

2001 No. 3591 (S.19)

**INSOLVENCY
BANKRUPTCY, SCOTLAND**

**The Bankruptcy (Financial Services and Markets Act 2000)
(Scotland) Rules 2001**

Made - - - - - 5th November 2001

Laid before Parliament 6th November 2001

Coming into force in accordance with rule 1

The Treasury, in exercise of their powers under sections 372(4)(c) and (9)(b) and 428(3) of the Financial Services and Markets Act 2000(a), after consulting the Scottish Ministers in accordance with section 372(9)(b) of that Act, hereby make the following Rules:

Citation and commencement

1. These Rules may be cited as the Bankruptcy (Financial Services and Markets Act 2000) (Scotland) Rules 2001 and come into force on the day on which section 19 of the Act comes into force.

Interpretation

2. In these Rules—
- “the Act” means the Financial Services and Markets Act 2000;
 - “the court” means the sheriff court in the sheriffdom where the individual had an established place of business, or was habitually resident, at any time in the year immediately preceding the date of presentation of the application under rule 5;
 - “debt” means the sum referred to in section 372(4)(a) of the Act;
 - “demand” means a demand made under section 372(4)(a) of the Act;
 - “individual” has the meaning given by section 372(7) of the Act.

Form of a demand

3. A demand must—
- (a) be dated and signed by a member of the Authority’ staff authorised by it for that purpose;
 - (b) specify that it is made under section 372(4)(a) of the Act;
 - (c) state the amount of the debt, to whom it is owed and the way in which it arises;
 - (d) state the grounds on which it is alleged that the individual appears to have no reasonable prospect of paying the debt;
 - (e) specify the name, address and telephone number of one or more persons with whom the individual may enter into communication with a view to establishing to the

(a) 2000 c. 8.

Authority's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due or (as the case may be) that the debt will be secured or compounded; and

- (f) include an explanation to the individual of the following matters:
 - (i) the purpose of the demand and the fact that, if the individual does not comply with the demand, the Authority may petition under section 5 of the Bankruptcy (Scotland) Act 1985(a) for the sequestration of his estate;
 - (ii) the time within which the demand must be complied with, if that consequence is to be avoided;
 - (iii) the methods of compliance which are open to the individual; and
 - (iv) the individual's right to apply to the court for the demand to be set aside.

Service of a demand

4. The demand must be served on the individual by leaving it at his usual or last known address or by sending it by first class recorded delivery post to that address.

Application to set aside a demand

5.—(1) An individual may, within 18 days from the date of service on him of a demand, apply to the court by way of summary application for an order setting aside the demand.

- (2) The Authority must be cited as a defender to the summary application.

Setting aside a demand

6.—(1) The court must order the demand to be set aside if—

- (a) the individual appears to have a counterclaim or set-off which equals or exceeds the amount of the debt or debts specified in the demand;
- (b) the debt is disputed on grounds which appear to the court to be substantial;
- (c) it appears that the creditor holds some security in respect of the debt claimed by the demand and the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
- (d) the court is satisfied, on other grounds, that the demand ought to be set aside.

- (2) The decision of the court on such an application is final.

Tony McNulty
Graham Stringer

5th November 2001

Two of the Lords Commissioners of Her Majesty's Treasury

(a) 1985 c. 66.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules relate to demands made by the Financial Services Authority (under section 372(4)(a) of the Financial Services and Markets Act 2000) to an individual that he establish to the Authority's satisfaction that he has a reasonable prospect of being able to pay a regulated activity debt when it falls due.

Rule 3 makes provision for the form of a demand. Rule 4 relates to service of a demand. Rules 5 and 6 relate to the setting aside of a demand.

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