



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 3

#### INITIAL STAGES OF SEQUESTRATION, STATUTORY MEETING AND TRUSTEE VOTE

##### *Initial stages*

#### **39 Interim preservation of estate**

- (1) An interim trustee may, in pursuance of the function conferred by section 53(1), give general or particular directions to the debtor relating to the management of the debtor's estate.
- (2) In exercising the function so conferred, an interim trustee may—
  - (a) require the debtor to deliver up to the interim trustee—
    - (i) any money or valuables, or
    - (ii) any document relating to the debtor's business or financial affairs, belonging to, or in the possession of, the debtor or under the debtor's control,
  - (b) place in safe custody anything mentioned in paragraph (a),
  - (c) require the debtor to deliver up to the interim trustee any perishable goods belonging to the debtor or under the debtor's control,
  - (d) arrange for the sale or disposal of such goods,
  - (e) make, or cause to be made, an inventory or valuation of any property belonging to the debtor,
  - (f) require the debtor to implement any transaction entered into by the debtor,
  - (g) effect or maintain insurance policies in respect of the business or property of the debtor, or
  - (h) carry on any business of the debtor or borrow money in so far as it is necessary for the interim trustee to do so to safeguard the debtor's estate.
- (3) Section 111 applies to an interim trustee as it applies to a trustee.
- (4) The sheriff, on the application of an interim trustee, may—
  - (a) on cause shown, grant a warrant authorising the interim trustee to enter the house where the debtor resides or the debtor's business premises and to search

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- for and take possession of anything mentioned in subsection (2)(a) or (c) (if need be, by opening shut and lock-fast places), or
  - (b) make such other order to safeguard the debtor's estate as the sheriff thinks appropriate.
- (5) Where AiB is the interim trustee, the debtor may apply to AiB for a review of a direction under subsection (1) on the ground that the direction is unreasonable.
- (6) If an application under subsection (5) 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 direction (whether or not substituting a new direction) within 28 days beginning with that day.
- (7) The sheriff may, on an application made by the debtor made within 14 days beginning with the day on which AiB makes a decision under subsection (6)(b)—
  - (a) set aside a direction under subsection (1) or (6)(b) if the sheriff considers the direction to be unreasonable, and
  - (b) in any event, give such directions to the debtor regarding the management of the debtor's estate as the sheriff considers appropriate.
- (8) The debtor must comply with a direction—
  - (a) under subsection (1) pending a decision by AiB under subsection (6)(b), and
  - (b) under subsection (6)(b) pending the final determination of any appeal (subject to any interim order of the sheriff).
- (9) Where AiB is not the interim trustee, the sheriff, on an application by the debtor on the grounds that a direction under subsection (1) is unreasonable, may—
  - (a) set aside the direction if the sheriff considers it to be unreasonable, and
  - (b) in any event, give such directions to the debtor regarding the management of the debtor's estate as the sheriff considers appropriate.
- (10) But, subject to any interim order of the sheriff, the debtor must comply with the direction appealed against pending the final determination of the appeal.

#### **40 Offences in relation to interim preservation of estate**

- (1) If a debtor—
  - (a) fails without reasonable excuse to comply with a direction under subsection (1), (6)(b), (7)(b) or (9)(b), or a requirement under subsection (2) (a), (c) or (f), of section 39, or
  - (b) obstructs the interim trustee where the interim trustee is acting in pursuance of subsection (4)(a) of that section,
 then the debtor commits an offence.
- (2) A person who commits an offence under subsection (1) 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 subparagraph (i) or (ii), or

- (b) on conviction on indictment—
  - (i) to a fine, or
  - (ii) to imprisonment for a term not exceeding 2 years,or both to a fine and to such imprisonment.

#### **41 Statement of assets and liabilities etc.**

- (1) Where a debtor has made a debtor application then, within 7 days after the appointment of the trustee in the sequestration under section 51 (where the trustee is not AiB), the debtor must send to the trustee such statement of assets and liabilities as was sent to AiB in pursuance of section 8(3)(a).
- (2) Where a petitioner for sequestration is a creditor, or a trustee acting under a trust deed, then, within 7 days after having been notified by the trustee as mentioned in section 51(13) the debtor must send to the trustee a statement of assets and liabilities.
- (3) If the debtor—
  - (a) fails to disclose any material fact in a statement of assets and liabilities sent to the trustee in accordance with subsection (1) or (2), or
  - (b) makes a material misstatement in any such statement,then the debtor commits of an offence.
- (4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months (or both to such fine and to such imprisonment).
- (5) In any proceedings for an offence under subsection (3), it is a defence for the accused to show that the accused had a reasonable excuse for the failure to disclose or for the making of the misstatement.

#### **42 Duties on receipt of list of assets and liabilities**

- (1) As soon as practicable after a trustee has received a statement of assets and liabilities—
  - (a) the trustee must prepare a statement of the debtor's affairs so far as within the knowledge of the trustee, and
  - (b) if, in the trustee's opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in section 129(1)(e) to (i) the trustee is so to indicate in the statement prepared under paragraph (a).
- (2) Not later—
  - (a) than 4 days before the date fixed for the statutory meeting, or
  - (b) where the trustee does not intend to hold such a meeting, than 60 days after the date on which the sequestration is awarded,the trustee must send to AiB the statement, copy statement and comments mentioned in subsection (3).
- (3) The statement, copy statement and comments are—

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- (a) the statement of assets and liabilities (unless that statement has already been received by AiB by virtue of section 8(3)(a)),
  - (b) subject to subsection (4), a copy of the statement prepared under subsection (1) (a), and
  - (c) written comments by the trustee indicating what in the trustee's opinion are the causes of the insolvency and to what extent the conduct of the debtor may have contributed to the insolvency.
- (4) The trustee need not send the copy mentioned in subsection (3)(b) if the trustee has, in accordance with section 108(1)(c), sent a copy of the inventory and valuation to AiB.
- (5) The written comments made under subsection (3)(c) are absolutely privileged.
- (6) Subsections (2) and (5) do not apply in any case where AiB is the trustee.