



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 7

SAFEGUARDING INTERESTS OF CREDITORS

Recall of certain orders

100 Recall of order for payment of capital sum on divorce or on dissolution of civil partnership

- (1) This section applies where—
- (a) a court has, under section 8(2) of the Family Law (Scotland) Act 1985 and whether before or after the coming into force of this Act, made—
 - (i) an order for the payment by a debtor of a capital sum,
 - (ii) an order for the transfer of property by the debtor, or
 - (iii) a pension sharing order,
 - (b) on the date of the making of the order the debtor was absolutely insolvent or was rendered so by implementation of the order, and
 - (c) within 5 years after the making of the order—
 - (i) the debtor's estate has been sequestrated other than on the death of the debtor,
 - (ii) the debtor has granted a trust deed which has (whether or not within the 5 years) become a protected trust deed,
 - (iii) the debtor has died and, within 12 months after the date of death, the debtor's estate has been sequestrated, or
 - (iv) the debtor has died and, within those 12 months, a judicial factor has been appointed under section 11A of the 1889 Act to administer the debtor's estate.
- (2) The court, on the application of (as the case may be) the trustee in the sequestration, the trustee acting under the trust deed or the judicial factor, may make an order for recall of the order in question and—
- (a) for the repayment to the applicant of the whole or part of any sum already paid under the order,

Status: *This is the original version (as it was originally enacted).*

- (b) for the return to the applicant of all or part of any property already transferred under the order, or
 - (c) (where such property has been sold) for payment to the applicant of all or part of the proceeds of sale.
- (3) But before making an order under subsection (2), the court must have regard to all the circumstances including, in particular, the financial and other circumstances (in so far as made known to the court) of the person against whom the order would be made.