
STATUTORY INSTRUMENTS

1993 No. 438 (C.9) (S.49)

INSOLVENCY

BANKRUPTCY, SCOTLAND

**The Bankruptcy (Scotland) Act 1993
Commencement and Savings Order 1993**

Made - - - - 3rd March 1993

The Secretary of State, in exercise of the powers conferred upon him by section 12(4) and (5) of the Bankruptcy (Scotland) Act 1993⁽¹⁾ and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation

1. This Order may be cited as the Bankruptcy (Scotland) Act 1993 Commencement and Savings Order 1993.

Interpretation

2. In this Order—

“the Act” means the Bankruptcy (Scotland) Act 1993;

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985⁽²⁾;

“trust deed” means a voluntary trust deed granted by or on behalf of a debtor, whereby his estate is conveyed to the trustee for the benefit of his creditors generally.

and, unless the context otherwise requires, any expression used in this Order which is also used in the 1985 Act shall have the same meaning as in that Act.

Provisions brought into force by this Order

3. The provisions of the Act not already in force shall come into force on 1st April 1993.

(1) 1993 c. 6.
(2) 1985 c. 66.

Sequestrations; savings

4.—(1) Without prejudice to section 12(6) of the Act, nothing in any provision of the Act brought into force by this Order shall have effect as regards any sequestration in respect of which the petition is presented on or after 1st April 1993 and before 1st October 1993 by a trustee acting under a trust deed granted before 1st April 1993.

(2) Without prejudice to section 12(6) of the Act, paragraph (1) of this article, or to article 5(1) of this Order and notwithstanding the provisions of the Act brought into force by this Order, the 1985 Act as in force immediately before 1st April 1993 shall continue to apply and have effect in relation to any sequestration—

- (a) in respect of which the petition is presented before that date; or
- (b) as referred to in paragraph (1) of this article.

(3) Without prejudice to paragraph (2) of this article and notwithstanding the provisions of the Act brought into force by this Order, the following provisions of the 1985 Act, as in force immediately before 1st April 1993 relating to the maintenance of the list of interim trustees, namely—

- section 1(1)(b),
- section 2(2), (3) and (4), and
- in section 73(1), the definition of the expression “list of interim trustees”

shall continue to apply and have effect for the purposes of any sequestration referred to in paragraphs (1) and (2) of this article.

Trust deeds; savings

5.—(1) Nothing in any provision of the Act brought into force by this Order shall have effect as regards any trust deed granted before 1st April 1993.

(2) Without prejudice to paragraph (1) of this article and notwithstanding the provisions brought into force by this Order, section 59 of and Schedule 5 to the 1985 Act, as in force immediately before 1st April 1993, shall continue to apply and have effect in relation to any trust deed granted before that date.

St Andrew’s House,
Edinburgh
3rd March 1993

Fraser of Carmyllie
Minister of State Scottish Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 1st April 1993 those provisions of the Bankruptcy (Scotland) Act 1993 (“the Act”) which are not already in force. The provisions of the Act already in force are sections 8, 9 and 12 and paragraphs 22(5), 23 and 31(4) and (5) of Schedule 1 and, so far as relating to those paragraphs, section 11 which, by virtue of section 12(3) of the Act, came into force on the day the Act was passed (18th February 1993).

Article 3 of the Order appoints 1st April 1993 as the date when the provisions of the Act not already in force shall come into force.

Article 4(1) of the Order provides that no provision of the Act brought into force by the Order shall have effect as regards any sequestration in respect of which the petition is presented on or after 1st April 1993 and before 1st October 1993 by a trustee acting under a trust deed granted before 1st April 1993. (Equivalent provision is already made in section 12(6) of the Act in respect of sequestrations where the petition is presented before 1st April 1993).

Article 4(2) of the Order continues the application and effect of the provisions of the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) as in force immediately before 1st April 1993 in respect of those sequestrations where the petition is presented before that date, or where the petition is presented on or after 1st April 1993 and before 1st October 1993 by a trustee acting under a trust deed granted before 1st April 1993.

Article 4(3) of the Order continues the effect of those provisions of the 1985 Act, as in force immediately before 1st April 1993, which relate to the Accountant in Bankruptcy having the general function of maintaining the list of interim trustees for the purposes of any sequestration in respect of which the petition is presented in accordance with article 4(2).

Article 5 of the Order provides that no provision of the Act brought into force by the Order shall have effect as regards any trust deed which has been granted before 1st April 1993 and continues the effect of provisions of the 1985 Act relating to trust deeds, as in force immediately before that date, for the purposes of such trust deeds.