



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 17

MISCELLANEOUS

206 Liabilities and rights of co-obligants

- (1) Where a creditor has an obligant bound to the creditor along with the debtor for the whole or part of the debt, the obligant is not freed or discharged from the obligant's liability for the debt by reason of the discharge of the debtor or by virtue of the creditor's voting or drawing a dividend or assenting to, or not opposing, the discharge of the debtor.
- (2) Subsection (3) applies where—
 - (a) the creditor has had a claim accepted in whole or in part, and
 - (b) the obligant holds a security over any part of the debtor's estate
- (3) The obligant must account to the trustee in the sequestration so as to put the estate in the same position as if the obligant had paid the debt to the creditor and thereafter had had the obligant's claim accepted in whole or in part in the sequestration after deduction of the value of the security.
- (4) The obligant may require and obtain at the obligant's own expense from the creditor an assignation of the debt on payment of the amount of the debt and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.
- (5) Subsection (4) is without prejudice to any right, under any rule of law, of a co-obligant who has paid the debt.
- (6) In this section, "obligant" includes cautioner.

207 Member State liquidator deemed creditor

For the purposes of this Act, and without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC insolvency proceedings regulation (exercise of creditors' rights), a member State liquidator appointed in

relation to a debtor is deemed to be a creditor in the sum due to creditors in proceedings in relation to which the member State liquidator holds office.

208 Trustee’s duty to provide certain notices and copies of documents to member State liquidator

- (1) This section applies where a member State liquidator has been appointed in relation to a debtor.
- (2) Where an interim trustee or a trustee in the sequestration must—
 - (a) give notice to the sheriff or AiB, or
 - (b) provide a copy of a document to the sheriff or AiB,
 the interim trustee or trustee in the sequestration must also give such notice, or provide such a copy, to the member State liquidator.
- (3) Subsection (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC insolvency proceedings regulation (duty to co-operate and communicate information).
- (4) In subsection (2)(b), “document” includes an order of court.

209 Extortionate credit transactions

- (1) This section applies where—
 - (a) a debtor is, or has been, party to a transaction for, or involving, the provision of credit to the debtor, and
 - (b) the debtor’s estate is sequestrated.
- (2) The sheriff may, on the application of the trustee in the sequestration, make an order with respect to the transaction if the transaction—
 - (a) is, or was, extortionate, and
 - (b) was not entered into more than 3 years before the date of sequestration.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
 - (a) the terms of the transaction are, or were, such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
 - (b) the transaction otherwise grossly contravened ordinary principles of fair dealing.
- (4) It is to be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is, or as the case may be was, extortionate.
- (5) An order under this section with respect to a transaction may contain such one or more of the following as the sheriff thinks fit—
 - (a) provision setting aside the whole or part of any obligation created by the transaction,
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,
 - (c) provision requiring any person who is a party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the debtor,

- (d) provision requiring any person to surrender to the trustee any property held by the person as security for the purposes of the transaction,
 - (e) provision directing accounts to be taken between any persons.
- (6) Any sums required to be paid, or property required to be surrendered, to the trustee in accordance with an order under this section vest in the trustee.
- (7) The powers conferred by this section are exercisable, in relation to a transaction, concurrently with any powers exercisable under this Act in relation to that transaction as a gratuitous alienation or unfair preference.
- (8) In this section, “credit” has the same meaning as in the Consumer Credit Act 1974.

210 Sederunt book and other documents

- (1) Whoever by virtue of this Act for the time being holds the sederunt book must make it available for inspection at all reasonable hours by any interested party; but this subsection is subject to subsection (2).
- (2) As regards any case in which the person on whom a duty is imposed by subsection (1) is AiB, the Scottish Ministers may by regulations—
- (a) limit the period for which the duty is so imposed, and
 - (b) prescribe conditions in accordance with which the duty is to be carried out.
- (3) The trustee must insert in the sederunt book the information listed in schedule 5.
- (4) The Scottish Ministers may by regulations modify schedule 5.
- (5) An entry in the sederunt book is sufficient evidence of the facts stated in that entry, (except where the entry is founded on by the trustee in the sequestration in the trustee’s own interest).
- (6) Notwithstanding any provision of this Act, the trustee is not bound to insert in the sederunt book a document of a confidential nature.
- (7) The trustee is not bound to exhibit to a person other than a commissioner or AiB any document in the trustee’s possession which is of a confidential nature.
- (8) An extract from the register of insolvencies bearing to be signed by AiB is sufficient evidence of the facts stated in the extract.

211 Power of court to cure defects in procedure

- (1) On the application of a person having an interest, the sheriff may—
- (a) if there has been a failure to comply with a requirement of this Act (or of regulations under this Act), make an order—
 - (i) waiving the failure, and
 - (ii) so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure, or
 - (b) if for any reason anything required or authorised to be done in, or in connection with, the sequestration process cannot be done, make such order as may be necessary to enable the thing to be done.
- (2) An order under subsection (1) may waive a failure to comply with a requirement mentioned in section 212(1)(a) or (b) only if the failure relates to—

- (a) a document to be lodged with the sheriff,
 - (b) a document issued by the sheriff, or
 - (c) a time limit specified in relation to proceedings before the sheriff or a document relating to those proceedings.
- (3) In an order under subsection (1), the sheriff may impose such conditions, including conditions as to expenses, as the sheriff thinks fit and may—
- (a) authorise, or dispense with, the performance of any act in the sequestration process,
 - (b) appoint as trustee on the debtor’s estate AiB or a person who would be eligible to be elected under section 49 (whether or not in place of an existing trustee),
 - (c) extend or waive a time limit specified in or under this Act.
- (4) Subsection (5) applies where the sheriff, or as the case may be the Court of Session, considers that a remit from the sheriff to the Court of Session is desirable because of the importance or complexity of the matters raised by an application under subsection (1).
- (5) The application—
- (a) may at any time be so remitted—
 - (i) of the sheriff’s own accord, or
 - (ii) on an application by a person having an interest, and
 - (b) must be so remitted, if the Court of Session so directs on an application by any such person.

212 Power of Accountant in Bankruptcy to cure defects in procedure

- (1) AiB may make an order—
- (a) correcting a clerical or incidental error in a document required by or under this Act, or
 - (b) waiving a failure—
 - (i) to comply with a time limit specified by or under this Act, and
 - (ii) for which no provision is made by or under this Act.
- (2) An order under subsection (1) may be made—
- (a) on the application of any person having an interest, or
 - (b) without an application if AiB proposes to correct or waive a matter mentioned in that subsection.
- (3) The applicant must notify all interested persons where an application is made under subsection (2)(a).
- (4) AiB must notify all interested persons where AiB proposes to make an order by virtue of subsection (2)(b).
- (5) A notice under subsection (3) or (4) must inform the recipient that the recipient has a right to make representations to AiB in relation to the application or the proposed order within 14 days beginning with the day on which the notice is given.
- (6) Before making an order under subsection (1), AiB must take into account any representations made by an interested person.
- (7) An order under subsection (1) may—

- (a) so far as practicable, restore any person prejudiced by the error or failure to the position that person would have been in but for the error or failure, and
 - (b) impose such conditions, including conditions as to expenses, as AiB thinks fit.
- (8) After making an order under subsection (1) which affects a matter recorded in the Register of Inhibitions, AiB must without delay send a certified copy of the order to the keeper of that register for recording in that register.

213 Decision under section 212(1): review

- (1) An interested person may apply to AiB for a review of a decision of AiB to make, or refuse to make, an order under section 212(1).
- (2) Any application under subsection (1) must be made within 14 days beginning with the day of that decision.
- (3) If an application under subsection (1) is made, AiB must—
 - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision within 28 days beginning with the day on which the application is made.
- (4) An interested person may appeal to the sheriff against a decision by AiB under subsection (3)(b) within 14 days beginning with the day of that decision.
- (5) The decision of the sheriff on an appeal under subsection (4) is final.

214 Review of decision by Accountant in Bankruptcy: grounds of appeal

- (1) For the avoidance of doubt, an appeal under a provision mentioned in subsection (2) may be made on—
 - (a) a matter of fact,
 - (b) a point of law, or
 - (c) the merits.
- (2) The provisions are—
 - (a) section 27(8),
 - (b) section 37(5),
 - (c) section 52(7),
 - (d) section 57(8),
 - (e) section 59(4),
 - (f) section 61(8),
 - (g) section 64(8),
 - (h) section 65(7),
 - (i) section 68(4),
 - (j) section 71(4),
 - (k) section 73(5),
 - (l) section 92(5),
 - (m) section 97(5),
 - (n) section 110(7),
 - (o) section 127(5),

- (p) section 139(6),
- (q) section 144(6),
- (r) section 149(4),
- (s) section 151(7),
- (t) section 161(8),
- (u) section 213(4), and
- (v) paragraph 3(9) of schedule 2.

215 Debtor to co-operate with trustee

- (1) The debtor must take every practicable step (and in particular must execute any document) which may be necessary to enable the trustee in the sequestration to perform the functions conferred on the trustee by this Act.
- (2) If the sheriff, on the trustee's application, is satisfied—
 - (a) that the debtor has failed to execute a document in compliance with subsection (1), the sheriff may authorise the sheriff clerk to do so, or
 - (b) that the debtor has failed to comply in any other respect with that subsection, the sheriff may order the debtor to do so.
- (3) The execution, by virtue of paragraph (a) of subsection (2), of a document by the sheriff clerk has the like force and effect in all respects as if it had been executed by the debtor.
- (4) If the debtor fails to comply with an order under subsection (2)(b) then the debtor commits an offence.
- (5) If the debtor is convicted of an offence under subsection (4) then the debtor is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
 - (i) in a case where the debtor has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
 - (ii) in any other case, to imprisonment for a term not exceeding 3 months, or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in subparagraph (i) or (ii),
 - (b) on conviction on indictment—
 - (i) to a fine or to imprisonment for a term not exceeding 2 years, or
 - (ii) both to a fine and to such imprisonment.
- (6) In this section, “debtor” includes a debtor discharged under this Act.

216 Arbitration and compromise

- (1) The trustee in the sequestration may (but if there are commissioners then only with their consent or with the consent of the creditors or of the sheriff)—
 - (a) refer to arbitration any claim or question, of whatever nature, arising in the course of the sequestration, or
 - (b) make a compromise with regard to any claim, of whatever nature, made against or on behalf of the sequestrated estate.

- (2) Where a claim or question is referred to arbitration under this section, AiB may vary any time limit for carrying out a procedure under this Act.
- (3) A decree arbitral on a reference under paragraph (a) of subsection (1), or a compromise under paragraph (b) of that subsection, is binding on the creditors and on the debtor.

217 Meetings of creditors and commissioners

Part 1 of schedule 6 has effect in relation to meetings of creditors other than the statutory meeting, Part 2 in relation to all meetings of creditors and Part 3 in relation to meetings of commissioners.

218 General offences by debtor etc.

- (1) Subsection (2) applies where, during the relevant period, a debtor makes a false statement in relation to the debtor's assets or financial or business affairs —
 - (a) to a creditor, or
 - (b) to a person concerned in the administration of the debtor's estate.
- (2) Unless the debtor shows that the debtor neither knew nor had reason to believe that the statement was false, the debtor commits an offence.
- (3) Subsection (4) applies where, during the relevant period, a debtor or some other person acting in the debtor's interest (whether or not with the debtor's authority)—
 - (a) destroys,
 - (b) damages,
 - (c) conceals,
 - (d) disposes of, or
 - (e) removes from Scotland,any part of the debtor's estate or any document relating to the debtor's assets or business or financial affairs.
- (4) Unless the perpetrator shows that it was not done with intent to prejudice the creditors, the perpetrator commits an offence.
- (5) If, after the date of sequestration of the estate of a debtor, the debtor (being a person who is absent from Scotland) fails when required by the court to come to Scotland for any purpose connected with the administration of that estate, then the debtor commits an offence.
- (6) Subsection (7) applies where, during the relevant period, a debtor or some other person acting in the debtor's interest (whether or not with the debtor's authority) falsifies any document relating to the debtor's assets or business or financial affairs.
- (7) Unless the perpetrator shows that the perpetrator had no intention to mislead the trustee, a commissioner or any creditor, the perpetrator commits an offence.
- (8) If a debtor whose estate is sequestrated—
 - (a) knows that a person has falsified a document relating to the debtor's assets or business or financial affairs, and
 - (b) fails, within one month of acquiring that knowledge, to report it to the trustee in the sequestration,

then the debtor commits an offence.

- (9) Subsection (10) applies where, during the relevant period, a person (in this subsection and in subsection (10) referred to as “P”) who is absolutely insolvent—
- (a) transfers anything to another person for an inadequate consideration, or
 - (b) grants an unfair preference to any of P’s creditors.
- (10) Unless P shows that it was not done with intent to prejudice P’s creditors, P commits an offence.
- (11) Subsection (12) applies where, at any time in the period of one year ending with the sequestration of the estate of a debtor who is engaged in trade or business, the debtor otherwise than in the ordinary course of the trade or business pledges or disposes of property which the debtor has obtained on credit and has not paid for.
- (12) Unless the debtor shows that it was not done with intent to prejudice the debtor’s creditors, the debtor commits an offence.
- (13) If a debtor, either alone or jointly with another person, obtains credit—
- (a) to the extent of £2,000 or such other sum as may be prescribed or more, or
 - (b) of any amount where, at the time the credit is obtained, the debtor has debts amounting to £1,000 or such other sum as may be prescribed or more,
- without giving the person from whom the credit is obtained the relevant information about the debtor’s status, then the debtor commits an offence.

219 General offences: supplementary and penalties

- (1) For the purpose of calculating an amount of credit mentioned in subsection (13) of section 218 or of debts mentioned in paragraph (b) of that subsection, no account is to be taken of any credit obtained or, as the case may be, of any liability for charges in respect of—
- (a) any of the supplies mentioned in section 222(4), and
 - (b) any council tax (within the meaning of section 99(1) of the Local Government Finance Act 1992).
- (2) For the purposes of section 218(13)—
- (a) “debtor” means—
 - (i) a person whose estate has been sequestrated,
 - (ii) a person who has been adjudged bankrupt in England and Wales or in Northern Ireland, or
 - (iii) a person subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England and Wales,
 being, in the case of a person mentioned in sub-paragraph (i) or (ii), a person who has not been discharged,
 - (b) the reference to the debtor obtaining credit includes a reference to a case where goods—
 - (i) are hired to the debtor under a hire-purchase agreement, or
 - (ii) are agreed to be sold to the debtor under a conditional sale agreement,
 and
 - (c) the “relevant information” about the status of the debtor is the information that (as the case may be)—

- (i) the debtor’s estate has been sequestrated and that the debtor has not been discharged,
 - (ii) the debtor is an undischarged bankrupt in England and Wales or in Northern Ireland, or
 - (iii) the debtor is subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England and Wales.
- (3) In section 218—
“the relevant period” means the period commencing one year immediately before the date of sequestration of the debtor’s estate and ending with the debtor’s discharge, and
references to intent to prejudice creditors include references to intent to prejudice an individual creditor.
- (4) If a person does, or fails to do, in England and Wales or in Northern Ireland anything which if done, or as the case may be not done, in Scotland is an offence under section 218(2), (4), (7), (8), (10) or (12), then that person commits an offence under the subsection in question.
- (5) A person convicted of an offence under section 218 is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
 - (i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
 - (ii) in any other case, to imprisonment for a term not exceeding 3 months, or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or
 - (b) on conviction on indictment, to a fine, or—
 - (i) in the case of an offence under section 218(2), (4), (7) or (12), to imprisonment for a term not exceeding 5 years, or
 - (ii) in any other case, to imprisonment for a term not exceeding 2 years, or both to a fine and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii).

220 Summary proceedings

- (1) Summary proceedings for an offence under this Act may be commenced at any time within 12 months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to the Lord Advocate’s knowledge.
- (2) But such proceedings must not be commenced by virtue of this section more than 3 years after the commission of the offence.
- (3) Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date of commencement of summary proceedings) has effect for the purposes of this section as it has for the purposes of that section.
- (4) For the purposes of subsection (1), a certificate of the Lord Advocate as to the date on which the evidence in question came to the Lord Advocate’s knowledge is conclusive evidence of the date on which it did so.

221 Outlays of insolvency practitioner in actings as interim trustee or trustee

The Scottish Ministers may, by regulations, provide for the premium (or a proportionate part of the premium) of any bond of caution or other security required, for the time being, to be given by an insolvency practitioner to be taken into account as part of the outlays of the practitioner in the practitioner's actings as an interim trustee or as trustee in the sequestration.

222 Supplies by utilities

- (1) This section applies where on any day (“the relevant day”)—
 - (a) sequestration is awarded in a case where a debtor application was made,
 - (b) a warrant is granted under section 22(3) in a case where the petition was presented by a creditor or by a trustee acting under a trust deed, or
 - (c) the debtor grants a trust deed.
- (2) If a request falling within subsection (3) is made for the giving, after the relevant day, of any of the supplies mentioned in subsection (4), the supplier—
 - (a) may make it a condition of the giving of the supply that the office holder personally guarantee the payment of any charges in respect of the supply, and
 - (b) is not to make it a condition (or to do anything which has the effect of making it a condition) of the giving of the supply that any outstanding charges in respect of a supply given to the debtor before the relevant day are paid.
- (3) A request falls within this subsection if it is made—
 - (a) by or with the concurrence of the office holder, and
 - (b) for the purposes of any business which is, or has been, carried on by or on behalf of the debtor.
- (4) The supplies are—
 - (a) a supply of gas by a gas supplier, within the meaning of Part 1 of the Gas Act 1986,
 - (b) a supply of electricity by an electricity supplier, within the meaning of Part 1 of the Electricity Act 1989,
 - (c) a supply of water by Scottish Water, and
 - (d) a supply of communications services by a provider of a public electronic communications service.
- (5) In subsection (4)(d) “communications services” do not include electronic communications services to the extent that they are used to broadcast, or otherwise transmit, programme services (within the meaning of the Communications Act 2003).
- (6) In this section, “the office holder” means, as the case may be—
 - (a) the interim trustee,
 - (b) the trustee in the sequestration, or
 - (c) the trustee acting under a trust deed.

223 Disqualification provisions: power to make regulations

- (1) The Scottish Ministers may make regulations under this section in relation to a disqualification provision.

- (2) A “disqualification provision” is a provision, made by or under any enactment, which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a relevant debtor or a category of relevant debtors from—
 - (a) being elected or appointed to an office or position,
 - (b) holding an office or position, or
 - (c) becoming or remaining a member of a body or group.
- (3) In subsection (2), the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables the person to be dismissed.
- (4) Regulations under subsection (1) may repeal or revoke the disqualification provision.
- (5) Regulations under subsection (1) may amend, or modify the effect of, the disqualification provision—
 - (a) so as to reduce the category of relevant debtors to whom the disqualification provision applies,
 - (b) so as to extend the disqualification provision to some or all natural persons who are subject to a bankruptcy restrictions order,
 - (c) so that the disqualification provision applies only to some or all natural persons who are subject to a bankruptcy restrictions order,
 - (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.
- (6) Regulations made by virtue of subsection (5)(d) may provide for a discretion to be subject to—
 - (a) the approval of a specified person or body,
 - (b) appeal to a specified person, body, court or tribunal.
- (7) The Scottish Ministers may be specified for the purposes of subsection (5)(d) or (6) (a) or (b).
- (8) In this section, “bankruptcy restrictions order” includes—
 - (a) a bankruptcy restrictions order made under paragraph 1 of schedule 4A of the Insolvency Act 1986, and
 - (b) a bankruptcy restrictions undertaking entered into under paragraph 7 of that schedule.
- (9) In this section, “relevant debtor” means a debtor—
 - (a) whose estate has been sequestrated,
 - (b) who has granted (or on whose behalf has been granted) a trust deed,
 - (c) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland, or
 - (d) who, in England and Wales or in Northern Ireland, has made an agreement with the debtor’s creditors—
 - (i) for a composition in satisfaction of the debtor’s debts,
 - (ii) for a scheme of arrangement of the debtor’s affairs, or
 - (iii) for some other kind of settlement or arrangement.
- (10) Regulations under this section may make—
 - (a) provision generally or for a specified purpose only,
 - (b) different provision for different purposes, and

- (c) transitional, consequential or incidental provision.

224 Regulations: applications to Accountant in Bankruptcy etc.

- (1) The Scottish Ministers may, by regulations, make provision in relation to the procedure to be followed in relation to—
 - (a) an application to AiB under this Act,
 - (b) an application to AiB for a review under this Act,
 - (c) any other decision made by AiB under this Act.
- (2) In this section, “decision” includes any appointment, determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation made by AiB.
- (3) Regulations under subsection (1) may in particular make provision for, or in connection with—
 - (a) the procedure to be followed by the person making an application,
 - (b) the form of any report or other document that may be required for the purposes of an application or a decision,
 - (c) the form of a statement of undertakings that must be given by the debtor when making a debtor application,
 - (d) time limits applying in relation to the procedure,
 - (e) the procedure to be followed in connection with the production and recovery of documents relating to an application or a decision,
 - (f) the procedure to be followed (including provision about those entitled to participate) in determining an application or making a decision, and
 - (g) the procedure to be followed after an application is determined or a decision is made.
- (4) Regulations under subsection (1) may—
 - (a) include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate, or
 - (b) modify any enactment (including this Act).
- (5) This section is without prejudice to section 194.