



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 1

BANKRUPTCY

Debtor applications

14 Debtor applications

(1) In section 1A of the 1985 Act (supervisory functions of the Accountant in Bankruptcy), in subsection (1), after paragraph (a), insert—

“(aa) the determination of debtor applications;”.

(2) In section 2 of that Act (appointment and functions of interim trustee), after subsection (1), insert—

“(1A) Subject to subsection (1C) below, where the Accountant in Bankruptcy awards sequestration of the debtor’s estate and the debtor application—

- (a) nominates a person to be the trustee;
- (b) states that the person satisfies the conditions mentioned in subsection (3) below; and
- (c) has annexed to it a copy of the undertaking mentioned in subsection (3)(c) below,

the Accountant in Bankruptcy may, if it appears to him that the person satisfies those conditions, appoint that person to be the trustee in the sequestration.

(1B) Where the Accountant in Bankruptcy awards sequestration of the debtor’s estate and does not appoint a person to be the trustee in pursuance of subsection (1A) above, the Accountant in Bankruptcy shall be deemed to be appointed to be the trustee in the sequestration.

(1C) Where—

- (a) the debtor application is made by a debtor to whom section 5(2B)(c) (ia) applies; and

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- (b) the Accountant in Bankruptcy awards sequestration of the debtor's estate,
the Accountant in Bankruptcy shall be deemed to be appointed as trustee in the sequestration.”.
- (3) In section 5 of that Act (sequestration of the estate of living or deceased debtor)—
- (a) for subsection (2) substitute—
- “(2) The sequestration of the estate of a living debtor shall be—
- (a) by debtor application made by the debtor, if either subsection (2A) or (2B) below applies to the debtor; or
- (b) on the petition of—
- (i) subject to subsection (2D) below, a qualified creditor or qualified creditors, if the debtor is apparently insolvent;
- (ii) a temporary administrator;
- (iii) a member State liquidator appointed in main proceedings; or
- (iv) the trustee acting under a trust deed if, and only if, one or more of the conditions in subsection (2C) below is satisfied.”; and
- (b) after subsection (4A), insert—
- “(4B) A debtor application shall—
- (a) be made to the Accountant in Bankruptcy; and
- (b) be in such form as may be prescribed.
- (4C) The Scottish Ministers may, by regulations, make provision—
- (a) in relation to the procedure to be followed in a debtor application (in so far as not provided for in this Act);
- (b) prescribing the form of any document that may be required for the purposes of making a debtor application; and
- (c) prescribing the fees and charges which may be levied by the Accountant in Bankruptcy in relation to debtor applications.”.
- (4) In section 6 of that Act (sequestration of other estates)—
- (a) in subsection (3), for the words from “on” to the end of that subsection substitute—
- “(a) by debtor application made by a majority of trustees, with the concurrence of a qualified creditor or qualified creditors; or
- (b) on the petition of—
- (i) a temporary administrator;
- (ii) a member State liquidator appointed in main proceedings; or
- (iii) a qualified creditor or qualified creditors, if the trustees as such are apparently insolvent.”;
- (b) in subsection (4), for the words from “on” to the end of that subsection substitute—
- “(a) by debtor application made by the partnership with the concurrence of a qualified creditor or qualified creditors; or

- (b) on the petition of—
 - (i) a temporary administrator;
 - (ii) a member State liquidator appointed in main proceedings;
 - (iii) a trustee acting under a trust deed; or
 - (iv) a qualified creditor or qualified creditors, if the partnership is apparently insolvent.”;
 - (c) in subsection (6), for the words from “on” to the end of that subsection substitute—
 - “(a) by debtor application made by a person authorised to act on behalf of the body, with the concurrence of a qualified creditor or qualified creditors; or
 - (b) on the petition of—
 - (i) a temporary administrator;
 - (ii) a member State liquidator appointed in main proceedings; or
 - (iii) a qualified creditor or qualified creditors, if the body is apparently insolvent.”; and
 - (d) in subsection (8), for “and (8)” substitute “, (6A), (8) and (8A)”.
- (5) After section 6A of that Act, insert—

“6B Debtor application: provision of information

- (1) Where a debtor application is made, the debtor shall state in the application—
 - (a) whether or not the debtor’s centre of main interests is situated—
 - (i) in the United Kingdom; or
 - (ii) in another member State; and
 - (b) whether not the debtor possesses an establishment—
 - (i) in the United Kingdom; or
 - (ii) in any other member State.
 - (2) If, to the debtor’s knowledge, there is a member State liquidator appointed in main proceedings in relation to the debtor, the debtor shall, as soon as reasonably practicable, send a copy of the debtor application to that member State liquidator.”.
- (6) After section 8 of that Act, insert—

“8A Further provisions relating to debtor applications

- (1) Subject to subsection (2) below, a debtor application may be made at any time.
- (2) A debtor application made in relation to the estate of a limited partnership may be made within such time as may be prescribed.
- (3) The making of, or the concurring in, a debtor application shall bar the effect of any enactment or rule of law relating to the limitation of actions.
- (4) Where, before sequestration is awarded, it becomes apparent that a creditor concurring in a debtor application was ineligible to so concur the Accountant

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in Bankruptcy shall withdraw him from the application but another creditor may concur in the place of the ineligible creditor and that other creditor shall notify the Accountant in Bankruptcy of that fact.”.

- (7) In section 9 of that Act (jurisdiction)—
- (a) in subsection (1), at the beginning insert “Where a petition is presented for the sequestration of an estate,”;
 - (b) after subsection (1), insert—
 - “(1A) The Accountant in Bankruptcy may determine a debtor application for the sequestration of the estate of a living debtor if the debtor had an established place of business in Scotland, or was habitually resident there, at the relevant time.”;
 - (c) in subsection (2), at the beginning insert “Where a petition is presented for the sequestration of an estate,”;
 - (d) after subsection (2), insert—
 - “(2A) The Accountant in Bankruptcy may determine a debtor application for the sequestration of the estate of any entity which may be sequestrated by virtue of section 6 of this Act, if the entity—
 - (a) had an established place of business in Scotland at the relevant time; or
 - (b) was constituted or formed under Scots law, and at any time carried on business in Scotland.”; and
 - (e) after subsection (3), insert—
 - “(3A) Any proceedings under this Act which—
 - (a) relate to—
 - (i) a debtor application; or
 - (ii) the sequestration of a debtor’s estate awarded following such an application; and
 - (b) may be brought before a sheriff,
 shall be brought before the sheriff who would, under subsection (1) or (2) above, have had jurisdiction in respect of a petition for sequestration of the debtor’s estate.”.
- (8) In section 12 of that Act (when sequestration is awarded), in subsection (1), for the words from “petition”, where it first occurs, to the end of paragraph (a), substitute “debtor application is made, the Accountant in Bankruptcy shall award sequestration forthwith if he is satisfied—
- (a) that the application has been made in accordance with the provisions of this Act and any provisions made under this Act;”.

15 Debtor applications by low income, low asset debtors

- (1) In section 5 of the 1985 Act, in subsection (2B)(c)—
- (a) the word “either” is repealed; and
 - (b) after sub-paragraph (i) insert—
 - “(ia) is unable to pay his debts and each of the conditions in section 5A of this Act is met;”.
- (2) After section 5 of that Act insert—

“5A Debtor applications by low income, low asset debtors

- (1) The conditions referred to in section 5(2B)(c)(ia) of this Act are as follows.
- (2) The debtor’s weekly income (if any) on the date the debtor application is made does not exceed £100 or such other amount as may be prescribed.
- (3) The debtor does not own any land.
- (4) The total value of the debtor’s assets (leaving out of account any liabilities) on the date the debtor application is made does not exceed £1000 or such other amount as may be prescribed.
- (5) The Scottish Ministers may by regulations—
 - (a) make provision as to how the debtor’s weekly income is to be determined;
 - (b) provide that particular descriptions of income are to be excluded for the purposes of subsection (2) above;
 - (c) make provision as to how the value of the debtor’s assets is to be determined;
 - (d) provide that particular descriptions of asset are to be excluded for the purposes of subsection (4) above;
 - (e) make different provision for different classes or description of debtor;
 - (f) add further conditions which must be met before a debtor application may be made by virtue of section 5(2B)(c)(ia) of this Act; and
 - (g) where such further conditions are added—
 - (i) remove; or
 - (ii) otherwise vary,those conditions.”.