



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 8

#### ADMINISTRATION OF ESTATE BY TRUSTEE

##### *General*

#### **108 Taking possession of estate by trustee**

- (1) The trustee in the sequestration must—
  - (a) for the purpose of recovering the estate of the debtor under section 50(1)(a), take possession as soon as may be after the trustee's appointment—
    - (i) of the debtor's whole estate so far as vesting in the trustee under sections 78 and 86, and
    - (ii) of any document in the debtor's possession or control relating to the debtor's assets or the debtor's business or financial affairs,
  - (b) make up and maintain an inventory and valuation of the estate, and
  - (c) forthwith thereafter send a copy of the inventory and valuation to AiB.
- (2) Paragraph (a) of subsection (1) is subject to section 113.
- (3) The trustee is entitled to have access to, and to make a copy of, any document relating to the assets or the business or financial affairs of the debtor—
  - (a) sent by or on behalf of the debtor to a third party, and
  - (b) in the third party's hands.
- (4) If a person obstructs the trustee in the trustee's exercise, or attempted exercise, of a power conferred by subsection (3), the sheriff may, on the trustee's application, order the person to cease obstructing the trustee.
- (5) The trustee may require delivery to the trustee of any title deed or other document of the debtor, even if a right of lien is claimed over it.
- (6) Subsection (5) is without prejudice to any preference of the holder of the lien.

## 109 Management and realisation of estate

- (1) The trustee in the sequestration, as soon as may be after the trustee's appointment, must consult with AiB concerning the exercise of the trustee's functions under section 50(1) (a).
- (2) The trustee must comply with any general or specific directions given to the trustee (as the case may be)—
  - (a) by the creditors,
  - (b) on the application under this subsection of the commissioners, by the sheriff, or
  - (c) by AiB,
 as to the exercise by the trustee of such functions.
- (3) But subsection (2) is subject to subsections (4), (9) and (12).
- (4) Subsections (1) and (2) do not apply where the trustee is AiB.
- (5) The trustee may—
  - (a) carry on or close down any business of the debtor,
  - (b) bring, defend or continue any legal proceedings relating to the estate of the debtor,
  - (c) create a security over any part of the estate,
  - (d) where any right, option or other power forms part of the debtor's estate, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power,
  - (e) borrow money in so far as it is necessary for the trustee to do so to safeguard the debtor's estate, and
  - (f) effect or maintain insurance policies in respect of the business or property of the debtor.
- (6) Any sale of the debtor's estate by the trustee may either be by public sale or by private bargain.
- (7) The following rules apply to the sale of any part of the debtor's heritable estate over which a heritable security is held by a creditor or creditors if the rights of the secured creditor or creditors are preferable to those of the trustee—
  - (a) the trustee may sell that part only with the concurrence of every such creditor unless the trustee obtains a sufficiently high price to discharge every such security,
  - (b) the following acts are precluded—
    - (i) the taking of steps by a creditor to enforce the creditor's security over the part after the trustee has intimated to the creditor that the trustee intends to sell the part,
    - (ii) the commencement by the trustee of the procedure for the sale of the part after the creditor has intimated to the trustee that the creditor intends to commence the procedure for its sale,
  - (c) except that where the trustee or a creditor has given intimation under paragraph (b) but has unduly delayed in proceeding with the sale then, if authorised by the sheriff in the case of—
    - (i) sub-paragraph (i) of that paragraph, any creditor to whom intimation has been given may enforce the creditor's security, or

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

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- (ii) sub-paragraph (ii) of that paragraph, the trustee may sell the part.
- (8) The function of the trustee under section 50(1)(a) to realise the debtor's estate includes the function of selling, with or without recourse against the estate, debts owing to the estate.
- (9) The trustee may sell any perishable goods without complying with any directions given to the trustee under subsection (2)(a) or (c) if the trustee considers that compliance with such directions would adversely affect the sale.
- (10) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this section.
- (11) It is not competent for the trustee or an associate of the trustee, or for any commissioner, to purchase any of the debtor's estate in pursuance of this section.
- (12) The trustee—
- (a) must comply with the requirements of subsection (7) of this section, and
  - (b) may do anything permitted by this section,
- only in so far as, in the trustee's view, it would be of financial benefit to the estate of the debtor, and in the interests of the creditors, to do so.