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 STATUTORY INSTRUMENTS
 

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1986 No. 2297 (S. 169)

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Sheriff Court Company Insolvency Rules)  
1986**

*Made* - - - - 19th December 1986

*Coming into Operation* 29th December 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), and of all other powers enabling them in that behalf, after consultation with the Sheriff Court Rules Council, do hereby enact and declare:—

*Citation and commencement*

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 and shall come into operation on 29th December 1986.

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

*Revocation and transitional provision*

2.—(1) The Act of Sederunt (Sheriff Court Liquidations) 1930(b) is hereby revoked.

(2) Notwithstanding paragraph (1), the Act of Sederunt (Sheriff Court Liquidations) 1930 shall continue to have effect in relation to proceedings commenced before the coming into operation of this Act of Sederunt.

*Interpretation*

3.—(1) In these rules —

“the Act of 1986” means the Insolvency Act 1986(c);

“the Insolvency Rules” means the Insolvency (Scotland) Rules 1986(d);

“registered office” means —

(a) the place specified, in the statement of the company delivered to the registrar of companies under section 10 of the Companies Act 1985(e), as the intended place of its registered office on incorporation; or

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(a) 1971 c. 58; section 32 was amended by the Administration of Justice Act 1977 (c. 38), section 29(2).

(b) S.R. & O. 1930/234, as amended by S.R. & O. 1948/2293.

(c) 1986 c. 45.

(d) S.I. 1986/1915.

(e) 1985 c. 6.

(b) where notice has been given by the company to the registrar of companies under section 287 of the Companies Act 1985 of a change of registered office, the place specified in the last such notice;

“sheriff-clerk” has the meaning assigned to it in section 3 (f) of the Sheriff Courts (Scotland) Act 1907(a).

(2) Unless the context otherwise requires, words and expressions used in these rules which are also used in the Act of 1986 or the Insolvency Rules have the same meaning as in that Act or those Rules.

## PART I

### Company voluntary arrangements

#### *Lodging of nominee’s report (Part 1, Chapter 2 of the Insolvency Rules)*

4.—(1) This rule applies where the company is not being wound up, is not in liquidation and an administration order is not in force in respect of it.

(2) A report of a nominee, sent to the court under section 2(2) of the Act of 1986, shall be accompanied by a covering letter, lodged in the offices of the court and marked by the sheriff-clerk with the date on which it is received.

(3) The report shall be placed before the sheriff for consideration of any direction which he may make under section 3(1) of the Act of 1986.

(4) An application by a nominee to extend the time within which he may lodge his report under section 2(2) of the Act of 1986 shall be made by letter addressed to the sheriff-clerk, who shall place the matter before the sheriff for determination.

(5) The letter of application under paragraph (4) and a copy of the reply by the court shall be placed by the sheriff-clerk with the nominee’s report when it is subsequently lodged.

(6) A person who states in writing that he is a creditor, member or director of the company may, by himself or his agent, on payment of the appropriate fee, inspect the nominee’s report lodged under paragraph (2).

#### *Lodging of nominee’s report (Part 1, Chapter 4 of the Insolvency Rules)*

5.—(1) This rule applies where the company is being wound up, is in liquidation or there is an administration order in force in respect of it.

(2) Where a report of a nominee is sent to the court under section 2(2) of the Act of 1986, it shall be lodged in the process of the petition to wind up the company or the petition for an administration order which is in force in respect of it, as the case may be.

(3) Where the nominee is not the liquidator or administrator, the report shall be placed before the sheriff for consideration of any direction which he may make under section 3(1) of the Act of 1986.

(4) An application by a nominee to extend the time within which he may lodge his report under section 2(2) of the Act of 1986 shall be made by letter

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(a) 1907 c. 51.

addressed to the sheriff-clerk, who shall place the matter before the sheriff for determination.

(5) The letter of application under paragraph (4) and a copy of the reply by the court shall be placed by the sheriff-clerk in the process of the petition to wind up the company or the petition for an administration order which is in force in respect of it, as the case may be.

(6) A person who states in writing that he is a creditor, member or director of the company may, by himself or his agent, on payment of the appropriate fee, inspect the nominee's report lodged under paragraph (2).

*Applications to replace nominee*

6. An application under section 2(4) of the Act of 1986 to replace a nominee who has failed to lodge a report under section 2(2) of the Act of 1986, shall be made —

- (a) by petition where the company is not being wound up, is not in liquidation and an administration order is not in force in respect of it; or
- (b) by note in the process of the petition to wind up the company or the petition for an administration order which is in force in respect of it, as the case may be,

and shall be intimated and served as the court shall direct.

*Report of meetings to approve arrangement*

7. The report of the result of a meeting to be sent to the court under section 4(6) of the Act of 1986 shall be sent to the sheriff-clerk who shall cause it to be lodged —

- (a) in a case to which rule 4 applies, with the nominee's report lodged under that rule; or
- (b) in a case to which rule 5 applies, in the process of the petition to wind up the company or the petition for an administration order which is in force in respect of it, as the case may be.

*Abstracts of supervisor's receipts and payments and notices of completion of arrangement*

8. An abstract of receipts and payments prepared by a supervisor to be sent to the court under rule 1.21(2) of the Insolvency Rules or a notice of completion of the arrangement (together with a copy of the supervisor's report) to be sent to the court under rule 1.23(3) of those Rules shall be sent to the sheriff-clerk, who shall cause it to be lodged —

- (a) in a case to which rule 4 applies, with the nominee's report lodged under that rule; or
- (b) in a case to which rule 5 applies, in the process of the petition to wind up the company or the petition for an administration order which is in force in respect of it, as the case may be.

*Form of certain applications*

9.—(1) This rule applies to applications under any of the following provisions of the Act of 1986 and the Insolvency Rules:—

- (a) section 6 (to challenge a decision in relation to an arrangement);
  - (b) section 7(3) (to challenge actings of a supervisor);
  - (c) section 7(4)(a) (by supervisor for directions);
  - (d) section 7(5) (to appoint a supervisor);
  - (e) rule 1.21(5) (to dispense with sending abstracts or reports or to vary dates on which obligation to send abstracts or reports arises);
  - (f) rule 1.23(4) (by supervisor to extend period for sending notice of implementation of arrangement); and
  - (g) any other provision relating to company voluntary arrangements not specifically mentioned in this Part.
- (2) An application shall be made —
- (a) in a case to which rule 4 applies, by petition; or
  - (b) in a case to which rule 5 applies, by note in the process of the petition to wind up the company or the petition for an administration order which is in force in respect of it, as the case may be.

## PART II

### Administration orders

#### *Petitions for administration orders*

**10.—(1)** A petition for an administration order shall include averments in relation to —

- (a) the petitioner and the capacity in which he presents the petition, if other than the company;
  - (b) whether it is believed that the company is, or is likely to become, unable to pay its debts and the grounds of that belief;
  - (c) which of the purposes specified in section 8(3) of the Act of 1986 is expected to be achieved by the making of an administration order;
  - (d) the company's financial position, specifying (so far as known) assets and liabilities, including contingent and prospective liabilities;
  - (e) any security known or believed to be held by creditors of the company, whether in any case the security confers power on the holder to appoint a receiver, and whether a receiver has been appointed;
  - (f) so far as known to the petitioner, whether any steps have been taken for the winding up of the company, giving details of them;
  - (g) other matters which, in the opinion of the petitioner, will assist the court in deciding whether to grant an administration order;
  - (h) whether a report has been prepared under rule 2.1 of the Insolvency Rules (independent report on affairs of the company), and, if not, an explanation why not; and
  - (i) the person proposed to be appointed as administrator, giving his name and address and that he is qualified to act as an insolvency practitioner in relation to the company.
- (2) There shall be produced with the petition —

- (a) any document instructing the facts relied on, or otherwise founded on, by the petitioner; and
- (b) where a report has been prepared under rule 2.1 of the Insolvency Rules, a copy of that report.

*Notice of petition*

**11.** Notice of the petition on the persons to whom notice is to be given under rule 2.2 of the Insolvency Rules shall be made in such manner as the court shall direct.

*Form of certain applications and appeals where administration order in force*

**12.—(1)** An application or appeal under any of the following provisions of the Act of 1986 or the Insolvency Rules shall be made by note in the process of the petition for an administration order which is in force:—

- (a) section 13(2) (application for appointment to fill a vacancy in office of administrator);
- (b) section 14(3) (application by administrator for directions);
- (c) section 15(2) (application by administrator for power to dispose of property subject to a security);
- (d) section 18(1) (application by administrator for discharge or variation of administration order);
- (e) section 19(1) (application for removal from office of administrator);
- (f) section 22(5) (application for release from, or extension of time for, obligation to submit statement of affairs);
- (g) section 27(1) (application for protection of interest of creditors and members);
- (h) rule 2.6(2) (appeal against decision of administrator as to expenses of submitting statement of affairs);
- (i) rule 2.16(3) (application by administrator for increase of remuneration); and
- (j) any other application under a provision relating to administration orders not specifically mentioned in this Part.

(2) An application by an administrator to extend the period for sending an abstract of his receipts and payments under rule 2.17(2) of the Insolvency Rules shall be made by motion in the process of the petition.

*Report of administrator's proposals*

**13.—(1)** A report of the meeting to approve the administrator's proposals to be sent to the court under section 24(4) of the Act of 1986 shall be sent to the sheriff-clerk, who shall cause it to be lodged in the process of the petition.

(2) Where the report lodged under paragraph (1) discloses that the meeting has declined to approve the administrator's proposals, the court shall appoint a special diet for determination by the sheriff of any order he may make under section 24(5) of the Act of 1986.

*Abstracts of administrator's receipts and payments*

**14.** An abstract of receipts and payments of an administrator to be sent to the court under rule 2.17(1) of the Insolvency Rules shall be sent to the sheriff-clerk, who shall cause it to be lodged in the process of the petition.

**PART III****Receivers***Petitions to appoint receivers*

**15.—**(1) A petition to appoint a receiver for a company shall include averments in relation to —

- (a) any floating charge and the property over which it is secured;
- (b) so far as known to the petitioner whether any petition for an administration order has been made in respect of the company, giving details of it;
- (c) other matters which, in the opinion of the petitioner, will assist the court in deciding whether to appoint a receiver; and
- (d) the person proposed to be appointed as receiver, giving his name and address and that he is qualified to act as a receiver.

(2) There shall be produced with the petition any document instructing the facts relied on, or otherwise founded on, by the petitioner.

*Intimation, service and advertisement*

**16.—**(1) Intimation, service and advertisement of the petition shall be made in accordance with the following provisions of this rule unless the court otherwise directs.

(2) There shall be included in the order for service, a requirement to serve —

- (a) upon the company; and
- (b) where a petition for an administration order has been presented, on that petitioner and any respondent to that petition.

(3) Subject to paragraph (5), service of a petition on the company shall be effected at its registered office —

- (a) by registered or recorded delivery post addressed to the company; or
- (b) by sheriff officer —
  - (i) leaving the citation in the hands of a person who, after due inquiry, he has reasonable grounds for believing to be a director, other officer or responsible employee of the company or authorised to accept service on behalf of the company; or
  - (ii) if there is no such person as is mentioned in head (i) present, depositing it in the registered office in such a way that it is likely to come to the attention of such a person attending at that office.

(4) Where service is effected in accordance with paragraph (3)(b)(ii), the sheriff officer thereafter shall send a copy of the petition and citation by ordinary first class post to the registered office of the company.

- (5) Where service cannot be effected at the registered office of the company or the company has no registered office —
- (a) service may be effected at the last known principal place of business of the company in Scotland or at some place in Scotland at which the company carries on business, by leaving the citation in the hands of such a person as is mentioned in paragraph (3)(b)(i) or by depositing it as specified in paragraph (3)(b)(ii); and
  - (b) where the citation is deposited as is specified in paragraph (3)(b)(ii), the sheriff officer thereafter shall send a copy of the petition and citation by ordinary first class post to such place mentioned in sub-paragraph (a) of this paragraph in which the citation was deposited.
- (6) The petition shall be advertised forthwith —
- (a) once in the Edinburgh Gazette; and
  - (b) once in one or more newspapers as the court shall direct for ensuring that it comes to the notice of the creditors of the company.
- (7) The advertisement under paragraph (6) shall state —
- (a) the name and address of the petitioner;
  - (b) the name and address of the solicitor for the petitioner;
  - (c) the date on which the petition was presented;
  - (d) the precise order sought;
  - (e) the period of notice; and
  - (f) that any person who intends to appear in the petition must lodge answers to the petition within the period of notice.
- (8) The period of notice within which answers to the petition may be lodged and after which further consideration of the petition may proceed shall be 8 days after such intimation, service and advertisement as the court may have ordered.

*Form of certain applications where receiver appointed*

17.—(1) An application under any of the following sections of the Act of 1986 shall be made by petition or, where the receiver was appointed by the court, by note in the process of the petition for appointment of a receiver:—

- (a) section 61(1) (by receiver for authority to dispose of interest in property);
- (b) section 62 (for removal or resignation of receiver);
- (c) section 63(1) (by receiver for directions);
- (d) section 69(1) (to enforce receiver to make returns, etc.); and
- (e) any other section relating to receivers not specifically mentioned in this Part.

(2) An application under any of the following provisions of the Act of 1986 or the Insolvency Rules shall be made by motion in the process of the petition:—

- (a) section 67(1) or (2) (by receiver to extend time for sending report); and
- (b) rule 3.9(2) (by receiver to extend time for sending abstract of receipts and payments).

**PART IV****Winding up by the court of companies registered under the Companies Acts  
and of unregistered companies***Petitions to wind up a company*

**18.**—(1) A petition to wind up a company under the Act of 1986 shall include —

- (a) particulars of the petitioner, if other than the company;
  - (b) in respect of the company —
    - (i) the registered name;
    - (ii) the address of the registered office and any change of that address within the last 6 months so far as known to the petitioner;
    - (iii) a statement of the nature and objects, the amount of its capital (nominal and issued) and indicating what part is called up, paid up or credited as paid, and the amount of the assets of the company so far as known to the petitioner;
  - (c) a narrative of the facts on which the petitioner relies and any particulars required to instruct the title of the petitioner to present the petition;
  - (d) the name and address of the person to be appointed as interim liquidator and a statement that he is qualified to act as an insolvency practitioner in relation to the company; and
  - (e) a crave setting out the orders applied for, including any intimation, service and advertisement and any appointment of an interim liquidator.
- (2) There shall be lodged with the petition any document —
- (a) instructing the title of the petitioner; and
  - (b) instructing the facts relied on, or otherwise founded on, by the petitioner.

*Intimation, service and advertisement*

**19.**—(1) Intimation, service and advertisement shall be in accordance with the following provisions of this rule unless the court —

- (a) summarily dismisses the petition; or
  - (b) otherwise directs.
- (2) There shall be included in the order for intimation and service, a requirement —
- (a) to intimate on the walls of the court;
  - (b) where the petitioner is other than the company, to serve upon the company;
  - (c) where the company is being wound up voluntarily and a liquidator has been appointed, to serve upon the liquidator;
  - (d) where a receiver has been appointed for the company, to serve upon the receiver;
  - (e) where the company is —



- (i) a recognised bank or licensed institution within the meaning of the Banking Act 1979(a); or
  - (ii) an institution to which sections 16 and 18 of that Act apply as if it were licensed,  
and the petitioner is not the Bank of England, to serve upon the Bank of England.
- (3) Subject to paragraph (5), service of a petition on the company shall be executed at its registered office —
- (a) by registered or recorded delivery post addressed to the company; or
  - (b) by sheriff officer —
    - (i) leaving the citation in the hands of a person who, after due inquiry, he has reasonable grounds for believing to be a director, other officer or responsible employee of the company or authorised to accept service on behalf of the company; or
    - (ii) if there is no such person as is mentioned in head (i) present, depositing it in the registered office in such a way that it is likely to come to the attention of such a person attending at that office.
- (4) Where service is effected in accordance with paragraph (3)(b)(ii), the sheriff officer thereafter shall send a copy of the petition and citation by ordinary first class post to the registered office of the company.
- (5) Where service cannot be effected at the registered office or the company has no registered office —
- (a) service may be effected at the last known principal place of business of the company in Scotland or at some place in Scotland at which the company carries on business, by leaving the citation in the hands of such a person as is mentioned in paragraph (3)(b)(i) or by depositing it as specified in paragraph (3)(b)(ii); and
  - (b) where the citation is deposited as is specified in paragraph (3)(b)(ii), the sheriff officer thereafter shall send a copy of the petition and the citation by ordinary first class post to such place mentioned in sub-paragraph (a) of this paragraph in which the citation was deposited.
- (6) The petition shall be advertised forthwith —
- (a) once in the Edinburgh Gazette; and
  - (b) once in one or more newspapers as the court shall direct for ensuring that it comes to the notice of the creditors of the company.
- (7) The advertisement under paragraph (6) shall state —
- (a) the name and address of the petitioner and, where the petitioner is the company, the registered office;
  - (b) the name and address of the solicitor for the petitioner;
  - (c) the date on which the petition was presented;
  - (d) the precise order sought;

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(a) 1979 c. 37.

- (e) where a provisional liquidator has been appointed, his name, address and the date of his appointment;
- (f) the period of notice; and
- (g) that any person who intends to appear in the petition must lodge answers to the petition within the period of notice.

(8) The period of notice within which answers to the petition may be lodged and after which further consideration of the petition may proceed shall be 8 days after such intimation, service and advertisement as the court may have ordered.

*Lodging of caveats*

**20.**—(1) A company, debenture holder, holder of a floating charge, receiver, shareholder of a company or other person claiming an interest, apprehensive that a petition to wind up that company may be presented and wishing to be heard by the court before an order for intimation, service and advertisement is pronounced, may lodge a caveat with the sheriff-clerk.

(2) A caveat shall endure for 12 months on the expiry of which a new caveat may be lodged.

(3) Where a caveat has been lodged and has not expired, no order may be pronounced without the person lodging the caveat having been given an opportunity to be heard by the court.

*Substitution of creditor or contributory for petitioner*

**21.**—(1) This rule applies where a petitioner —

- (a) is subsequently found not entitled to present the petition;
- (b) fails to make intimation, service and advertisement as directed by the court;
- (c) consents to withdraw the petition or to allow it to be dismissed or refused;
- (d) fails to appear when the petition is called for hearing; or
- (e) appears, but does not move for an order in terms of the prayer of the petition.

(2) The court may, on such terms as it considers just, sist as petitioner in room of the original petitioner any creditor or contributory who, in the opinion of the court, is entitled to present a petition.

(3) An application by a creditor or contributory to be sisted under paragraph (2) —

- (a) may be made at any time before the petition is dismissed or refused; and
- (b) shall be made by note in the process of the petition, and if necessary the court may continue the cause for a specified period to allow a note to be presented.

*Advertisement of appointment of liquidator*

**22.** Where a liquidator is appointed by the court, the court may order that the liquidator shall advertise his appointment once in one or more newspapers

as the court shall direct for ensuring that it comes to the notice of creditors of the company.

*Provisional liquidators*

23.—(1) An application to appoint a provisional liquidator under section 135 of the Act of 1986 may be made —

- (a) by the petitioner, in the crave of the petition or subsequently by note in the process of the petition; or
  - (b) by a creditor or contributory of the company, the company, Secretary of State or a person entitled under any enactment to present a petition to wind up the company, in a note in the process of the petition.
- (2) The petition or note, as the case may be, shall include averments in relation to —
- (a) the grounds on which it is proposed that a provisional liquidator should be appointed;
  - (b) the name and address of the person to be appointed as provisional liquidator and that he is qualified to act as an insolvency practitioner in relation to the company; and
  - (c) whether, to the knowledge of the applicant, there is a receiver for the company or a liquidator has been appointed for the voluntary winding up of the company.
- (3) Where the court is satisfied that sufficient grounds exist for the appointment of a provisional liquidator, it shall, on making the appointment, specify the functions to be carried out by him in relation to the affairs of the company.
- (4) The applicant shall send a certified copy of the interlocutor appointing a provisional liquidator forthwith to the person appointed.
- (5) On receiving a certified copy of his appointment on an application by note, the provisional liquidator shall intimate his appointment forthwith —
- (a) once in the Edinburgh Gazette; and
  - (b) once in one or more newspapers as the court shall direct for ensuring that it comes to the notice of creditors of the company.
- (6) An application for discharge of a provisional liquidator shall be by note in the process of the petition.

*Applications and appeals in relation to a statement of affairs*

24.—(1) An application under section 131(5) of the Act of 1986 for —

- (a) release from an obligation imposed under section 131(1) or (2) of the Act of 1986; or
  - (b) an extension of time for the submission of a statement of affairs,
- shall be made by note in the process of the petition.

(2) A note under paragraph (1) shall be served on the liquidator or provisional liquidator, as the case may be.

(3) The liquidator or provisional liquidator may lodge answers to the note or lodge a report of any matters which he considers should be drawn to the attention of the court.

(4) Where the liquidator or provisional liquidator lodges a report under paragraph (3), he shall send a copy of it to the noter forthwith.

(5) Where the liquidator or provisional liquidator does not appear, a certified copy of the interlocutor pronounced by the court disposing of the note shall be sent by the noter forthwith to him.

(6) An appeal under rule 4.9(6) of the Insolvency Rules against a refusal by the liquidator of an allowance towards the expense of preparing a statement of affairs shall be made by note in the process of the petition.

*Appeals against adjudication of claims*

**25.**—(1) An appeal under section 49(6) of the Bankruptcy (Scotland) Act 1985(a), as applied by rule 4.16 of the Insolvency Rules, by a creditor or contributory of the company against a decision of the liquidator shall be made by note in the process of the petition.

(2) A note under paragraph (1) shall be served on the liquidator.

(3) On receipt of the note served on him under this rule, the liquidator forthwith shall send to the court the claim in question and a copy of his adjudication for lodging in process.

(4) After the note has been disposed of, the court shall return the claim and the adjudication to the liquidator together with a copy of the interlocutor.

*Appointment of liquidator by the court*

**26.**—(1) An application to appoint a liquidator under section 139(4) of the Act of 1986 shall be made by note in the process of the petition.

(2) Where the court appoints a liquidator under section 138(5) of the Act of 1986, the sheriff-clerk shall send a certified copy of the interlocutor pronounced by the court to the liquidator forthwith.

*Removal of liquidator*

**27.** An application by a creditor of the company for removal of a liquidator or provisional liquidator from office under section 172 of the Act of 1986 or for an order under section 171(3) of the Act of 1986 directing a liquidator to summon a meeting of creditors for the purpose of removing him shall be made by note in the process of the petition.

*Applications in relation to remuneration of liquidator*

**28.**—(1) An application by a liquidator under rule 4.34 of the Insolvency Rules shall be made by note in the process of the petition.

(2) An application by a creditor of the company under rule 4.35 of the Insolvency Rules shall be made by note in the process of the petition.

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(a) 1985 c. 66.

- (3) A note under paragraph (2) shall be served on the liquidator.

*Application to appoint a special manager*

29.—(1) An application under section 177 of the Act of 1986 by a liquidator or provisional liquidator for the appointment of a special manager shall be made by note in the process of the petition.

(2) The cautioner, for the caution to be found by the special manager within such time as the court shall direct, may be —

- (a) a private person, if approved by the court; or  
(b) a guarantee company, chosen from a list of such companies prepared for this purpose annually by the Accountant of Court and approved by the Lord President of the Court of Session.

(3) A bond of caution certified by the noter under rule 4.70(4) of the Insolvency Rules shall be delivered to the sheriff-clerk by the noter, marked as received by him and transmitted forthwith by him to the Accountant of Court.

(4) On receipt of the bond of caution, the sheriff-clerk shall issue forthwith to the person appointed to be special manager a certified copy of the interlocutor appointing him.

(5) An application by a special manager to extend the time within which to find caution shall be made by motion.

*Other applications*

30. An application under the Act of 1986 or rules made under that Act in relation to a winding up by the court not specifically mentioned in this Part shall be made by note in the process of the petition.

## PART V

### General provisions

*Application*

31. This Part applies to Parts I to IV of these rules.

*Intimation, service and advertisement of notes and appeals*

32. An application by note, or an appeal, to the court under these rules shall be intimated, served and, if necessary, advertised as the court shall direct.

*Affidavits*

33. The court may accept as evidence an affidavit lodged in support of a petition or note.

*Notices, reports and other documents sent to the court*

34. Where, under the Act of 1986 or rules made under that Act —

- (a) notice of a fact is to be given to the court;  
(b) a report is to be made, or sent, to the court; or  
(c) some other document is to be sent to the court;

it shall be sent or delivered to the sheriff-clerk of the court, who shall cause it to be lodged in the appropriate process.

*Failure to comply with rules*

**35.**—(1) The court may, in its discretion, relieve a party from the consequences of any failure to comply with the provisions of a rule shown to be due to mistake, oversight or other cause, which is not wilful non-observance of the rule, on such terms and conditions as the court considers just.

(2) Where the court relieves a party from the consequences of failure to comply with a rule under paragraph 1, the court may pronounce such interlocutor as may be just so as to enable the cause to proceed as if the failure to comply with the rule had not occurred.

## PART VI

### Appeals

*Appeals to the Sheriff Principal or Court of Session*

**36.**—(1) Where an appeal to the Sheriff Principal or the Court of Session is competent, it shall be taken by note of appeal which shall —

- (a) be written by the appellant or his solicitor on —
  - (i) the interlocutor sheet or other written record containing the interlocutor appealed against; or
  - (ii) a separate document lodged with the sheriff-clerk;
- (b) be as nearly as may be in the following terms:— “The (*petitioner, noter, respondent or other party*) appeals to the Sheriff Principal [*or Court of Session*]”; and
- (c) be signed by the appellant or his solicitor and bear the date on which it is signed.

(2) Such an appeal shall be marked within 14 days of the date of the interlocutor appealed against.

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

- (4) On an appeal being taken, the sheriff-clerk shall within 4 days —
  - (a) transmit the process —
    - (i) where the appeal is to Sheriff Principal, to him; or
    - (ii) where the appeal is to the Court of Session, to the Deputy Principal Clerk of Session; and
  - (b) send written notice of the appeal to any other party to the cause and certify in the interlocutor sheet, or other written record containing the interlocutor appealed against, that he has done so.

(5) Failure of the sheriff-clerk to give notice under paragraph 4(b) shall not invalidate the appeal.

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*Emslie,*  
Lord President,  
I.P.D.

Edinburgh.  
19th December 1986.

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EXPLANATORY NOTE

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

This Act of Sederunt makes provision for insolvency proceedings in relation to voluntary arrangements, administration orders, receivers and winding up in the Sheriff Court under the Insolvency Act 1986 and the Insolvency (Scotland) Rules 1986 relating to registered companies in Scotland and other companies in respect of which the Sheriff Court has jurisdiction.

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