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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 312**

**COURT OF SESSION  
SHERIFF APPEAL COURT  
SHERIFF COURT**

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

*Made* - - - - 6th October 2016  
*Laid before the Scottish  
Parliament* - - - - 10th October 2016  
*Coming into force* - - 30th November 2016

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(1), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 11B of the Judicial Factors (Scotland) Act 1889(2), sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(3) and all other powers enabling it to do so.

**Citation and commencement, etc.**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Bankruptcy (Scotland) Act 2016) 2016.

(2) It comes into force on 30th November 2016.

(3) A certified copy is to be inserted in the Books of Sederunt.

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(1) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).  
(2) 1889 c.39. Section 11B was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), section 75(1) and schedule 7, paragraph 4.  
(3) 2014 asp 18.

## **Amendment of the Rules of the Court of Session 1994**

2.—(1) The Rules of the Court of Session 1994(4) are amended in accordance with this paragraph.

(2) In rule 33.9 (caution and security – insolvency or death of cautioner or guarantor)(5), 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)(6), 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(7).

(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)—

- (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).

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(4) 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).

(5) Rule 33.9 was amended by S.S.I. 2009/63.

(6) Chapter 72 was substituted by S.S.I. 2008/122. Rule 72.2 was substituted by S.S.I. 2015/119.

(7) 2016 asp 21.

(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)(8), for “section 49(6) of the Bankruptcy (Scotland) Act 1985”, substitute “section 127(5) of the Bankruptcy (Scotland) Act 2016(9)”.

(7) In the Appendix, omit Form 72.4 (information to be contained in the Register of Insolvencies)(10).

### **Amendment of the Act of Sederunt (Applications under Part VII of the Companies Act 1989) 1991**

3.—(1) The Act of Sederunt (Applications under Part VII of the Companies Act 1989) 1991(11) is amended in accordance with this paragraph.

(2) In paragraph 1(3) (citation and commencement), for “section 5 or 6 of the Bankruptcy (Scotland) Act 1985” substitute “section 2, 5 or 6 of the Bankruptcy (Scotland) Act 2016”.

### **Amendment of the Judicial Factors Rules**

4.—(1) The Act of Sederunt (Judicial Factors Rules) 1992(12) is amended in accordance with this paragraph.

(2) In rule 28 (administration, deathbed and funeral expenses), for “those claims given a preference by section 51(1) and (2) of, and Schedule 3 to, the Bankruptcy (Scotland) Act 1985” substitute “those debts listed in paragraphs (a) to (e) of section 129(1) of the Bankruptcy (Scotland) Act 2016”.

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

(9) 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).

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

(11) [S.I. 1991/145](#).

(12) [S.I. 1992/272](#), last amended by [S.S.I. 2008/223](#).

### **Amendment of the Ordinary Cause Rules 1993**

5.—(1) The Ordinary Cause Rules 1993<sup>(13)</sup> are amended in accordance with this paragraph.

(2) In rule 27.8 (insolvency or death of cautioner of guarantor)<sup>(14)</sup>, 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)”.

### **Revocation of Sheriff Court Bankruptcy Rules 2008**

6. The Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008<sup>(15)</sup> is revoked.

### **Amendment of the Sheriff Appeal Court Rules**

7.—(1) The Act of Sederunt (Sheriff Appeal Court Rules) 2015<sup>(16)</sup> is amended in accordance with this paragraph.

(2) In rule 18.8 (insolvency or death of cautioner or guarantor), in paragraph (3)(a), for “section 7 of the Bankruptcy (Scotland) Act 1985” substitute “section 16 of the Bankruptcy (Scotland) Act 2016”.

### **Saving**

8.—(1) In this paragraph “the 1985 Act” means the Bankruptcy (Scotland) Act 1985.

(2) Paragraph 2(4) has no effect as regards—

- (a) an appeal under section 28B(4)<sup>(17)</sup> of the 1985 Act;
- (b) a referral for a direction under section 28B(5) of the 1985 Act; or
- (c) an application for a direction under section 63(3)(b) of the 1985 Act.

(3) Paragraph 3(2) has no effect as regards a petition for sequestration under section 5 or 6 of the 1985 Act.

(4) Paragraph 6 has no effect in relation to sequestrations as regards which the petition is presented, or the debtor application is made, before 30th November 2016.

Edinburgh  
6th October 2016

*CJM SUTHERLAND*  
Lord President  
I.P.D.

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<sup>(13)</sup> The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c. 51). Schedule 1 was last amended by S.S.I. 2016/242.

<sup>(14)</sup> Rule 27.8 was amended by S.S.I. 2009/294.

<sup>(15)</sup> S.S.I. 2008/119, last amended by S.S.I. 2015/419.

<sup>(16)</sup> S.S.I. 2015/356, amended by S.S.I. 2016/194.

<sup>(17)</sup> Section 28B was substituted by the Bankruptcy and Debt Advice (Scotland) Act 2011 (asp 11), section 29.

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## EXPLANATORY NOTE

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

This Act of Sederunt makes changes to court rules and other rules to take account of the coming into force of the Bankruptcy (Scotland) Act 2016.

Paragraph 2 amends the Rules of the Court of Session by replacing existing references to the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”), and by substituting a new version of Chapter 72, which makes provision about certain appeals, referrals and remits to the Court of Session.

Paragraph 6 revokes the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008, which are being superseded by new rules.

Paragraphs 3, 4, 5 and 7 replace references to the 1985 Act where they appear elsewhere in rules.

Paragraph 8 preserves the effect of existing rules for the purpose of proceedings concerned with sequestrations that continue to be subject to the provisions of the 1985 Act.