

*(Paper 6.4A, SCJC 24 November 2014)*

## REQUEST FOR COURT RULES – ACCOUNTANT IN BANKRUPTCY PAPER

### **Purpose:**

1. This is a policy paper for the Scottish Civil Justice Council on the changes being made by the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) to the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”), and accompanying secondary legislation, which will result in a requirement to amend the Act of Sederunt (Rules of the Court of Session) 1994/1443 (“Court of Session rules”) and Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008/119 (“Sheriff Court bankruptcy rules”).

### **Timing:**

2. The 2014 Act is introducing changes to the 1985 Act to take effect from 1st April 2015. The Bankruptcy and Debt Advice (Scotland) Act 2014 (Commencement No. 2, Savings and Transitionals) Order 2014 (“draft savings and transitionals order 2014”), which is still in draft, provides details of when the changes will be brought into effect. We attach an updated draft of the Order, an earlier draft of which was previously sent to Scottish Court colleagues, together with a draft Policy Note. It is envisaged that for sequestration petitions presented to the courts or AiB pre 1<sup>st</sup> April 2015 (or debtor applications for sequestration to the Accountant in Bankruptcy before that date), generally speaking the 1985 Act in its present form will continue to operate, but with a number of exceptions - please see draft savings and transitional Order 2014, article 4(3) and (6). Subject to those exceptions and savings/transitional arrangements, matters arising in connection with sequestration petitions presented on or after 1<sup>st</sup> April 2015 will apply the Bankruptcy (Scotland) Act 1985 as amended by 2014 Act. Accordingly the Civil Justice Council is invited to consider changes to the court rules.
3. In terms of outline changes to the court rules it may be possible broadly to apply the rules as they exist today for applications pre 1<sup>st</sup> April 2015 and the amended court rules which will apply to matters arising with a sequestration petition presented on or after 1<sup>st</sup> April 2015. Alternatively, the applications of court rules changes could be built around sequestrations commenced before the coming into force of the changes to the court rules. Subject to the views of the Civil Justice Council, it is considered that the basic framework of the Sheriff Court bankruptcy rules as revised in 2008 will continue to operate in relation to the new structures.

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**Summary of request/ proposal:**

4. The 2014 Act has introduced a significant number of changes to the 1985 Act which will come into force on 1<sup>st</sup> April 2015. These changes were highlighted to the Council in a paper previously sent to Scottish Court colleagues on 23<sup>rd</sup> May 2014. We attach a copy for your information [**Paper 6.4B**]. Some of the changes made to the 1985 Act relate to a transfer of functions from the courts to the Accountant in Bankruptcy (“AiB”). The idea of transferring functions from the court to AiB is to remove some of the burden from the courts. As a result, we would suggest that the Court of Session rules and the bankruptcy court rules will require amendment and possibly new rules introduced.
5. This paper considers the bankruptcy court rules as drafted and makes recommendations for amendment considering legislative references which will not be applicable post 1<sup>st</sup> April 2015. The paper then considers the Court of Session rules and makes recommendation for amendment as a result of legislative references which will no longer be applicable post 1<sup>st</sup> April 2015. The paper then makes recommendations for new rules and forms which the Council may wish to consider drafting as a result of new processes which the 2014 Act will introduce on 1<sup>st</sup> April 2015.

**Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008/119**

**Schedule 1 Paragraph 1 (interpretation)**

6. “AiB sequestration” is defined as the sequestration of a debtor’s estate by the AiB following a debtor application made under section 5(2)(a) or 6(3)(a), 4(a) or (6)(a) of the 1985 Act. Section 11 of the 2014 Act will introduce a change that the sequestration of the estate of a deceased debtor by an executor is instead of being made by petition, to be made by a debtor application to AiB. This will be in accordance with new section 5(3)(a). Accordingly Schedule 1 paragraph 1(2) could be amended to include reference to section 5(3)(a) of the 1985 Act. The term “AIB sequestration” is used in rules 2(b), 5(3) and 7(3).

**Schedule 1 Paragraph 3 (petitions for sequestration)**

7. This rule provides what form a petition should be made on. Upon reading this rule some of the legislative references have minor referencing errors at present. Whilst taking the opportunity to update the court rules, these could be amended.

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8. Paragraph (3)(2)(i) reads “A petition under section 5(2)(ii) of the Act of 1985 by a temporary administrator”. This reference should be “section 5(2)(b)(ii)” and not “section 5(2)(ii)”.
9. Similarly paragraph 3(2)(ii) reads “A petition under section 5(2)(iii) of the Act of 1985 by a member state liquidator appointed in main proceedings”. The reference should be “section 5(2)(b)(iii)” and not “section 5(2)(iii)”.

Schedule 1 Paragraph 5 (applications)

10. This rule states that an application under the 1985 Act shall be made on form 5, except as otherwise provided for. We are content that Form 5 will still be relevant for applications being made to the sheriff after 1<sup>st</sup> April 2015 and will not require modification. An additional application form may however be required and we have provided further details below.

Schedule 1 Paragraph 6 (determination of aliment etc)

11. Once the changes introduced by the 2014 Act take effect, this rule will no longer be applicable to sequestration petitions presented on or after 1<sup>st</sup> April 2015. Rule 6 relates to an application by the trustee for an income payment order under section 32(2) of the 1985 Act to the sheriff asking the sheriff to determine a suitable amount of aliment for the debtor and the debtor’s relevant obligations and if the debtor’s income is in excess of the total amount so allowed, the sheriff shall fix an amount for the debtor to pay to the trustee in sequestration.
12. The 2014 Act removes the requirement for the trustee to apply to the sheriff when seeking determination of an amount that the debtor will pay to the trustee in his sequestration. As from 1<sup>st</sup> April 2015, for all sequestration petitions presented after that date, AiB will determine a debtor contribution order in accordance with new sections 32A. That can be reviewed by AiB and is subject to appeal to the sheriff (section 32C). The trustee can vary the contribution under section 32F, which replaces section 32(4) of the 1985 Act, again subject to review by AiB and appeal to the sheriff (section 32G). (These provisions are inserted by section 4 of 2014 Act).
13. Accordingly from 1<sup>st</sup> April 2015 section 32(2) will be repealed in respect of sequestration which follows from any sequestration petitions or debtor applications presented or made on or after 1<sup>st</sup> April 2015 and so schedule 1 paragraph 6 can be removed. Please note, though, rule 6 will need to continue to be applicable for any sequestration petition presented before 1<sup>st</sup> April 2015.

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14. In relation to any sequestration petition presented before 1<sup>st</sup> April 2015, where the debtor's circumstances change, the trustee, the debtor or any interested person may apply to the sheriff (section 32(4)) to vary or recall any order made by the sheriff under section 32(2). In accordance with the savings and transitionals order 2014, article 6, where an application is made, on or after 1<sup>st</sup> April 2015, to the sheriff under section 32(4), in making the decision the sheriff must "have regard" to the common financial tool. The sheriff is not however required to follow the tool, as under the new Act for these cases, but only to "have regard" to it, and article 6 of the savings and transitionals order 2014 makes clear (for the avoidance of doubt) that other factors including the initial amount set can also be relevant, and the introduction of the common financial tool is not itself grounds for a change in circumstances warranting a variation. We do not consider a court rule is required, but we include the detail for the Council's information.
15. We do not consider that a new rule is required to replace rule 6 for the petitions presented on or after 1<sup>st</sup> April 2015 as the debtor contribution order is a process that is dealt with by AiB and will no longer be a court process. The only time the courts will be considering the matter of a debtor contribution order is where a trustee or a debtor appeals to the sheriff in relation to a review decision of AiB (new section 32C(5) and 32H(5)). Regulation 3(9) and (10) of the Common Financial Tool Regulations 2014 replicate the aliment provisions of section 32(3) of the 1985 Act. We consider that such an appeal can be made to the courts on an existing Form 6, though the Council may wish to consider if it would wish to have any equivalent specific provision to rule 6 in respect of appeals.
16. The 2014 Act is introducing a number of decisions of AiB which are appealable to the courts, including section 32C(5) and 32H(5) as mentioned. We do not consider that an individual rule is required for section 32C(5) and 32H(5). However, the Scottish Civil Justice Council may wish to consider introducing a general rule relating to all the decisions of AiB which are appealable to the sheriff. This matter is considered below.

#### Schedule 1 Paragraph 7 (appeals to the sheriff)

17. Rule 7 relates to any appeal to the sheriff under the 1985 Act. Following the changes being made by the 2014 Act to the 1985 Act, appeals will still be made to the sheriff, accordingly rule 7 is still relevant. The changes the 2014 Act is making will introduce a number of appeals to the sheriff in relation to a decision made by AiB. (Please see the previous paper issued on 23<sup>rd</sup> May highlighting the changes). Section 63C of the 1985 Act (inserted by section 43

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of the 2014 Act) provides details of all the provisions where an application may be made to the sheriff to appeal a decision of AiB:-

- 3A(7) Application for a direction to AiB
- 13A(11) Interim trustee determination
- 13B(7) (AiB interim trustee termination)
- 15(3D) refusal of sequestration on debtor application
- 17G(5) Recall of sequestration by AiB
- 18(3C) Interim preservation
- 25A(8) Applications to AiB: Procedure
- 26A(5) AiB to account for intromissions
- 27(4) Discharge of Original Trustee
- 28B(4) Determination etc. under section 28A:review
- 29(4) Removal of trustee and trustee not acting
- 29(6H) Removal of trustee and trustee not acting
- 32C(5) Debtor Contribution Order
- 32H(5) Review and Appeal- relating to payment break or variation of debtor contribution order
- 42(2D) Contractual powers of trustee
- 49(6D) Adjudication of claims
- 54B(6) Discharge of debtor
- 54G(6) Subsequent debtor contact
- 56A(6) Bankruptcy Restriction Order
- 56J(8) Effect of recall of sequestration
- 57(4) Discharge of trustee
- 58A(5) AiB Discharge of Trustee
- 63B(4) Decision under section 63A: review
- Paragraph 3 Schedule 1 Sub paragraph 6 Valuation of debts depending on contingency.

18. We envisage that such appeal applications may be made to the sheriff on the existing court Form 6 in the sheriff court bankruptcy rules. The Council may however wish to consider if a specific rule should be included that relates

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solely to the appeals noted above. For instance where an appeal is made under the above sections, it may be appropriate for the applicant to include with the Form 6 a copy of the decision of AiB that they are appealing.

19. Rule 7, for example, could be amended to include a section stating, for example:

*“where an appeal relates to appeal of a decision made by AiB, there shall be lodged with the note of appeal a copy of the decision made by AiB”.*

20. It is worth noting that there are a number of sections currently in the 1985 Act which allow an appeal to the sheriff from a decision of AiB (section 13A(11), section 15(3A), section 26(4), section 26A(5), section 27(4) of 1985 Act). The court rules at present do not provide any specific detail regarding the appeal of AiB’s decision to the sheriff. Accordingly the council may conclude that they do not require additional rules for the sections mentioned above.

#### Schedule 1 Paragraph 8 (appeals to Sheriff Principal and Court of Session)

21. Rule 8 will require amendment as a result of the changes being introduced by the 2014 Act. Rule 8 relates to appeals to the sheriff principal and the Court of Session. Rule 8(1) makes reference to “section 29(4) (order of sheriff removing trustee)”. Section 29(4) will be amended as a result of the 2014 Act and will no longer be relevant for sequestration applications presented on or after 1<sup>st</sup> April 2015. Accordingly reference to “section 29(4)” should be removed from Schedule 1, paragraph 8(1). The section however will need to continue to apply to sequestration petitions presented before 1<sup>st</sup> April 2015.
22. Rule 8(1) also refers to “section 54(6) (order deferring discharge of debtor or dismissal of application to defer discharge)”. This section allows the applicant to appeal against the decision of the sheriff regarding the deferral of discharge, within 14 days. This section will be repealed from 1<sup>st</sup> April 2015. Accordingly the reference to “section 54(6)” should be removed from schedule 1 paragraph 8(1). This section however will still be relevant to sequestration petitions presented before 1<sup>st</sup> April 2015.
23. Rule 8(1) refers to “section 56J(2) (refusal to annul Bankruptcy Restriction Order, Interim Bankruptcy Restrictions Order or Bankruptcy Restrictions Undertaking)”. This rule is still applicable following the changes of 2014 Act, however the heading does refer to a “bankruptcy restriction undertaking”. The 2014 Act is repealing section 56G bankruptcy restrictions undertaking,

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from 1<sup>st</sup> April 2015, accordingly the term should be removed from the heading. Bankruptcy restriction undertakings however will continue to apply to sequestration petitions presented pre 1<sup>st</sup> April 2015. It is proposed to include express provision in article 4(4) of the savings and transitionals Order 2014 to ensure this is clear.

24. Rule 8(1) refers to “paragraph 8(3) of Schedule 4 (order approving or refusing to approve offer of composition)”. Paragraph 8(3) of schedule 4 was superseded in April 2008 and accordingly the reference is no longer appropriate (unless it was kept for transitional purposes). Provision for composition is now repealed by section 18 of the 2014 Act in respect of sequestration petitions presented after 1<sup>st</sup> April 2015.
25. As noted above sections 29(4) and 54(6) will no longer be applicable from 1<sup>st</sup> April 2015 and paragraph 8(3) of schedule 4 is no longer relevant. Accordingly reference can be removed from Rule 8(6).
26. It is worth noting that the amendments the 2014 Act is making will introduce new appeals to the Court of Session under sections 28B and 30(8) of the 1985 Act. The Council may wish to consider if rule 8 should be amended to include detail of these appeals.
27. Section 29 of the 2014 Act inserts section 28A and 28B into the 1985 Act. The sections relate to the replacement of a trustee acting in more than one sequestration. Section 28B(6) allows an appeal to be made to the Court of Session in relation to a decision of AiB under section 28B(3)(b).
28. Sections 31 of 2014 Act amends section 30 of 1985 Act which relates to election resignation and removal of commissioners. The details of the new application to the sheriff under this section are discussed below at paragraph 53. It is worth noting that the decision of the sheriff under section 30(4)(c) is appealable under section 30(8).

#### Schedule 1 Paragraph 9 (forms and RoI)

##### 29. Rule 9- forms of register of insolvencies

Section 1A(1)(b) of the 1985 Act will be amended by section 22 of the 2014 Act with effect from 1<sup>st</sup> April 2015 to state that the register of insolvencies shall be maintained by AiB in such form as may be prescribed by “regulations made by Scottish Ministers” instead of by the “Court of Session by act of sederunt”. Accordingly rule 9(4) and appendix 2 will need to be repealed. This information from 1<sup>st</sup> April 2015 will be contained in the updated Bankruptcy (Scotland) Regulations 2014 (SSI 2014/225). Rule 9(4) and appendix 2 will not need to be retained for petitions

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presented pre 1<sup>st</sup> April 2015, as these provisions are commenced and will apply to all sequestrations.

Schedule 1 Paragraph 12 (approved debt payment programmes)

30. This rule indicates that where a creditor is petitioning for the sequestration of a debtor, the creditor, at the lodging of the petition shall satisfy himself that the debtor is not subject to an approved debt payment programme under the Debt Arrangement Scheme, or if there is an approved debt payment programme in force, the creditor is entitled to apply for the debtor's sequestration, because the debt being founded on is not covered by section 4(5) of the Debt Arrangement and Attachment (Scotland) Act 2002. The creditor must lodge a statement in Form 12 that he is satisfied that the debtor is not subject to an approved DPP.
31. The 2014 Act is introducing a moratorium on diligence in new section 4A-4D of 1985 Act (section 8 of 2014 Act). Where a person gives notice to AiB under new section 4A(1), the AiB must without delay enter the details in the Register of Insolvencies. Where such a notice has been given, it shall not be competent to present a petition for sequestration in respect of any debt owed by that person (new section 4C(3)(c)).
32. Accordingly the Scottish Civil Justice Council may wish to consider amending Rule 12 with effect from 1<sup>st</sup> April 2015 to include circumstances under new section 4A and also amending Form 12 in the bankruptcy court rules. The circumstances include where a person intends to make a debtor application for sequestration under section 5, seek to fulfil the conditions required in order for a trust deed to be granted protected status or to apply for the approval of a debt payment programme in accordance with section 2 of Debt Arrangement and Attachment (Scotland) Act 2002.

Schedule 1 Paragraph 15

33. This rule permits lay representation in certain circumstances for proceedings under section 12 of the 1985 Act. It is proposed to allow money advisers to represent debtors by way of lay representation subject to the discretion of the sheriff on the existing basis in paragraph 15 at appeals following review by AiB of a decision on the discharge of a debtor under section 54B(6) of the 1985 Act from a review by the AiB. Section 32 of the Sheriff Court (Scotland) Act 1971 Act was amended by paragraph 1 of schedule 3 to the 2014 Act to insert subsection (1)(m) to enable court rules to make provision for lay representation at appeals following review of a discharge decision under section 54B of the 1985 Act as amended by section 17 of the 2014 Act. This



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change was introduced following representations from Citizens Advice Scotland during the passage of the 2014 Act through the parliamentary process, requesting that their advisers be able to act in relation to discharge. This was on a transitional basis until the powers in the Courts Reform (Scotland) Bill to make provisions for lay representation in civil cases come into force, which we understand is likely to be later in 2015. The section 32(1)(m) power was commenced by SSI 2014/172 and is available for use.

34. Subject to the views of the Council, it is considered this can be achieved by amending a reference to section 54B(6) into rule 15(1)(a).

#### Act of Sederunt Rules of the Court of Session

35. Chapter 72 provides rules relating to the 1985 Act which we consider will require amendment as a result of the changes being made by the 2014 Act.

#### Rule 72.2- Application for replacement of trustee under section 28A of the Act of 1985

36. At present section 28A of the 1985 Act applies where a trustee acting in two or more sequestrations, dies or ceases to be qualified to continue to act as trustee. The AiB may apply by a single petition to the Court of Session for the removal of the trustee from office and for the appointment of a replacement. Rule 72.2 sets out the procedure for such an application to the Court of Session.
37. Section 29 of the 2014 Act is replacing current section 28A and adding a section 28B with effect from 1<sup>st</sup> April 2015. Thereafter where the trustee acting in two or more sequestrations dies or ceases to be qualified, the AiB can determine that the trustee is removed from office and the AiB can appoint a replacement. AiB however before making a determination under new section 28A, can refer the matter to the court for a direction under section 28B(5). Where this is two different jurisdictions, to the Court of Session and if the same jurisdiction, to the sheriff court (section 28B(6)(a)). AiB remitting a matter to the sheriff for a direction is discussed below and the Council may wish to consider a new rule or form for this purpose.
38. Section 28B(4) and (6) allow the former trustee, the debtor and the newly appointed trustee to appeal to the sheriff against a decision of AiB. Where the appeal relates to two or more sequestrations, the appeal is to the Court of Session. The Council may wish to consider amending Rule 72.2 to provide details of the appeal to the Court of Session under section 28B(6).

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### Rule 72.3- Remit of application under section 63(1) of the 1985 Act

39. The 2014 Act is introducing the ability of AiB to make an order correcting a clerical or incidental error in a document or waive a failure to comply with a time limit (new section 63A). Section 63 of the 1985 Act however remains and under the act an application can be remitted to the Court of Session. The detail of this application is contained with Rule 72.3. We do not consider that this rule requires any amendment.

### Rule 72.4 Register of Insolvencies

40. Rule 72.4 confirms that the register of insolvencies maintained by the Accountant in Bankruptcy under section 1A(1)(b) of the Act of 1985 shall contain the information set out in Form 72.4.

41. The 2014 Act at section 22 is amending section 1A of the 1985 Act to state that the register of insolvencies shall be in such form as may be prescribed by regulations made by the Scottish Ministers and not the Court of Session by act of sederunt. Accordingly rules 72.4 will require to be repealed from 1<sup>st</sup> April 2015.

### New Rule Considerations

#### AiB referring/ remitting a matter to the Sheriff for a direction

42. The 2014 Act is introducing a changes whereby certain applications will now be made to AiB at first instance instead of going directly to the sheriff. In certain circumstances, where an application is made to AiB, if AiB are unable to make a decision, they may refer or remit the matter to the sheriff. This is possible under:

section 3A(3) (inserted by section 25 of 2014 Act)

section 17F(1) & (2) (inserted by section 27 of 2014 Act)

section 28B(5) (inserted by section 29 of 2014 Act)

section 29 (6I) (inserted by section 30 of 2014 Act)

section 42(2E) (inserted by section 32 of 2014 Act)

paragraph 3 schedule 1 (inserted by section 37 of 2014 Act)

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43. The Council may wish to consider if a new form should be drafted to allow AiB to apply to refer or remit matters to the sheriff court. The provisions in the Act include these as “applications” so we think they may be covered in principle by rule 5. We do not consider that any of the existing court forms in the bankruptcy court rules are suitable. In addition the Council may wish to consider if they think a new court rule should be inserted into the bankruptcy court rules to formalise the process. There may require to be further discussion between AiB and Scottish court colleagues in setting up a suitable process.
44. New section 3A relates to an application to AiB for a direction. From 1<sup>st</sup> April 2015 the trustee will apply to AiB for a direction in relation to any matter arising in any sequestration. At present a trustee would apply directly to the sheriff on a Form 5 (bankruptcy court rules). From 1<sup>st</sup> April 2015 the trustee will apply to AiB on a Form 2 contained within the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014 (SSI 2014/226). We envisage that AiB in referring a matter to the sheriff will include all relevant information they have received within the initial application.
45. Once the matter is transferred to the sheriff, we envisage that matters will progress as if the trustee had applied directly to the sheriff. We do not consider there is a need for AiB to be involved and the relevant parties can be involved in the proceedings before the sheriff as at present. It may remove duplication if where there is nothing to add to the determination of the sheriff, the decision is intimated by the court directly to the trustee and any other parties involved under the court rules as at present.
46. New section 17F allows AiB to remit a matter to the sheriff relating to an application to AiB for recall of an award of sequestration. New section 17F(3) states that if an application is remitted to the sheriff under section (1) or (2), the sheriff may dispose of the application or the case in accordance with section 17 as if it were a petition presented by the AiB under section 16. Accordingly the 2014 Act does direct the sheriff how to deal with an application. The court however may wish to create a form to allow the matter to be remitted to the sheriff and any other detail they consider necessary.
47. Section 28B(5) is discussed above under Court of Session Rule changes

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48. Section 29 of 1985 Act relates to the removal of trustee. The changes made by the 2014 Act will allow the AiB to remove a trustee on the application of the commissioners, or the person representing not less than one quarter of creditors, or in any other case where the AiB is satisfied that there are reasons to do so. Subsection (6I) allows AiB to refer the matter to the sheriff for a direction before making an order to remove the trustee or such further order as AiB thinks fit. As above, the Council may wish to consider creating a Form to allow AiB to refer the matter to the sheriff and consider what information they think should accompany any form.
49. Section 42 relates to the contractual powers of a trustee and the power of the trustee to adopt any contract entered into by the debtor before the date of sequestration. The trustee must within 28 days of receipt of a request in writing from any party to a contract entered into by the debtor, adopt or refuse to adopt the contract. The time period may be extended, where AiB is not trustee, by an application to AiB. AiB may refer the matter to the sheriff before making such a decision. As above, the Council may wish to consider creating a Form to allow AiB to refer the matter to the sheriff and consider what information they think should accompany any form.
50. Paragraph 3 schedule 1 relates to debts dependant on contingency. Paragraph 3 allows a creditor to apply to the trustee, and if there is no trustee, to AiB (currently the sheriff), to put a value on a debt so far as it is contingent and the amount that the creditor can claim, shall be that value and no more. An interested person may apply to AiB for a review of the valuation. Sub-paragraph (7) allows AiB to refer a matter to the sheriff for a direction. As above, the Council may wish to consider creating a Form to allow AiB to refer the matter to the sheriff and consider what information they think should accompany any form.

#### Other matters

51. New section 1D, which came into force on 30 June 2014 as discussed in previous correspondence with the Lord President's Office, relates to "the conduct of proceedings in the sheriff court" – A person authorised by the AiB may conduct civil proceedings in the sheriff court. AiB personnel currently conduct proceedings in the sheriff court. This is covered by rule 15(2) of the existing Sheriff Court bankruptcy rules.

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52. Section 14(4) of 1985 Act provides that “the trustee, if not discharged, may before the end of the period of three years...send a memorandum in a form prescribed by the Court of Session act of sederunt to the keeper of the register of inhibitions and adjudications for recording in that register...” The form of memorandum is prescribed in the Bankruptcy court rules. We wish to be able to submit this document electronically to the Keeper and wondered if it might be suitable to include provision within the court rules which would allow the form to be submitted electronically? AiB has been in discussions with the Keeper in relation to receiving documents electronically and this is something the Keeper is agreeable to.

53. Section 30 of 1985 is being amended by section 31 of 2014 Act to introduce a new application to the sheriff with effect from 1<sup>st</sup> April 2015. A commissioner may now be removed from office by order of the sheriff if the sheriff is satisfied that the commissioner is no longer acting in the interests of efficient conduct of the sequestration. An order may be made by the sheriff on the application of AiB, a person representing not less than one quarter in value of the creditors or the trustee. Detail of the process is provided within section 31 of 2014 Act and we consider that such an application could be made on Form 5 of the bankruptcy court rules, however the Council may wish to consider if they a separate rule requires to be drafted.

**Vires:**

The Court of Session has the authority to introduce rules in respect of court procedure under section 32 of the Sheriff Courts (Scotland) Act 1971 and the Court of Session Act 1988 section 5. See paragraph 33 above on lay representation and one addition to the section 32 power. At paragraph 29 et seq above the changes by section 22 of the 2014 Act to the power in section 1A of the 1985 Act are in force for the purposes of making regulations, orders or rules of court. We don't see any bar to the exercise of the Court's general power to revoke the current court rules about the Register of Insolvencies.

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