



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 5

VESTING ETC.

Vesting

79 Provision supplementary to section 78 and interpretation of Part 5

- (1) In subsection (1) of section 78, the “whole estate of the debtor” means the debtor's whole estate at the date of sequestration (wherever situated) including—
- (a) any income or estate vesting in the debtor on the date of sequestration,
 - (b) any property of the debtor title to which has not been completed by another person deriving right from the debtor, and
 - (c) the capacity to exercise and to take proceedings for exercising all such powers in, over or in respect of any property as—
 - (i) might have been exercised by the debtor for the debtor's own benefit as at, or on, the date of sequestration, or
 - (ii) might be exercised on a relevant date.
- (2) But subsection (1) is subject to subsection (3) ^{F1}....
- (3) The “whole estate of the debtor” does not include any interest of the debtor as tenant under—
- (a) a tenancy which is an assured tenancy within the meaning of Part 2 of the Housing (Scotland) Act 1988,
 - (b) a protected tenancy within the meaning of the Rent (Scotland) Act 1984 in respect of which, by virtue of Part 8 of that Act, no premium can lawfully be required as a condition of assignment, ^{F2}...
 - (c) a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001^{F3}, or
 - (d) a private residential tenancy within the meaning of the Private Housing (Tenancies) (Scotland) Act 2016].
- (4) On the date on which the trustee serves notice to that effect on the debtor, the interest of the debtor as tenant under any of the tenancies referred to in subsection (3) forms

Changes to legislation: Bankruptcy (Scotland) Act 2016, Section 79 is up to date with all changes known to be in force on or before 17 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

part of the debtor's estate and vests in the trustee as if it had vested in the trustee under section 86(5).

(5) In this Part “relevant date” means a date after the date of sequestration and before the date which is 4 years after the date of sequestration.

Textual Amendments

- F1** Words in s. 79(2) omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), regs. 1, **4(11)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in s. 79(3)(b) omitted (1.12.2017) by virtue of [The Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(Consequential Provisions\) Regulations 2017 \(S.S.I. 2017/405\)](#), regs. 1, **4(2)(a)**
- F3** S. 79(3)(d) and word inserted (1.12.2017) by [The Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(Consequential Provisions\) Regulations 2017 \(S.S.I. 2017/405\)](#), regs. 1, **4(2)(b)**

Commencement Information

- I1** S. 79 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\(2\)\(b\)](#)