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STATUTORY INSTRUMENTS

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**1996 No. 2507 (S.196)**

**SHERIFF COURT, SCOTLAND  
INSOLVENCY**

**BANKRUPTCY, SCOTLAND**

**Act of Sederunt (Sheriff Court Bankruptcy Rules) 1996**

*Made* - - - - - *27th September 1996*

*Coming into force* - - - - - *1st January 1997*

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(1)(b), 14(4) and 25(2) 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 said Act of 1971, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Bankruptcy Rules) 1996 and shall come into force on 1st January 1997.

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

**Bankruptcy Rules**

2. The Schedule to this Act of Sederunt shall have the effect of providing rules in the sheriff court for the purpose of the Bankruptcy (Scotland) Act 1985.

**Revocation and saving**

3. The Act of Sederunt (Bankruptcy Rules) 1993 (3) is hereby revoked.

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(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).

(2) 1985 c. 66; section 1A was inserted by the Bankruptcy (Scotland) Act 1993 (c. 6) (“the 1993 Act”), section 1; section 14(4) was amended by the 1993 Act, Schedule 1, paragraph 3; and paragraph 2 of Schedule 2 was substituted by the 1993 Act, Schedule 1, paragraph 30.

(3) S.I. 1993/921.

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Edinburgh  
27th September 1996

*Hope of Craighead*  
Lord President I.P.D.

## SCHEDULE

Paragraph 2

### SHERIFF COURT BANKRUPTCY RULES

#### **Citation and interpretation**

1.—(1) These Rules may be cited as the Sheriff Court Bankruptcy Rules.

(2) In these Rules, “the Act of 1985” means the Bankruptcy (Scotland) Act 1985.

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

#### **Forms of petitions etc.**

2.—(1) A petition, note, application, report and the like under the Act of 1985 shall be written, typed or printed on A4 size paper of durable quality and shall not be backed.

(2) On receipt of a petition for sequestration, the sheriff clerk shall prepare a process folder which shall include an inventory of process.

(3) The petition and any production or part of process lodged shall be placed by the sheriff clerk in the process folder.

#### **Petitions for sequestration**

3.—(1) A petition by the debtor under section 5(2)(a) of the Act of 1985<sup>(4)</sup> (sequestration of the estate of living debtor) shall be in –

(a) Form 1 where section 5(2A) of the Act of 1985<sup>(5)</sup> (with concurrence of qualified creditor or creditors) applies; or

(b) Form 2 where section 5(2B) of the Act of 1985<sup>(6)</sup> (without concurrence of qualified creditor or creditors) applies.

(2) A petition by a qualified creditor under section 5(2)(b) of the Act of 1985 shall be in Form 3.

(3) A petition by a trustee acting under a trust deed under section 5(2)(c) of the Act of 1985 shall be in Form 4.

(4) 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 the court considers it necessary.

(5) An undertaking by the interim trustee under section 2(3)(c) of the Act of 1985<sup>(7)</sup> shall be in Form 5.

#### **Application for certificate for summary administration**

4.—(1) An application for the grant of a certificate for the summary administration of the sequestration of the debtor’s estate under section 23A(1) of the Act of 1985<sup>(8)</sup> shall be in Form 6.

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

(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).

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(2) Where such an application has been made to the court before the appointment or confirmation of a permanent trustee, the 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(1) of the Act of 1985 shall be in Form 7.

#### **Intimation of certificate for summary administration**

5. 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 Act of 1985.

#### **Withdrawal of certificate for summary administration**

6.—(1) An application under subsection (5) of section 23A of the Act of 1985 (application for withdrawal of certificate for summary administration) shall be in Form 8, and shall be intimated by the first class recorded delivery service, by the applicant to the other persons mentioned in that subsection.

(2) A person receiving intimation under paragraph (1) above, who wishes to object to the application, must object by letter to the sheriff clerk within 14 days after the date of intimation to him.

(3) The permanent trustee shall, within 42 days of the date of intimation to him of an application under section 23A(5) of the Act of 1985 –

- (a) lodge in court a report under section 23A(6) of the Act of 1985 (report on circumstances of the sequestration); and
- (b) send a copy of that report to the Accountant in Bankruptcy and the debtor.

(4) The sheriff, on considering the application and any written objections which have been received by the court, may fix a hearing.

(5) 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 Act of 1985.

#### **Intimation of appointment of interim trustee**

7. The sheriff clerk shall, without delay, 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.

#### **Application to exclude vesting**

8.—(1) An application under section 31(6) of the Act of 1985 (exclusion of estate from vesting in the permanent trustee) shall be by note in the bankruptcy process, and shall include –

- (a) a crave by the applicant to be sisted in the process; and
- (b) a statement of the facts on which the application is based.

(2) An application under paragraph (1) above shall be served by the applicant on the permanent trustee and shall be intimated by the applicant to the debtor.

(3) Where the permanent trustee or the debtor intends to object to the application, he shall lodge answers with the sheriff clerk within 14 days after the date of service or intimation, as the case may be, in accordance with paragraph (2) above.

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(4) Where answers are lodged, the sheriff may fix a hearing to take place not less than 14 days after such service or intimation of the application or may, at any time, after the period of 14 days, determine the application by way of affidavits or otherwise as he thinks fit.

(5) Where no answers are lodged, the sheriff may fix a hearing or determine the application in chambers without the attendance of the applicant.

(6) Where the sheriff determines an application in chambers in accordance with paragraphs (4) or (5) above, the sheriff clerk shall intimate the decision of the sheriff to the applicant, the permanent trustee and the debtor.

#### **Application to determine amount for aliment and obligations, etc.**

**9.—**(1) An application by the permanent trustee under section 32(2) of the Act of 1985 (determination of suitable amount of aliment for the debtor, his relevant obligations, and to fix the amount of excess) shall be by note in the bankruptcy process and shall be in Form 9.

(2) An application under paragraph (1) above shall be intimated by the applicant to the debtor.

(3) Where the debtor intends to object to the application, he shall lodge answers with the sheriff clerk within 14 days after the date of intimation in accordance with paragraph (2) above.

(4) Where answers are lodged, the sheriff may fix a hearing to take place not less than 14 days after intimation of the application or may, at any time, after the period of 14 days, determine the application by way of affidavits or otherwise as he thinks fit.

(5) Where no answers are lodged, the sheriff may fix a hearing or determine the application in chambers without the attendance of the applicant.

(6) Where the sheriff determines an application in chambers in accordance with paragraphs (4) or (5) above, the sheriff clerk shall intimate the decision of the sheriff to the applicant and the respondent.

#### **Application to vary or recall an order made under section 32(2) of the Act of 1985**

**10.—**(1) An application under section 32(4) of the Act of 1985 (variation or recall of an order made under section 32(2)) shall be by note in the bankruptcy process, and shall be in Form 10.

(2) An application under paragraph (1) above shall be intimated by the applicant to the debtor and, or, the permanent trustee as the case may be.

(3) Where the debtor or the permanent trustee intends to object to the application, he shall lodge answers with the sheriff clerk within 14 days after the date of intimation in accordance with paragraph (2) above.

(4) Where answers are lodged, the sheriff may fix a hearing to take place not less than 14 days after intimation of the application or may, at any time, after the period of 14 days, determine the application by way of affidavits or otherwise as he thinks fit.

(5) Where no answers are lodged, the sheriff may fix a hearing or determine the application in chambers without the attendance of the applicant.

(6) Where the sheriff determines an application in chambers in accordance with paragraphs (4) or (5) above, the sheriff clerk shall intimate the decision of the sheriff to the applicant and the respondent.

#### **Determination without hearing**

**11.** Where a hearing is not mandatory under the Act of 1985, the sheriff may grant any application in chambers outwith the presence of parties.

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## Notes

12.—(1) Except as otherwise provided, all applications shall be made by note in the bankruptcy process.

(2) Where a note is unopposed, the crave of the note shall be granted by the sheriff in chambers without the attendance of parties, unless the sheriff otherwise directs.

(3) Where the sheriff requires to hear a party on a note, the sheriff clerk shall inform that party of the date on which the note will be heard.

## Appeals to the sheriff

13. An appeal to the sheriff under the Act of 1985 shall be made by note of appeal in the bankruptcy process.

## Appeals to the Sheriff Principal and the Court of Session

14.—(1) An appeal under the following provisions of the Act of 1985 shall be made in accordance with the 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 –

(a) on the interlocutor sheet,

(b) on any other written record containing the interlocutor appealed against, or

(c) on a separate sheet lodged with the sheriff clerk

in the following terms:—

“The petitioner [*or as the case may be*] appeals to the Sheriff Principal [*or Court of Session*].”.

(3) Such a note of appeal shall –

(a) be signed by the appellant or his solicitor;

(b) bear the date on which it was signed; and

(c) have appended to it the name and address of any firm of solicitors who will be acting for the appellant in the appeal.

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

(5) The sheriff clerk shall, within four days of the note of appeal being marked –

(a) on an appeal to the Sheriff Principal, transmit the process to the Sheriff Principal; or

(b) on an appeal to the Court of Session, transmit the process to the Deputy Principal Clerk of Session.

(6) Within the period of four days mentioned in paragraph (5) above, the sheriff clerk shall send written notice of the appeal –

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

(b) in an appeal under section 29(4) of the Act of 1985 to –

- (i) the permanent trustee,
  - (ii) the Accountant in Bankruptcy,
  - (iii) the commissioners, and
  - (iv) 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 Act of 1985, to –
- (i) the applicant creditor,
  - (ii) the permanent trustee, and
  - (iii) the debtor,
- as the case may be;
- (d) in an appeal under paragraph 8(3) of Schedule 4 to the Act of 1985, to
- (i) the permanent trustee,
  - (ii) the debtor, and
  - (iii) the creditors to whom notice of the hearing fixed by the sheriff was given,
- as the case may be.

(7) The sheriff clerk shall certify on the interlocutor sheet that he has sent the notice required under paragraph (6) above.

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

### **Forms and register of insolvencies**

**15.**—(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 Act of 1985 shall be in Form 11.

(2) The act and warrant to be issued by the sheriff clerk under section 25(2) of, or paragraph 2(2) of Schedule 2 to, the Act of 1985 shall be in Form 12.

(3) The notice which the trustee may record in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Act of 1985 shall be in Form 13.

(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 Act of 1985 shall be in Form 14.

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

### **Reports**

**16.**—(1) The report to be made by the interim trustee under section 21B(1)(a) of the Act of 1985<sup>(9)</sup> shall be in Form 15.

(2) The report to be made by the Accountant in Bankruptcy as interim trustee under section 24(3A) of the Act of 1985<sup>(10)</sup> shall be in Form 16.

(3) The report to be made by the interim trustee under section 24(4)(b) of the Act of 1985<sup>(11)</sup> shall be in Form 17.

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<sup>(9)</sup> Section 21B was inserted by the 1993 Act, section 5.

<sup>(10)</sup> Section 24(3A) was inserted by the 1993 Act, Schedule 1, paragraph 12(4).

<sup>(11)</sup> Section 24(4) was amended by the 1993 Act, Schedule 1, paragraph 12(5).

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(4) The report to be made by the interim trustee under section 25(1)(a) of the Act of 1985 shall be in Form 18.



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## APPENDIX 1

Schedule, Rule 1(3)

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

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Rule 3(1)(a)

SHERIFFDOM OF AT Court Reference No.

Name of debtor: (insert full name)

Home address: (insert address and postcode)

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.

**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 creditor(s))

**NOTE**

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

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

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Rule 3(1)(b)

SHERIFFDOM OF

A1

Court Reference No.

Name of debtor: *(insert full name)*Home address: *(insert address and postcode)*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 five 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 3(3) of the Bankruptcy (Scotland) Act 1985.  
 (iii) I attach his undertaking as required by section 2(3)(v) of the Bankruptcy (Scotland) Act 1985.
7. I certify that I have sent a copy of this petition to the Accountant in Bankruptcy.
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 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 14 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.



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Rule 3(2)

SHERIFFDOM OF

AT

Court Reference No.

PETITION of *(insert name and address of petitioner)*

Petitioner(s)

against

*(insert name and address of debtor)*

\*trading as

*(insert name and address of business)*

Respondent

The petitioner(s) crave(s) the court:-

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.
2. To award sequestration of the estate of the respondent.
3. To declare that the said estate belongs to the creditors of the respondent.
4. To appoint *(insert name, designation and address of interim trustee)* \*|or alternatively the Accountant in Bankruptcy] as interim trustee [where applicable \*forthwith].
5. To make such other and further orders as may seem appropriate to the court.
6. To find the petitioner(s) entitled to the expenses of this application out of the respondent's estate.

**STATEMENT OF FACTS**

1. The petitioner(s) \*is [or are] as designed in the instance. The respondent habitually resides \*and/or had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.
2. The petitioner(s) \*is/are a qualified †creditor/creditors of the respondent to the extent of £ as evidenced in the oath/s by creditor/s and supporting vouchers attached.
3. The respondent has been rendered apparently insolvent by virtue of *(insert appropriate ground founded on in terms of section 7 of the Bankruptcy (Scotland) Act 1985)* and that within four months of the presentation of this petition.
4. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) is/are under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.
5. *(Insert name of interim trustee)* satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. \*|or alternatively if no nomination of interim trustee The petitioner(s) accept that the Accountant in Bankruptcy will be interim trustee in the sequestration.  
*(If interim trustee to be appointed forthwith, the circumstances rendering this necessary should also be narrated).*
6. A copy of this petition has been sent today to the Accountant in Bankruptcy.

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### PLEA IN LAW

The debtor's apparent insolvency within the meaning of the Bankruptcy (Scotland) Act 1985 being constituted within 4 months before the date of presentation of this petition and the petitioner(s) being qualified creditor(s) of the respondent in terms of section 5(4) of the said Act being entitled to the remedy sought, the orders and finding requested in the crave should be granted.

Date (*insert date of petition*)

Signed

(signature of Petitioner(s)

or Solicitor for Petitioner(s)

(*insert designation and address*)

*\*delete as appropriate*

FORM 4 Form of petition by a trustee under a trust deed in terms of section 5(2)(c) of the Bankruptcy (Scotland) Act 1985

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Rule 3(3)

SHERIFFDOM OF

AT

Court Reference No.

PETITION of *(insert name and address of petitioner)*

Petitioner: s)

against

*(insert name and address of debtor)*

trading as

*(insert name and address of business)*

Respondent

The petitioner(s) crave(s) the court:-

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.
2. To award sequestration of the estate of the respondent.
3. To declare that the said estate belongs to the creditors of the respondent.
4. To appoint *(insert name, designation and address of interim trustee)* [or the Accountant in Bankruptcy] as interim trustee *where applicable* [or~~thwith~~].
5. To make such other and further orders as may seem appropriate to the court.
6. To find the petitioner entitled to the expenses of this application out of the respondent's sequestrated estate.

**STATEMENT OF FACTS**

1. The petitioner is ~~designated~~ in the instance and is trustee acting under the trust deed granted as ~~mentioned~~. The respondent habitually resides [and] [or] had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.
2. On *(insert date)* the respondent granted a trust deed in favour of the petitioner. A copy of the trust deed by the respondent in favour of the petitioner is attached.
3. The debtor has failed to *(specify condition or instruction with which debtor has failed to comply as required in section 5(2C) of the Bankruptcy (Scotland) Act 1985)*. It would be in the best interests of the creditors that an award of sequestration be made *(narrate reasons for this averment)*.
4. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) ~~is/are~~ under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.
5. *(Insert name of interim trustee)* satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. \**[or alternatively if no nomination of interim trustee: The petitioner accepts that the Accountant in Bankruptcy will be interim trustee in the sequestration.]*  
*(If interim trustee to be appointed forthwith, the circumstances rendering this necessary should also be narrated).*
6. A copy of this petition has been sent today to the Accountant in Bankruptcy.



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### PLEA IN LAW

The petitioner, as trustee of the respondent under a trust deed being entitled to have the respondent's estate sequestrated in terms of section 5 of the Bankruptcy (Scotland) Act 1985, the orders and finding requested in the crave should be granted.

Date (*insert date of petition*)

Signed  
(signature of Petitioner(s)  
\*or Solicitor for Petitioner(s)  
(*insert designation and address*))

*\*(delete as appropriate)*

FORM 5 Form of undertaking required by section 2(3)(c) of the Bankruptcy (Scotland) Act 1985  
Rule 3(5)

I, (*insert full 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 6 Form of application for a certificate for summary administration under the Bankruptcy (Scotland) Act 1985

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Rule 4(1)

SHERIFFDOM OF AT Court Reference No.

\*1 (insert name) the Accountant in Bankruptcy; or

\*1 (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 7 Form of certificate for summary administration under the Bankruptcy (Scotland) Act 1985

Rule 4(3)

SHERIFFDOM OF AT Court Reference No.

The court having considered the application by:-

\*(insert name) the Accountant in Bankruptcy

\*(insert name and designation) 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 8 Form of application for withdrawal of certificate for summary administration under the Bankruptcy (Scotland) Act 1985

Rule 6(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 names; 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 9 Form of application by permanent trustee for an order for a contribution from the debtors income, in terms of section 32(2) 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 9(1)

SHERIFFDOM OF

AT

Court Reference No.

NOTE

by

*(name and designation)*

the permanent trustee appointed on *(insert date)* in the sequestration of *(insert full name and address of debtor)*

The noter requests the court, in accordance with the provisions of section 32(2) of the Bankruptcy (Scotland) Act 1985,

- (a) to determine a suitable amount to allow for aliment for the debtor;
- (b) to determine a suitable amount to allow for the debtor's relevant obligations as defined in section 32(3) of the said Act; and
- (c) if the debtor's income is in excess of the total amount so allowed, to fix the amount of the excess at *(insert amount)* and order it to be paid to the noter for the benefit of the creditors.

**STATEMENT OF FACTS**

1. Appended hereto are:
  - (1) extract from the debtor's statement of assets and liabilities furnished to the noter;
  - (2) noter's assessment of the debtor's current income, alimentary requirements and relevant obligations.
2. The noter proposes £*(insert amount)* per week/month as an appropriate contribution by the debtor.

Date *(insert date of application)*

Signed *(signature of noter)*  
Noter

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

**EXTRACT OF STATEMENT OF ASSETS AND LIABILITIES  
COMPLETED BY THE DEBTOR ON (insert date)**

**INCOME**

|   | Average weekly amount |
|---|-----------------------|
| Income from earnings<br>( <i>net of tax</i> )   | £                     |
| Other income (e.g. pensions,<br>income bonds, benefits etc.)<br>( <i>please specify</i> ) | £                     |
| Total income  | £                     |

**EXPENDITURE**

|   | Average weekly amount |
|---|-----------------------|
| Rent/mortgage   | £                     |
| Fuel (e.g. Gas, electricity etc.)   |                       |
| Food  |                       |
| Clothing  |                       |
| Travel  |                       |
| Council tax and/or rates  |                       |
| Other expenditure (e.g. insurance, telephone etc.)<br>( <i>please specify</i> ) |                       |
| Total expenditure   | £                     |

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**Noter's assessment of debtor's current income, alimentary requirements and relevant obligations**

**NUMBER OF DEPENDANTS**

(to whom obligation of aliment as defined in the Family Law (Scotland) Act 1985 is owed)

|   |
|---|
| Spouse or partner (yes/no) _____                                  |
| Number of children under age 16 _____                             |
| Number of children over age 16 still in full time education _____ |

**INCOME**

|                        | Average weekly amount |
|------------------------|-----------------------|
| Income from employment | £                     |
| Other income           | £                     |
| Total income           | £                     |

**OUTGOINGS**

|                             | Average weekly amount |
|-----------------------------|-----------------------|
| Rent/mortgage               | £                     |
| Rates and taxes             |                       |
| Fuel costs                  |                       |
| Food                        |                       |
| Clothing                    |                       |
| Travel                      |                       |
| Other essential expenditure |                       |
| Total expenditure           | £                     |

**Excess of income over expenditure** £

FORM 10 Form of application under section 32(4) of the Bankruptcy (Scotland) Act 1985 for variation or recall of an order made under section 32(2) of that Act

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

Rule 10(1)

SHERIFFDOM OF

AT

Court Reference No.

**NOTE**

by

*(name and designation of noter and state nature of interest)*

In the sequestration of

*(insert full name and address of debtor)*

I *(insert name and designation of noter and detail interest)* in accordance with the provisions of section 32(4) of the Bankruptcy (Scotland) Act 1985 hereby apply to the sheriff for an order varying/recalling the order dated *(enter date of order under section 32(2) of that Act)* made under section 32(2) of that Act and that in respect of the following:

**STATEMENT OF FACTS**

1. Following upon the note number *(enter no. of process of note which it is sought to vary or recall)* of process, an order was pronounced in terms of section 32(2) of the Bankruptcy (Scotland) Act 1985 on *(enter date on which order it is sought to vary or recall was made)*.

2. The effect of the said order was as follows *(detail effect)*.

3. In respect of the following change of the debtor's circumstances, the noter seeks recall/variation of said order to the following effect *(enter details of change of circumstances founded upon)*.

4. In respect of the foregoing, the noter respectfully proposes that an appropriate contribution by the debtor would now be £*(enter amount)* per week/month.

Date *(insert date of application)*

Signed *(signature of noter)*

FORM 11 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

Rule 15(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 presentation hereof.

Date *(insert date)*

Signed *(signature of permanent trustee or agent)*

FORM 12 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

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

Rule 15(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.

*\*delete as appropriate*

Date *(insert date)*

Signed *(signature of sheriff clerk)*

FORM 13 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 15(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 14 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

Rule 15(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)*

FORM 15 Form of report by the interim trustee under section 21B(1)(a) of the Bankruptcy (Scotland) Act 1985 and application for the appointment of permanent trustee under section 25A of that Act



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

Rule 16(1)

REPORT TO THE SHERIFF OF

AT

Court Reference No.

in the sequestration of *(insert full name and address of debtor)*

1. The interim trustee reports to the sheriff that he has intimated to the creditors his intention not to call a statutory meeting in terms of section 21A(2) of the Bankruptcy (Scotland) Act 1985. The interim trustee further reports that no competent requests were received by him to call such a meeting.

2. A copy of the interim trustee's statement of the debtor's affairs is attached.

3. The interim trustee requests the sheriff to appoint him *\*(insert name and designation of permanent trustee if not the interim trustee)* who by his signature hereto consents to his nomination as permanent trustee in terms of section 25A of the Bankruptcy (Scotland) Act 1985.

\*4. An application for a certificate of summary administration is submitted with this report and application.

\*delete as appropriate

Date *(insert date of report)*

Signed *(signature of interim trustee or person authorised by him)*

Signed *(permanent trustee)*

FORM 16 Form of report by the Accountant in Bankruptcy under section 24 (3A) of the Bankruptcy (Scotland) Act 1985 and application for the appointment of permanent trustee under section 25A of that Act

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

Rule 16(2)

REPORT TO THE SHERIFF OF

AT

Court Reference No.

in the sequestration of *(insert full name and address of debtor)*

1. The Accountant in Bankruptcy as the interim trustee in the above sequestration reports to the sheriff that a statutory meeting was called in accordance with the provisions of section 21A of the Bankruptcy (Scotland) Act 1985.

\*2. The meeting duly took place and no creditor entitled to vote in the election of the permanent trustee attended.

OR

\*2. The meeting was attended by *(insert number of creditors attending)* creditors or their representatives who were advised of their right to elect a trustee and commissioners, but no permanent trustee was elected.

3. A copy of the record of the meeting and of the interim trustee's statement of the debtor's affairs are attached.

\*4. In accordance with section 25A of the Bankruptcy (Scotland) Act 1985, the sheriff is requested to appoint the Accountant in Bankruptcy as permanent trustee.

OR

\*4. In accordance with section 25A of the Bankruptcy (Scotland) Act 1985, the Accountant in Bankruptcy nominates *(insert name and designation of person nominated)* as permanent trustee in the sequestration of the said *(insert name of debtor)* and requests the sheriff to appoint the said *(insert name of person nominated)* who by his signature hereto consents to nomination as permanent trustee.

\*5. An application for a certificate of summary administration is submitted with this application.

\*delete as appropriate

Date *(insert date of report)*

Signed *(signature of Accountant in Bankruptcy or person authorised by him)*

Signed *(permanent trustee)*

FORM 17 Form of report by the interim trustee and application for appointment as permanent trustee under section 24(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 16(3)

REPORT TO THE SHERIFF OF

AT

Court Reference No.

in the sequestration of *(insert full name and address of debtor)*

**1.** *(Insert name and designation of interim trustee)* the interim trustee in the above sequestration reports to the sheriff that a statutory meeting was called in accordance with the provisions of section 21 of the Bankruptcy (Scotland) Act 1985.

**\*2.** The meeting duly took place and no creditor entitled to vote in the election of the permanent trustee attended.

OR

**\*2.** The meeting was attended by *(insert number of creditors attending)* creditors or their representatives who were advised of their right to elect a trustee and commissioners, but no permanent trustee was elected.

**3.** A copy of the record of the meeting and of the interim trustee's statement of the debtor's affairs are attached.

**4.** The interim trustee requests the sheriff to appoint him as permanent trustee in accordance with section 24(4) of the Bankruptcy (Scotland) Act 1985.

**\*5.** An application for a certificate of summary administration is submitted with this application.

**6.** A copy of this report has been sent to the Accountant in Bankruptcy in accordance with section 24(4)(a) of the Bankruptcy (Scotland) Act 1985.

\*delete as appropriate

Date *(insert date of report)*

Signed *(signature of interim trustee or person authorised by him)*

FORM 18 Form of report by the interim trustee under section 25(1)(a) of the Bankruptcy (Scotland) Act 1985 and application for confirmation of election in terms of section 25(2) of that Act

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

Rule 16(4)

REPORT TO THE SHERIFF OF AT Court Reference No.

in the sequestration of *(insert full name and address of debtor)*:

1. *(insert name and designation of interim trustee)* the interim trustee in the above sequestration reports to the sheriff that a statutory meeting was called in accordance with the provisions of section 21/21A of the Bankruptcy (Scotland) Act 1985.

2. A copy of the record of the meeting and the interim trustee's statement of the debtor's affairs are attached.

3. The meeting duly elected the interim trustee *(insert name and designation of permanent trustee if not the interim trustee)* to be the permanent trustee.

\*4. No timeous objection has been made under section 25(1)(b) of the Bankruptcy (Scotland) Act 1985 and I hereby request the sheriff to declare and confirm the election of the said *(insert name of permanent trustee)* as permanent trustee in accordance with section 25(2) of that Act.

OR

\*4. There was timeous objection and I hereby request a hearing to be fixed.

\*5. A copy of this report has been sent to the Accountant in Bankruptcy.

\*6. An application for a certificate of summary administration is submitted with this application.

\*delete as appropriate

Date *(insert date of report)*;

Signed *(signature of interim trustee or person authorized by him)*

## APPENDIX 2

### Information to be contained in the Register of Insolvencies

Schedule, Rule 15(5)

#### 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  
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

#### B. Protected trust deeds for creditors

Name and address of granter of trust deed  
Name and address of trustee under 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

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## **EXPLANATORY NOTE**

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

This Act of Sederunt consolidates the Act of Sederunt (Bankruptcy Rules) 1993, making provision for the procedure to be followed, and forms to be used, in proceedings brought in the sheriff court under the Bankruptcy (Scotland) Act 1985. It also makes provision as to the manner of appealing from the sheriff court to the Court of Session under that Act, and repeals the Act of Sederunt (Bankruptcy Rules) 1993.