

CHAPTER 72

BANKRUPTCY (SCOTLAND) ACT 1985

Interpretation of this Chapter

72.1.-(1) In this Chapter-

“the Act of 1985” means the Bankruptcy (Scotland) Act 1985; and
“the EC Regulation” means Council Regulation (EC) 1346/2000 of 29th May 2000 on insolvency proceedings^(a).

(2) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Act of 1985 have the same meaning as in that Act.

Application of the EU Regulation

72.1A. A petition for sequestration to which section 12 of the Act of 1985 (petition for sequestration of debtor’s estate) applies shall include averments stating-

- (a) whether the ER Regulation applies; and
- (b) if so, whether the proceedings are main proceedings or territorial proceedings.

First order in petitions for sequestration

72.2. A petition for sequestration to which subsection (2) of section 12 of the Act of 1985 (petition for sequestration of debtor's estate by creditor or trustee) applies shall, on being presented, be brought before the Lord Ordinary in court or in chambers for an order for a warrant to cite the debtor as required by that subsection.

Declaration regarding an approved debt payment programme

72.2A. The petitioner shall lodge with the petition a declaration or declarations by the petitioner and any concurring creditors in Form 72.2A confirming that the debtor has not entered into an approved debt payment programme or that the debts founded on in the petition are in respect of credit as defined in regulation 35(1)(b) of the 2004 Regulations.

Notice of concurrent proceedings

72.3. A person seeking to bring to the attention of the court a fact referred to in section 10(1) of the Act of 1985^(b) (concurrent proceedings for sequestration or analogous remedy) shall do so by motion in the process of the petition which may be affected.

Applications for transfer or remit of sequestration

72.4.-(1) An application under section 15(2) (transfer of sequestration from one sheriff to another), or section 63(3)(b) (application for a direction to remit an application under section 63(1)), of the Act of 1985 from the sheriff to the court shall be made-

- (a) where sequestration has been awarded by the court, by motion; or
- (b) where sequestration has been awarded by the sheriff, by petition.

(2) The applicant under section 15(2) of the Act of 1985 shall intimate such motion to or serve such petition on-

(a) O.J.L. 160. 30/62000 p.001-0018.

(b) Section 10(1) was amended by the Financial Services Act 1986 (c.60), Schedule 16, paragraph 29.

- (a) the debtor;
- (b) any person who was a petitioner or concurred in the petition for sequestration;
- (c) the interim trustee or permanent trustee;
- (d) the Accountant in Bankruptcy; and
- (e) the sheriff clerk.

(3) A copy of the application under section 63(1) of the Act of 1985 (application to sheriff to cure defects in procedure), certified by the sheriff clerk, shall be lodged with any application under section 63(3)(b) of that Act.

(4) Where the court has determined an application under section 15(2) or section 63(3)(b) of the Act of 1985, the applicant shall intimate a certified copy of the interlocutor of the court forthwith to-

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

(5) Where the court grants an application under section 15(2) of the Act of 1985, the sheriff clerk shall, on receipt of a certified copy of the interlocutor of the court, transmit those parts of the sequestration process in his custody to the sheriff clerk of the sheriff court specified in the interlocutor.

(6) Where the court grants an application under section 63(3)(b) of the Act of 1985, the sheriff clerk shall, on receipt of a certified copy of the interlocutor of the court, transmit the application under section 63(1) of that Act, and those parts of the sequestration process in his custody, to the Deputy Principal Clerk.

(7) Where the court has determined the matters raised by the application under section 63(1) of the Act of 1985-

- (a) the applicant under section 63(3)(b) of that Act shall 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 shall transmit the parts of process transmitted to him under paragraph (6) to the sheriff clerk.

Holding of sederunt book by Accountant in Bankruptcy

72.5. The Accountant in Bankruptcy shall hold the sederunt book for a period of at least 6 months from the date he receives it from the permanent trustee by virtue of section 57(1) of the Act of 1985 and-

- (a) shall make it available for public inspection during office hours; and
- (b) may allow such extracts to be made of entries in the Sederunt Book by such persons as he thinks fit.

Prescribed forms

72.6-(1) The register of insolvencies kept by the Accountant in Bankruptcy under section 1A(1)(b) of the Act of 1985(a) shall contain the information required in Form 72.6-A.

2) An undertaking by the interim trustee under section 2(3)(c) of the Act of 1985(b) shall be in Form 72.6-B.

(3) The memorandum to be sent by a permanent trustee to the Keeper of the Register of Inhibitions and Adjudications under section 14(4) of the Act of 1985(c) shall be in Form 72.6-C.

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- (a) Section 1A of the Act of 1985 was inserted by the Bankruptcy (Scotland) Act 1993 (c.6), section 1.
 - (b) Section 2(3)(c) of the Act of 1985 was substituted by the Act of 1993, section 2.

(c) Section 14(4) of the Act of 1985 was amended by the Act of 1993, Schedule 1, paragraph 3.

(4) A notice by a trustee under a trust deed for creditors to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Act of 1985 (registration of notice of inhibition) shall be in Form 72.6-D.

(5) A notice under paragraph 2(2) of Schedule 5 to the Act of 1985 recalling a notice registered under paragraph 2(1) of that Schedule shall be in Form 72.6-E.