



Bankruptcy (Scotland) Act 2016

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PART 13

BANKRUPTCY RESTRICTIONS ORDERS AND INTERIM BANKRUPTCY RESTRICTIONS ORDERS

Bankruptcy restrictions orders

155 Bankruptcy restrictions order

- (1) Where sequestration of a living debtor's estate is awarded, an order (to be known as a "bankruptcy restrictions order") in respect of the debtor may be made—
 - (a) by AiB, or
 - (b) on the application of AiB, by the sheriff.
- (2) If AiB proposes to make a bankruptcy restrictions order, AiB must so notify the debtor.
- (3) A notice under subsection (2) must inform the debtor that the debtor has a right to make representations to AiB in relation to the proposed bankruptcy restrictions order.
- (4) Before making a bankruptcy restrictions order, AiB must take into account any representations made by the debtor.

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

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- 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,
 - (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.

157 Bankruptcy restrictions order: application of section 218(13)

- (1) Where—
 - (a) AiB thinks it appropriate, AiB may, or
 - (b) as the case may be, the sheriff thinks it appropriate, the sheriff may,specify in a bankruptcy restrictions order that section 218(13) is to apply to the debtor, during the period the debtor is subject to the order, as if the debtor were a debtor within the meaning of section 219(2)(a).
- (2) But for the purposes of subsection (1), section 219(2) has effect as if, for paragraph (c) of that section, there were substituted—
 - “(c) the “relevant information” about the status of the debtor is the information that (as the case may be)—
 - (i) the debtor is subject to a bankruptcy restrictions order, or
 - (ii) where the debtor’s estate has been sequestrated and the debtor has not been discharged, that fact.”.

158 Timing for making a bankruptcy restrictions order

- (1) AiB must make, or apply to the sheriff for, any bankruptcy restrictions order within the period which begins with the date of sequestration and ends with the date on which the debtor’s discharge becomes effective.
- (2) But subsection (1) is subject to subsection (3).
- (3) After the end of the period referred to in subsection (1), AiB may—
 - (a) make a bankruptcy restrictions order, or
 - (b) make an application for a bankruptcy restrictions order,with the permission of the sheriff.

159 Duration of bankruptcy restrictions order and application for revocation or variation

- (1) A bankruptcy restrictions order—
 - (a) comes into force when made, and
 - (b) ceases to have effect at the end of a day specified, for the purposes of this paragraph, in the order.
- (2) The day specified under subsection (1)(b)—
 - (a) in the case of an order made by AiB—
 - (i) must not be before the expiry of 2 years beginning with the day on which the order is made, but
 - (ii) must be within 5 years beginning with that day, and
 - (b) in the case of an order made by the sheriff—
 - (i) must not be before the expiry of the 5 years beginning with the day on which the order is made, but
 - (ii) must be within 15 years beginning with that day.
- (3) On an application by the debtor, the person mentioned in subsection (4) may—

- (a) revoke a bankruptcy restrictions order, or
 - (b) vary it.
- (4) The person is, in the case of a bankruptcy restrictions order —
- (a) made by AiB, AiB, and
 - (b) made by the sheriff, the sheriff.
- (5) If an application under subsection (3) is made to AiB, AiB must—
- (a) take into account any representations made, within 21 days beginning with the day on which the application is made, by an interested person, and
 - (b) confirm, revoke or vary the order within 28 days beginning with that day.
- (6) The debtor may appeal to the sheriff against any decision of AiB under subsection (5)
- (b) within 14 days beginning with the date of the decision.
- (7) The sheriff may—
- (a) in determining such an appeal, or
 - (b) otherwise on an application by AiB,
- make an order providing that the debtor may not make another application under subsection (3) for such period as may be specified in the order.
- (8) Variation under subsection (3)(b) may include providing for such an order to cease to have effect at the end of a day earlier than that specified under subsection (1)(b).

Interim bankruptcy restrictions orders

160 Interim bankruptcy restrictions orders

- (1) Subsection (2) applies at any time—
- (a) after AiB notifies the debtor under section 155(2) that AiB proposes to make a bankruptcy restrictions order, and
 - (b) before AiB decides whether to make the order.
- (2) AiB may make an interim bankruptcy restrictions order if AiB thinks—
- (a) that there are *prima facie* grounds to suggest that a bankruptcy restrictions order will be made, and
 - (b) that it is in the public interest to make such an order.
- (3) Subsection (4) applies at any time between—
- (a) the making of an application to the sheriff for a bankruptcy restrictions order, and
 - (b) the determination of that application.
- (4) The sheriff may, on the application of AiB, make an interim bankruptcy restrictions order if the sheriff thinks—
- (a) that there are *prima facie* grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
 - (b) that it is in the public interest to make an interim bankruptcy restrictions order.
- (5) An interim bankruptcy restrictions order—
- (a) has the same effect as a bankruptcy restrictions order, and
 - (b) comes into force on being made.

- (6) An interim bankruptcy restrictions order ceases to have effect—
- (a) where it was made by AiB, on AiB deciding whether or not to make a bankruptcy restrictions order,
 - (b) where it was made by the sheriff, on the determination of the application for the bankruptcy restrictions order, or
 - (c) if the sheriff discharges it on the application of AiB or of the debtor.
- (7) Where a bankruptcy restrictions order is made in respect of a debtor who is subject to an interim bankruptcy restrictions order, subsection (2) of section 159 has effect in relation to the bankruptcy restrictions order as if the reference in that subsection to the day the order is made were a reference to the day the interim bankruptcy restrictions order is made.

Effect of recall of sequestration

**161 Bankruptcy restrictions orders and interim bankruptcy restrictions orders:
effect of recall of sequestration**

- (1) Where an award of sequestration of a debtor's estate is recalled under section 30(1)—
- (a) the sheriff may revoke any bankruptcy restrictions order or interim bankruptcy restrictions order in force in respect of the debtor, and
 - (b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.
- (2) Where the sheriff refuses to revoke, under subsection (1)(a), a bankruptcy restrictions order or interim bankruptcy restrictions order the debtor may, within 28 days after the date on which the award of sequestration is recalled, appeal to the Sheriff Appeal Court against the refusal.
- (3) The decision of the Sheriff Appeal Court on an appeal under subsection (2) is final.
- (4) Where an award of sequestration of a debtor's estate is recalled under section 34(1) or 35(6)—
- (a) AiB may revoke any bankruptcy restrictions order or interim bankruptcy restrictions order in force in respect of the debtor, and
 - (b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.
- (5) Where AiB refuses to revoke under subsection (4) a bankruptcy restrictions order or interim bankruptcy restrictions order, the debtor may apply to AiB for a review of the refusal.
- (6) Any application under subsection (5) must be made within 14 days beginning with the day on which the award of sequestration is recalled.
- (7) If an application under subsection (5) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
 - (b) confirm the refusal or revoke the order within 28 days beginning with that day.
- (8) The debtor may appeal to the sheriff against any decision of AiB under subsection (7)
- (b) within 14 days beginning with the day of the decision.

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(9) The decision of the sheriff on an appeal under subsection (8) is final.