

Status: Point in time view as at 01/02/1991.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), SCHEDULE 7 is up to date with all changes known to be in force on or before 31 May 2023. 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)

SCHEDULES

SCHEDULE 7 **S**

PART I **S**

CONSEQUENTIAL AMENDMENTS

The Judicial Factors (Scotland) Act 1880 (c.4)

- 1 In section 3 (interpretation), for the words “section 14 or 163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “section 11A of the ^{M1}Judicial Factors (Scotland) Act 1889”.

Marginal Citations

M1 1889 c. 39.

- 2 **F1**

Textual Amendments

F1 Sch. 7 para. 2 repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), s. 1(1), [Sch. 1 Pt. I](#)

The Judicial Factors (Scotland) Act 1889 (c.39)

- 3 In section 2, at the beginning there shall be inserted the words “Without prejudice to section 1(2) of the Bankruptcy (Scotland) Act 1985 (Accountant of Court to be Accountant in Bankruptcy),”.
- 4 After section 11 there shall be inserted the following sections—

“11A Application for judicial factor on estate of person deceased.

- (1) It shall be competent to one or more creditors of parties deceased, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting, to apply by summary petition to the Court of Session or to the sheriff of the sheriffdom within which the deceased resided or carried on business during the year immediately preceding the date of the petition, or within which heritage belonging to the deceased at the time of his death is situated, for the appointment of a judicial factor.

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- (2) After such intimation of the petition to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the Court or sheriff may appoint such factor, who shall administer the estate subject to the supervision of the accountant in accordance with this Act and the Judicial Factors (Scotland) Act 1880 and relative acts of sederunt; and, if the deceased's estate is absolutely insolvent within the meaning of section 73(2) of the Bankruptcy (Scotland) Act 1985, section 51 of, and Schedule 1 to, that Act shall apply as if for references to—
- (a) the interim trustee or permanent trustee there were substituted references to the judicial factor; and
 - (b) the date of sequestration there were substituted references to the date of the judicial factor's appointment.

11B Judicial factor's duties to be regulated by act of sederunt.

The Court of Session shall have full power to regulate by act of sederunt—

- (a) the caution to be found by a factor appointed under section 11A above;
- (b) the mode in which he shall proceed in realising and dividing the funds, and otherwise in the discharge of his duties; and
- (c) any other matter which they may deem necessary.”.

The Conveyancing (Scotland) Act 1924 (c. 27)

5 In section 44(4)(c) (limitation of effect of entries in the register of inhibitions and adjudications)—

- (a) after the words “Bankruptcy (Scotland) Act 1913” there shall be inserted the words “or the Bankruptcy (Scotland) Act 1985”;
- (b) after the words “effect of recording” there shall be inserted “(a)” and after the words “as aforesaid” there shall be inserted the words “; or (b) under subsection (1)(a) of section 14 of the Bankruptcy (Scotland) Act 1985 the certified copy of an order shall have expired by virtue of subsection (3) of that section”; and
- (c) for the words “in terms of paragraph (b) of this subsection”, there shall be substituted the words “in the form provided by Schedule O to this Act”.

The Third Parties (Rights Against Insurers) Act 1930 (c.25)

6 (1) In section 1(2) (rights of third parties against insurers on bankruptcy of insured), after the words “provable in bankruptcy” there shall be inserted the words “(in Scotland, any claim accepted in the sequestration)”.

(2) In section 4 (application to Scotland)—

- (a) paragraph (a) shall be omitted; and
- (b) in paragraph (b), for the words “one hundred and sixty-three of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

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Textual Amendments

F2 Sch. 7 para. 7 repealed by [Finance Act 1987 \(c. 16, SIF 99:6\)](#), s. 72, [Sch. 16 Pt. XI](#)

The Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)

- 8 In paragraph 9(2)(b) of Schedule 3 (“insolvent” for purposes of standard condition as to default), for the words “163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

The Superannuation Act 1972 (c.11)

- 9 In section 5(2) (benefits under civil service superannuation schemes not negotiable), for the words “148” and “1913” there shall be substituted respectively, the words “32(2) and (4)” and “1985”.

- 10 **F3**

Textual Amendments

F3 Sch. 7 para. 10 repealed by [Road Traffic \(Consequential Provisions\) Act 1988 \(c.54, SIF 107:1\)](#), ss. 3, 5, [Sch. 1 Pt. I](#), [Sch. 4 paras. 1, 2](#)

The Prescription and Limitation (Scotland) Act 1973 (c.52)

- 11 In section 9(1), for paragraph (b) there shall be substituted the following paragraphs—
 “(b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 48 of the Bankruptcy (Scotland) Act 1985 (or those sections as applied by section 613 of the Companies Act 1985); or
 (c) by a creditor to the trustee acting under a trust deed as defined in section 5(2)(c) of the Bankruptcy (Scotland) Act 1985;”.

The Local Government (Scotland) Act 1973 (c.65)

- 12 In section 31(2) (disqualifications regarding members of local authority), for paragraph (b) there shall be substituted the following paragraph—
 “(b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.”.

The Social Security Pensions Act 1975 (c.60)

- 13 In section 58 of the Social Security Pensions Act 1975 (under which Schedule 3 to that Act has effect for giving priority in bankruptcy etc. to certain debts) after the word “effect” there shall be inserted the words “for the purposes, in respect of the sequestration of estates in Scotland, of Schedule 3 to the Bankruptcy (Scotland)

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Act 1985 (preferred debts)”; and, for the purposes of the sequestration of a debtor’s estate in Scotland, Schedule 3 to the said Act of 1975 shall have effect as if—

- (i) in paragraph 3(1), for the words “a person going into liquidation or being adjudged bankrupt” there were substituted the words “the sequestration of a debtor’s estate”; and
- (ii) in paragraph 4, for the words “Schedule 4 to the Insolvency” there were substituted the words “Part I of Schedule 3 to the Bankruptcy (Scotland)”.

The Employment Protection (Consolidation) Act 1978 (c.44)

- 14 (1) In section 106(6) (payments out of fund to employees), in paragraph (b) for the words from “163” to “1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.
- (2) In section 122(8) (employee’s rights on insolvency of employer), for the word “admitted” there shall be substituted the word “accepted”.
- (3) F4
- (4) In section 127(2)(b) (interpretation) for the words from “163” to “1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

Textual Amendments

F4 Sch. 7 para. 14(3) repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(4), [Sch. 7 Pt. II](#)

The Land Registration (Scotland) Act 1979 (c.33)

- 15 In section 12(3)(b) (restriction as regards indemnity in respect of registered interest in land), after the word “reduced”, where it first occurs, there shall be inserted the words “, whether or not under subsection (4) of section 34, or subsection (5) of section 36, of the Bankruptcy (Scotland) Act 1985 (or either of those subsections as applied by sections 615A(4) and 615B of the Companies Act 1985, respectively),”.

The Banking Act 1979 (c.37)

- 16 In section 28 (payments to depositors on institution’s insolvency)—
- (a) in subsection (6)—
 - (i) in paragraph (a), after the word “proved” there shall be inserted the words “or whose claim has been accepted in the sequestration”; and
 - (ii) in paragraph (b)(iii), for the words “72” and “1913” there shall be substituted, respectively, the words “30” and “1985”; and
 - (b) in subsection (7)(c)—
 - (i) the words from “where” to “court,” shall cease to have effect; and
 - (ii) for the words “deed of arrangement or other settlement or arrangement by way” there shall be substituted the words “trust deed, contract of composition or offer”.

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The Estate Agents Act 1979 (c.38)

- 17 In section 23(2) (bankrupts not to engage in estate agency work), in paragraph (a) after the word “recalled” there shall be inserted the words “or reduced”.

The Value Added Tax Act 1983 (c.55)

- 18 In section 22(4)(a)(ii) (“insolvency” for purposes of refund of tax in cases of bad debts), for the words “163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

- 19—22. F5

Textual Amendments

F5 Sch. 7 paras. 19–22 repealed by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), ss. 438, 443, [Sch. 12](#)

The Family Law (Scotland) Act 1985 (c.37)

- 23 In section 14(5)(b) for the words from “sections 30” to “1913” there shall be substituted the words “section 41 of the Bankruptcy (Scotland) Act 1985”.

PART II S

RE-ENACTMENT OF CERTAIN PROVISIONS OF BANKRUPTCY (SCOTLAND) ACT 1913 (C. 20)

Arrestments and Poidings

- 24 (1) Subject to sub-paragraph (2) below, all arrestments and poidings which have been executed within 60 days prior to the constitution of the apparent insolvency of the debtor, or within four months thereafter, shall be ranked *pari passu* as if they had all been executed on the same date.
- (2) Any such arrestment which is executed on the dependence of an action shall be followed up without undue delay.
- (3) Any creditor judicially producing in a process relative to the subject of such arrestment or poiding liquid grounds of debt or decree of payment within the 60 days or four months referred to in sub-paragraph (1) above shall be entitled to rank as if he had executed an arrestment or a poiding; and if the first or any subsequent arrester obtains in the meantime a decree of furthcoming, and recovers payment, or a poiding creditor carries through a sale ^{F6}or receives payment in respect of a poided article upon its redemption], he shall be accountable for the sum recovered to those who, by virtue of this Act, may be eventually found to have a right to a ranking *pari passu* thereon, and shall be liable in an action at their instance for payment to them proportionately, after allowing out of the fund the expense of such recovery.
- (4) Arrestments executed for attaching the same effects of the debtor after the period of four months subsequent to the constitution of his apparent insolvency shall not compete with those within the said periods prior or subsequent thereto, but may

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rank with each other on any reversion of the fund attached in accordance with any enactment or rule of law relating thereto.

- (5) Any reference in the foregoing provisions of this paragraph to a debtor shall be construed as including a reference to an entity whose apparent insolvency may, by virtue of subsection (5) of section 7 of this Act, be constituted under subsection (1) of that section.
- (6) This paragraph shall apply in respect of arrestments and poindings which have been executed either before or after the coming into force of this paragraph.
- (7) The repeal of the Bankruptcy (Scotland) Act 1913 shall not affect the equalisation of arrestments and poindings (whether executed before or after the coming into force of this paragraph) in consequence of the constitution of notour bankruptcy under that Act.
- [^{F7}(8) Nothing in this paragraph shall apply to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.]

Textual Amendments

- F6** Words inserted by Debtors (Scotland) Act 1987 (c.18, SIF 45:2), s. 108(1)(2), Sch. 6 para. 28(a), Sch. 7 paras. 5, **9(1)**
- F7** Words added by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108(1)(2), Sch. 6 para. 28(b), Sch. 7 paras. 5, **9(1)**

Modifications etc. (not altering text)

- C1** Sch. 7 para. 24 excluded by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 67, 108(2), Sch. 7 paras. 5, **9(1)**

Exemptions from stamp or other duties for conveyances, deeds etc. relating to sequestrated estates

- 25 Any—
- (a) conveyance, assignation, instrument, discharge, writing, or deed relating solely to the estate of a debtor which has been or may be sequestrated, either under this or any former Act, being estate which after the execution of such conveyance, assignation, instrument, discharge, writing, or deed, shall be and remain the property of such debtor, for the benefit of his creditors, or the interim or permanent trustee appointed or chosen under or by virtue of such sequestration,
 - (b) discharge to such debtor,
 - (c) deed, assignation, instrument, or writing for reinvesting the debtor in the estate,
 - (d) article of roup or sale, or submission,
 - (e) other instrument or writing whatsoever relating solely to the estate of any such debtor; and
 - (f) other deed or writing forming part of the proceedings ordered under such sequestration,
- shall be exempt from all stamp duties or other Government duty.

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