

SCHEDULE 5
MINOR AND CONSEQUENTIAL AMENDMENTS

The Bankruptcy (Scotland) Act 1985 (c. 66)

- 13 (1) The 1985 Act is amended as follows.
- (2) In section 31 (vesting of estate in trustee), in subsection (1)—
- (a) after “shall”, where it first occurs, insert “, by virtue of the trustee’s appointment,”; and
 - (b) after “vest”, where it first occurs, insert “in the trustee”.
- (3) In section 37 (effect of sequestration on diligence)—
- (a) in subsection (1)(b), for “a completed poinding” substitute “an attachment”;
 - (b) in subsection (2), for “No” substitute “Where an”;
 - (c) in subsection (4)—
 - (i) after “arrestment” insert “, money attachment, interim attachment”; and
 - (ii) after “attached” insert “, or any funds released under section 73J(2) of the Debtors (Scotland) Act 1987 (c. 18) (automatic release of funds)”;
 - (d) in subsection (5)—
 - (i) after “arrestment”, where it first occurs, insert “, money attachment, interim attachment”;
 - (ii) in paragraph (a), after “obtaining” insert—
 - “(i) warrant for interim attachment; or
 - (ii)”;
 - (iii) after “arrestment”, where it second occurs, insert “, money attachment”; and
 - (iv) in paragraph (b), after “arrestment” insert “, money attachment, interim attachment”;
 - (e) after subsection (5A) insert—
 - (5B) No land attachment of heritable property of the debtor created within the period of six months before the date of sequestration and whether or not subsisting at that date shall be effectual to create a preference for the creditor.
 - (5C) A creditor who creates a land attachment within the period of six months mentioned in subsection (5B) above shall be entitled to payment, out of the attached land or out of the proceeds of the sale of it, of the expenses incurred—
 - (a) in obtaining the extract of the decree, or other document, containing the warrant for land attachment; and
 - (b) in—
 - (i) serving the charge for payment;
 - (ii) registering the notice of land attachment;
 - (iii) serving a copy of that notice; and
 - (iv) registering certificate of service of that copy.”;
 - (f) after subsection (8) insert—

Status: This is the original version (as it was originally enacted).

- “(8A) A notice of land attachment registered—
- (a) on or after the date of sequestration against land forming part of the heritable estate of the debtor (including any estate vesting in the trustee by virtue of section 32(6) of this Act); or
 - (b) before that date in relation to which, by that date, no land attachment is created,
- shall be of no effect.
- (8B) Subject to subsections (8C) to (8F) below, it shall not be competent for a creditor to insist in a land attachment—
- (a) created over heritable estate of the debtor before the beginning of the period of six months mentioned in subsection (5B) above; and
 - (b) which subsists on the date of sequestration.
- (8C) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—
- (a) the trustee shall concur in and ratify the deed implementing that contract; and
 - (b) the appointed person shall account for and pay to the trustee any balance of the proceeds of sale which would, but for the sequestration, be due to the debtor after disbursing those proceeds in accordance with section 116 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (disbursement of proceeds of sale of attached land).
- (8D) Subsection (8C) above shall not apply where the deed implementing the contract is not registered before the expiry of the period of 28 days beginning with the day on which—
- (a) the certified copy of the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 14 of this Act; or
 - (b) the certified copy of the determination of the Accountant in Bankruptcy awarding sequestration is recorded under subsection (1A) of that section,
- in the register of inhibitions.
- (8E) Where a decree of foreclosure has been granted but an extract of it has not registered, the creditor may proceed to complete title to the land by so registering that extract provided that the extract is registered before the expiry of the period mentioned in subsection (8D) above.
- (8F) The Scottish Ministers may—
- (a) prescribe such other period for the period mentioned in subsection (8D) above; and
 - (b) prescribe different periods for the purposes of that subsection and subsection (8E) above,
- as they think fit.”; and
- (g) at the end insert—

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

“(10) Expressions used in subsections (5B), (5C) and (8A) to (8F) above which are also used in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) have the same meanings in those subsections as they have in that Chapter.”.