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STATUTORY INSTRUMENTS

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**1992 No. 272**

**Act of Sederunt (Judicial Factors Rules) 1992**

**PART II**

**ADDITIONAL RULES APPLYING TO FACTORS APPOINTED  
UNDER SECTION 11A OF THE JUDICIAL FACTORS  
(SCOTLAND) ACT 1889 ON ESTATES OF DECEASED PERSONS**

**Form of application**

**22.** An application for the appointment of a factor under section 11A of the 1889 Act<sup>(1)</sup> shall include the following matters—

- (a) the grounds of jurisdiction;
- (b) the name, last address and date of death of the deceased person;
- (c) the reasons for the appointment being necessary;
- (d) the interest of the person(s) making the application, ie if a creditor or creditors, the nature and amount of the debt(s), how constituted, vouched or established, if a person or persons having an interest in the succession to the estate, the nature of that interest;
- (e) details of the deceased person's estate so far as known to the applicant(s) including heritable and moveable property, any stock in trade, any interests in any business or partnership, debts owed to or by the deceased and any other relevant facts;
- (f) the names and addresses of all persons known to the applicant(s) as having an interest in the estate either as creditors or as having an interest in the succession to the estate and the nature of the interest in each case; and
- (g) the name, designation and address of the person nominated to be the judicial factor.

**Intimation and service**

**23.** The first order in an application under rule 22 shall, in addition to the requirements of rule 6 provide for—

- (a) advertisement of the application in the Edinburgh Gazette in Form 3; and
- (b) service of the application on such persons named therein as personal representatives of the deceased who are not parties to the application.

**Interim appointment**

**24.** The sheriff may make an interim appointment of a factor when the application is presented or at any time thereafter.

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(1) 1989 c. 39; section 11A was inserted by paragraph 4 of schedule 7 to the Bankruptcy (Scotland) Act 1985 (c. 66).

### **Notice calling for claims**

**25.**—(1) In order to ascertain the claims upon the estate, the factor shall, within 14 days of the issue to him of the first certified copy interlocutor of his appointment, insert in the Edinburgh Gazette and in such other appropriate newspaper, a notice in Form 4.

(2) The factor shall lodge in process—

- (a) a copy of each newspaper containing the notice under paragraph (1) of this rule; or
- (b) a certificate of publication by the publisher of each such newspaper stating the date of publication and text of the notice.

(3) The period of notice for creditors to intimate their claims to the factor on the estate shall be 4 months from the latest date of advertisement in accordance with paragraph (1) of this rule.

### **Claims**

**26.**—(1) The factor shall examine the claims of the creditors in order to ascertain whether the debts are properly due from the estate of the deceased, and may—

- (a) call for further evidence in support of the claims;
- (b) if he sees fit, require a creditor to constitute such claim by decree in a competent court in an action in which the factor shall be called as a defender.

(2) For the purpose of ranking and payment of creditors, the date of the factor's appointment shall be equivalent to the date of sequestration.

### **Inventory of estate and report of state of debts**

**27.** The inventory of estate, when adjusted and approved by the Accountant and signed by him and the factor together with a report on the state of debts and all subsequent accounts submitted by the factor shall remain in the possession of the Accountant and shall be open to inspection, within his office, by any creditor or person interested in the succession of the deceased.

### **Administration, deathbed and funeral expenses**

**28.**—(1) Out of the first funds realised by him, the factor shall reserve sufficient to defray the estimated costs of his administration including the legal expenses of the factory.

(2) Thereafter on the expiry of the period for lodging claims, the factor shall be entitled to pay out of such funds, with the prior approval of the Accountant, those claims given a preference by section 51(1) and (2) of, and Schedule 3 to, the Bankruptcy (Scotland) Act 1985(2).

### **Procedure where there are creditors**

**29.**—(1) Where claims are lodged, the factor shall—

- (a) where funds remain available for division after payment of the debts specified in rule 28, prepare a state of funds and scheme of division amongst the creditors; or
- (b) where no such funds remain after payment of those specified debts, prepare a state of funds only.

(2) The factor shall lodge with the Accountant the state of funds and scheme of division, or state of funds, as the case may be, together with all writings and documents relevant thereto, and shall provide the Accountant with such explanations as he shall require.

(3) The Accountant shall prepare a written report on the state of funds and scheme of division, or state of funds, as the case may be, containing such observations thereon as he considers appropriate for consideration by the Sheriff.

(4) The Accountant shall issue the report under paragraph (3) of this rule to the factor.

### **Notice to creditors**

**30.**—(1) As soon as the Accountant's report under rule 29 has been issued, the factor shall—

- (a) lodge it together with the state of funds and scheme of division or state of funds, as the case may be, in process;
- (b) send to each person who has lodged with him a claim on the estate of the deceased a notice by first class post, or if that person is abroad by air mail, stating—
  - (i) that the state of funds and scheme of division or state of funds only, as the case may be; and a report thereon have been lodged in court; and
  - (ii) the amount for which the creditor has been ranked and whether his claim is to be paid in full or by a dividend and the amount thereof; or
  - (iii) that his claim has been rejected; or
  - (iv) that no funds are available for division;
- (c) insert in the Edinburgh Gazette a notice in Form 5; and
- (d) if any person, other than those who have lodged claims with him are stated in the application or in the books, deed of settlement, or other papers of the deceased, to be a creditor of the estate or interested therein, or if he otherwise has reason to believe that any other person is either a creditor of the estate or interested therein, give notice to such person by first class post or if that person is abroad by air mail, that no dividend is allotted to him in the scheme of division.

(2) Any creditor or person interested in the succession to the deceased's estate shall be entitled to examine—

- (a) the state of funds and scheme of division or state of funds, as the case may be, lodged in process; and
- (b) the claims and the supporting vouchers or evidence lodged with the factor.

### **Approval of state of funds or scheme of division with or without objections**

**31.**—(1) Any creditor or person interested in the succession to the deceased's estate who is dissatisfied with either the state of funds and scheme of division or state of funds may lodge with the sheriff clerk a notice of objections within 28 days of the last date of the notices given under rule 30(1)(b) and, until the lapse of said period, the court shall not approve the state of funds and scheme of division or state of funds.

(2) Where a notice of objections under paragraphs (1) of this rule is lodged, the sheriff shall dispose of such notice after hearing any objector and the factor and making such investigations as he considers necessary.

(3) If the objections are sustained to any extent, the necessary alterations shall be made to the state of funds and scheme of division or state of funds, and shall be approved by the sheriff.

(4) Where no notice of objections is lodged, the sheriff shall approve the state of funds and scheme of division or state of funds.

### **Payment following approval of scheme of division**

**32.** After the sheriff has approved a scheme of division, the factor shall pay, deliver or convey to the parties the sums or other property to which they are entitled under the scheme.

### **Partial division on first scheme of division**

**33.—**(1) Where, in the opinion of the factor, a partial division of funds among the creditors who have claimed may be made with safety to the interests of all concerned, the factor may, with the approval of the Accountant, prepare a state of funds and first scheme of division as soon as may be after the time for lodging claims has expired.

(2) The provisions of rules 29(2) and (3), 30 and, subject to paragraph (3) of this rule, 31, shall apply to a state of funds and first scheme of division prepared under paragraph (1) above as they apply to a state of funds and scheme of division prepared under rule 29(1)(a).

(3) The sheriff may, not earlier than 6 months after the death of the deceased, approve the first scheme of division and, where he so approves, the factor shall pay, deliver or convey accordingly provided always that there shall be retained and deposited in an appropriate bank or institution a sufficient sum to meet—

- (a) the amount of the claims of creditors whose debts have not at that period been admitted by the factor, or whose debts are future or contingent; and
- (b) the full amount of such debts as are claimed as preferable but the priority of which is not admitted by the factor.

### **Procedure where no creditors**

**34.** Where, on the expiry of the period for lodging claims, no creditor has lodged a claim, the factor shall not lodge a state of funds but shall prepare forthwith a report with regard to the disposal of the surplus estate in accordance with rule 35.

### **Disposal of surplus estate**

**35.—**(1) Where after payment of the creditors, there is a surplus, the factor shall lodge with the Accountant a statement of the amount of the surplus, of the parties claiming that surplus and their respective grounds of claim, and of those parties who, in the opinion of the factor, are entitled to the surplus and the reasons therefor.

(2) The Accountant shall prepare a written opinion on the factor's statement lodged under paragraph (1) of this rule and issue that opinion to the factor.

(3) On receipt of the Accountant's opinion under paragraph (2) of this rule, the factor shall—

- (a) lodge it in process together with the statement prepared under paragraph (1) of this rule;
- (b) give notice by first class post or, if abroad, by air mail to each party claiming an interest or apparently entitled to any part of the estate, that—
  - (i) the factor's statement and the Accountant's opinion have been lodged in process;
  - (ii) should any such party desire to lodge objections to the statement he shall lodge with the sheriff clerk a notice of such objections within 28 days of the date of the posting of the notice by the factor.

(4) On expiry of the time for lodging objections, the sheriff shall consider the statement, opinion, and any objections and, after such procedure as he considers appropriate, shall—

- (a) determine the party or parties entitled to the surplus estate and direct the factors to make payment accordingly; or

(b) if he considers that it is desirable that the factor should continue to administer the surplus estate, direct accordingly.

(5) Where the sheriff makes an order under paragraph (4)(a) of this rule, the factor shall pay over the surplus accordingly.

**Discharge of factor appointed under of section 11A of the 1889 Act**

**36.** Every application for discharge of a factor on the estate of a deceased person shall be intimated and served as required under rule 6 and shall also be served on the cautioner and on the personal representatives of the deceased and notice of the application shall be inserted in the Edinburgh Gazette in Form 6.