



SCS GUIDANCE ON NEW LEGISLATION, REGULATION, ETC.

FORMS FOR CIVIL AND MISCELLANEOUS PROCEEDINGS

Forms

Sheriff Court Bankruptcy Rules 2008 Forms

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FORM 1

Form of petition by qualified creditor(s) under section 5(2)(b)(i) of the Bankruptcy
(Scotland) Act 1985

SHERIFFDOM OF AT

Court Reference No.

PETITION of (*insert name and address of petitioner*)
Petitioner(s)

against

(*insert name and address of debtor*)
*trading as
(*insert name and address of business*)
Respondent

The petitioner(s) crave(s) the court:-

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.
2. To award sequestration of the estate of the respondent.
3. To declare that the said estate belongs to the creditors of the respondent.
4. To appoint (*insert name, designation and address of trustee*) **[or alternatively the Accountant in Bankruptcy]* as trustee.
5. To make such other and further orders as may seem appropriate to the court.
6. To find the petitioner(s) entitled to the expenses of this application out of the respondent's estate.

STATEMENT OF FACTS

1.(a) The petitioner(s) *is [*or are*] as designed in the instance. The respondent habitually resides *and/or had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.

(b) As far as is within the knowledge of the petitioner(s), the centre of main interests of the debtor has been at (*state the location of the centre of interests within the meaning of the Council Regulation*).

*(c) As far as is within the knowledge of the petitioner(s), the debtor has [an] establishment[s] at (*state location of all establishments within the meaning of the Council Regulation*)

(d) As far as is within the knowledge of the petitioner(s), insolvency proceedings have/have not been opened (*state the nature and location of, and court in which, any other insolvency proceedings have been opened*).

(If sequestration is one to which the Council Regulation is relevant, give further details here)

2. The petitioner(s) *is/are [a] qualified *creditor/creditors of the respondent to the extent of £ as evidenced in the oath/s by creditor/s and supporting vouchers attached. Attached is a statement by each of the petitioning creditors stating that *the debtor of the debt in relation to which the petitioning creditor is petitioning 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 [*or the debtor to which the petition relates is in an approved debt payment programme but the debt in relation to which he is petitioning is not of a class covered by section 4(5)(b) of that Act.*]

3. The respondent has been rendered apparently insolvent by virtue of *(narrate appropriate ground founded on in terms of section 7 of the Bankruptcy (Scotland) Act 1985)* and that within four months of the presentation of this petition.

4. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) is/are under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.

5. *(Insert name of trustee)* satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. **[or alternatively if no nomination of trustee The petitioner(s) accept that the Accountant in Bankruptcy will be trustee in the sequestration.]*

(If appointment of interim trustee is craved, the circumstances rendering this necessary should also be narrated.)

6. A debt advice and information package was provided to the debtor on *(insert date)*.

7. A copy of this petition has been sent today to the Accountant in Bankruptcy.

PLEA IN LAW

The debtor's apparent insolvency within the meaning of the Bankruptcy (Scotland) Act 1985 being constituted within 4 months before the date of presentation of this petition and the petitioner(s) being qualified creditor(s) of the respondent in terms of section 5(4) of the said Act being entitled to the remedy sought, the orders and finding requested in the crave should be granted.

Date *(insert date of petition)*

Signed

(signature of Petitioner(s) *or Solicitor for Petitioner(s) *(insert designation and address)*)

**(delete as appropriate)*

Rule 3(2)

FORM 2

Form of petition by a temporary administrator, a member State liquidator in main proceedings or a foreign representative

SHERIFFDOM OF AT
Court Reference No.

PETITION of *(insert name and address of petitioner)*
Petitioner(s)

against

(insert name and address of debtor)
*trading as
(insert name and address of business)
Respondent

The petitioner(s) crave(s) the court:-

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.
2. To award sequestration of the estate of the respondent.
3. To declare that the said estate belongs to the creditors of the respondent.
4. To appoint *(insert name, designation and address of trustee)* **[or alternatively the Accountant in Bankruptcy]* as trustee.
5. To make such other and further orders as may seem appropriate to the court.
6. To find the petitioner(s) entitled to the expenses of this application out of the respondent's estate.

STATEMENT OF FACTS

1. The petitioner(s) *is [*or are*] as designed in the instance. The respondent habitually resides *and/or had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.
2. (a) As far as is within the knowledge of the petitioner(s), the centre of main interests of the debtor has been at *(state the location of the centre of interests within the meaning of the Council Regulation)*.
*(b) As far as is within the knowledge of the petitioner(s), the debtor has [an] establishment[s] at *(state location of all establishments within the meaning of the Council Regulation)*.
(c) As far as is within the knowledge of the petitioner(s), insolvency proceedings *have/have not been opened *(state the nature and location of, and court in which, any other insolvency proceedings have been opened)*.
(If sequestration is one to which the Council Regulation is relevant, give further details)
3. The petitioner(s) *is [*or are*] *a temporary administrator of the respondent/a member State liquidator appointed in main proceedings [*or a foreign representative within the meaning of the Model Law on Cross-Border Insolvency as set out in Schedule 1 to the Cross-Border Insolvency Rules 2006 as evidenced in the supporting documentation attached.*]
4. The respondent has been rendered apparently insolvent by virtue of *(narrate appropriate ground founded on in terms of section 7 of the Bankruptcy (Scotland) Act 1985 or article 31 of the Model Law referred to above)* and that within four months of the presentation of this petition.

5. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) is/are under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.

6. *(Insert name of trustee)* satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. **[or alternatively if no nomination of trustee The petitioner(s) accept that the Accountant in Bankruptcy will be trustee in the sequestration.]*

7. A copy of this petition has been sent today to the Accountant in Bankruptcy.

PLEA[S] IN LAW

[Here set out the plea(s) in law]

Date *(insert date of petition)*

Signed

(signature of Petitioner(s) *or Solicitor for Petitioner(s) *(insert designation and address)*)

**(delete as appropriate)*

Rule 3(3)

FORM 3

Form of petition by a trustee under a trust deed in terms of section 5(2)(b)(iv) of
the Bankruptcy (Scotland) Act 1985

SHERIFFDOM OF AT
Court Reference No.

PETITION of *(insert name and address of petitioner)*
Petitioner(s)

against

(insert name and address of debtor)
*trading as
(insert name and address of business)
Respondent

The petitioner(s) crave(s) the court:-

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.
2. To award sequestration of the estate of the respondent.
3. To declare that the said estate belongs to the creditors of the respondent.
4. To appoint *(insert name, designation and address of trustee)* [or the Accountant in Bankruptcy] as trustee.
5. To make such other and further orders as may seem appropriate to the court.
6. To find the petitioner entitled to the expenses of this application out of the respondent's estate.

STATEMENT OF FACTS

1.(a) The petitioner(s) *is [or are] as designed in the instance. The respondent habitually resides *and/or had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.

(b) As far as is within the knowledge of the petitioner(s), the centre of main interests of the debtor has been at *(state the location of the centre of interests within the meaning of the Council Regulation)*.

*(c) As far as is within the knowledge of the petitioner(s), the debtor has [an] establishment[s] at *(state location of all establishments within the meaning of the Council Regulation)*

(d) As far as is within the knowledge of the petitioner(s), insolvency proceedings have/have not been opened *(state the nature and location of, and court in which, any other insolvency proceedings have been opened)*.

(If sequestration is one to which the Council Regulation is relevant, give further details here)

2. On *(insert date)* the respondent granted a trust deed in favour of the petitioner(s). A copy of the trust deed by the respondent in favour of the petitioner is attached.
3. The debtor has failed to (specify obligation, instruction or requirement with which the debtor has failed to comply as required in section 5(2C) of the Bankruptcy (Scotland) Act 1985 [*and/or* It would be in the best interests of the creditors that an award of sequestration be made (*narrate reasons for this averment*)].
4. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) is/are under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.
5. *(Insert name of trustee)* satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. **[or alternatively if no nomination of trustee* The petitioner accepts that the Accountant in Bankruptcy will be trustee in the sequestration.]
(If appointment of interim trustee is craved, the circumstances rendering this necessary should also be narrated.)
6. A copy of this petition has been sent today to the Accountant in Bankruptcy.

PLEA IN LAW

The petitioner, as trustee of the respondent under a trust deed being entitled to have the respondent's estate sequestrated in terms of section 5 of the Bankruptcy (Scotland) Act 1985, the orders and finding requested in the crave should be granted.

Date *(insert date of petition)*

Signed

(signature of Petitioner(s) *or Solicitor for Petitioner(s) *(insert designation and address)*)

**(delete as appropriate)*

Rule 3(4)

FORM 4

Form of undertaking required by section 2(3)(c) of the Bankruptcy (Scotland) Act
1985

I, (*insert full name and designation*) a qualified insolvency practitioner undertake, if appointed by the court, to act as trustee in the sequestration of (*insert full name and address of debtor*).

Rule 5(1)

FORM 5

Form of application under the Bankruptcy (Scotland) Act 1985

SHERIFFDOM OF AT

Court Reference No.

APPLICATION by *(insert name and designation of applicant)*

In the sequestration of
(insert full name and address of debtor)

The applicant requests the court—
(state the nature of the application)

STATEMENT OF FACTS

(here set out, in numbered paragraphs, the facts on which the application is made)
Date *(insert date of application)* Signed *(signature of applicant)*

PLEA[S] IN LAW

[Here set out the plea(s) in law]
Date *(insert date of application)*

Signed

(Signature of applicant)
**or Solicitor for Applicant*
(insert designation and address)

Rule 5A (2)

FORM 5A
Form of citation

CITATION

Court ref. no.

SHERIFFDOM OF (*insert name of Sheriffdom*)

AT (*insert place of sheriff court*)

[A.B.], (*insert designation and address*), Petitioner against [C.D.], (*insert designation and address*), Defender

[*Insert place and date*]. You [C.D.], are hereby served with this copy petition and warrant. If you wish to show cause why sequestration should not be awarded you should appear at (*insert name and address of sheriff court*) on (*insert date of hearing*).

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens' Advice Bureau or other advice agency.

PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may award sequestration.

Signed
[[P.Q.], Sheriff Officer]
or [[X.Y.] (*add designation and business address*)
Solicitor for the Petitioner]

Rule 5A (7)

FORM 5B

Form of certificate of citation

CERTIFICATE OF CITATION

Court ref. no.

[Insert place and date] I, [insert name], certify that on [insert date] I duly cited [insert debtor's name] to answer to the attached petition by appearing at [insert name and address of sheriff court] on [insert date of hearing]. This I did by [state method of citation; if by sheriff officer add: in the presence of [insert name of witness] [insert designation], witness; and where citation served by post state method of postal service].

Signed

[[C.D.], Sheriff Officer

[P.Q.], witness] *or*

[[X.Y.] (*add designation and business address*)

Solicitor for the Petitioner]

Rule 7(1)

FORM 6

Form of note of appeal to sheriff under the Bankruptcy (Scotland) Act 1985

SHERIFFDOM OF AT
Court Reference No.

NOTE OF APPEAL

under
(insert provision under which appeal is made)

by *(insert name and designation of appellant)*

In the sequestration of
(insert full name and address of debtor)

The appellant appeals to the sheriff on the following grounds:
[State grounds on which appeal is made]

The appellant craves the court:
[State here orders sought in respect of appeal]

Date *(insert date of appeal)*

Signed
(Signature of appellant)
*or Solicitor for Appellant
(insert designation and address)

Rule 9(1)

FORM 7

Form of memorandum by trustee to be recorded in the Register of Inhibitions and Adjudications under section 14(4) of the Bankruptcy (Scotland) Act 1985

From: *(insert name and designation of trustee)* trustee in the sequestration of *(insert full name and address of debtor)*.

To: The Keeper of the Register of Inhibitions and Adjudications.

A certified copy of the court order of *(insert date)* awarding sequestration in respect of *(insert full name and address of debtor)* was recorded in your Register on *(insert date)*.

Record this memorandum to renew the effect of that recording for a further period of three years from the date of presentment hereof.

Date *(insert date)*

Signed *(signature of trustee or agent)*

Rule 9(2)

FORM 8

Form of notice of inhibition by trustee under trust deed to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Bankruptcy (Scotland) Act 1985

A trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 has been granted by *(insert full name and address of debtor)* and delivered to *(insert name and designation of trustee)* as trustee acting under the trust deed.

Under the trust deed the estate of *(insert full name of debtor)* has been conveyed to *(insert name of trustee)* as trustee for the benefit of the creditors generally of *(insert full name of debtor)*.

Date *(insert date)*

Signed *(signature of trustee or agent)*

Rule 9(3)

FORM 9

Form of notice of recall of inhibition to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(2) of Schedule 5 to the Bankruptcy (Scotland) Act 1985

The notice by (*insert name and designation of trustee*) as trustee under a trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 for creditors generally of (*insert full name and address of debtor*) recorded on (*insert date of recording*) is now recalled.

Date (*insert date*)

Signed (*signature of trustee or agent*)

Rule 10(1)

FORM 10

**Form of report by the Accountant in Bankruptcy under section 24(3A) of the
Bankruptcy (Scotland) Act 1985**

REPORT TO SHERIFF OF AT
Court Reference No.

in the sequestration of (*insert full name and address of debtor*)

1. The Accountant of Bankruptcy as the trustee in the above sequestration reports to the sheriff that a statutory meeting was called in accordance with the provisions of section 21A of the Bankruptcy (Scotland) Act 1985.

*2. The meeting duly took place and no creditor entitled to vote in the election of the trustee attended.

OR

*2. The meeting was attended by (*insert number of creditors attending*) creditors or their representatives who were advised of their right to elect a trustee and commissioners, but no trustee was elected.

3. A copy of the record of the meeting and of the trustee's statement of the debtor's affairs are attached.

*delete as appropriate

Date (*insert date of report*)

Signed (*signature of Accountant in Bankruptcy or person authorised by him*)

Signed (*trustee*)

Rule 10(2)

FORM 11

Form of report by the original trustee under section 24(4)(b) of the Bankruptcy
(Scotland) Act 1985

REPORT TO SHERIFF OF AT
Court Reference No.

in the sequestration of (*insert full name and address of debtor*)

1. (*Insert name and designation of trustee*) the trustee in the above sequestration reports to the sheriff that a statutory meeting was called in accordance with the provisions of section 21 of the Bankruptcy (Scotland) Act 1985.

*2. The meeting duly took place and no creditor entitled to vote in the election of the trustee attended.

OR

*2. The meeting was attended by (*insert number of creditors attending*) creditors or their representatives who were advised of their right to elect a trustee and commissioners, but no trustee was elected.

3. A copy of the record of the meeting and of the trustee's statement of the debtor's affairs are attached.

4. A copy of this report has been sent to the Accountant in Bankruptcy in accordance with section 24(4)(a) of the Bankruptcy (Scotland) Act 1985.

*delete as appropriate

Date (*insert date of report*)

Signed (*signature of trustee or person authorised by him*)

Rule 12(3)

FORM 12

Form of statement to be lodged by creditor in petitioning for sequestration

*The petitioner states that at the date of lodging of this petition *the petitioner has checked with the DAS Register that the debtor of whom sequestration is craved is not subject to an approved debt payment programme [*or* there is a debt payment programme in force but the petitioner 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].

*The petitioner states that immediately before the calling of this petition *the petitioner has checked with the DAS Register that the debtor of whom sequestration is craved is not subject to an approved debt payment programme [*or* there is a debt payment programme in force but the petitioner 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].

*Delete as appropriate