



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 13

#### BANKRUPTCY RESTRICTIONS ORDERS AND INTERIM BANKRUPTCY RESTRICTIONS ORDERS

##### *Bankruptcy restrictions orders*

#### **156 Grounds for making bankruptcy restrictions order**

- (1) A bankruptcy restrictions order must be made if AiB, or as the case may be the sheriff, thinks it appropriate having regard to the conduct, whether before or after the date of sequestration, of the debtor.
- (2) AiB, or as the case may be the sheriff, is in particular to take into account any of the following kinds of behaviour on the part of the debtor—
  - (a) failing to keep records which account for a loss of property—
    - (i) by the debtor, or
    - (ii) by a business carried on by the debtor,  
where the loss occurred in the period beginning 2 years before the date of presentation of the petition for sequestration, or as the case may be the date the debtor application was made, and ending with the date of the application for a bankruptcy restrictions order,
  - (b) failing to produce records of that kind on demand by—
    - (i) AiB,
    - (ii) the interim trustee, or
    - (iii) the trustee in the sequestration,
  - (c) failing to supply accurate information to an authorised person for the purpose of the granting under section 9 of a certificate for sequestration of the debtor's estate,
  - (d) making a gratuitous alienation, or any other alienation, for no consideration or for no adequate consideration, which a creditor has, under any rule of law, right to challenge,
  - (e) creating an unfair preference, or any other preference, which a creditor has, under any rule of law, right to challenge,

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*Status: This is the original version (as it was originally enacted).*

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- (f) making an excessive pension contribution,
  - (g) failing to supply goods or services which were wholly or partly paid for, where the failure has given rise to a claim submitted by a creditor under section 46 or 122,
  - (h) trading at a time before the date of sequestration when the debtor knew, or ought to have known, that the debtor was unable to meet the debtor's debts,
  - (i) incurring, before the date of sequestration, a debt which the debtor had no reasonable expectation of being able to pay,
  - (j) failing to account satisfactorily to the sheriff, AiB, the interim trustee or the trustee, for—
    - (i) a loss of property, or
    - (ii) an insufficiency of property to meet the debtor's debts,
  - (k) carrying on any gambling, speculation or extravagance—
    - (i) which may have contributed materially to, or increased the extent of, the debtor's debts, or
    - (ii) which took place between the date of presentation of the petition for sequestration, or as the case may be the date the debtor application was made, and the date on which sequestration is awarded,
  - (l) neglect of business affairs, being neglect of a kind which may have contributed materially to, or increased the extent of, the debtor's debts,
  - (m) fraud or breach of trust,
  - (n) failing to co-operate with—
    - (i) AiB,
    - (ii) the interim trustee, or
    - (iii) the trustee in the sequestration.
- (3) AiB, or as the case may be the sheriff, must in particular also consider whether the debtor—
- (a) has previously been sequestrated, and
  - (b) remained undischarged from that sequestration at any time during the 5 years ending with the date of the sequestration to which the application relates.
- (4) For the purposes of subsection (2)—
- “excessive pension contribution” is to be construed in accordance with section 101, and
  - “gratuitous alienation” means an alienation challengeable under section 98.