



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 1

APPLICATION OR PETITION FOR SEQUESTRATION

Concurrent proceedings

18 Powers in relation to concurrent proceedings

- (1) Where, in the course of instant proceedings (see section 17(1)) which are by petition, any of the circumstances mentioned in paragraphs (a) to (g) of section 17(2) exists, the sheriff to whom the petition in the instant proceedings was presented may, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest—
 - (a) allow the petition to proceed,
 - (b) sist it, or
 - (c) dismiss it.
- (2) Without prejudice to subsection (1), where, in the course of such instant proceedings, any of the circumstances mentioned in paragraph (a), (b), (e), (f) or (g) of section 17(2) exists, the Court of Session may, on the Court's own motion or at the instance of the debtor, of a creditor or of any other person having an interest—
 - (a) direct the sheriff before whom the petition in the instant proceedings is pending or the sheriff before whom the other petition is pending, to sist or dismiss the petition in the instant proceedings or, as the case may be, the other petition, or
 - (b) order the petitions to be heard together.
- (3) Without prejudice to subsection (1), where, in the course of such instant proceedings, any of the circumstances mentioned in paragraph (c) or (d) of section 17(2) exists, the sheriff to whom the petition in the instant proceedings was presented may, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest, direct AiB to dismiss the debtor application.
- (4) AiB must recall an award of sequestration if—
 - (a) the award was by virtue of a debtor application, and

Status: This is the original version (as it was originally enacted).

- (b) the sheriff directs AiB to dismiss the debtor application.
- (5) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor or, as the case may be, the other person would have been in if the sequestration had not been awarded.
- (6) A recall of an award of sequestration does not—
- (a) affect the interruption of prescription caused by—
 - (i) the presentation of the petition for sequestration,
 - (ii) the making of the debtor application, or
 - (iii) the submission of a claim under section 46 or 122,
 - (b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee, with a person acting in good faith, or
 - (c) affect a bankruptcy restrictions order which has not been revoked under section 161(1)(a).
- (7) Without delay after granting recall of an award of sequestration under subsection (4), AiB must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.
- (8) Where, in the course of instant proceedings which are by debtor application, any of the circumstances mentioned in paragraphs (a) to (g) of section 17(2) exists, AiB may dismiss the debtor application in the instant proceedings.
- (9) Subsection (10) applies where, in respect of the same estate—
- (a) a petition for sequestration is pending before a sheriff, and
 - (b) an application for an analogous remedy (see section 17(8)) is proceeding or an analogous remedy is in force.
- (10) The sheriff, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest, may—
- (a) allow the petition for sequestration to proceed,
 - (b) sist it, or
 - (c) dismiss it.
- (11) Subsection (12) applies where, in respect of the same estate—
- (a) a debtor application has been made and is not yet determined, and
 - (b) an application for an analogous remedy is proceeding or an analogous remedy is in force.
- (12) AiB may proceed to determine the application or may dismiss it.