SCOTTISH STATUTORY INSTRUMENTS

2004 No. 534

SHERIFF COURT

Act of Sederunt (Sheriff Court Bankruptcy Rules) 1996 Amendment 2004

Made - - - -	*3rd December 2004*
Coming into force - -	*4th December 2004*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(**1**), and of all other powers enabling them in that behalf, having approved 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 Amendment 2004 and shall come into force on 4th December 2004.

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

Amendment of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 1996

2. The Act of Sederunt (Sheriff Court Bankruptcy Rules) 1996(**2**) (hereinafter referred to as "the Principal Rules") shall be amended in accordance with Articles 3 to 9 of this Act of Sederunt.

Duty of creditor and court to be satisfied that no approved debt payment programme is in force

3. The Principal Rules shall be amended by inserting after rule 16–

"**Duty of creditor and court to be satisfied that no approved debt payment programme within the meaning of section 2 of the Debt Arrangement and**

(**1**) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).

(**2**) S.I.1996/2507 as amended by S.S.I. 2002/560.

Attachment (Scotland) Act 2002 is in force or if in force the creditor is entitled to petition

17.—(1) Where a creditor is petitioning for the sequestration of a debtor, the creditor, at the lodging of the petition and immediately prior to the hearing to determine whether an award of sequestration is to be made in relation to the petition for sequestration, shall satisfy himself that at that date (a) the debtor is not subject to an approved debt payment programme, or (b) if there is an approved debt payment programme in force, the creditor is entitled to the remedy sought because the debt being founded on is not one covered by section 4(5) of the Debt Arrangement and Attachment (Scotland) Act 2002.

(2) Having satisfied himself at the times referred to in paragraph (1), the creditor shall at those times lodge a statement in the court to the effect that he has so satisfied himself; and the sheriff may not award sequestration in respect of such a petition unless such a statement has been lodged, or the court is otherwise satisfied that there is as of the date of the award of sequestration no such approved debt payment programme in force or there is a debt payment programme in force but the creditor is entitled to the remedy sought because the debt being founded on is not one covered by section 4(5) of the Debt Arrangement and Attachment (Scotland) Act 2002.

(3) The statement referred to in paragraph (2) shall be in Form 19.

Duty of concurring creditor and court to be satisfied that no approved debt payment programme within the meaning of section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 is in force or if in force the creditor is entitled to concur in the petition

18.—(1) Where a creditor is concurring in a petition for the sequestration of a debtor, the creditor, when concurring shall satisfy himself that at that date (a) the debtor is not subject to an approved debt payment programme, or (b) if there is an approved debt payment programme in force, the concurring creditor is entitled to concur in the remedy sought because the debt being founded on is not one covered by section 4(5) of the Debt Arrangement and Attachment (Scotland) Act 2002.

(2) Having satisfied himself as referred to in paragraph (1), the concurring creditor shall make a statement for lodging in the court to the effect that he has so satisfied himself; and the sheriff may not award sequestration in respect of such a petition unless such a statement has been lodged, or the court is otherwise satisfied that there is as of the date of the award of sequestration no such approved debt payment programme in force or there is a debt payment programme in force but the creditor is entitled to concur in the remedy sought because the debt being founded on is not one covered by section 4(5) of the Debt Arrangement and Attachment (Scotland) Act 2002.

(3) The statement referred to in paragraph (2) shall be in Form 20.".

Amendment of Form 1

4.—(1) Form 1 contained in Appendix 1 of the Schedule to the Principal Rules shall be amended by insertion at the end of paragraph 1 of the form:

"**1A.** I certify that:

(a) I have my centre of main interests or an establishment in the United Kingdom as defined in the EC Regulation on insolvency proceedings(**3**);

(**3**) Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings, O.J. No. L 160, 30.06.00. p.1 which came into force on 31st May 2002.

(b) I have my centre of main interests or an establishment as defined above in a Member state other than the United Kingdom;

(c) I have neither my centre of main interests nor an establishment in the United Kingdom nor in a Member state other than the United Kingdom."

(2) Form 1 contained in Appendix 1 of the Schedule to the Principal Rules shall be amended by insertion at the end of paragraph 3 of the form:–

"Attached is a statement by each of the qualified creditors who concurs in this petition stating that the debtor of the debt in relation to which he or she is giving concurrence is not the subject of an approved debt payment programme within the meaning of section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002(**4**) or the debtor to which the petition relates is in an approved debt payment programme but the debt in relation to which he or she is giving concurrence is not of a class covered by section 4(5)(b) of that Act.".

(3) Form 1 contained in Appendix 1 to the Schedule to the Principal Rules shall be amended by insertion after paragraph 6 of that form:

(a) I am subject to an approved debt payment programme; or

(b) I am not subject to an approved debt payment programme.

(c) I have made application for approval of a debt payment programme; or

(d) I have not made application for approval of a debt payment programme."

Amendment of Form 2

5.—(1) Form 2 contained in Appendix 1 of the Schedule to the Principal Rules shall be amended by insertion at the end of paragraph 1 of the form:

"**1A.** I certify that:

(a) I have my centre of main interests or an establishment in the United Kingdom as defined in the EC Regulation on insolvency proceedings;

(b) I have my centre of main interests or an establishment as defined above in a Member state other than the United Kingdom;

(c) I have neither my centre of main interests nor an establishment in the United Kingdom nor in a Member state other than the United Kingdom.".

(2) Form 2 contained in Appendix 1 of the Schedule to the Principal Rules shall be amended by insertion after paragraph 6 of that form:–

(a) I am subject to an approved debt payment programme; or

(b) I am not subject to an approved debt payment programme.

(c) I have made application for approval of a debt payment programme; or

(d) I have not made application for approval of a debt payment programme."

(3) Form 2 contained in Appendix 1 of the Schedule to the Principal Rules shall be amended by substituting in paragraph 2 of the Note to the form "attachment (or an attempt to attach)" for "poinding".

(4) Form 2 contained in Appendix 1 of the Schedule to the Principal Rules shall be amended by insertion after paragraph 7 on page 2 of that form:

"**8.** You are apparently insolvent in terms of section 7(1) (c)(vii) of the Bankruptcy (Scotland) Act 1985(**5**) because a) you were party to an approved debt payment programme

(**4**) 2002 asp 17.
(**5**) 1985 c. 66. Section 7(1) of that Act was amended by section 46 of the Debt Arrangement and Attachment (Scotland) Act 2002.