

SCHEDULES

SCHEDULE 28

CONSEQUENTIAL AMENDMENTS: SCOTLAND

PART 3

AMENDMENTS OF THE BANKRUPTCY (SCOTLAND) ACT 1985 (c. 66)

- 31 In section 16(4) (presentation of petition for recall of sequestration), for “section 41(1)(b)” substitute “sections 41(1)(b) and 41A(1)(b)”.
- 32 In section 17(8)(b) (duties of clerk of court in relation to recall of sequestration), after “41(1)(b)(ii)” insert “or 41A(1)(b)(ii)”.
- 33 In section 20(4) (powers of interim trustee in relation to obtaining information as to debtor’s assets)—
- (a) in paragraph (b), after “spouse” insert “or civil partner”, and
 - (b) after “debtor, spouse” insert “, civil partner”.
- 34 In section 32(3)(b) (the expression “relevant obligations”), at the end insert “or former civil partner”.
- 35 In section 34(7) (gratuitous alienations: saving for operation of Married Women’s Policies of Assurance (Scotland) Act 1880), at the end insert “including the operation of that section as applied by section 132 of the Civil Partnership Act 2004”.
- 36 (1) Amend section 40 (power of permanent trustee in relation to debtor’s family home) as follows.
- (2) In subsection (2), after paragraph (a) insert—
- “(aa) the needs and financial resources of the debtor’s civil partner or former civil partner;”.
- (3) In paragraph (d) of that subsection, for “paragraph (a) or (b)” substitute “paragraphs (a) to (b)”.
- (4) In subsection (4)—
- (a) in paragraph (a), after “spouse” (in each place) insert “or civil partner”,
 - (b) in paragraph (b), after “spouse” (in each place) insert “or civil partner”, and
 - (c) in paragraph (c)(i), after “spouse” (in each place) insert “or civil partner”.
- 37 After section 41 insert—

Status: This is the original version (as it was originally enacted).

“Protection of rights of civil partner against arrangements intended to defeat them

(1) If a debtor’s sequestrated estate includes a family home of which the debtor, immediately before the date of issue of the act and warrant of the permanent trustee (or, if more than one such act and warrant is issued in the sequestration, of the first such issue) was an entitled partner and the other partner in the civil partnership is a non-entitled partner—

(a) the permanent trustee shall, where he—
(i) is aware that the entitled partner is in civil partnership with the non-entitled partner; and

(ii) knows where the non-entitled partner is residing, inform the non-entitled partner, within the period of 14 days beginning with that date, of the fact that sequestration of the entitled partner’s estate has been awarded, of the right of petition which exists under section 16 of this Act and of the effect of paragraph (b) below; and

(b) the Court of Session, on the petition under section 16 of this Act of the non-entitled partner presented either within the period of 40 days beginning with that date or within the period of 10 weeks beginning with the date of sequestration may—

(i) under section 17 of this Act recall the sequestration; or

(ii) make such order as it thinks appropriate to protect the occupancy rights of the non-entitled partner,

if it is satisfied that the purpose of the petition for sequestration was wholly or mainly to defeat the occupancy rights of the non-entitled partner.

(2) In subsection (1) above—

“entitled partner” and “non-entitled partner” have the same meanings as in section 101 of the Civil Partnership Act 2004;

“family home” has the meaning assigned by section 135 of the 2004 Act; and

“occupancy rights” means the rights conferred by subsection (1) of that section 101.”

38 In section 44(1)(b) (request for order requiring private examination of certain persons before sheriff)—

(a) after “debtor’s spouse” insert “or civil partner”, and

(b) after “such spouse” insert “, civil partner”.

39 In section 51(3)(b) (meaning of “postponed debt”), at the end insert “or civil partner”.

40 In section 74 (interpretation), in each of subsections (2) and (4), for “husband or wife” (in each place) substitute “husband, wife or civil partner”.

41 (1) Amend Schedule 1 (determination of amount of creditor’s claim) as follows.

(2) In paragraph 2(1)(a), the words “in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses)” become paragraph 2(1)(a)(i).

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

- (3) At the end of paragraph 2(1)(a)(i) insert “, 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),”.
- (4) In paragraph 2(2), after “divorce” insert “or on dissolution of a civil partnership”.