



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 10

#### CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

##### *Distribution*

#### **129 Priority in distribution**

- (1) The funds of the debtor's estate must be distributed by the trustee in the sequestration to meet the following debts in the order in which they are mentioned—
- (a) the outlays and remuneration of an interim trustee in the administration of the debtor's estate,
  - (b) the outlays and remuneration of the trustee in the sequestration in the administration of the debtor's estate,
  - (c) where the debtor has died—
    - (i) deathbed and funeral expenses reasonably incurred, and
    - (ii) expenses reasonably incurred in administering the deceased's estate,
  - (d) the expenses reasonably incurred by a creditor who is a petitioner for, or concurs in a debtor application for, sequestration,
  - (e) ordinary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
  - (f) secondary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
  - (g) ordinary debts (that is to say, debts which are neither secured debts nor debts mentioned in any other paragraph of this subsection),
  - (h) interest, between the date of sequestration and the date of payment of the debt, at the rate specified in subsection (10) on—
    - (i) the ordinary preferred debts,
    - (ii) the secondary preferred debts, and
    - (iii) the ordinary debts,
  - (i) any postponed debt.
- (2) In this Act—

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“preferred debt” means a debt listed in Part 1 of schedule 3 of this Act,  
 “ordinary preferred debt” means a debt within any of paragraphs 1 to 6 of that Part, and  
 “secondary preferred debt” means a debt within paragraph 7 or 8 of that Part.

- (3) Part 2 of that schedule has effect for the interpretation of Part 1 of that schedule.
- (4) In this Act, “postponed debt” means—
  - (a) a loan made to the debtor, in consideration of a share of the profits in the debtor’s business, which is postponed under section 3 of the Partnership Act 1890 to the claims of other creditors,
  - (b) a loan made to the debtor by the debtor’s spouse or civil partner, or
  - (c) a creditor’s right to—
    - (i) anything vesting in the trustee by virtue of a successful challenge under section 98, or
    - (ii) the proceeds of sale of anything so vesting.
- (5) A debt falling within any of paragraphs (c) to (i) of subsection (1) has the same priority as any other debt falling within the same paragraph and, where the funds of the estate are inadequate to enable the debts mentioned in the paragraph in question to be paid in full, those debts are to abate in equal proportions.
- (6) Any surplus remaining after all the debts mentioned in this section have been paid in full must be made over to the debtor or the debtor’s successors or assignees.
- (7) In subsection (6), “surplus”—
  - (a) includes any kind of estate, but
  - (b) does not include any unclaimed dividend.
- (8) Subsection (6) is subject to Article 35 of the EC insolvency proceedings regulation (which provides that any surplus in secondary proceedings is to be transferred to main proceedings).
- (9) Nothing in this section affects—
  - (a) any right of a secured creditor which is preferable to the rights of the trustee,
  - (b) any preference of the holder of a lien over a title deed, or other document, which has been delivered to the trustee in accordance with a requirement under section 108(5).
- (10) The rate of interest referred to in paragraph (h) of subsection (1) is whichever is the greater of—
  - (a) the prescribed rate at the date of sequestration, and
  - (b) the rate applicable to that debt apart from the sequestration.

## **130      Accounting periods**

- (1) The trustee in the sequestration must make up accounts of the trustee’s intromissions with the debtor’s estate in respect of each accounting period.
- (2) In this Act, “accounting period” is to be construed as follows—
  - (a) the first accounting period is the period of 12 months, or such shorter period as may be determined or agreed in accordance with subsection (5), either period beginning with the date on which sequestration is awarded, and

- (b) any subsequent accounting period is the period of 12 months beginning when its immediately preceding accounting period ends.
- (3) But—
  - (a) paragraph (a) of subsection (2) is subject to subsection (4), and
  - (b) paragraph (b) of subsection (2) is subject to the exception that—
    - (i) in a case where AiB is not the trustee, the trustee and the commissioners (or, if there are no commissioners, the trustee and AiB) agree, or
    - (ii) in a case where AiB is the trustee, the trustee determines, an accounting period is to be some other period beginning when its immediately preceding accounting period ends, it is that other period.
- (4) Where the trustee was appointed under section 54(1) as interim trustee in the sequestration, the first accounting period is—
  - (a) the period—
    - (i) beginning with the date of the appointment as interim trustee, and
    - (ii) ending on the date 12 months after that on which sequestration is awarded, or
  - (b) such shorter period as may be determined or agreed in accordance with subsection (5).
- (5) This subsection applies where the trustee considers that the funds of the debtor's estate are sufficient to pay a dividend in accordance with section 131(1) in respect of—
  - (a) in a case where the trustee is AiB, a shorter period of not less than 6 months determined by AiB, and
  - (b) in any other case, a shorter period of not less than 6 months agreed—
    - (i) between the trustee and the commissioners, or
    - (ii) if there are no commissioners, between the trustee and AiB.
- (6) An agreement under sub-paragraph (i), or determination under sub-paragraph (ii), of subsection (3)(b)—
  - (a) may be made in respect of one accounting period or more,
  - (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, is not to have effect unless made before the day on which that accounting period would, but for the agreement or determination, have ended, and
  - (c) may provide for different accounting periods to be of different duration.

### **131 Distribution in accordance with accounting periods**

- (1) The trustee in the sequestration must pay, under section 135(1), a dividend out of the estate in respect of each accounting period—
  - (a) if the funds of the debtor's estate are sufficient, and
  - (b) after making allowance for future contingencies.
- (2) But subsection (1) is subject to the following subsections.
- (3) The trustee may pay—
  - (a) the debts mentioned in paragraphs (a) to (d) of section 129(1), other than the trustee's own remuneration, at any time,

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- (b) the preferred debts at any time but only with the consent of the commissioners or, if there are no commissioners, of AiB.
- (4) If, in respect of an accounting period, the trustee—
  - (a) is not ready to pay a dividend, or
  - (b) considers it would be inappropriate to pay a dividend because the expense of doing so would be disproportionate to the amount of the dividend,
 the trustee may, with the consent of the commissioners or, if there are no commissioners, of AiB, postpone the payment to a date not later than the time for payment of a dividend in respect of the next accounting period.
- (5) Where a review or appeal is made under section 127 as respects the acceptance or rejection of a creditor's claim, the trustee must, at the time of payment of dividends and until the review or appeal is determined, set aside an amount which would be sufficient, if the determination in the review or appeal were to provide for the creditor's claim being accepted in full, to pay a dividend in respect of that claim.
- (6) Subsection (7) applies where a creditor—
  - (a) has failed to produce evidence in support of the creditor's claim earlier than 8 weeks before the end of an accounting period on being required to do so under section 123(1), and
  - (b) has given a reason for such failure which is acceptable to the trustee.
- (7) The trustee must set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the trustee to be satisfied under that section, an amount which would be sufficient, were the claim accepted in full, to pay a dividend in respect of that claim.
- (8) Where a creditor submits a claim to the trustee later than 8 weeks before the end of an accounting period but more than 8 weeks before the end of a subsequent accounting period in respect of which, after making allowance for future contingencies, funds are available for the payment of a dividend, the trustee must, if the trustee accepts the claim in whole or in part, pay to the creditor—
  - (a) the same dividend as has, or dividends as have, already been paid to creditors of the same class in respect of any accounting period or periods, and
  - (b) whatever dividend may be payable to the creditor in respect of the subsequent accounting period mentioned above.
- (9) Paragraph (a) of subsection (8) is without prejudice to any dividend which has already been paid.
- (10) In the declaration of, and payment of, a dividend, a payment must not be made more than once by virtue of the same debt.
- (11) Any dividend paid in respect of a claim must be paid to the creditor.