



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 17 **S**

MISCELLANEOUS

209 **Extortionate credit transactions** **S**

- (1) This section applies where—
 - (a) a debtor is, or has been, party to a transaction for, or involving, the provision of credit to the debtor, and
 - (b) the debtor's estate is sequestrated.
- (2) The sheriff may, on the application of the trustee in the sequestration, make an order with respect to the transaction if the transaction—
 - (a) is, or was, extortionate, and
 - (b) was not entered into more than 3 years before the date of sequestration.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
 - (a) the terms of the transaction are, or were, such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
 - (b) the transaction otherwise grossly contravened ordinary principles of fair dealing.
- (4) It is to be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is, or as the case may be was, extortionate.
- (5) An order under this section with respect to a transaction may contain such one or more of the following as the sheriff thinks fit—
 - (a) provision setting aside the whole or part of any obligation created by the transaction,
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,
 - (c) provision requiring any person who is a party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the debtor,

Changes to legislation: Bankruptcy (Scotland) Act 2016, Section 209 is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (d) provision requiring any person to surrender to the trustee any property held by the person as security for the purposes of the transaction,
 - (e) provision directing accounts to be taken between any persons.
- (6) Any sums required to be paid, or property required to be surrendered, to the trustee in accordance with an order under this section vest in the trustee.
- (7) The powers conferred by this section are exercisable, in relation to a transaction, concurrently with any powers exercisable under this Act in relation to that transaction as a gratuitous alienation or unfair preference.
- (8) In this section, “credit” has the same meaning as in the Consumer Credit Act 1974.

Commencement Information

II S. 209 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)