

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS OF THE 1985 ACT

8 For section 10 (concurrent proceedings for sequestration or analogous remedy) substitute—

“10 Duty to notify existence of concurrent proceedings for sequestration or analogous remedy

- (1) If, in the course of sequestration proceedings (referred to in this section and in section 10A of this Act as the “instant proceedings”)—
- (a) a petitioner for sequestration;
 - (b) the debtor; or
 - (c) a creditor concurring in a debtor application,
- is, or becomes, aware of any of the circumstances mentioned in subsection (2) below, he shall as soon as possible take the action mentioned in subsection (3) below.
- (2) Those circumstances are that, notwithstanding the instant proceedings—
- (a) a petition for sequestration of the debtor’s estate is before a sheriff or such sequestration has been awarded;
 - (b) a debtor application has been made in relation to the debtor’s estate or sequestration has been awarded by virtue of such an application;
 - (c) a petition for the appointment of a judicial factor on the debtor’s estate is before a court or such a judicial factor has been appointed;
 - (d) a petition is before a court for the winding up of the debtor under Part IV or V of the Insolvency Act 1986 (c. 45) or section 372 of the Financial Services and Markets Act 2000 (c. 8); or
 - (e) an application for an analogous remedy in respect of the debtor’s estate is proceeding or such an analogous remedy is in force.
- (3) The action referred to in subsection (1) above is—
- (a) in a case where the instant proceedings are by petition for sequestration, to notify the sheriff to whom that petition was presented; and
 - (b) in a case where the instant proceedings are by debtor application, to notify the Accountant in Bankruptcy,
- of the circumstance referred to in subsection (2) above.
- (4) If a petitioner fails to comply with subsection (1) above, he may be made liable for the expenses of presenting the petition for sequestration.
- (5) If a creditor concurring in a debtor application fails to comply with subsection (1) above, he may be made liable for the expenses of making the debtor application.
- (6) If a debtor fails to comply with subsection (1) above, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (7) In this section and in section 10A of this Act “analogous remedy” means a bankruptcy order under the Bankruptcy Act 1914 (c. 59) or an individual voluntary arrangement or bankruptcy order under the Insolvency Act 1986

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

(c. 45) or an administration order under section 112 of the County Courts Act 1984 (c. 28) in England and Wales or under any enactment having the like effect in Northern Ireland or a remedy analogous to any of the aforesaid remedies, or to sequestration, in any other country (including England, Wales and Northern Ireland).

10A Powers in relation to concurrent proceedings for sequestration or analogous remedy

- (1) Where, in the course of instant proceedings which are by petition, any of the circumstances mentioned in paragraphs (a) to (d) of section 10(2) of this Act exists, the sheriff to whom the petition in the instant proceedings was presented may, on his own motion or at the instance of the debtor or any creditor or other person having an interest, allow that petition to proceed or may sist or dismiss it.
- (2) Without prejudice to subsection (1) above, where, in the course of instant proceedings which are by petition, any of the circumstances mentioned in paragraphs (a), (c) or (d) of section 10(2) of this Act exists, the Court of Session may, on its own motion or on the application of the debtor or any creditor or other person having an interest, direct the sheriff before whom the petition in the instant proceedings is pending, or the sheriff before whom the other petition is pending, to sist or dismiss the petition in the instant proceedings or, as the case may be, the other petition, or may order the petitions to be heard together.
- (3) Without prejudice to subsection (1) above, where, in the course of instant proceedings which are by petition, the circumstance mentioned in paragraph (b) of section 10(2) of this Act exists, the sheriff to whom the petition in the instant proceedings was presented may, on his own motion or at the instance of the debtor or any creditor or other person having an interest, direct the Accountant in Bankruptcy to dismiss the debtor application.
- (4) Where, in the course of instant proceedings which are by debtor application, any of the circumstances mentioned in paragraphs (a) to (d) of section 10(2) of this Act exists, the Accountant in Bankruptcy may dismiss the debtor application in the instant proceedings.
- (5) Where, in respect of the same estate—
 - (a) a petition for sequestration is pending before a sheriff; and
 - (b) an application for an analogous remedy is proceeding or an analogous remedy is in force,the sheriff, on his own motion or at the instance of the debtor or any creditor or other person having an interest, may allow the petition for sequestration to proceed or may sist or dismiss it.
- (6) Where, in respect of the same estate—
 - (a) a debtor application has been made and has not been determined; and
 - (b) an application for an analogous remedy is proceeding or an analogous remedy is in force,the Accountant in Bankruptcy may proceed to determine the application or may dismiss it.”.