (appointments of receiver) or 18 (winding up a company) of the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986<sup>(2)</sup>, a petition for sequestration under sections 5 or 6 of the Bankruptcy (Scotland) Act 1985<sup>(3)</sup> or a summary petition under section 11A of the Judicial Factors (Scotland) Act 1889<sup>(4)</sup>.

**Applications under Part VII of the Companies Act 1989**

2.—(1) An application for an order or direction under the provisions of the Companies Act 1989 (“the Act”)<sup>(5)</sup> specified in sub-paragraph (2) below shall be made;

(a) where there are before the sheriff insolvency proceedings to which the application relates, by note in the process of those proceedings; or

(b) where there are no such proceedings before the sheriff, by summary application.

(2) The provisions of the Act referred to in sub-paragraph (1) above are—

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(1) 1971 c. 58.

(2) S.I.1986/2297

(3) 1985 c. 66.

(4) 1889 c. 39; section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), Schedule 7, paragraph 4.

(5) 1989 c. 40.

- (a) section 161(1) (interim order in relation to party to market contract dissipating or applying assets to prevent recovery by relevant office-holder);
- (b) section 161(3) (order altering or dispensing from compliance with duties of relevant office-holder);
- (c) section 163(4) (direction that profit arising from a sum is not recoverable by relevant office-holder);
- (d) section 164(4) (direction that profit from a market contract or the amount or value of a margin is not recoverable by relevant office-holder);
- (e) section 175(2) (order to ensure that charge under a prior or pari passu ranked charge is not prejudiced by enforcement of market charge);
- (f) section 175(5) (direction that profit from a property disposition is not recoverable by relevant office-holder); and
- (g) section 182(4) (order to achieve same result as if provisions of Schedule 22 to the Act had been in force).

### **Intimation**

3. Without prejudice to any other order in respect of intimation which the sheriff may make, he shall not make an order under section 175(2) of the Act unless intimation has been made to such persons having an interest as he considers necessary and any such person has had an opportunity to be heard.

Edinburgh  
30th January 1991

*J.A.D. Hope*  
Lord President, I.P.D.

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

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## EXPLANATORY NOTE

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

This Act of Sederunt makes provision for the manner of applications for certain orders or directions under Part VII of the Companies Act 1989 (Financial Markets and Insolvency) and for the manner and circumstances in which notice should be given to interested persons.