
STATUTORY INSTRUMENTS

1993 No. 921 (S.128)

**SHERIFF COURT, SCOTLAND
INSOLVENCY
BANKRUPTCY**

Act of Sederunt (Bankruptcy Rules) 1993

Made - - - - - *26th March 1993*
Coming into force - - - - - *1st April 1993*

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(1), sections 1A, 14, 25 of, and paragraph 2(2) of Schedule 2 and paragraph 2 of Schedule 5 to, the Bankruptcy (Scotland) Act 1985(2), and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation, commencement, revocation and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Bankruptcy Rules) 1993 and shall come into force on 1st April 1993.

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

(3) Subject to rule 9 below, the Act of Sederunt (Bankruptcy) 1986(3) is revoked.

(4) In this Act of Sederunt, “the 1985 Act” means the Bankruptcy (Scotland) Act 1985.

(5) Any reference in this Act of Sederunt to a numbered form shall be construed as a reference to the form so numbered in Schedule 1 to this Act of Sederunt or a form substantially to the same effect, with such variation as circumstances may require.

Petition for sequestration by the debtor

2.—(1) A petition by the debtor under section 5(2)(a) of the 1985 Act(4) shall be in—

(1) 1971 c. 58.

(2) 1985 c. 66; section 1A was inserted by section 1 of the Bankruptcy (Scotland) Act 1993 (c. 6) (“the 1993 Act”).

(3) S.I. 1986/517.

(4) Section 5(2)(a) was substituted by the 1993 Act, section 3(2).

- (a) Form 1 where section 5(2A) of the 1985 Act⁽⁵⁾ (with concurrence of qualified creditor(s)) applies; or
 - (b) Form 2 where subsection 5(2B) of the 1985 Act⁽⁶⁾ (without concurrence of qualified creditors(s)) applies.
- (2) The court, when considering a petition lodged in accordance with paragraph (1) above, shall not require—
- (a) intimation to be made to any person, or
 - (b) the debtor to appear or be represented,
- unless it seems necessary to the court to do so.
- (3) An undertaking by the interim trustee under section 2(3)(c) of the 1985 Act⁽⁷⁾ shall be in Form 3.

Application for certificate for summary administration

- 3.—(1) An application for the grant of a certificate for the summary administration of the sequestration of the debtor's estate under the 1985 Act shall be in Form 4.
- (2) Where an application for the grant of a certificate for the summary administration of the sequestration of the debtor's estate has been made to the court before the appointment or confirmation of a permanent trustee, such application shall be considered at the same time as the court appoints or confirms the permanent trustee.
- (3) A certificate for the summary administration of the debtor's estate granted under section 23A of the 1985 Act⁽⁸⁾ shall be in Form 5.

Intimation of certificate for summary administration

4. Where the court grants a certificate for the summary administration of the sequestration of the debtor's estate, the sheriff clerk shall send a copy of the certificate to the applicant who without delay shall intimate the grant of such certificate to the persons referred to in section 23A(5) of the 1985 Act.

Withdrawal of certificate for summary administration

- 5.—(1) An application under section 23A(5) of the 1985 Act for the withdrawal of a certificate for the summary administration of the sequestration of the debtor's estate shall be in Form 6, and shall be intimated, by means of the recorded delivery service, by the applicant to the persons referred to in section 23A(5) of the 1985 Act.
- (2) A person receiving intimation under paragraph (1) above who wishes to object to the application must do so by letter to the sheriff clerk within 14 days of date of intimation.
- (3) The permanent trustee shall, within 42 days of date of intimation to him of an application under section 23A(5) of the 1985 Act—
- (a) lodge in court a report under section 23A(6) of the 1985 Act; and
 - (b) send a copy of that report to the Accountant in Bankruptcy and the debtor.
- (5) The sheriff, on considering the application and any written objections which have been received by the court, may fix a hearing.

(5) Section 5(2A) was inserted by the 1993 Act, section 3(2).

(6) Section 5(2B) was inserted by the 1993 Act, section 3(2).

(7) Section 2(3)(c) was substituted by the 1993 Act, section 2.

(8) Section 23A was inserted by the 1993 Act, section 6(1).

(6) The sheriff clerk shall intimate the court's decision to the applicant, who without delay shall intimate that decision to the persons referred to in section 23A(5) of the 1985 Act.

Intimation of appointment of interim trustee

6. The sheriff clerk without delay shall intimate the appointment of any interim trustee to the person so appointed, and to the Accountant in Bankruptcy where he is not the interim trustee.

Appeals

7.—(1) An appeal under the following provisions of the 1985 Act shall be made in accordance with the following provisions of this rule:—

section 15(3) (order refusing to award sequestration),

section 29(4) (order of sheriff removing permanent trustee),

section 54(6) (order deferring discharge of debtor or dismissal of application to defer discharge),

paragraph 8(3) of Schedule 4 (order approving or refusing to approve offer of composition).

(2) An appeal under a provision mentioned in paragraph (1) above shall be made by note of appeal which shall be written by the appellant on the interlocutor sheet, or other written record containing the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk; and such note of appeal shall be as nearly as may be in the following terms:—

“The (*designation of appellant*) appeals to the Sheriff Principal [*or*Court of Session],”.

(3) Such note of appeal shall be signed by the appellant or his solicitor and shall bear the date on which it was signed and the name and address of any firm of solicitors who will be acting for the appellant in the appeal.

(4) Where the 1985 Act does not specify the time within which an appeal shall be made, such appeal shall be made within 14 days of the date of the interlocutor appealed against.

(5) On an appeal to the Sheriff Principal, the sheriff clerk shall, within 4 days of the appeal being made, transmit the process to the Sheriff Principal, and on an appeal to the Court of Session the sheriff clerk shall, within 4 days of the appeal being made, transmit the process to the Deputy Principal Clerk of Session.

(6) Within the period of 4 days referred to in paragraph (5) above the sheriff clerk shall send written notice of the appeal—

(a) in an appeal under section 15(3) of the 1985 Act, to any concurring creditor and the debtor, as the case may be;

(b) in an appeal under section 29(4) of the 1985 Act, to the permanent trustee, the Accountant in Bankruptcy, the commissioners and any person representing not less than one quarter in value of the creditors, as the case may be;

(c) in an appeal under section 54(6) of the 1985 Act, to the applicant creditor, the permanent trustee and the debtor, as the case may be;

(d) in an appeal under paragraph 8(3) of Schedule 4 to the 1985 Act, to the permanent trustee, the debtor and the creditors to whom notice of the hearing fixed by the sheriff was given, as the case may be,

and shall certify on the interlocutor sheet that he has done so.

(7) Failure by the sheriff clerk to give the notice prescribed in paragraph (6) above shall not invalidate the appeal.

Forms and Register of Insolvencies

8. –

(1) The memorandum to be sent by the permanent trustee to the Keeper of the Register of Inhibitions and Adjudications under section 14(4) of the 1985 Act⁽⁹⁾ shall be in Form 7.

(2) The act and warrant to be issued by the sheriff clerk under section 25(2) or paragraph 2(2) of Schedule 2 to the 1985 Act⁽¹⁰⁾ shall be in Form 8.

(3) The notice which the trustee may record in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the 1985 Act shall be in Form 9.

(4) The notice to recall the notice referred to in paragraph (3) above which is to be recorded by the trustee in the Register of Inhibitions and Adjudications under paragraph 2(2) of Schedule 5 to the 1985 Act shall be in Form 10.

(5) The Register of Insolvencies maintained by the Accountant in Bankruptcy under section 1A(1) (b) of the 1985 Act shall contain the information specified in Schedule 2 to this Act of Sederunt.

Transitional provisions

9. Notwithstanding rule 1(3) above, nothing in this Act of Sederunt shall have effect as regards any petition or application presented before the coming into force of this Act of Sederunt; and the Act of Sederunt (Bankruptcy) 1986 shall continue to apply to any such petition or application.

Edinburgh
26th March 1993

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

(9) Section 14(4) was amended by the 1993 Act Schedule 1, paragraph 3.

(10) Paragraph 2 of Schedule 2 was substituted by the 1993 Act, Schedule 1, paragraph 30(3).

SCHEDULES

SCHEDULE 1

FORM 1 Form of debtor's petition (with concurrence of qualified creditor(s)) under the Bankruptcy (Scotland) Act 1985

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

Rule 1(5) Rule 2(1)(a)

SHERIFFDOM OF

AT

Court Reference No.

Name of debtor: *(insert full name)*

Home address: *(insert address and post code)*

Business name and address: *(insert name, address and postcode of any business you trade as)*

I, *(insert full name)*, PETITION the court to award sequestration of my estate.

1. I reside at the above address.
2. My assets and liabilities are as set out in the statement of assets and liabilities attached.
3. The qualified creditor(s) who concur(s) in this petition are: *(insert name(s) and address(es))*.

NOTE

The term "qualified creditor" means a creditor who at the date of presentation of the petition, is a creditor in respect of debts amounting in aggregate to not less than £1,500.

4. *(a) I do not wish to nominate an interim trustee.
 *(b) (i) I wish to nominate as interim trustee *(insert name and address of insolvency practitioner)*.
 (ii) He satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985.
 (iii) I attach his undertaking as required by section 2(3)(c) of the Bankruptcy (Scotland) Act 1985.
5. I certify that I have sent a copy of this petition to the Accountant in Bankruptcy.
6. I certify that I have sent a statement of assets and liabilities as required by section 5(6A) of the Bankruptcy (Scotland) Act 1985 to the Accountant in Bankruptcy.
7. I certify that I have disclosed all material facts and made no material misstatement in either this petition or the statement of assets and liabilities.
8. I certify that the information I have supplied in this petition and in the statement of assets and liabilities is true, complete and accurate to the best of my knowledge and belief. I have read and understand the WARNING below.

Date *(insert date)*

Signed *(signature of petitioning debtor)*

*delete as appropriate

WARNING

It is a criminal offence not to comply with the terms of paragraphs 6, 7 and 8 above. The penalty for committing such an offence, on summary conviction, may be a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months or both.

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

NOTE

IF YOU ARE UNCERTAIN AS TO YOUR RIGHT TO APPLY TO THE COURT FOR AN AWARD OF SEQUESTRATION OR REQUIRE ASSISTANCE TO COMPLETE THIS FORM you should seek advice from a solicitor, Citizens Advice Bureau, Money Advice Centre or other advice agency.

CONCURRENCE OF QUALIFIED CREDITOR(S)

**I/We, (insert name(s) and address(es) of concurring qualified creditor(s), and where signatory is signing on behalf of a company, state whether signatory is an employee or an officer of that company) concur in this petition.*

**delete as appropriate*

Date *(insert date)*

Signed *(signature of concurring qualified creditors(s))*

NOTE

The oath of the concurring creditor(s) must be lodged with this petition.

FORM 2 Form of debtor's petition (without concurrence of qualified creditor(s)) under the Bankruptcy (Scotland) Act 1985

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

Rule 2(1)(b)

SHERIFFDOM OF

AT

Court Reference No.

Name of debtor: *(insert full name)*

Home address: *(insert address and post code)*

Business name and address: *(insert name, address and postcode of any business you trade as)*

I, *(insert full name)*, PETITION the court to award sequestration of my estate.

1. I reside at the above address.
2. My debts (including interest) amount to not less than £1,500.
3. My assets and liabilities are as set out in the statement of assets and liabilities attached.
4. I have not been sequestrated within the last 5 years.
5. *I am apparently insolvent for the reason(s) stated on page 2 of this form.
*I granted a trust deed on *(insert date)* in favour of *(insert name and address of trustee)* who has complied with the terms of paragraphs 5(1) to 5(3) of Schedule 5 to the Bankruptcy (Scotland) Act 1985 and who has received notification in writing from:-
 - (i) a majority in number of the creditors; or
 - (ii) not less than one third in value of the creditors,that they object to the trust deed and do not wish to accede to it.
6. [†](a) I do not wish to nominate an interim trustee.
^{*}(b) (i) I wish to nominate as interim trustee *(insert name and address of insolvency practitioner)*;
(ii) He satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985; and
(iii) I attach his undertaking as required by section 2(3)(c) of the Bankruptcy (Scotland) Act 1985.
7. I certify that I have sent a copy of this petition to the Accountant in Bankruptcy.

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8. I certify that I have sent a statement of assets and liabilities as required by section 5(6A) of the Bankruptcy (Scotland) Act 1985 to the Accountant in Bankruptcy.

9. I certify that I have disclosed all material facts and made no material misstatement in either this petition or the statement of assets and liabilities.

10. I certify that the information I have supplied in this petition and in the statement of assets and liabilities is true, complete and accurate to the best of my knowledge and belief. I have read and understand the WARNING given below.

Date (*insert date*) Signed (*signature of petitioning debtor*)

*delete as appropriate

WARNING

It is a criminal offence not to comply with the terms of paragraphs 8, 9 and 10 above. The penalty for committing such an offence, on summary conviction, may be a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months or both.

NOTE

IF YOU ARE UNCERTAIN AS TO YOUR RIGHT TO APPLY TO THE COURT FOR AN AWARD OF SEQUESTRATION OR REQUIRE ASSISTANCE TO COMPLETE THIS FORM you should seek advice from a solicitor, Citizens Advice Bureau, Money Advice Centre or other advice agency.

YOU ARE APPARENTLY INSOLVENT IF ONE OR MORE OF THE FOLLOWING APPLY:

1. You have failed to make payment to any creditor of any debt due by you under a court decree, and a charge for payment of that debt has expired without payment having been made.
2. You have failed to make payment to any creditor of any debt due by you under a summary warrant for recovery of rates or taxes and fourteen days have elapsed since the date of any pointing to recover that debt.
3. A decree of adjudication has been granted against you for any part of your estate, either for payment or in security.
4. Your effects have been sold under a decree for sequestration for rent.
5. A receiving order has been made against you in England or Wales.
6. A statutory demand for payment has been served on you requiring you either to pay a sum claimed to be due or to find security for payment within three weeks and you have failed to:—
 - (i) comply with that demand; or
 - (ii) intimate to the creditor, by means of recorded delivery service, that you deny that the sum claimed is immediately payable.
7. You have been sequestrated or adjudged bankrupt in England or Wales or Northern Ireland.

The reason(s) given in paragraph(s) |] apply(ies) to me.

Date (*insert date*) Signed (*signature of petitioning debtor*)

NOTE

The above list of circumstances may not be exhaustive and further information can be found in an explanatory guide which may be obtained from the Accountant in Bankruptcy, Strategy House, 3 Cables Wynd, Leith, Edinburgh or at Haymarket House, Edinburgh or at any Sheriff Clerk's Office, Citizens Advice Bureau or Money Advice Centre.

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Rule 2(3)

I (*insert name and designation*) a qualified insolvency practitioner undertake, if appointed by the court to do so:-

- (a) to act as interim trustee in the sequestration of (*insert full name and address of debtor*); and
- (b) to act as permanent trustee in the sequestration where no permanent trustee is elected.

Date (*insert date*)

Signed (*signature of qualified insolvency practitioner*)

FORM 4 Form of application for a certificate for summary administration under the Bankruptcy

Rule 3(1)

SHERIFFDOM OF

AT

Court Reference No.

*I (*insert name*) the Accountant in Bankruptcy; or

*I (*insert name and designation*) interim trustee of (*insert full name and address of debtor*)

APPLY to the court in terms of section 23A of the Bankruptcy (Scotland) Act 1985:

- (1) to grant a certificate for summary administration of the sequestration of the estate of (*insert full name and address of debtor*); and
- (2) to administer this sequestration under *Section 25A and Schedule 2A of the said Act.

1. Sequestration of the estate of (*insert full name and address of debtor*) was awarded at (*insert name of court*) on (*insert date*) and:-

- * (a) no permanent trustee has been elected; or
- * (b) the election of (*insert name and designation*) as permanent trustee:-
 - * (i) was confirmed by the sheriff on (*insert date*); or
 - * (ii) has not been confirmed.

2. The aggregate amount of the debtor's liabilities do not exceed £20,000.

3. The aggregate amount of the debtor's assets do not exceed £2,000.

4. I **CERTIFY** that in terms of section 23A(3) of the Bankruptcy (Scotland) Act 1985:-

- (1) the aggregate amount of the debtor's liabilities, excluding any debt over which any creditor holds a security, is (*insert amount*).
- (2) the aggregate amount of the debtor's assets, excluding any heritable property and any property which, in terms of section 33(1) of the Bankruptcy (Scotland) Act 1985 does not vest in the permanent trustee, is (*insert amount*).

Date (*insert date*)

Signed *(*signature of Accountant in Bankruptcy/interim trustee*)

*delete as appropriate

FORM 5 Form of certificate for summary administration under the Bankruptcy (Scotland) Act 1985

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

Rule 3(3)

SHERIFFDOM OF AT Court Reference No.

The court having considered the application by:-

**(insert name) the Accountant in Bankruptcy*

**(insert name and designation) the interim trustee of (insert full name and address of debtor)*

on *(insert date)* GRANTED a certificate in terms of section 23A of the Bankruptcy (Scotland) Act 1985 for summary administration of the sequestration of the estate of *(insert full name and address of debtor)*, to administer the sequestration in terms of **section 25A and Schedule 2A of the said Act.*

Signed **(signature of sheriff clerk)*

**delete as appropriate*

FORM 6 Form of application for withdrawal of certificate for summary administration under the Bankruptcy (Scotland) Act 1985

Rule 5(1)

SHERIFFDOM OF AT Court Reference No.

**I (insert full name and address) the debtor*

**I (insert name and address) a creditor of (insert full name and address of debtor)*

**I (insert name and designation) permanent trustee of (insert full name and address of debtor)*

**I (insert name) the Accountant in Bankruptcy*

APPLY to the court to withdraw the certificate for summary administration of the sequestration of the estate of *(insert full name and address of debtor)* granted on *(insert date)*.

1. This application is made for the following reason(s):-
(insert the reason(s) for the application).

2. I certify that I have sent a copy of this application to:-

**(insert name and designation), the permanent trustee;*

**(insert name and address), the debtor;*

**(insert name(s) and designation(s)), the creditor(s) of the debtor;*

**the Accountant in Bankruptcy.*

Date *(insert date)*

Signed *(signature of debtor, creditor, permanent trustee or the Accountant in Bankruptcy)*

**delete as appropriate*

FORM 7 Form of memorandum by permanent trustee to be recorded in the Register of Inhibitions and Adjudications under section 14(4) of the Bankruptcy (Scotland) Act 1985

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

Rule 8(1)

From: *(insert name and designation of permanent trustee)* trustee in the sequestration of *(insert full name and address of debtor)*.

To: **The Keeper of the Register of Inhibitions and Adjudications.**

A certified copy of the court order of *(insert date)* awarding sequestration in respect of *(insert full name and address of debtor)* was recorded in your Register on *(insert date)*.

Record this memorandum to renew the effect of that recording for a further period of three years from the date of presentment hereof.

Date *(insert date)* Signed *(signature of permanent trustee or agent)*

FORM 8 Form of act and warrant on confirmation or appointment of trustee under respectively section 25(2) or paragraph 2(2) of Schedule 2 to the Bankruptcy (Scotland) Act 1985

Rule 8(2)

(insert place and date)

The Sheriff of the Sheriffdom of *(insert sheriffdom)* has ^{*}[confirmed/appointed] and hereby ^{*}[confirms/appoints] *(insert name and designation)* as permanent trustee on the sequestrated estate of *(insert full name and address of debtor)*; and the whole estate wherever situated of *(insert full name of debtor)* at *(insert date of sequestration)* is vested in and now belongs to *(insert name of permanent trustee)* as trustee for the benefit of the creditors of *(insert full name of debtor)* in terms of the Bankruptcy (Scotland) Act 1985.

Date *(insert date)* Signed ^{*}*(signature of sheriff clerk)*

*delete as appropriate

FORM 9 Form of notice of inhibition by trustee under trust deed to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Bankruptcy (Scotland) Act 1985

Rule 8(3)

A trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 has been granted by *(insert full name and address of debtor)* and delivered to *(insert name and designation of permanent trustee)* as trustee acting under the trust deed.

Under the trust deed the estate of *(insert full name of debtor)* has been conveyed to *(insert name of permanent trustee)* as trustee for the benefit of the creditors generally of *(insert full name of debtor)*.

Date *(insert date)* Signed *(signature of permanent trustee or agent)*

FORM 10 Form of notice of recall of inhibition to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(2) of Schedule 5 to the Bankruptcy (Scotland) Act 1985

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

Rule 8(4)

The notice by *(insert name and designation of permanent trustee)* as trustee under a trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 for creditors generally of *(insert full name and address of debtor)* recorded on *(insert date of recording)* is now recalled.

Date *(insert date)*

Signed *(signature of permanent trustee or agent)*

SCHEDULE 2

Rule 8(5)

Information to be contained in the Register of Insolvencies

A.

Sequestrations

Name of debtor

Debtor's residence and his principal place of business (if any) at date of sequestration or date of death

Date of death in case of deceased debtor

Occupation of debtor

Name and address of petitioner for sequestration

Court by which sequestration awarded

Sheriff Court to which sequestration remitted (where applicable)

Date of first order

Date of award of sequestration

Date of recall of sequestration (where applicable)

Date certificate for summary administration of sequestration of debtor's estate granted (where applicable)

Date certificate for summary administration of sequestration of debtor's estate withdrawn (where applicable)

Name and address of interim trustee and date of appointment

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

- B.
- Level of debt when interim trustee's statement of debtor's affairs is produced
 - Level of assets when interim trustee's statement of debtor's affairs is produced
 - Name and address of permanent trustee and date of confirmation of appointment
 - Date of debtor's discharge and whether on composition or by operation of law
 - Date of interim trustee's discharge
 - Date of permanent trustee's discharge
 - Protected Trust Deeds for Creditors
 - Name and address of granter of trust deed
 - Name and address of trustee under the deed
 - Date (or dates) of execution of deed
 - Date on which copy deed and certificate of accession were registered
 - Date of registration of statement indicating how the estate was realised and distributed and certificate to the effect that the distribution was in accordance with the trust deed.
 - Date of trustee's discharge
 - Date of registration of copy of order of court that non acceding creditor is not bound by trustee's discharge.
-
-

EXPLANATORY NOTE

This note is not part of the Act of Sederunt)

This Act of Sederunt prescribes the form of petition by a debtor for sequestration. It prescribes the form of application for a certificate for summary administration of the sequestration of a debtor's estate, and the form of the certificate itself.

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Provision is also made for applications for withdrawal of the certificate. It also provides for intimation of the appointment of an interim trustee and prescribes the form of undertaking to be given by an interim trustee.

The Act of Sederunt (Bankruptcy) 1986 has been revoked and re-enacted with minor amendments. It continues to have effect, however, in relation to petitions and applications presented before this Act of Sederunt came into effect.