
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 312

**Act of Sederunt (Rules of the Court of Session,
Sheriff Appeal Court Rules and Sheriff Court Rules
Amendment) (Bankruptcy (Scotland) Act 2016) 2016**

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994⁽¹⁾ are amended in accordance with this paragraph.

(2) In rule 33.9 (caution and security – insolvency or death of cautioner or guarantor)⁽²⁾, in paragraph (a), for “section 7 of the Bankruptcy (Scotland) Act 1985 (constitution of apparent insolvency)” substitute “section 16 of the Bankruptcy (Scotland) Act 2016 (meaning of apparent insolvency)”.

(3) In rule 61.23 (judicial factors – administration, deathbed and funeral expenses), in paragraph (2), for “section 51(1) of the Bankruptcy (Scotland) Act 1985 (order of priority in distribution)” substitute “section 129(1) of the Bankruptcy (Scotland) Act 2016 (priority in distribution)”.

(4) For Chapter 72 (Bankruptcy (Scotland) Act 1985)⁽³⁾, substitute—

“CHAPTER 72

Bankruptcy (Scotland) Act 2016

Interpretation of this Chapter

72.1.—(1) In this Chapter, references to a section are to sections of the Bankruptcy (Scotland) Act 2016⁽⁴⁾.

(2) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Bankruptcy (Scotland) Act 2016 have the same meaning as in that Act.

Determination etc. under section 66: appeals and referrals

72.2.—(1) This rule applies to a petition containing—

- (a) an appeal under section 68(4) (as read with section 68(6)(a)); or
- (b) a referral for a direction under section 68(5) (as read with section 68(6)(a)).

(2) The petition must include a list of the sequestrations to which the petition relates.

(3) Where the court allows an appeal under section 68(4)—

(1) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2016/242).
(2) Rule 33.9 was amended by S.S.I. 2009/63.
(3) Chapter 72 was substituted by S.S.I. 2008/122. Rule 72.2 was substituted by S.S.I. 2015/119.
(4) 2016 asp 21.

- (a) the Accountant in Bankruptcy must intimate a certified copy of the interlocutor of the court to the persons specified in section 67(2); and
- (b) the court may make such orders as it thinks fit for the intimation and advertisement of its decision.

Remit of application under section 211(1)

72.3.—(1) An application under section 211(5)(b) (application for a direction to remit an application under section 211(1)) is to be made by petition.

(2) A copy of the application under section 211(1) (application to sheriff to cure defects in procedure) certified by the sheriff clerk must be lodged with any application under section 211(5)(b).

(3) Where the court has determined an application under section 211(5)(b), the applicant must intimate a certified copy of the interlocutor of the court forthwith to—

- (a) the sheriff clerk; and
- (b) the Accountant in Bankruptcy.

(4) Where the court grants an application under section 211(5)(b), the sheriff clerk must, on receipt of the certified copy of the interlocutor of the court, transmit the application under section 211(1) and those parts of the sequestration process in the custody of the sheriff clerk, to the Deputy Principal Clerk.

(5) Where the court has determined the matters raised by the application under section 211(1)—

- (a) the applicant under section 211(5)(b) must intimate a certified copy of the interlocutor of the court forthwith to—
 - (i) the sheriff clerk; and
 - (ii) the Accountant in Bankruptcy; and
- (b) the Deputy Principal Clerk must transmit the parts of process transmitted under paragraph (4) to the sheriff clerk.”

(5) Omit rule 74.39 (appeals against adjudication of claims).

(6) In rule 74.59 (building society insolvency procedure – appeals against adjudication of claims)(5), for “section 49(6) of the Bankruptcy (Scotland) Act 1985”, substitute “section 127(5) of the Bankruptcy (Scotland) Act 2016(6)”.

(7) In the Appendix, omit Form 72.4 (information to be contained in the Register of Insolvencies)(7).

(5) Rule 74.59 was inserted by [S.S.I. 2011/385](#).

(6) The reference to section 49 of the Bankruptcy (Scotland) Act 1985 in rule 127 of the Investment Bank Special Administration (Scotland) Rules 2011 ([S.I. 2011/262](#)) falls to be read subject to sections 17 and 23A of the Interpretation Act 1978 (c. 30).

(7) Form 72.4 was inserted by [S.S.I. 2008/122](#).