



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Moratorium on diligence

8 Moratorium on diligence

After section 4 of the 1985 Act, insert—

“Moratorium on diligence

4A Notice of intention to apply: debtor application etc.

- (1) A person may give written notice to the Accountant in Bankruptcy of the person’s intention—
 - (a) to make a debtor application for sequestration under section 5,
 - (b) to seek to fulfil the conditions required in order for a trust deed granted by or on behalf of that person to be granted the status of protected trust deed,
 - (c) to apply for the approval of a debt payment programme in accordance with section 2 of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#).
- (2) A person may not give a notice if that person has given a notice under subsection (1) in the immediately preceding period of 12 months.
- (3) The Accountant in Bankruptcy must, without delay after receipt of a notice under subsection (1), enter in the registers mentioned in subsection (4)—
 - (a) the name of the person who gave the notice, and
 - (b) such other information as the Accountant in Bankruptcy considers appropriate in relation to that person.
- (4) The registers are—
 - (a) the register of insolvencies, and

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- (b) the register of debt payment programmes established and maintained in accordance with section 7 of the Debt Arrangement and Attachment (Scotland) Act 2002 (the “DAS register”).

4B Notice of intention to apply: sequestration of estate under section 6

- (1) A person may give written notice to the Accountant in Bankruptcy of the person’s intention to make a debtor application under section 6.
- (2) A person may not give a notice in respect of an estate mentioned in section 6 if any person has given a notice under subsection (1) in respect of the same estate in the immediately preceding period of 12 months.
- (3) The Accountant in Bankruptcy must, without delay after receipt of a notice under subsection (1), enter in the register of insolvencies—
 - (a) the name of the person who is the subject of the notice, and
 - (b) such other information as the Accountant in Bankruptcy considers appropriate in relation to that person.

4C Moratorium on diligence

- (1) This section applies where a person gives notice to the Accountant in Bankruptcy in accordance with section 4A(1) or 4B(1).
- (2) A moratorium on diligence applies in relation to the person who is the subject of the notice for the moratorium period determined in accordance with section 4D.
- (3) While a moratorium on diligence applies in relation to the person it is not competent—
 - (a) to serve a charge for payment in respect of any debt owed by the person,
 - (b) to commence or execute any diligence to enforce payment of any debt owed by the person,
 - (c) to found on any debt owed by the person in presenting, or concurring in the presentation of, a petition for sequestration of the person’s estate, or
 - (d) in the case where an arrestment mentioned in subsection (1) of section 73J of the [Debtors \(Scotland\) Act 1987 \(c.18\)](#) has been granted in respect of funds due to the person, to release funds to the creditor under subsection (2) of that section.
- (4) The moratorium period applying in relation to the person is to be disregarded for the purposes of determining the period mentioned in section 73J(3) of the [Debtors \(Scotland\) Act 1987 \(c.18\)](#).
- (5) Despite subsection (3)(b), it is competent to—
 - (a) auction an article which has been attached in accordance with the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#) where—
 - (i) notice has been given to the debtor under section 27(4) of that Act, or
 - (ii) the article has been removed, or notice of removal has been given, under section 53 of that Act,
 - (b) implement a decree of furthcoming,
 - (c) implement a decree or order for sale of a ship (or a share of it) or cargo,

- (d) execute an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order which came into effect before the day on which the moratorium period in relation to the person begins.

4D Period of moratorium

- (1) The moratorium period applying in relation to the person is the period which—
 - (a) begins on the day on which an entry is made in the register of insolvencies under section 4A(3) or 4B(3), and
 - (b) ends on—
 - (i) the day which is 6 weeks after that day,
 - (ii) such earlier day as is mentioned in subsection (2), or
 - (iii) if subsection (3), (5) or (7) applies, such later day as is determined in accordance with subsection (4), (6) or (8).
- (2) The earlier day is the day on which, in relation to the person who is the subject of the moratorium—
 - (a) an entry is made in the register of insolvencies recording the award of sequestration of the estate,
 - (b) an entry is made in the register of insolvencies recording that a trust deed granted by the person has been granted or refused protected status,
 - (c) an entry is made in the DAS register recording the approval of a debt payment programme in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
 - (d) written notice is given to the Accountant in Bankruptcy—
 - (i) by the person withdrawing the notice given under section 4A(1), or
 - (ii) by or on behalf of the person withdrawing the notice given under section 4B(1).
- (3) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—
 - (a) a person has made a debtor application for sequestration of the estate of the person who is the subject of the moratorium,
 - (b) the moratorium has not ended in accordance with subsection (2)(a), and
 - (c) no decision has been made by the Accountant in Bankruptcy under section 15(3C)(b).
- (4) Where subsection (3) applies, the moratorium period ends on—
 - (a) the day on which an entry is made in the register of insolvencies recording the award of sequestration of the estate,
 - (b) in the case of refusal to award sequestration—
 - (i) the day of the expiry of the period applying by virtue of section 15(3B) where no application for review is made under section 15(3A), or
 - (ii) the day on which a decision is made by the Accountant in Bankruptcy under section 15(3C)(b) where an application for review is made, or
 - (c) the day on which written notice is given to the Accountant in Bankruptcy—

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- (i) by the person withdrawing the notice given under section 4A(1), or
 - (ii) by or on behalf of the person withdrawing the notice given under section 4B(1).
- (5) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—
 - (a) an entry has been made in the register of insolvencies recording an application for a trust deed granted by or on behalf of the person who is the subject of the moratorium to be granted the status of protected trust deed, and
 - (b) the moratorium has not ended in accordance with subsection (2)(b).
- (6) Where subsection (5) applies, the moratorium period ends on—
 - (a) the day on which an entry is made in the register of insolvencies recording that the trust deed granted by or on behalf of the person has been granted the status of protected trust deed,
 - (b) where such an entry is not made, the day which is 13 weeks after the day on which the moratorium began under subsection (1)(a), or
 - (c) the day on which written notice is given to the Accountant in Bankruptcy by the person withdrawing the notice given under section 4A(1).
- (7) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—
 - (a) the person who is the subject of the moratorium has applied for approval of a debt payment programme under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002,
 - (b) the moratorium has not ended in accordance with subsection (2)(c), and
 - (c) the application has not been determined.
- (8) Where subsection (7) applies, the moratorium period ends on—
 - (a) the day on which an entry is made in the DAS register recording the approval of the debt payment programme in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002,
 - (b) in the case of a rejection of a debt payment programme, the day on which an entry is made in the DAS register recording the rejection, or
 - (c) the day on which written notice is given to the Accountant in Bankruptcy by the person withdrawing the notice given under section 4A(1).”.