
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 313

SHERIFF COURT

Act of Sederunt (Sheriff Court Bankruptcy Rules) 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 paragraph 1A of schedule 2 of the European Communities Act 1972(2), section 104(1) of the Courts Reform (Scotland) Act 2014(3), section 26(6) and (8) of and paragraph 3 of schedule 4 of the Bankruptcy (Scotland) Act 2016(4) and all other powers enabling it to do so.

This Act of Sederunt makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(5) and it appears to the Court of Session that it is expedient for the references in this Act of Sederunt to Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings, and to Regulation (E.C.) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (E.C.) No. 1348/2000, be construed as references to those instruments as amended from time to time.

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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) 1972 c. 68. Paragraph 1A of schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006 (c. 51), section 28, and amended by the European Union (Amendment) Act 2008 (c. 7), schedule, Part 1.
- (3) 2014 asp 18.
- (4) 2016 asp 21.
- (5) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and by the European Union (Amendment) Act 2008 (c. 7), schedule, Part 1.

CHAPTER 1

CITATION, COMMENCEMENT AND INTERPRETATION ETC.

Citation, commencement and application, etc.

1.1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016.

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

(3) It applies to sequestrations as regards which the petition is presented, or the debtor application is made, on or after that date.

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

Interpretation

1.2.—(1) In this Act of Sederunt—

“the 2016 Act” means the Bankruptcy (Scotland) Act 2016;

“AiB sequestration” means the sequestration of a debtor’s estate by AiB following a debtor application made under the following provisions of the 2016 Act—

- (a) section 2(1)(a);
- (b) section 5(a);
- (c) section 6(3)(a);
- (d) section 6(4)(a);
- (e) section 6(4)(b); or
- (f) section 6(7)(a);

“Council Regulation” means Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings⁽⁶⁾ as amended from time to time;

“Model Law on Cross-Border Insolvency” means the Model Law on cross-border insolvency as adopted by the United Nations Commission on International Trade Law on 30th May 1997 as set out in schedule 1 of the Cross-Border Insolvency Regulations 2006⁽⁷⁾;

“Register of Inhibitions” means the register mentioned in section 44(1) of the Conveyancing (Scotland) Act 1924⁽⁸⁾.

(2) In this Act of Sederunt, the following expressions have the meaning given by section 228(1) of the 2016 Act—

“AiB”;

“debtor application”;

“establishment”;

“main proceedings”;

“member State liquidator”;

“temporary administrator”.

⁽⁶⁾ O.J. L 160, 30.6.2000, p. 1.

⁽⁷⁾ S.I. 2006/1030, to which there are amendments not relevant to this Act of Sederunt.

⁽⁸⁾ 1924 c. 27. Section 44 was amended by the Conveyancing Amendment (Scotland) Act 1938 (c. 24), section 7(1)(b); the Bankruptcy (Scotland) Act 1985 (c. 66), section 75, schedule 7, paragraph 5, and schedule 8; the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 59 and schedule 2, paragraph 6; the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 156; and the Land Registration etc. (Scotland) Act 2012 (asp 5), schedule 5, paragraph 9(4).

Computation of periods of time

1.3. If any period of time specified in these Rules expires on a Saturday, Sunday or public or court holiday, it is extended to expire on the next day that the sheriff clerk's office is open for civil business.

Forms

1.4.—(1) Where there is a reference in these Rules to a form, it is a reference to that form in schedule 1.

(2) Schedule 2 makes provision about forms relating to the Register of Inhibitions.

(3) Where these Rules require a form to be used, that form may be varied where the circumstances require it.

Sequestration process

1.5.—(1) The sheriff clerk must prepare a sequestration process when an initiating document mentioned in paragraph (2) is lodged.

(2) The initiating documents are—

- (a) a petition for sequestration;
- (b) a petition for recall of sequestration;
- (c) an application or remit under the 2016 Act;
- (d) an appeal under the 2016 Act.

(3) Any other document lodged with the sheriff clerk is to be placed in the sequestration process.

(4) Where a further initiating document relating to a sequestration is lodged—

- (a) paragraph (1) does not apply;
- (b) that document is to be placed in the existing sequestration process.

CHAPTER 2

RELIEF FOR FAILURE TO COMPLY

Relief for failure to comply with rules

2.1.—(1) The sheriff may relieve a party from the consequences of a failure to comply with a provision in these Rules.

(2) The sheriff may do so only where the party shows that the failure is due to—

- (a) mistake;
- (b) oversight;
- (c) any other excusable cause.

(3) Where relief is granted, the sheriff may—

- (a) impose conditions that must be satisfied before relief is granted;
- (b) make an order to enable the proceedings to proceed as if the failure had not occurred.

CHAPTER 3

SANCTIONS FOR FAILURE TO COMPLY

Circumstances where a party is in default

3.1. A party is in default if that party fails—

- (a) to implement an order made by the sheriff within the period specified in the order;
- (b) to appear or be represented at any hearing; or
- (c) otherwise to comply with any requirement imposed on that party by these Rules.

Sanctions where a party is in default

3.2.—(1) This rule—

- (a) applies where a party is in default; but
- (b) does not apply where a party is in default because the party has failed to comply with rule 12.4(1) (peremptory hearing).

(2) The sheriff may make any order to secure the expeditious disposal of the proceedings.

(3) In particular, the sheriff may—

- (a) refuse the appeal, application or petition, if the party in default is the appellant, applicant or petitioner;
- (b) allow the appeal, application or petition, if the condition in paragraph (4) is satisfied, where—
 - (i) the party in default is the sole respondent; or
 - (ii) every respondent is in default.

(4) The condition is that the appellant, applicant or petitioner must show cause why the appeal, application or petition should be allowed.

CHAPTER 4

REPRESENTATION AND SUPPORT

Representation and support

4.1.—(1) A natural person who is a party to proceedings may appear and act on the party's own behalf.

(2) A party who appears and acts on the party's own behalf is to be known as a party litigant.

(3) A party may be represented in any proceedings by—

- (a) a legal representative (see rule 4.2); or
- (b) an authorised person (see rule 4.3).

(4) A party who is a natural person may also be represented by a lay representative (see rule 4.4).

(5) A lay supporter (see rule 4.6) may assist a party litigant with the conduct of any proceedings.

Legal representation

4.2. A party is represented by a legal representative if that party is represented by an advocate or a solicitor.

Representation by authorised person

4.3.—(1) This rule applies where an enactment authorises a person to conduct proceedings in the sheriff court.

(2) A party is represented by an authorised person if that party is represented by a person who is authorised in accordance with such an enactment.

(3) An authorised person may do everything for the preparation and conduct of the proceedings that a party litigant may do, unless the enactment provides otherwise.

Lay representation

4.4.—(1) A party may apply to the sheriff for permission to be represented by a person who is not a legal representative or an authorised person, and such a person is to be known as a lay representative.

(2) The sheriff may grant an application only if the sheriff considers that it would assist the sheriff's consideration of the case to grant it.

(3) If the sheriff no longer considers that it would assist the sheriff's consideration of the case for a party to be represented by a lay representative, the sheriff may withdraw permission.

(4) A lay representative may represent a party at a specified hearing for the purpose of making oral submissions on behalf of the party.

(5) The party must appear along with the lay representative at any hearing where the lay representative is to make oral submissions.

(6) A party may show any document (including a court document) or communicate any information about the proceedings to that party's lay representative without contravening any prohibition or restriction on disclosure of the document or information.

(7) Where a document or information is disclosed under paragraph (6), the lay representative is subject to any prohibition or restriction on disclosure in the same way as the party is.

(8) A lay representative must not receive directly or indirectly from the party any remuneration or other reward for assisting the party.

Expenses

4.5.—(1) This rule applies where a party is represented by an authorised person or a lay representative.

(2) Despite that representation, the sheriff may award the party any expenses or outlays that the party would be entitled to by virtue of the Litigants in Person (Costs and Expenses) Act 1975(9).

Lay support

4.6.—(1) A party litigant may apply to the sheriff for permission for a named person to assist the party litigant in the conduct of proceedings, and such a person is to be known as a lay supporter.

(2) The sheriff may refuse an application only if the sheriff is of the opinion that—

(a) the named person is an unsuitable person to act as a lay supporter; or

(9) 1975 c. 47.

- (b) it would be contrary to the efficient administration of justice to grant it.
- (3) The sheriff, if satisfied that it would be contrary to the efficient administration of justice for permission to continue, may withdraw permission.
- (4) A lay supporter may assist a party by accompanying the party at hearings.
- (5) A lay supporter may, if authorised by the party, assist the party by—
 - (a) providing moral support;
 - (b) helping to manage court documents and other papers;
 - (c) taking notes of the proceedings;
 - (d) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the party litigant might want to raise with the court.
- (6) A party may show any document (including a court document) or communicate any information about the proceedings to that party’s lay supporter without contravening any prohibition or restriction on disclosure of the document or information.
- (7) Where a document or information is disclosed under paragraph (6), the lay supporter is subject to any prohibition or restriction on disclosure in the same way as the party is.
- (8) A lay supporter must not receive directly or indirectly from the party any remuneration or other reward for assisting the party.

CHAPTER 5

INTIMATION AND LODGING

Interpretation of this Chapter

5.1. In this Chapter—

“first class post” means a postal service which seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases;

“intimating party” means any party who has to give intimation in accordance with rule 5.2;

“receiving party” means any party to whom intimation is to be given in accordance with rule 5.2;

“recorded delivery” means a postal service which provides for the delivery of the document or other thing by post to be recorded.

Intimation

5.2. Unless the sheriff orders otherwise, where—

- (a) any provision in these Rules requires a party to—
 - (i) take any procedural step;
 - (ii) lodge any document;
 - (iii) intimate any other matter; or
- (b) the sheriff orders a party to intimate something,

intimation is to be given to every other party.

Methods of intimation

5.3.—(1) Intimation may be given to a receiving party by any of the methods specified in rules 5.4 and 5.5.

(2) Where the receiving party is represented by a solicitor, intimation may also be given by any of the methods specified in rule 5.6.

Methods of intimation: intimation by recorded delivery

5.4. An intimating party may give intimation by recorded delivery to the receiving party.

Methods of intimation: intimation by sheriff officer

5.5.—(1) A sheriff officer may give intimation on behalf of an intimating party by—

- (a) delivering the intimation personally to the receiving party; or
- (b) leaving the intimation in the hands of—
 - (i) a resident at the receiving party’s dwelling place; or
 - (ii) an employee, agent or representative at the receiving party’s place of business.

(2) Where a sheriff officer has been unsuccessful in intimation in accordance with paragraph (1), the sheriff officer may give intimation by—

- (a) depositing it in the receiving party’s dwelling place or place of business; or
- (b) leaving it at the receiving party’s dwelling place or place of business in such a way that it is likely to come to the attention of that party.

Additional methods of intimation where receiving party represented by solicitor

5.6.—(1) An intimating party may give intimation to the solicitor for the receiving party by—

- (a) delivering it personally to the solicitor;
- (b) delivering it to a document exchange of which the solicitor is a member;
- (c) first class post;
- (d) fax.

(2) Where intimation is given by the method in paragraph (1)(a) or (d) not later than 1700 hours on any day, the date of intimation is that day.

(3) Where intimation is given by the method in—

- (a) paragraph (1)(b) or (c); or
- (b) paragraph (1)(a) or (d) after 1700 hours on any day,

the date of intimation is the next day.

Form of certificate of intimation

5.7. A certificate of intimation is to be in Form 5.7.

Lodging

5.8.—(1) Where any provision in these Rules requires a party to lodge a document, it is to be lodged with the sheriff clerk.

(2) A document may be lodged by—

- (a) delivering it personally to the sheriff clerk’s office;

- (b) delivering it to a document exchange of which the sheriff clerk is a member;
- (c) first class post;
- (d) fax.

CHAPTER 6

PETITIONS FOR SEQUESTRATION

Form of petition for sequestration

- 6.1.**—(1) A petition for sequestration is to be made in Form 6.1–A.
 (2) An undertaking for the purposes of section 51(1) or (6) of the 2016 Act is to be in Form 6.1–B.

Debt payment programmes and moratorium on diligence

- 6.2.**—(1) This rule applies where a creditor is petitioning for sequestration on the ground of the debtor's apparent insolvency.
 (2) The petitioner must, when lodging the sequestration petition, lodge a statement in Form 6.2.

Citation of debtor

- 6.3.**—(1) A debtor is cited for the purposes of section 22(3) of the 2016 Act by serving the documents mentioned in paragraph (2) in accordance with rules 6.4 to 6.6.
 (2) Those documents are—
 (a) a citation in Form 6.3–A;
 (b) a copy of the petition for sequestration;
 (c) a copy of the warrant of citation.
 (3) The petitioner must lodge a certificate of citation in Form 6.3–B no later than 2 days before the date on which the debtor has been cited to appear.

Service by sheriff officer

- 6.4.**—(1) Where the debtor is of a type mentioned in the first column of the following table, a sheriff officer may effect service of the documents referred to in rule 6.3(2) by the method specified in the second column—

<i>Debtor</i>	<i>Method of service</i>
Living individual	Giving the document personally to the individual
Deceased individual	Giving the document personally to an executor or a person entitled to be appointed as executor
Trust	Giving the document personally to the individual trustees (if known)
Partnership or limited partnership	(a) Giving the document personally to the individual partners (if known); and (b) leaving the document in the hands of an employee, agent or representative at the place of business of the partnership

<i>Debtor</i>	<i>Method of service</i>
Dissolved partnership or dissolved limited partnership	Giving the document personally to the individual partners (if known)
Body corporate or unincorporated body	(a) Giving the document personally to a senior official (if known); and (b) leaving the document in the hands of an employee, agent or representative at the place of business of the entity

(2) The sheriff officer is to be accompanied by a witness.

(3) Section 3 of the Citation Amendment (Scotland) Act 1882(10) does not apply to a document that is to be served in accordance with this rule.

Service furth of Scotland

6.5. Where a person mentioned in the second column of the table in rule 6.4(1) is furth of Scotland, service on that person is to be effected in accordance with schedule 3.

Authority to serve by other means

6.6.—(1) A petitioner may apply to the sheriff for authority to serve a document by a method other than those specified in rule 6.4 or 6.5.

(2) That application is to be made—

- (a) by crave in the petition, where authority is sought at the time of lodging the petition; or
- (b) by motion, where authority is sought at any other time.

(3) Where the sheriff grants the application, the sheriff may authorise the petitioner to effect service by any method that the sheriff thinks fit.

Intimation of appointment of trustee

6.7.—(1) This rule applies where the sheriff appoints a person to be—

- (a) the trustee in a sequestration under section 51 of the 2016 Act;
- (b) an interim trustee under section 54 of the 2016 Act;
- (c) a new interim trustee under section 55 of the 2016 Act.

(2) The sheriff clerk must, without delay, intimate that appointment to—

- (a) the person appointed; and
- (b) AiB, unless AiB is the person appointed.

CHAPTER 7

APPLICATIONS ETC. UNDER THE BANKRUPTCY (SCOTLAND) ACT 2016

Form of applications

7.1.—(1) An application under the 2016 Act is to be made in Form 7.1–A unless these Rules provide otherwise.

(2) An application by AiB for a direction under the following provisions of the 2016 Act is to be in Form 7.1–B—

- (a) section 50(6) (AiB application for directions);
- (b) section 52(3) (referral of trustee application for direction);
- (c) section 68(5) (replacement of trustee acting in more than one sequestration);
- (d) section 71(7) (removal of trustee other than where unable to act etc.);
- (e) section 73(6) (removal of trustee where unable to act etc.);
- (f) section 110(8) (contractual powers of trustee);
- (g) paragraph 3(10) of schedule 2 (debts depending on contingency).

Form of remit by AiB

7.2. A remit by AiB under section 36(1) or (2) of the 2016 Act is to be made in Form 7.2.

Applications and remits relating to AiB sequestration

7.3.—(1) This rule applies where an application or a remit relates to an AiB sequestration.

(2) When the application or remit is lodged, the applicant must also lodge a copy of the debtor application.

Determination of applications and remits

7.4.—(1) When an application or a remit is lodged, the sheriff is to make—

- (a) an order for intimation to any person who appears to the sheriff to have an interest in it;
- (b) an order specifying how it is to be determined.

(2) A certificate of intimation in Form 5.7 must be lodged within 14 days after the date of intimation by—

- (a) in the case of an application, the applicant;
- (b) in the case of a remit, AiB.

(3) Without prejudice to the generality of paragraph (1), where—

- (a) an application, or a remitted application, is unopposed, the sheriff is to dispose of it in chambers without the appearance of parties, unless the sheriff otherwise determines;
- (b) the sheriff requires to hear parties on an application or remit, the sheriff clerk is to fix a hearing and intimate the date and time of the hearing to the parties.

(4) Where an order is granted disposing of an application or a remit in accordance with paragraph (3)(a), the sheriff clerk is to intimate the order to the parties.

Form of report by original trustee

7.5. A report to the sheriff by the original trustee under section 49(8) or (9) of the 2016 Act is to be in Form 7.5.

CHAPTER 8

APPLICATIONS UNDER THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

Form of applications

8.1. An application under article 12 of the Model Law on Cross-Border Insolvency is to be made by application in accordance with Chapter 7.

Transfer of proceedings to Court of Session

8.2.—(1) This rule applies where the Lord Ordinary orders proceedings under these Rules to be transferred to the Court of Session under paragraph 11 of schedule 3 of the Cross-Border Insolvency Regulations 2006**(11)**.

(2) Within 4 days after receipt of a certified copy interlocutor containing that order, the sheriff clerk must transmit the sequestration process to the Deputy Principal Clerk of Session.

CHAPTER 9

APPEALS TO THE SHERIFF UNDER THE BANKRUPTCY (SCOTLAND) ACT 2016

Form of appeal

9.1. An appeal to the sheriff under the 2016 Act is to be made in Form 9.1.

Appeals relating to AiB sequestration

9.2.—(1) This rule applies where an appeal relates to an AiB sequestration.

(2) When the appeal is lodged, the appellant must also lodge a copy of the debtor application.

Determination of appeal

9.3.—(1) When an appeal is lodged, the sheriff is to make—

- (a) an order for intimation to any person who appears to the sheriff to have an interest in it;
- (b) an order specifying the procedure to be followed in the appeal.

(2) The appellant must lodge a certificate of intimation in Form 5.7 within 14 days after the date of intimation.

(3) Where an appeal is disposed of in chambers without the appearance of parties, the sheriff clerk is to intimate the order disposing of the appeal to every party on whom intimation was ordered in accordance with paragraph (1)(a).

CHAPTER 10

APPEALS TO THE SHERIFF APPEAL COURT

Appeals to the Sheriff Appeal Court

10.1.—(1) This rule applies to an appeal to the Sheriff Appeal Court under the following provisions of the 2016 Act—

- (a) section 27(3) (appeal against transfer of sequestration);
- (b) section 27(4) (appeal against refusal to award sequestration);
- (c) section 77(11) (appeal against removal of commissioner);
- (d) section 161(2) (appeal against refusal to revoke bankruptcy restrictions order).

(2) An appeal is to be made in accordance with Chapter 6 of the Sheriff Appeal Court Rules.

(3) Within 4 days after a note of appeal is lodged under rule 6.2(1) (form of appeal) of the Sheriff Appeal Court Rules, the Clerk must—

- (a) give written notice of the appeal in accordance with paragraph (4); and
- (b) certify that subparagraph (a) has been complied with.

(4) In relation to an appeal made under a provision of the 2016 Act specified in the first column of the following table, the persons to whom notice is to be given are the persons specified in the second column, unless that person is the appellant—

<i>Type of appeal</i>	<i>Persons to whom notice is to be given</i>
Section 27(3)	The trustee The petitioner Any concurring creditor AiB
Section 27(4)	The debtor Any concurring creditor
Section 77(11)	The trustee AiB Any commissioner Any creditor who lodged answers to, or was otherwise heard in relation to, the application to the sheriff
Section 161(2)	The trustee AiB

(5) Where the Clerk fails to comply with paragraph (3)—

- (a) that failure does not affect the validity of the appeal;
- (b) the procedural Appeal Sheriff may make an order to enable the appeal to proceed as if the failure had not occurred.

(6) In this rule—

- (a) “the Sheriff Appeal Court Rules” means the Act of Sederunt (Sheriff Appeal Court Rules) 2015(12);
- (b) “the Clerk” and “the procedural Appeal Sheriff” have the meanings given in rule 1.2 of the Sheriff Appeal Court Rules.

CHAPTER 11

MOTIONS

Interpretation

11.1. In this Chapter—

“lodging party” means the party lodging the motion;

“receiving party” means a party receiving the intimation of the motion from the lodging party.

Making of motions

11.2. A motion may be made—

(a) orally; or

(b) in writing, in accordance with rule 11.3.

Written motions

11.3.—(1) A motion in writing is made by lodging it with the sheriff clerk in accordance with rule 11.7(1).

(2) A motion in writing must specify the grounds on which it is made.

Intimation of written motions

11.4.—(1) The lodging party must give intimation of his or her intention to lodge the motion, and of the terms of the motion, to every other party in Form 11.4.

(2) That intimation must be accompanied by a copy of any document referred to in the motion.

Opposition to written motions

11.5.—(1) A receiving party may oppose a motion by lodging a notice of opposition in Form 11.5.

(2) Any notice of opposition must be lodged within 7 days after the date of intimation of the motion.

(3) The sheriff may, on the application of the lodging party—

(a) vary the period of 7 days mentioned in paragraph (2); or

(b) dispense with intimation on any party.

(4) An application mentioned in paragraph (3) must—

(a) be included in the motion;

(b) give reasons for varying the period or dispensing with intimation, as the case may be.

(5) The sheriff may allow a notice of opposition to be lodged late, on cause shown.

Consent to written motions

11.6. Where a receiving party seeks to consent to a motion, that party may do so by lodging a notice to that effect.

Lodging of written motions

11.7.—(1) The motion must be lodged by the lodging party within 5 days after the date of intimation of the motion, unless paragraph (3) applies.

(2) The lodging party must also lodge—

- (a) a certificate of intimation in Form 5.7;
- (b) so far as practicable, any document referred to in the motion that has not already been lodged.

(3) Where the sheriff varies the period for lodging a notice of opposition to a period of 5 days or less, the motion must be lodged no later than the day on which that period expires.

Joint written motions

11.8.—(1) A joint motion by all parties need not be intimated.

(2) Such a motion is to be lodged by any of the parties.

Determination of unopposed written motions

11.9.—(1) The sheriff clerk may determine any unopposed motion in writing other than a motion which seeks a final interlocutor.

(2) Where the sheriff clerk considers that such a motion should not be granted, the sheriff clerk must refer the motion to the sheriff.

(3) The sheriff is to determine—

- (a) a motion referred under paragraph (2);
- (b) an unopposed motion which seeks a final interlocutor,

in chambers without the appearance of parties, unless the sheriff otherwise determines.

(4) The sheriff clerk must intimate to every party an interlocutor determining a joint written motion or an unopposed written motion.

Hearing of opposed written motions

11.10.—(1) Where a notice of opposition in Form 11.5 is lodged, the motion is to be heard by the sheriff on the first suitable court day after the lodging of the notice of opposition.

(2) The sheriff clerk must intimate the date and time of the hearing to the parties.

CHAPTER 12

WITHDRAWAL OF SOLICITORS

Interpretation of this Chapter

12.1. In this Chapter, “peremptory hearing” means a hearing at which a party whose solicitor has withdrawn from acting must appear or be represented in order to state whether or not the party intends to proceed.

Giving notice of withdrawal

12.2.—(1) Where a solicitor withdraws from acting on behalf of a party, the solicitor must give notice in writing to the sheriff clerk and to every other party.

(2) Paragraph (1) does not apply if the solicitor withdraws from acting at a hearing in the presence of the other parties or their representatives.

(3) Paragraph (4) applies if a solicitor who withdraws from acting is aware that the address of the party for whom the solicitor acted has changed from that specified in the instance of the appeal, application, petition or answers.

(4) The solicitor must disclose to the sheriff clerk and every other party the last known address of the party for whom the solicitor acted.

Arrangements for peremptory hearing

12.3.—(1) On notice being given under rule 12.2(1), the sheriff is to make an order—

- (a) ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a peremptory hearing;
- (b) fixing a date and time for the peremptory hearing;
- (c) appointing any other party to the proceedings to intimate the order and a notice in Form 12.3 to that party within 7 days after the date of the order.

(2) A peremptory hearing is to be fixed no sooner than 14 days after the date on which an order is made under paragraph (1).

(3) The sheriff may vary the period of 7 days mentioned in paragraph (1) or the period of 14 days mentioned in paragraph (2)—

- (a) of the sheriff's own accord; or
- (b) on cause shown, on the application of any other party to the proceedings.

(4) Where any previously fixed hearing is to occur within 14 days after the date on which the sheriff clerk is given notice under rule 12.2(1), the sheriff may continue consideration of the withdrawal to that previously fixed hearing instead of making an order under paragraph (1).

(5) Where an order and a notice in Form 12.3 are intimated under this rule, the party appointed to intimate them must lodge a certificate of intimation in Form 5.7—

- (a) within 14 days from the date of intimation; or
- (b) before the peremptory hearing,

whichever is sooner.

Peremptory hearing

12.4.—(1) At a peremptory hearing, the party whose solicitor has withdrawn from acting must appear or be represented in order to state whether the party intends to proceed.

(2) Where the party fails to comply with paragraph (1), the sheriff may make an order mentioned in paragraph (3) only if the sheriff is satisfied that the order and notice in Form 12.3 have been intimated to that party.

(3) The orders are—

- (a) if the party is the appellant, applicant or petitioner, an order refusing the appeal, application or petition; or
- (b) if the party is the respondent and the condition in paragraph (4) is satisfied, an order allowing the appeal, application or petition.

(4) The condition is that the appellant, applicant or petitioner must show cause why the appeal, application or petition should be allowed.

(5) If the sheriff is not satisfied that the order and notice in Form 12.3 have been intimated to that party, the sheriff may make—

- (a) an order fixing a further peremptory hearing;
- (b) any other order that the sheriff considers appropriate to secure the expeditious disposal of the proceedings.

CHAPTER 13

EXPENSES

Taxation of expenses

13.1.—(1) Where the sheriff makes an order allowing expenses in any proceedings, those expenses must be taxed before decree is granted for them

(2) This rule does not apply where the sheriff modifies those expenses to a fixed sum.

Procedure for taxation of expenses

13.2.—(1) Where an account of expenses is lodged for taxation, the sheriff clerk must transmit the account and the process to the auditor of court.

(2) The auditor must—

- (a) fix a taxation hearing no sooner than 7 days after the auditor receives the account;
- (b) intimate the date, time and place of the taxation hearing to every party.

(3) If the auditor reserves consideration of the account at the taxation hearing, the auditor must intimate the auditor's decision to the parties who attended the hearing.

(4) After the account has been taxed, the auditor must transmit the account and the process, together with the auditor's report, to the sheriff clerk.

(5) Where no objections are lodged under rule 13.3, the sheriff may grant decree for the expenses as taxed.

Objections to taxed account

13.3.—(1) A party may lodge a note of objections to an account as taxed only where the party attended the taxation hearing.

(2) A note of objections must be lodged within 7 days after—

- (a) the taxation hearing; or
- (b) where the auditor reserves consideration of the account, the date on which the auditor intimates the auditor's decision to the parties.

(3) The sheriff is to dispose of the note of objections in a summary manner.

Decree for expenses in name of solicitor

13.4. The sheriff may allow a decree for expenses to be extracted in the name of the solicitor who conducted the proceedings.

CHAPTER 14

VULNERABLE WITNESSES

Interpretation and application of this Chapter

14.1.—(1) This Chapter applies where the evidence of a witness is to be taken in proceedings.

(2) In this Chapter—

“2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004(13);

“child witness notice” has the meaning given by section 12(2) of the 2004 Act;

“review application” means an application under section 13 of the 2004 Act;

“vulnerable witness application” has the meaning given by section 12(6) of the 2004 Act.

Form of notices and applications

14.2.—(1) A child witness notice is to be made in Form 14.2–A.

(2) A vulnerable witness application is to be made in Form 14.2–B.

(3) A review application is to be made—

(a) in Form 14.2–C; or

(b) orally, with the leave of the sheriff.

Determination of notices and applications

14.3.—(1) When a notice or application under this Chapter is lodged, the sheriff may require any of the parties to provide further information before determining the notice or application.

(2) The sheriff may—

(a) determine the notice or application by making an order under section 12(1) or (6) or 13(2) of the 2004 Act without holding a hearing;

(b) fix a hearing at which parties are to be heard on the notice or application before determining it.

(3) The sheriff may make an order altering the date of any hearing at which evidence is to be taken in order that the notice or application may be determined.

Determination of notices and applications: supplementary orders

14.4. Where the sheriff determines a notice or application under this Chapter and makes an order under section 12(1) or (6) or 13(2) of the 2004 Act, the sheriff may make further orders to secure the expeditious disposal of the proceedings.

Intimation of orders

14.5.—(1) Where the sheriff makes an order—

(a) fixing a hearing under rule 14.3(2)(b);

(b) altering the date of a hearing under rule 14.3(3); or

(c) under section 12(1) or (6) or 13(2) of the 2004 Act,

the sheriff clerk is to intimate the order in accordance with this rule.

(13) 2004 asp 3.

- (2) Intimation is to be given to—
 - (a) every party to the proceedings; and
 - (b) any other person named in the order.
- (3) Intimation is to be given—
 - (a) on the day that the hearing is fixed or the order is made;
 - (b) in the manner ordered by the sheriff.

Taking of evidence by commissioner: preparatory steps

14.6.—(1) This rule applies where the sheriff authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act.

- (2) The commission is to proceed without interrogatories unless the sheriff otherwise orders.
- (3) The order of the sheriff authorising the special measure is sufficient authority for citing the vulnerable witness to appear before the commissioner.
- (4) The party who cited the vulnerable witness—
 - (a) must give the commissioner—
 - (i) a certified copy of the order of the sheriff appointing the commissioner;
 - (ii) a copy of the pleadings;
 - (iii) where rule 14.7 applies, the approved interrogatories and cross-interrogatories;
 - (b) must instruct the clerk to the commission;
 - (c) is responsible in the first instance for the fee of the commissioner and the clerk.
- (5) The commissioner is to fix a hearing at which the commission will be carried out.
- (6) The commissioner must consult the parties before fixing the hearing.
- (7) An application by a party for leave to be present in the room where the commission is carried out is to be made by motion.

Taking of evidence by commissioner: interrogatories

- 14.7.**—(1) This rule applies where the sheriff—
- (a) authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act; and
 - (b) orders that interrogatories are to be prepared.
- (2) When the sheriff makes an order for interrogatories to be prepared, the sheriff is to specify the periods within which parties must comply with the steps in this rule.
- (3) The party who cited the vulnerable witness must lodge draft interrogatories in process.
 - (4) Any other party may lodge cross-interrogatories.
 - (5) The parties may adjust their interrogatories and cross-interrogatories.
 - (6) At the expiry of the adjustment period, the parties must lodge the interrogatories and cross-interrogatories as adjusted in process.
 - (7) The sheriff is to resolve any dispute as to the content of the interrogatories and cross-interrogatories, and approve them.

Taking of evidence by commissioner: conduct of commission

- 14.8.**—(1) The commissioner is to administer the oath *de fidei administratione* to the clerk.

(2) The commissioner is to administer the oath to the vulnerable witness in Form 14.8–A unless the witness elects to affirm.

(3) Where the witness elects to affirm, the commissioner is to administer the affirmation in Form 14.8–B.

Taking of evidence by commissioner: lodging and custody of video record and documents

14.9.—(1) The commissioner is to lodge the video record of the commission and any relevant documents with the sheriff clerk.

(2) When the video record and any relevant document are lodged, the sheriff clerk is to notify every party—

- (a) that the video record has been lodged;
- (b) whether any relevant documents have been lodged;
- (c) of the date on which they were lodged.

(3) The video record and any relevant documents are to be kept by the sheriff clerk.

(4) Where the video record has been lodged—

- (a) the name and address of the vulnerable witness and the record of the witness’s evidence are to be treated as being in the knowledge of the parties;
- (b) the parties need not include—
 - (i) the name of the witness in any list of witnesses; or
 - (ii) the record of evidence in any list of productions.

CHAPTER 15

LIVE LINKS

Interpretation

15.1. In this Chapter—

“evidence” means the evidence of—

- (a) a party; or
- (b) a person who has been or may be cited to appear before the court as a witness

“live link” means—

- (c) a live television link; or
- (d) where the sheriff gives permission in accordance with rule 15.2(4), an alternative arrangement;

“submission” means any oral submission which would otherwise be made to the sheriff by a party or that party’s representative, including an oral submission in support of a motion.

Application for use of live link

15.2.—(1) A party may apply to the sheriff to use a live link to make a submission or to give evidence.

(2) An application to use a live link is to be made by motion.

(3) Where a party seeks to use a live link other than a live television link, the motion must specify the proposed arrangement.

- (4) The sheriff must not grant a motion to use a live link other than a live television link unless the person using the live link is able to—
- (a) be heard in the courtroom; and
 - (b) hear the proceedings in the courtroom.

CHAPTER 16

REPORTING RESTRICTIONS

Interpretation and application of this Chapter

- 16.1.**—(1) This Chapter applies to orders which restrict the reporting of proceedings.
- (2) In this Chapter, “interested person” means a person—
- (a) who has asked to see any order made by the sheriff which restricts the reporting of proceedings, including an interim order; and
 - (b) whose name is included on a list kept by the Lord President for the purposes of this Chapter.

Interim orders: notification to interested persons

- 16.2.**—(1) Where the sheriff is considering making an order, the sheriff may make an interim order.
- (2) Where the sheriff makes an interim order, the sheriff clerk must immediately send a copy of the interim order to any interested person.
- (3) The sheriff is to specify in the interim order why the sheriff is considering making an order.

Interim orders: representations

- 16.3.**—(1) Paragraph (2) applies where the sheriff has made an interim order.
- (2) An interested person who would be directly affected by the making of an order is to be given an opportunity to make representations to the sheriff before the order is made.
- (3) Representations are to—
- (a) be made in Form 16.3;
 - (b) include reasons why an urgent hearing is necessary, if an urgent hearing is sought;
 - (c) be lodged no later than 2 days after the interim order is sent to interested persons in accordance with rule 16.2(2).
- (4) If representations are made—
- (a) the sheriff is to appoint a date and time for a hearing—
 - (i) on the first suitable court day; or
 - (ii) where the sheriff considers that an urgent hearing is necessary, at an earlier date and time;
 - (b) the sheriff clerk must—
 - (i) notify the date and time of the hearing to the parties to the proceedings and any person who has made representations; and
 - (ii) send a copy of the representations to the parties.

(5) Where no interested person makes representations in accordance with paragraph (3), the sheriff clerk is to put the interim order before the sheriff in chambers in order that the sheriff may resume consideration of whether to make an order.

(6) Where the sheriff, having resumed consideration, makes no order, the sheriff must recall the interim order.

(7) Where the sheriff recalls an interim order, the sheriff clerk must immediately notify any interested person.

Notification of reporting restrictions

16.4.—(1) Where the sheriff makes an order, the sheriff clerk must immediately—

- (a) send a copy of the order to any interested person;
- (b) arrange for the publication of the making of the order on the Scottish Courts and Tribunals Service website.

Applications for variation or revocation

16.5.—(1) A person aggrieved by an order may apply to the sheriff for its variation or revocation.

(2) An application is to be made in Form 16.5.

(3) When an application is made—

- (a) the sheriff is to appoint a date and time for a hearing;
- (b) the sheriff clerk must—
 - (i) notify the date and time of the hearing to the parties to the proceedings and the applicant; and
 - (ii) send a copy of the application to the parties.

(4) The hearing is, so far as reasonably practicable, to be before the sheriff who made the order.

Edinburgh
6th October 2016

CJM SUTHERLAND
Lord President
I.P.D.

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SCHEDULE 1

Rule 1.4(1)

FORMS

SCHEDULE 2

Rule 1.4(2)

FORMS FOR USE IN REGISTER OF INHIBITIONS

APPENDIX

SCHEDULE 3

Rule 6.5

SERVICE OF DOCUMENTS FURTH OF SCOTLAND

Interpretation of this Schedule

1. In this Schedule—
“consular service” is to be construed in accordance with paragraph 8;

“EU member state” means a state which is a member of the European Union, within the meaning of Part II of schedule 1 of the European Communities Act 1972⁽¹⁴⁾;

“Hague Convention country” means a country in respect of which the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters is in force, other than an EU member state⁽¹⁵⁾;

“personal service” is to be construed in accordance with paragraph 9;

“postal service” is to be construed in accordance with paragraph 10;

“Service Regulation” means Regulation (E.C.) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (E.C.) No. 1348/2000, as amended from time to time.

Service furth of Scotland

2.—(1) Service of a document furth of Scotland is to be effected in accordance with this paragraph.

(2) If the person’s known residence or place of business is in England and Wales, Northern Ireland, the Isle of Man or the Channel Islands, see paragraph 3.

(3) If the person’s known residence or place of business is in an EU member state (including Denmark), see paragraph 4.

(4) If the person’s known residence or place of business is in a Hague Convention country (other than an EU member state), see paragraph 5.

(5) If the person’s known residence or place of business is in a country with which the United Kingdom has a convention about how to serve court documents (such as Algeria, Libya and the United Arab Emirates), see paragraph 6.

(6) If none of the above applies, see paragraph 7.

Service in England and Wales etc.

3.—(1) A document may be served in England and Wales, Northern Ireland, the Isle of Man or the Channel Islands by—

(a) postal service; or

(b) personal service.

(2) Personal service may be effected by a person who is authorised to do so under the domestic law of the place where the document is to be served.

Service in an EU member state

4.—(1) A document may be served in an EU member state (including Denmark) under the Service Regulation by—

(a) postal service;

(b) service by transmitting agency;

(c) direct service, where the law of the member state permits it;

(d) consular service.

⁽¹⁴⁾ 1972 c. 68.

⁽¹⁵⁾ See the status table at <https://www.hoch.net/en/instruments/conventions/status-table/?cid=17>.

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(2) Service by transmitting agency may be effected by sending the document to a messenger-at-arms and instructing them to arrange for it to be served.

(3) Direct service may be effected by sending the document to a person who is entitled to serve court documents in that member state and asking them to arrange for it to be served.

(4) Where service is to be effected by transmitting agency, the party must give the messenger-at-arms a translation of the document into a language which the recipient understands or an official language of the member state where the document is to be served.

Service in a Hague Convention country

5.—(1) A document may be served in a Hague Convention country (other than an EU member state) by—

- (a) postal service, where the law of the country permits it;
- (b) service via central authority;
- (c) consular service;
- (d) service by competent person, where the law of the country permits it.

(2) Service via central authority may be effected by sending the document to the Scottish Ministers and asking them to arrange for it to be served.

(3) Service by competent person may be effected by sending the document to a person who is entitled to serve court documents in that country and asking them to arrange for it to be served.

(4) Any document must be accompanied by a translation into an official language of the country where it is to be served, unless English is an official language of that country.

Service in a country with which the United Kingdom has a convention about how to serve court documents

6. A document may be served in a country with which the United Kingdom has a convention about how to serve court documents by any method that is permitted by the convention.

Service in any other country

7.—(1) Where none of paragraphs 3 to 6 apply, a document may be served by—

- (a) postal service;
- (b) personal service.

(2) Where service is effected by personal service, the party executing service must lodge a certificate stating that the method of service employed is in accordance with the law of the country where service was executed.

(3) That certificate is to be given by a person who—

- (a) practises or has practised law in that country; or
- (b) is an accredited representative of that country's government, conversant with the law of that country.

Consular service

8.—(1) Consular service is service by a British consular authority.

(2) Consular service may be effected only if—

- (a) the law of the member state where the document is to be served permits it; or

(b) the document is being served on a British national.

(3) Consular service may be effected by sending the document to the Secretary of State for Foreign and Commonwealth Affairs and asking the Secretary of State to arrange for it to be served by a British consular authority.

Personal service

9.—(1) Personal service is service using the rules for personal service under the domestic law of the place where the document is to be served.

(2) Personal service may be effected by a person who is authorised to do so under the domestic law of the place where the document is to be served.

Postal service

10.—(1) Postal service is service by posting the document to the person's home or business address using a postal service which records delivery.

(2) Postal service may be effected by a solicitor or a sheriff officer.

(3) Where postal service is used, the envelope containing the document must have the following label printed or written on it—

(4) That label must be translated into an official language of the country where the document is to be served, unless English is an official language of that country.

Certification of translations

11.—(1) This paragraph applies where this schedule requires a document to be translated into a language other than English.

(2) The party executing service must lodge a certificate stating that the translation is correct.

(3) That certificate—

(a) is to be given by the person who made the translation;

(b) must include the full name, address and qualifications of the translator.

EXPLANATORY NOTE

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

This Act of Sederunt makes provision about the procedure to be followed in petitions for sequestration, and in certain applications and appeals to the sheriff relating to sequestrations. The rules set out in the Act of Sederunt apply when the sequestration concerned is one to which the Bankruptcy (Scotland) Act 2016 applies, that is sequestrations in which the petition is presented, or the debtor application is made, on or after 30th November 2016.

Schedule 2 to the Act of Sederunt also prescribes certain forms for use in the Register of Inhibitions in relation to sequestrations and trust deeds.

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