



Bankruptcy (Scotland) Act 1985

1985 CHAPTER 66

Miscellaneous and supplementary

75 Amendments, repeals and transitional provisions

- (1) Subject to subsection (3) below—
 - (a) the enactments mentioned in Part I of Schedule 7 to this Act shall have effect subject to the amendments respectively specified in that Schedule, being amendments consequential on the provisions of this Act;
 - (b) Part II of that Schedule, which re-enacts certain provisions of the Bankruptcy (Scotland) Act 1913 repealed by this Act, shall have effect.
- (2) The enactments set out in columns 1 and 2 of Schedule 8 to this Act are, subject to subsection (3) below, hereby repealed to the extent specified in the third column of that Schedule.
- (3) Subject to subsections (4) and (5) below, nothing in this Act shall affect any of the enactments repealed or amended by this Act in their operation in relation to a sequestration as regards which the award was made before the coming into force of this section.
- (4) Where a debtor's estate has been sequestrated before the coming into force of this section but he has not been discharged, the debtor shall be discharged on the expiry of—
 - (a) 2 years after such coming into force; or
 - (b) 3 years after the date of sequestration,whichever expires later:

Provided that, not later than 3 months before the date on which the debtor is due to be discharged under this subsection, the trustee in the sequestration or any creditor may apply to the sheriff for a deferment of that discharge ; and subsections (4) to (8) of section 54 of this Act shall apply in relation to that application by the trustee as they apply in relation to an application under subsection (3) of that section by the permanent trustee.

Status: This is the original version (as it was originally enacted).

- (5) Section 63 of this Act shall apply in a case where before the coming into force of this section sequestration of a debtor's estate has been awarded under the Bankruptcy (Scotland) Act 1913 but the debtor has not yet been discharged, subject to the following modifications—
- (a) in subsections (1)(a) and (2)(c) for the words " this Act" there shall be substituted the words " the Bankruptcy (Scotland) Act 1913 ";
 - (b) in subsections (2)(b) and (4) the word "permanent" shall be omitted; and
 - (c) in subsection (2)(b) for the words "24 of this Act" there shall be substituted the words " 64 of the Bankruptcy (Scotland) Act 1913 ".
- (6) The apparent insolvency of a debtor may be constituted for the purposes of this Act notwithstanding that the circumstance founded upon to constitute the apparent insolvency occurred on a date before the coming into force of section 7 of this Act; and, for those purposes, the apparent insolvency shall be deemed to have been constituted on that date:
- Provided that apparent insolvency shall be constituted by virtue of this subsection only on grounds which would have constituted notour bankruptcy under the Bankruptcy (Scotland) Act 1913.
- (7) Where a debtor whose estate is sequestrated after the commencement of this subsection is liable, by virtue of a transaction entered into before that date, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the sequestrated estate, section 102 of the Bankruptcy (Scotland) Act 1913 (trustee's powers in relation to copyright) shall apply in relation to the permanent trustee as it applied before its repeal in relation to a trustee in bankruptcy under the said Act of 1913.
- (8) Where sequestration of a debtor's estate is awarded under this Act a person shall not be guilty of an offence under any provision of this Act in respect of anything done before the date of commencement of that provision but, notwithstanding the repeal by this Act of the Bankruptcy (Scotland) Act 1913, he shall be guilty of an offence under that Act in respect of anything done before that date which would have been an offence under that Act if the award of sequestration had been made under that Act.
- (9) Unless the context otherwise requires, any reference in any enactment or document to notour bankruptcy, or to a person being notour bankrupt, shall be construed as a reference to apparent insolvency, or to a person being apparently insolvent, within the meaning of section 7 of this Act.
- (10) Unless the context otherwise requires, any reference in any enactment or document to a person's estate being sequestrated under the Bankruptcy (Scotland) Act 1913 shall be construed as, or as including, a reference to its being sequestrated under this Act; and analogous references shall be construed accordingly.
- (11) Unless the context otherwise requires, any reference in any enactment or document to a trustee in sequestration or to a trustee in bankruptcy shall be construed as a reference to a permanent trustee, or in a case where no permanent trustee has been elected or appointed an interim trustee, within the meaning of this Act; and analogous expressions shall be construed accordingly.
- (12) Unless the context otherwise requires, any reference in any enactment or document—

- (a) to a " gratuitous alienation " shall be construed as including a reference to an alienation challengeable under section 34(1) of this Act or under section 615A(1) of the Companies Act 1985 ;
- (b) to a " fraudulent preference " or to an " unfair preference " shall be construed as including a reference to—
 - (i) an unfair preference within the meaning of this Act;
 - (ii) a preference created as is mentioned in subsection (1) of section 36 of this Act (as applied by section 615B of the said Act of 1985), by a transaction to which subsection (4) of the said section 36 (as so applied) applies.