
STATUTORY INSTRUMENTS

1992 No. 272

Act of Sederunt (Judicial Factors Rules) 1992

PART I
GENERAL

Citation, commencement and revocation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Judicial Factors Rules) 1992 and shall come into force on 9th March 1992.

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

(3) Chapter VIII of Book L of the Codifying Act of Sederunt⁽¹⁾ and the Act of Sederunt (Judicial Factors) 1980⁽²⁾ are revoked.

Interpretation

2.—(1) In these Rules unless the context otherwise requires—

“the 1849 Act” means the Judicial Factors Act 1849;

“the 1880 Act” means the Judicial Factors (Scotland) Act 1880;

“the 1889 Act” means the Judicial Factors (Scotland) Act 1889;

“Accountant” means the Accountant of Court;

“factor” includes a curator bonis, a factor loco absentis, a factor on trust or other estates and a guardian where caution is required.

(2) Any reference in these Rules to a numbered form shall, unless the context otherwise requires, be construed as a reference to the form so numbered in the Schedule to these Rules or a form substantially to the same effect, with such variation as circumstances may require.

Application

3.—(1) The provisions of Part I of these Rules shall have effect in relation to—

(a) factors appointed under section 4 of the 1880 Act;

(b) guardians appointed under the Law Reform Parent and Child (Scotland) Act 1986⁽³⁾; and

(c) except as provided in Part II of these Rules, factors appointed under section 11A of the 1889 Act.

(2) The provisions of Part II of these Rules shall have effect only in relation to factors appointed under section 11A of the 1889 Act.

⁽¹⁾ S.R. & O. 1913/638.

⁽²⁾ S.I. 1980/1803.

⁽³⁾ 1986 c. 9.

Applications to be summary

4. An application for the appointment of a factor shall be made by summary application.

Incidental application

5.—(1) Except as otherwise provided in these rules, all incidental applications to the court shall be made by note in the proceedings.

(2) Unless included in the application for appointment of a factor an application for special powers shall be made by note in the proceedings.

Intimation and service

6.—(1) Subject to rule 15(2), 23 and 36, the first order in an application shall provide for—

- (a) intimation of a copy of the application by display on the walls of court;
- (b) intimation to the Accountant by first class recorded delivery post of the application together with copies of any schedules or productions lodged with the application;
- (c) such service on those having an interest as may be deemed proper by the sheriff; and
- (d) the lodging of answers.

(2) The sheriff may also direct notice by advertisement of the applications to be made in Form 1.

Paper to be copied to the Accountant

7.—(1) A person who has lodged answers, a note, or any other principal paper (other than an application for appointment of a factor) shall serve forthwith such answers, note or other paper on the Accountant by any competent method of service.

(2) Copies of all interlocutors issued in the process of an application for appointment of a factor shall be supplied to the Accountant forthwith by the sheriff clerk.

Accountant to send information on any prior application

8. The Accountant, on receiving intimation of an application for the appointment of a factor, shall, in the event of an application for a similar appointment to the same ward or estate having been previously intimated to him—

- (a) forthwith report to the sheriff clerk; and
- (b) communicate any information he may possess which may be of use to the sheriff in disposing of the application.

Procedure in fixing caution

9.—(1) The Accountant shall forthwith, on receiving intimation of an application for the appointment of a factor, fix the caution to be found in the event of appointment being made and shall notify the amount to the sheriff clerk and the applicant.

(2) During the subsistence of a judicial factory, the Accountant may, at any time—

- (a) require the factor to increase the amount of or find new or additional caution; or
- (b) authorise the factor to decrease the amount of existing caution.

Time for finding caution

10.—(1) Where the time within which caution is to be found is not stipulated in the interlocutor appointing a factor, the time allowed for finding caution shall be, subject to paragraph (2) of this rule, limited to one calendar month from the date of the interlocutor.

(2) The sheriff may, on application made before the expiry of the period for finding caution, and, on cause shown, allow further time for finding caution.

Procedure on finding caution

11.—(1) All bonds of caution offered by a factor shall be delivered to the Accountant.

(2) Except in relation to rule 9(2), where caution has been found to the satisfaction of the Accountant, he shall notify the sheriff clerk.

Issue of certified copy interlocutor

12. A certified copy interlocutor of appointment shall not be issued by the sheriff clerk until he receives notification from the Accountant in accordance with rule 11(2).

Factor's title to act

13. A factor shall not be entitled to act until he has obtained a certified copy interlocutor of his appointment.

Requisition of process by Accountant

14. The sheriff clerk shall transmit to the Accountant the whole or any part of the process as the Accountant may request unless such part of the process is not at the time of request required by the court.

Application to encroach on capital

15.—(1) Where the income from the estate of a ward is insufficient for the maintenance of the ward, the factor may apply to the Accountant for his consent to encroach on the capital of the estate for the purpose of maintaining the ward.

(2) An application under paragraph (1) of this rule shall be made by letter and shall be supported by such information as the Accountant may require.

- (a) (3) (a) On receipt of such an application, the Accountant shall—
- (i) appoint the factor to intimate the making of the application in accordance with paragraphs (4) and (5) of this rule; or
 - (ii) require him to apply by note to the sheriff for special powers.

- (b) Any person to whom intimation is appointed to be given in accordance with paragraphs (4) and (5) of this rule shall have the right to object to the application by lodging any objection in writing with the Accountant, and intimating a copy thereof to the factor within 28 days of the date on which the intimation was given.

(4) The persons to whom intimation under paragraph (3)(a)(i) of this rule is to be given are—

- (a) the cautioner of the factor;
- (b) the applicant for the appointment of the factor;
- (c) the ward, unless the circumstances of the ward are such as would warrant dispensing with service on him of an application for the appointment of his factor;

- (d) the persons upon whom the application for appointment of the factor was served and whose whereabouts are known to the factor; and
 - (e) all other persons who have an interest in the estate and whose identity and whereabouts are known to the factor.
- (5) Intimation under paragraph (3)(a)(i) of this rule shall be given by posting by registered or recorded delivery post or the nearest equivalent which the available postal service permits—
- (a) a copy of the letter of application; and
 - (b) a notice setting out—
 - (i) the right of the person receiving the notice to object to the application in the manner provided in paragraph (3)(b) of this rule; and
 - (ii) that, in the absence of any such objection, the Accountant may consent to the application.
- (6) The factor shall, on giving intimation under paragraph (3)(a)(i) of this rule, send to the Accountant a certificate of execution of service with a copy of the notice sent attached to it.
- (7) Where no objections have been lodged, the Accountant may, on the expiry of the period for lodging objections, consent to the application (subject to such conditions as he thinks fit) or require the factor to apply to the sheriff for special powers.
- (8) Where objections have been lodged, the factor shall, on expiry of the period for lodging objections, apply to the sheriff for special powers.

Applications under section 2(3) of the Trusts (Scotland) Act 1961

16.—(1) An application under section 2(3) of the Trusts (Scotland) Act 1961⁽⁴⁾ to the Accountant for his consent to the doing of an act to which that section applies shall be made by letter and shall be supported by such information as the Accountant may require.

(2) Any person to whom intimation requires to be given in accordance with paragraphs (3) and (4) of this rule shall have the right to object to the application by lodging any objections with the Accountant, and intimating a copy thereof to the factor, within 28 days of the date on which the intimation was given.

(3) On the day on which he makes application or as soon as possible thereafter, the factor shall give intimation thereof to—

- (a) the cautioner of the factor;
- (b) the applicant for the appointment of the factor;
- (c) the ward, unless the circumstances of the ward are such that would warrant dispensing with service on him of a petition for the appointment of his factor;
- (d) the persons upon whom the application for appointment of the factor was served and whose whereabouts are known to the factor; and
- (e) all other persons who have an interest in the estate and whose identity and whereabouts are known to the factor.

(4) Intimation under paragraph (3) of this rule shall be given by posting by registered or recorded delivery post or the nearest equivalent which the available postal service permits—

- (a) a copy of the letter of application; and
- (b) a notice setting out—

⁽⁴⁾ 1961, c. 57; sub-section (3) was inserted by section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55).

- (i) the right of the person receiving the notice to object to the application in the manner provided in paragraph (2) of this rule; and
- (ii) that, in the absence of any such objection, the Accountant may consent to the application.

(5) The factor shall, on giving intimation under paragraph (3) of this rule, send to the Accountant a duly completed execution of service with a copy of the notice sent attached to it.

Special powers

17.—(1) Except as provided for in rules 5, 15 and 16, where the factor desires special powers, he shall submit an application to the Accountant, who, after making such enquiries as may appear to him proper, shall transmit the application together with a written opinion on the application to the factor who shall submit the application and the Accountant's opinion to the court in accordance with rule 5.

(2) Upon receipt of the application and opinion, the sheriff shall, after ordering such intimation and service in terms of rule 6 as may seem to him appropriate and such procedure as he may think necessary, deal with and dispose of the application.

(3) The factor shall provide the Accountant with a copy of the interlocutor disposing of the application within two days of the disposal.

(4) An application for special powers under this rule shall not be made by the factor until the factor has obtained a certified copy interlocutor of his appointment.

Outlays of Accountant, sheriff clerk etc.

18. All outlays incurred by the Accountant and sheriff clerk, and office fees in the factory, shall form a charge against the estate, and shall be satisfied and paid by the factor therefrom, unless the sheriff shall see cause to find the factor personally liable to any extent, in which case the factor shall be bound to relieve the estate of such outlay.

Applications for discharge to the Accountant

19.—(1) This rule shall apply only to a judicial factor appointed as a—

- (a) curator bonis;
- (b) guardian;
- (c) factor loco absentis; or
- (e) commissary factor.

(2) Where a factory is terminated by reason of the recovery, death or coming of age of the ward, or by reason of the exhaustion of the estate, the factor, or where he died, his representative, may apply to the Accountant for a certificate of discharge.

(3) The factor shall send a notice in Form 2 by first class recorded delivery post of an application under paragraph (2) to—

- (a) the cautioner; and
- (b) any person with an interest in the estate of the ward.

(4) Any person to whom notice has been given under paragraph (3) of this rule may make written representations relating to the application to the Accountant within 21 days from the date of such notice.

(5) On the expiry of the period specified in paragraph (4) of this rule, the Accountant shall—

- (a) consider the application and representations made; and

- (b) intimate to the factor, to the sheriff clerk 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 such determination.
- (6) The Accountant—
 - (a) shall not sign a certificate of discharge until the time for lodging an appeal under rule 20 has expired; and
 - (b) shall, on issuing a certificate of discharge, give notice of such issue to the sheriff clerk.
- (7) The issue of a certificate of discharge shall be sufficient authority for the factor to uplift his bond of caution.

Appeals against Accountant’s determination of application for discharge

20.—(1) The factor, or any person who has made representations under rule 19(4), may within 14 days of intimation under rule 19(5)(b), appeal to the sheriff against the determination of the Accountant.

(2) An appeal under paragraph (1) of this rule shall be by letter to the sheriff clerk containing a statement of the grounds of appeal, and intimated to the Accountant.

(3) On receipt of an appeal under paragraph (1) of this rule, the sheriff clerk shall place the papers before the sheriff in chambers for determination of the appeal.

(4) On disposing of such appeal, the sheriff may—

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

Applications for discharge to the sheriff

21.—(1) Where the discharge is desired of a factor, to whom the provisions of rule 19 do not apply, the factor, or where he has died, his representative, shall lodge an application in process.

(2) On receipt of such application the sheriff shall order intimation and service in terms of rule 6 and, where applicable, rule 36.

(3) The Accountant shall issue his written opinion to the sheriff on the application.