Bankruptcy (Scotland) Act 1985 (repealed) (c. 66)
SCHEDULE 1 – Determination of Amount of Creditor's Claim
Document Generated: 2024-07-19

1

S C H E D U L E S

SCHEDULE 1

Sections 5(5) and 22(9).

DETERMINATION OF AMOUNT OF CREDITOR'S CLAIM

Modifications etc. (not altering text)

C1 Sch. 1 applied with modifications by S.I. 1986/1915, **Rules 4**.16(1)(f), 7.9(5) and by Rule 2.41(2) (as substituted (15.9.2003) by The Insolvency (Scotland) Amendment Rules 2003 (S.I. 2003/2111), **Rule 3**, {Sch. 1, Pt. 1}) (as amended (20.12.2008) by S.S.I. 2008/393 art. 3)

C2 Sch. 1 applied in part (with modifications) (14.11.2011) by The Investment Bank Special Administration (Scotland) Rules 2011 (S. I. 2011/2262), **rule 127**

Amount which may be claimed generally

1   (1) Subject to the provisions of this Schedule, the amount in respect of which a creditor shall be entitled to claim shall be the accumulated sum of principal and any interest which is due on the debt as at the date of sequestration.

(2) If a debt does not depend on a contingency but would not be payable but for the sequestration until after the date of sequestration, the amount of the claim shall be calculated as if the debt were payable on the date of sequestration but subject to the deduction of interest at the rate specified in section 51(7) of this Act from the said date until the date for payment of the debt.

(3) In calculating the amount of his claim, a creditor shall deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the debtor or by the usage of trade.

Claims for aliment and periodical allowance on divorce

2   (1) A person entitled to aliment, however arising, from a living debtor as at the date of sequestration, or from a deceased debtor immediately before his death, shall not be entitled to include in the amount of his claim—

(a)   any unpaid aliment for any period before the date of sequestration unless the amount of the aliment has been quantified by court decree or by any legally binding obligation which is supported by evidence in writing, and,

[**F1**(i)] in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses)[**F2**, or

(ii) in the case of civil partners (or, where the aliment is payable to a former civil partner in respect of a child after dissolution of a civil partnership, former civil partners),]

they were living apart during that period;

(b)   any aliment for any period after the date of sequestration.

2   *Bankruptcy (Scotland) Act 1985 (repealed) (c. 66)*
                                                                      SCHEDULE 1 – Determination of Amount of Creditor's Claim
                                                                      Document Generated: 2024-07-19

(2) Sub-paragraph (1) above shall apply to a periodical allowance payable on divorce [**F3**or on dissolution of a civil partnership]—

    (a)   by virtue of a court order; or

    (b)   under any legally binding obligation which is supported by evidence in writing,

as it applies to aliment and as if for the words from "in the case [**F4**, where they first occur] " to "they" there were substituted the words "the payer and payee".

Textual Amendments

F1   Words in Sch. 1 para. 2(1)(a) renumbered (5.12.2005) as Sch. 1 para. 2(1)(a)(i) by Civil Partnership Act 2004 (c. 33), ss. 261(2), 263, **Sch. 28 para. 41(2)**; S.S.I. 2005/604, **art. 2(c)**

F2   Sch. 1 para. 2(1)(a)(ii) and word inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(2), 263, **Sch. 28 para. 41(3)**; S.S.I. 2005/604, **art. 2(c)**

F3   Words in Sch. 1 para. 2(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(2), 263, **Sch. 28 para. 41(4)**; S.S.I. 2005/604, **art. 2(c)**

F4   Words in Sch. 1 para. 2(2) inserted (1.4.2015) by Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), s. 57(2), **sch. 3 para. 36**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

Debts depending on contingency

3   (1) Subject to sub-paragraph (2) below, the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.

    (2) On an application by the creditor—

        (a)   to the **F5**. . . trustee; or

        (b)   if there is no **F5**. . . trustee, to the [**F6**Accountant in Bankruptcy] ,

the **F5**. . . trustee or [**F6**Accountant in Bankruptcy] shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more; and, where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

[**F7**(3) An interested person may apply to the Accountant in Bankruptcy for a review of a valuation under sub-paragraph (2) by the trustee.

    (4) An application under sub-paragraph (3) must be made before the expiry of the period of 14 days beginning with the day of the valuation.

    (5) If an application under subsection (3) is made, the Accountant in Bankruptcy must—

        (a)   take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

        (b)   confirm or vary the valuation before the expiry of the period of 28 days beginning with the day on which the application is made.

    (6) An interested person may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (5)(b) before the expiry of the period of 14 days beginning with the day of the decision.

Bankruptcy (Scotland) Act 1985 (repealed) (c. 66)
SCHEDULE 1 – Determination of Amount of Creditor's Claim
Document Generated: 2024-07-19

3

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(7) The Accountant in Bankruptcy may refer a case to the sheriff for a direction before making a decision under sub-paragraph (5)(b).

(8) An appeal to the sheriff under sub-paragraph (6) may not be made in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under sub-paragraph (7).**]**

Textual Amendments

F5   Words in Sch. 1 para. 3 repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

F6   Words in Sch. 1 para. 3(2) substituted (1.4.2015) by Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), **ss. 37(a)**, 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

F7   Sch. 1 para. 3(3)-(8) substituted for Sch. 1 para. 3(3) (1.4.2015) by Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), **ss. 37(b)**, 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

F8
…

Textual Amendments

F8   Sch. 1 para. 4 and crossheading repealed (1.4.2015) by Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), s. 57(2), **sch. 4**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

F84   . . . .

Secured debts

5   (1) In calculating the amount of his claim, a secured creditor shall deduct the value of any security as estimated by him:

Provided that if he surrenders, or undertakes in writing to surrender, a security for the benefit of the debtor's estate, he shall not be required to make a deduction of the value of that security.

(2) The **F9**. . . trustee may, at any time after the expiry of 12 weeks from the date of sequestration, require a secured creditor at the expense of the debtor's estate to discharge the security or convey or assign it to the **F9**. . . trustee on payment to the creditor of the value specified by the creditor; and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of his debt remaining after receipt of such payment.

(3) In calculating the amount of his claim, a creditor whose security has been realised shall deduct the amount (less the expenses of realisation) which he has received, or is entitled to receive, from the realisation.

4   *Bankruptcy (Scotland) Act 1985 (repealed) (c. 66)*
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Textual Amendments

F9   Words in Sch. 1 para. 5 repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

Valuation of claims against partners for debts of the partnership

6   Where a creditor claims in respect of a debt of a partnership, against the estate of one of its partners, the creditor shall estimate the value of—

   (a)   the debt to the creditor from the firm's estate where that estate has not been sequestered; or

   (b)   the creditor's claim against that estate where it has been sequestrated,

and deduct that value from his claim against the partner's estate; and the amount in respect of which he shall be entitled to claim on the partner's estate shall be the balance remaining after that deduction has been made.

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