Bankruptcy (Scotland) Act 2016

2016 asp 21

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 22nd March 2016 and received Royal Assent on 28th April 2016

An Act of the Scottish Parliament to consolidate the Bankruptcy (Scotland) Act 1985, the Bankruptcy (Scotland) Act 1993, Part 1 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, Part 2 of the Home Owner and Debtor Protection (Scotland) Act 2010, the Bankruptcy and Debt Advice (Scotland) Act 2014, the Protected Trust Deeds (Scotland) Regulations 2013 and related enactments.

Modifications etc. (not altering text)

C1 Act modified (30.11.2016) by The Bankruptcy (Scotland) Regulations 2016 (S.S.I. 2016/397), **reg. 31(2)**

C2 Act applied (with modifications) (8.12.2017) by The Risk Transformation Regulations 2017 (S.I. 2017/1212), regs. 1(2), 166(2), 167(2), Sch. 2, **Sch. 3** (with regs. 168, 189)

PART 1

APPLICATION OR PETITION FOR SEQUESTRATION

Applications and petitions

1 Sequestration

The estate of a debtor may be sequestrated in accordance with the provisions of this Act.

Commencement Information

I1 S. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

2 Sequestration of estate of living debtor

(1) The sequestration of the estate of a living debtor is—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) by debtor application made by the debtor, if subsection (2) or (8) applies to the debtor, or

(b) on the petition of—

(i) a qualified creditor, or qualified creditors, if the debtor is apparently insolvent,

[F1](ii) . . . . . .

[F1](iii) . . . . . .

(iv) a trustee acting under a trust deed if a condition mentioned in subsection (7) is satisfied.

(2) This subsection applies to the debtor where—

(a) the debtor—

(i) has been assessed by the common financial tool as requiring to make no debtor's contribution, or

(ii) has been in receipt of payments, of a kind prescribed, for a period of at least 6 months ending with the day on which the debtor application is made,

(b) the total amount of the debtor's debts (including interest) at the date the debtor application is made is—

(i) not less than £1,500 or such other amount as may be prescribed, and

(ii) not more than **[**[F2]£25,000**]** or such other amount as may be prescribed,

(c) 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 £2,000 or such other amount as may be prescribed,

(d) no single asset of the debtor has a value which exceeds £1,000 or such other amount as may be prescribed,

(e) the debtor does not own land,

(f) the debtor has been granted, within the prescribed period and in accordance with section 9, a certificate for sequestration of the debtor's estate,

(g) in the 10 years ending on the day before the day on which the debtor application is made or such other period as may be prescribed, no award of sequestration has been made against the debtor in pursuance of an application made by the debtor by virtue of this subsection, and

(h) in the 5 years ending on the day before the day on which the debtor application is made, no award of sequestration has been made against the debtor in pursuance of—

(i) an application made by the debtor other than by virtue of this subsection, or

(ii) a petition.

[[F3](2A) For the purposes of subsection (2)(b), the amount of a loan made to the debtor is not to be regarded as a debt where the loan was made by virtue of regulations to which section 73B (regulations relating to student loans) of the Education (Scotland) Act 1980 applies.**]**

(3) For the purposes of subsection (2)(c) and (d)—

(a) any property of the debtor is not to be regarded as an asset if, under any provision of this or any other enactment, it would be excluded from vesting in AiB as trustee,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) if the debtor reasonably requires the use of a vehicle, any vehicle owned by the debtor the value of which does not exceed £3,000 or such other amount as may be prescribed is not to be regarded as an asset, and

(c) any other property of the debtor that is of a prescribed type is not to be regarded as an asset.

(4) For the purposes of subsection (2)(c) and (d), the Scottish Ministers may by regulations make provision about how the value of the debtor's assets is to be determined.

(5) The Scottish Ministers may by regulations modify subsection (2).

(6) Schedule 1 makes further provision about the application of certain provisions of this Act in relation to a debtor to whom subsection (2) applies.

(7) The conditions mentioned in subsection (1)(b)(iv) are—

(a) that the debtor has failed to comply—

(i) with an obligation imposed on the debtor under the trust deed, being an obligation with which the debtor reasonably could have complied, or

(ii) with an instruction reasonably given to, or requirement reasonably made of, the debtor by the trustee for the purposes of the trust deed, or

(b) that the trustee avers in the trustee's petition that it would be in the best interests of the creditors that an award of sequestration be made.

(8) This subsection applies to the debtor where—

(a) the total amount of the debtor's debts (including interest) at the date the debtor application is made is not less than £3,000 or such sum as may be prescribed,

(b) an award of sequestration has not been made against the debtor in the 5 years ending on the day before the date the debtor application is made,

(c) the debtor has obtained the advice of a money adviser in accordance with section 4(1),

(d) the debtor has given a statement of undertakings (including an undertaking to pay to the trustee, after the award of sequestration of the debtor's estate, an amount determined using the common financial tool), and

(e) the debtor—

(i) is apparently insolvent,

(ii) has been granted, within the prescribed period and in accordance with section 9, a certificate for sequestration of the debtor's estate, or

(iii) has granted a trust deed which, by reason of creditors objecting, or not agreeing, to it is not a protected trust deed.

(9) For the purposes of subsection (8)(e)(i), the debtor is not apparently insolvent by reason only of granting a trust deed or of giving notice to creditors as mentioned in section 16(1)(c).

(10) In subsection (8)(e)(ii), "the prescribed period" means such period, ending immediately before the date the debtor application is made, as may be prescribed under section 9(4)(b).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F1 S. 2(1)(b)(ii)(iii) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(2)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F2 Sum in s. 2(2)(b)(ii) substituted (29.3.2021) by The Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/148), regs. 1, **4(2)** (with regs. 3(a), 4(4))

F3 S. 2(2A) inserted (29.3.2021) by The Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/148), regs. 1, **4(3)** (with regs. 3(a), 4(4))

Commencement Information

I2 S. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

3 Debt advice and information package

(1) No petition may be presented under section 2(1)(b)(i) unless the qualified creditor has, or qualified creditors have, provided the debtor, by such time prior to the presentation of the petition as may be prescribed, with a debt advice and information package.

(2) In this Act, "debt advice and information package" means the debt advice and information package referred to in section 10(5) of the 2002 Act.

Commencement Information

I3 S. 3 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

4 Money advice

(1) An application for the sequestration of a living debtor's estate may not be made unless the debtor has obtained from a money adviser advice on—

(a) the debtor's financial circumstances,

(b) the effect of the proposed sequestration,

(c) the preparation of the application, and

(d) such other matters as may be prescribed.

(2) In this Act, "money adviser" means a person who—

(a) is not an associate of the debtor, and

(b) is of a prescribed description or falls within a prescribed class.

Commencement Information

I4 S. 4 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

5 Sequestration of estate of deceased debtor

The sequestration of the estate of a deceased debtor is—

(a) by debtor application made by the executor, or a person entitled to be appointed as executor, on the estate,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) on the petition of a qualified creditor, or qualified creditors, of the deceased debtor,

[F4](c) . . . . . .

[F4](d) . . . . . .

(e) on the petition of a trustee acting under a trust deed.

Textual Amendments

F4 S. 5(c)(d) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(3)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I5 S. 5 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

6 Sequestration of other estates

(1) The estate belonging to any of the following (or held for or jointly by, as the case may be, the trustees, partners or members of any of the following) may be sequestrated—

(a) a trust in respect of debts incurred by it,

(b) a partnership (including a dissolved partnership),

(c) a body corporate,

(d) an unincorporated body,

(e) a limited partnership (including a dissolved limited partnership) within the meaning of the Limited Partnerships Act 1907.

(2) But it is not competent to sequestrate the estate of any of the following—

(a) a company registered under the Companies Act 2006,

(b) a limited liability partnership, or

(c) any other entity if it is an entity in respect of which an enactment provides, expressly or by implication, that sequestration is incompetent.

(3) The sequestration of a trust estate in respect of debts incurred by the trust is—

(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—

[F5](i) . . . . . .

[F5](ii) . . . . . .

(iii) a qualified creditor or qualified creditors, if the trustees as such are apparently insolvent.

(4) The sequestration of the estate of a partnership is—

(a) by debtor application made by the partnership where the partnership is apparently insolvent,

(b) by debtor application made by the partnership with the concurrence of a qualified creditor or qualified creditors, or

(c) on the petition of—

[F6](i) . . . . . .

[F6](ii) . . . . . .

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(iii) a trustee acting under a trust deed, or

(iv) a qualified creditor or qualified creditors, if the partnership is apparently insolvent.

(5) For the purposes of an application under subsection (4)(a), section 16(4) is to be read as if—

(a) the word "either", and

(b) the words "or if any of the partners is apparently insolvent for a debt of the partnership",

were omitted.

(6) A petition under subsection (4)(c) may be combined with a petition for the sequestration of the estate of any of the partners as an individual where that individual is apparently insolvent.

(7) The sequestration of the estate of a body corporate or of an unincorporated body is—

(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—

[F7](i) . . . . . .

[F7](ii) . . . . . .

(iii) a qualified creditor or qualified creditors, if the body is apparently insolvent.

(8) The application of this Act to the sequestration of the estate of a limited partnership is subject to such modifications as may be prescribed.

(9) Subsections (3)(a) of section 8 and (3) to (6) of section 10 apply for the purposes of this section as they apply for the purposes of their respective sections.

Textual Amendments

F5 S. 6(3)(b)(i)(ii) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(4)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F6 S. 6(4)(c)(i)(ii) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(4)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F7 S. 6(7)(b)(i)(ii) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(4)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C3 S. 6 excluded (8.12.2017) by The Risk Transformation Regulations 2017 (S.I. 2017/1212), regs. 1(2), **169(1)(f)** (with reg. 189)

Commencement Information

I6 S. 6 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

7 Qualified creditor and qualified creditors

(1) In this Act—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"qualified creditor" means a creditor who, at the date of the presentation of the petition, or as the case may be at the date the debtor application is made, is a creditor of the debtor in respect of relevant debts which amount (or of one such debt which amounts) to not less than **[**[F8]£3,000**]**[[F8]£10,000**]** or such sum as may be prescribed, and

"qualified creditors" means creditors who, at the date in question, are creditors of the debtor in respect of relevant debts which amount in aggregate to not less than **[**[F9]£3,000**]**[[F9]£10,000**]** or such sum as may be prescribed.

(2) In the definitions of "qualified creditor" and "qualified creditors" in subsection (1) "relevant debts" means liquid or illiquid debts (other than contingent or future debts or amounts payable under a confiscation order) whether secured or unsecured.

(3) In subsection (2), "confiscation order" means a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.

(4) Paragraphs 1(1) and (3), 2(1)(a) and (2) and 5 of schedule 2 apply in order to ascertain the amount of the debt or debts for the purposes of subsection (1) as those paragraphs apply in order to ascertain the amount which a creditor is entitled to claim but as if for any reference to the date of sequestration there were substituted a reference to the date of the presentation of the petition or, as the case may be, the date the debtor application is made.

Textual Amendments

F8 Sum in s. 7(1) substituted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 10(2)(a)** (with s. 9) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) (No.2) Act 2020 (asp 10), **s. 9(1)**)

F9 Sum in s. 7(1) substituted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 10(2)(b)** (with s. 9) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) (No.2) Act 2020 (asp 10), **s. 9(1)**)

Commencement Information

I7 S. 7 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

8 Debtor applications: general

(1) Any debtor application must be made to AiB.

(2) A debtor application must—

(a) include a declaration by the money adviser who provided the advice referred to in section 4(1) that such advice has been given, and

(b) specify the name and address of the money adviser.

(3) The debtor must send to AiB along with the application—

(a) a statement of assets and liabilities, and

(b) a statement of undertakings.

(4) If the debtor—

(a) fails, in a statement of assets and liabilities sent to AiB in accordance with subsection (3)(a), to disclose a material fact, or

(b) makes in such a statement a material misstatement,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

then the debtor commits an offence.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or both to such fine and to such imprisonment.

(6) In any proceedings for an offence under subsection (4), it is a defence to show that the accused had a reasonable excuse for the failure in question or, as the case may be, for making the statement in question.

Commencement Information
I8 S. 8 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

9 Certificate for sequestration

(1) A certificate for sequestration of the estate of a debtor is a certificate granted by a money adviser certifying that the debtor is unable to pay debts as they become due.

(2) A certificate may be granted only on the debtor applying for it.

(3) A money adviser must grant a certificate if, and only if, the debtor can demonstrate that the debtor is unable to pay debts as they become due.

(4) The Scottish Ministers may—
- (a) by regulations make provision about certification by a money adviser, including—
  - (i) the form and manner in which a certification must be made,
  - (ii) the fee, if any, which a money adviser is entitled to charge for or in connection with granting a certificate,
- (b) prescribe a period for the purpose of section 2(2)(f) or (8)(e)(ii).

Commencement Information
I9 S. 9 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

10 Death or withdrawal

(1) Where, after a petition for sequestration is presented but before the sequestration is awarded, the debtor dies then, if the petitioner is a creditor, the proceedings are to continue in accordance with this Act so far as circumstances will permit.

(2) Where, after a debtor application is made but before the sequestration is awarded, the debtor dies then the application falls.

(3) Where, after a petition for sequestration is presented but before the sequestration is awarded, a creditor who is the petitioner withdraws or dies, there may be sisted in the place of that creditor any creditor who both was a qualified creditor at the date when the petition was presented and is a qualified creditor at the date of the sist.

(4) Where, after a petition for sequestration is presented but before the sequestration is awarded, a creditor who has lodged answers to the petition withdraws or dies, there may be sisted in the place of that creditor any other creditor.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Where, after a debtor application is made but before the sequestration is awarded, a creditor who concurs in the application withdraws or dies, any other creditor may, if the conditions mentioned in subsection (6) are met, notify AiB that the other creditor concurs in the application in place of the creditor who has withdrawn or died.

(6) The conditions are that the other creditor—

(a) was a qualified creditor at the date when the debtor application was made, and

(b) is a qualified creditor at the date of the notification.

Commencement Information

I10 S. 10 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

11 Debtor application: provision of information

(1) Where a debtor application is made other than under section 5(a), the debtor must state in the application—

(a) whether or not the debtor's centre of main interests is situated in the United Kingdom or in **[**[F10]a member State (other than Denmark)**]**, and

[[F11](b) if the debtor's centre of main interests is situated in a member State (other than Denmark), whether or not the debtor possesses an establishment in the United Kingdom.**]**

(2) Where a debtor application is made by an executor under section 5(a) the executor must state in the application—

(a) whether or not the debtor's centre of main interests was situated in the United Kingdom or in **[**[F12]a member State (other than Denmark)**]**, and

[[F13](b) if the debtor's centre of main interests was situated in a member State (other than Denmark), whether or not the debtor possessed an establishment in the United Kingdom.**]**

[F14](3) . . . . . .

Textual Amendments

F10 Words in s. 11(1)(a) substituted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(5)(a)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F11 S. 11(1)(b) substituted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(5)(b)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F12 Words in s. 11(2)(a) substituted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(5)(c)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F13 S. 11(2)(b) substituted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(5)(d)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F14 S. 11(3) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(5)(e)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I11 S. 11 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

12 Petition for sequestration of estate: provision of information

(1) A petitioner for sequestration of the estate of a debtor is, in so far as it is within the petitioner's knowledge, to state in the petition—

(a) whether or not the debtor's centre of main interests is situated in the United Kingdom or in **[**[F15]a member State (other than Denmark)**]**, and

[[F16](b) if the debtor's centre of main interests is situated in a member State (other than Denmark), whether or not the debtor possesses an establishment in the United Kingdom.**]**

[F17](2) . . . . . .

Textual Amendments

F15 Words in s. 12(1)(a) substituted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(6)(a)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F16 S. 12(1)(b) substituted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(6)(b)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F17 S. 12(2) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(6)(c)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I12 S. 12 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

13 Further provisions relating to presentation of petitions

(1) The petitioner is, on the day the petition for sequestration is presented under section 2, 5 or 6, to send a copy of the petition to AiB.

(2) A petition for the sequestration of the estate of a debtor (other than a limited partnership or a deceased debtor) may be presented—

(a) by a qualified creditor or qualified creditors only if the apparent insolvency founded on in the petition was constituted within 4 months before the date of presentation of the petition, or

(b) at any time by—

(i) a trustee acting under a trust deed,

[F18](ii) . . . . . .

[F18](iii) . . . . . .

(3) A petition for the sequestration of the estate of a limited partnership may be presented—

(a) by a qualified creditor or qualified creditors only if the apparent insolvency founded on in the petition was constituted within 4 months (or such other period as may be prescribed) before the date of presentation of the petition, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) at any time by—

(i) a trustee acting under a trust deed,

[F19](ii) . . . . . .

[F19](iii) . . . . . .

(4) A petition for the sequestration of the estate of a deceased debtor may be presented—

(a) by a qualified creditor or qualified creditors—

(i) in a case where the apparent insolvency of the debtor founded on in the petition was constituted within 4 months before the date of death, at any time, and

(ii) in any other case (whether or not apparent insolvency has been constituted), not earlier than 6 months after the date of death, or

(b) at any time by—

(i) a person entitled to be appointed as executor of the estate, **[**[F20]or**]**

(ii) a trustee acting under a trust deed,

[F21](iii) . . . . . .

[F21](iv) . . . . . .

(5) The presentation of a petition for sequestration bars the effect of any enactment or rule of law relating to the limitation of actions.

(6) Where, before sequestration is awarded, it becomes apparent that a petitioning creditor was ineligible to petition, that person must withdraw, or as the case may be withdraw from, the petition; but another creditor may be sisted in that person's place.

Textual Amendments

F18 S. 13(2)(b)(ii)(iii) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(7)(a)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F19 S. 13(3)(b)(ii)(iii) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(7)(b)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F20 Word in s. 13(4) inserted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(7)(c)(i)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F21 S. 13(4)(b)(iii)(iv) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(7)(c)(ii)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I13 S. 13 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

14 Further provisions relating to debtor applications

(1) A debtor application may be made at any time; but this subsection is subject to subsections (2) and (3).

(2) A debtor application made in relation to the estate of a limited partnership may be made—

(a) at any time unless a time is prescribed, and

(b) if a time is prescribed, within that time.

(3) Any intromission by an executor with the deceased debtor's estate after the 12 months mentioned in subsection (4) is deemed an intromission without title unless, within that period, the executor—

(a) makes a debtor application under section 5(a), or

(b) petitions for the appointment of a judicial factor to administer the estate.

(4) The 12 months referred to in subsection (3) is the 12 months following the day on which the executor knew, or ought to have known, that the estate was absolutely insolvent and likely to remain so.

(5) The making of, or concurrence in, a debtor application bars the effect of any enactment or rule of law relating to the limitation of actions.

(6) Where, before sequestration is awarded, it becomes apparent that a creditor concurring in a debtor application was ineligible to concur, AiB must withdraw the ineligible creditor from the application.

(7) But another creditor may concur in place of the ineligible creditor; and if the other creditor does concur in place of the ineligible creditor, the other creditor must notify AiB of that fact.

Commencement Information

I14 S. 14 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

[F22]14A Main proceedings in Scotland: undertaking by trustee in respect of assets in another EU member State

. . . . . .

Textual Amendments

F22 S. 14A omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(8)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

[F23]14B Main proceedings in another member State: approval of undertaking offered by member State insolvency practitioner to local creditors in the UK

. . . . . .

Textual Amendments

F23 S. 14B omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(8)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Jurisdiction

15 Jurisdiction

(1) Where a petition is presented for the sequestration of the estate of a debtor (whether living or deceased), the sheriff has jurisdiction if, at the relevant time, the debtor—
- (a) had an established place of business in the sheriffdom, or
- (b) was habitually resident in the sheriffdom.

(2) AiB may determine a debtor application for the sequestration of the estate of a living or deceased debtor if, at the relevant time, the debtor—
- (a) had an established place of business in Scotland, or
- (b) was habitually resident in Scotland.

(3) Where a petition is presented for the sequestration of the estate of an entity which may be sequestrated by virtue of section 6, the sheriff has jurisdiction if the entity—
- (a) had at the relevant time an established place of business in the sheriffdom, or
- (b) was constituted or formed under Scots law and at any time carried on business in the sheriffdom.

(4) AiB may determine a debtor application for the sequestration of the estate of such an entity if the entity—
- (a) had at the relevant time an established place of business in Scotland, or
- (b) was constituted or formed under Scots law and at any time carried on business in Scotland.

(5) Even where a person (whether living or deceased) does not fall within subsection (1), the sheriff has jurisdiction in respect of the sequestration of that person's estate if—
- (a) a petition has been presented for the sequestration of the estate of a partnership of which the person is, or was at the relevant time before dying, a partner, and
- (b) the process of that sequestration is still current.

(6) Subsection (7) applies as regards any proceedings under this Act which—
- (a) may be brought before a sheriff, and
- (b) relate either to a debtor application or to the sequestration of a debtor's estate following any such application.

(7) The proceedings are to be brought before the sheriff who, under subsection (1) or (3), would have jurisdiction in respect of a petition for sequestration of the debtor's estate.

(8) References in this section to "the relevant time" are to any time in the year immediately preceding (as the case may be)—
- (a) the date of presentation of the petition,
- (b) the date the debtor application is made, or
- (c) the debtor's date of death.

[F24](9) . . . . . .

Textual Amendments

F24 S. 15(9) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(9)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C4 S. 15 modified (30.11.2016) by The Bankruptcy (Scotland) Regulations 2016 (S.S.I. 2016/397), regs. 1, **31(3)**

Commencement Information

I15 S. 15 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Meaning of "apparent insolvency"

16 Meaning of "apparent insolvency"

(1) The apparent insolvency of a debtor is constituted, or where the debtor is already apparently insolvent again constituted, whenever—

(a) the debtor's estate is sequestrated,

(b) the debtor is adjudged bankrupt in England and Wales or in Northern Ireland,

(c) the debtor gives written notice to the debtor's creditors that the debtor has ceased to pay the debtor's debts in the ordinary course of business (but the debtor must not, at the time notice is so given, be a person whose property—

(i) is affected by a restraint order,

(ii) is detained under or by virtue of a relevant detention power, or

(iii) is subject to a confiscation or charging order),

[F25](d) . . . . . .

(e) the debtor grants a trust deed,

(f) following the service on the debtor of a duly executed charge for payment of a debt, the days of charge expire without payment (unless the circumstances are shown to be such as are mentioned in subsection (2)),

(g) a decree of adjudication of any part of the debtor's estate is granted, either for payment or in security (unless the circumstances are shown to be such as are mentioned in subsection (2)),

(h) a debt constituted by a decree or document of debt, as defined in section 10 of the 2002 Act, is being paid by the debtor under a debt payment programme under Part 1 of that Act and the programme is revoked (unless the circumstances are shown to be such as are mentioned in subsection (2)), or

(i) a creditor of the debtor, in respect of a liquid debt which amounts to (or liquid debts which in aggregate amount to) not less than £1,500 or such sum as may be prescribed, serves on the debtor, by personal service by an officer of court, a demand in the prescribed form requiring the debtor either to pay the debt (or debts) or to find security for its (or their) payment and the condition set out in subsection (3) is met.

(2) The circumstances are—

(a) that at the time of the occurrence, the debtor was able and willing to pay the debtor's debts as they became due, or

(b) that, but for the debtor's property being affected by a restraint order or being subject to a confiscation order or charging order, the debtor would at that time have been able to pay those debts as they became due.

(3) The condition is that the debtor does not, within 3 weeks after the date of service—

(a) comply with the demand, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) intimate to the creditor, by recorded delivery, that the debtor—

(i) denies that there is a debt, or

(ii) denies that the sum claimed by the creditor as the debt is immediately payable.

(4) The apparent insolvency of a partnership is constituted (or as the case may be again constituted) either—

(a) in accordance with subsection (1), or

(b) if any of the partners is apparently insolvent for a debt of the partnership.

(5) The apparent insolvency of an unincorporated body is constituted (or as the case may be again constituted) either—

(a) if a person representing the body is apparently insolvent for a debt of the body, or

(b) if a person holding property for the body in a fiduciary capacity is apparently insolvent for such a debt.

(6) Notwithstanding subsection (2) of section 6, the apparent insolvency of an entity such as is mentioned in that subsection may be constituted (or as the case may be again constituted) under subsection (1); and any reference to the debtor in subsections (1) to (3) and (7) is, except where the context otherwise requires, to be construed as including a reference to such an entity.

(7) The debtor's apparent insolvency continues—

(a) if constituted under paragraph (a) or (b) of subsection (1), until the debtor's discharge,

(b) if constituted under paragraph (c), (e), (f), (g), (h) or (i) of that subsection, until the debtor becomes able to pay the debtor's debts and pays them as they become due, or

[F26](c) . . . . . .

(8) In this section—

"charging order" means an order made under section 78 of the Criminal Justice Act 1988 or under section 27 of the Drug Trafficking Act 1994,

"confiscation order" means a confiscation order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002,

"liquid debt" does not include a sum payable under a confiscation order,

"relevant detention power" means section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P of the Proceeds of Crime Act 2002, and

"restraint order" means a restraint order made under Part 2, 3 or 4 of that Act of 2002.

Textual Amendments

F25 S. 16(1)(d) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(10)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F26 S. 16(7)(c) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(10)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I16 S. 16 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Concurrent proceedings

17 Concurrent proceedings for sequestration or analogous remedy

(1) If, in the course of sequestration proceedings (referred to in this section and in section 18 as the "instant proceedings"), a person who is a petitioner for sequestration, the debtor, or a creditor concurring in a debtor application is or becomes aware of any of the circumstances mentioned in subsection (2), that person must as soon as may be take the action mentioned in subsection (3).

(2) The circumstances are that, notwithstanding the instant proceedings—

(a) a petition for sequestration of the debtor's estate is before a sheriff,

(b) such sequestration has been awarded,

(c) a debtor application has been made in relation to the debtor's estate,

(d) sequestration has been awarded by virtue of any such application,

(e) a petition for the appointment of a judicial factor on the debtor's estate is before a court,

(f) such a judicial factor has been appointed,

(g) a petition is before a court for the winding up of the debtor under Part 4 or 5 of the Insolvency Act 1986 or section 372 of the Financial Services and Markets Act 2000,

(h) an application for an analogous remedy in respect of the debtor's estate is proceeding, or

(i) such an analogous remedy is in force.

(3) The action is—

(a) where the instant proceedings are by petition for sequestration, to notify the sheriff to whom that petition was presented of the circumstances in question,

(b) where the instant proceedings are by debtor application, to notify AiB of those circumstances.

(4) A petitioner who fails to comply with subsection (1) may be made liable for the expenses of presenting the petition for sequestration.

(5) A debtor who fails so to comply commits an offence.

(6) A debtor who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A creditor concurring in a debtor application who fails so to comply may be made liable for the expenses of making the debtor application.

(8) In this section and in section 18, "analogous remedy" means—

(a) in relation to England and Wales—

(i) an individual voluntary arrangement or bankruptcy order under the Insolvency Act 1986,

(ii) an administration order under section 112 of the County Courts Act 1984, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(iii) a remedy having the like effect to any of those mentioned in sub-paragraphs (i) and (ii) or to sequestration, and

(b) in relation to Northern Ireland or to any other country, a remedy having the like effect as a remedy mentioned in paragraph (a).

Commencement Information

I17 S. 17 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

18 Powers in relation to concurrent proceedings

(1) Where, in the course of instant proceedings (see section 17(1)) which are by petition, any of the circumstances mentioned in paragraphs (a) to (g) of section 17(2) exists, the sheriff to whom the petition in the instant proceedings was presented may, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest—

(a) allow the petition to proceed,

(b) sist it, or

(c) dismiss it.

(2) Without prejudice to subsection (1), where, in the course of such instant proceedings, any of the circumstances mentioned in paragraph (a), (b), (e), (f) or (g) of section 17(2) exists, the Court of Session may, on the Court's own motion or at the instance of the debtor, of a creditor or of any other person having an interest—

(a) 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

(b) order the petitions to be heard together.

(3) Without prejudice to subsection (1), where, in the course of such instant proceedings, any of the circumstances mentioned in paragraph (c) or (d) of section 17(2) exists, the sheriff to whom the petition in the instant proceedings was presented may, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest, direct AiB to dismiss the debtor application.

(4) AiB must recall an award of sequestration if—

(a) the award was by virtue of a debtor application, and

(b) the sheriff directs AiB to dismiss the debtor application.

(5) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor or, as the case may be, the other person would have been in if the sequestration had not been awarded.

(6) A recall of an award of sequestration does not—

(a) affect the interruption of prescription caused by—

(i) the presentation of the petition for sequestration,

(ii) the making of the debtor application, or

(iii) the submission of a claim under section 46 or 122,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee, with a person acting in good faith, or

(c) affect a bankruptcy restrictions order which has not been revoked under section 161(1)(a).

(7) Without delay after granting recall of an award of sequestration under subsection (4), AiB must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

(8) Where, in the course of instant proceedings which are by debtor application, any of the circumstances mentioned in paragraphs (a) to (g) of section 17(2) exists, AiB may dismiss the debtor application in the instant proceedings.

(9) Subsection (10) applies 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 (see section 17(8)) is proceeding or an analogous remedy is in force.

(10) The sheriff, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest, may—

(a) allow the petition for sequestration to proceed,

(b) sist it, or

(c) dismiss it.

(11) Subsection (12) applies where, in respect of the same estate—

(a) a debtor application has been made and is not yet determined, and

(b) an application for an analogous remedy is proceeding or an analogous remedy is in force.

(12) AiB may proceed to determine the application or may dismiss it.

Commencement Information

I18 S. 18 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Creditor's oath

19 Creditor's oath

(1) Every creditor who is—

(a) a petitioner for sequestration,

(b) a creditor who concurs in a debtor application, or

(c) a qualified creditor who becomes sisted under subsection (3) of section 10 (or under that subsection as applied by section 6(9)),

must produce an oath, in the prescribed form, made by or on behalf of the creditor.

(2) The oath may be made—

(a) in the United Kingdom, before any person entitled to administer an oath there,

(b) outwith the United Kingdom, before—

(i) a British diplomatic or consular officer, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) any person authorised to administer an oath or affirmation under the law of the place where the oath is made.

(3) The identity of the creditor and the identity of the person before whom the oath is made, and their authority to make and to administer the oath respectively, are presumed to be correctly stated unless the contrary is established.

(4) Any seal or signature on the oath is presumed to be authentic unless the contrary is established.

(5) If the oath contains an error or has omitted a fact—

(a) the sheriff to whom the petition was presented, or

(b) in the case of a creditor concurring in a debtor application, AiB,

may at any time before sequestration is awarded allow another oath to be produced rectifying the original oath.

(6) This section applies to the making of that other oath as it applies to the making of the original oath.

(7) The creditor must produce, along with the oath—

(a) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt, and

(b) if a petitioning creditor, such evidence as is available to the creditor to show the apparent insolvency of the debtor.

Commencement Information

I19 S. 19 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 2

SEQUESTRATION: AWARD AND RECALL

Incomplete or inappropriate debtor applications

20 Debtor application: incomplete application

(1) This section applies where a debtor application is made and AiB considers that—

(a) the application is incomplete,

(b) further information is required in relation to the application,

(c) further evidence is required to substantiate any fact relevant to the application, or

(d) any fee or charge applicable to the application is outstanding.

(2) AiB must specify by notice in writing to the debtor—

(a) any further information which must be provided,

(b) any further evidence which must be provided, and

(c) any fee or charge to be paid.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Any information, evidence, fee or charge to be provided or paid under subsection (2) must be provided or paid within 21 days (or such greater number of days as may be specified by AiB) beginning with the day on which notice is sent under that subsection.

(4) AiB may refuse to award sequestration if, after the expiry of the days referred to in subsection (3), AiB considers that—

(a) the application remains incomplete,

(b) the debtor has provided insufficient information or evidence under subsection (2)(a) or (b), or

(c) any fee or charge applicable to the application remains outstanding.

Commencement Information

I20 S. 20 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

21 Refusal of debtor application: inappropriate application

(1) This section applies where a debtor application is made and AiB considers that an award of sequestration may not be appropriate in the circumstances of the case.

(2) AiB must specify by notice in writing to the debtor—

(a) the reason why AiB considers the application may not be appropriate, and

(b) any further information which must be provided within 21 days (or such greater number of days as may be specified by AiB) beginning with the day on which notice is sent under this subsection.

(3) AiB may refuse to award sequestration if, after the expiry of the days referred to in subsection (2)(b), AiB remains of the view that an award of sequestration would be inappropriate in the circumstances of the case.

Commencement Information

I21 S. 21 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Award of sequestration

22 When sequestration is awarded

(1) Where a debtor application (other than an application under section 5(a)) is made and neither section 20 nor section 21 applies, AiB must award sequestration forthwith if satisfied—

(a) that the application is made in accordance with—

(i) this Act, and

(ii) any provisions made under this Act,

(b) that section 2(8) applies to the debtor, and

(c) that the provisions of section 8(3)(a) have been complied with.

(2) Where a debtor application is made under section 5(a), AiB must award sequestration forthwith if satisfied—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) that the application has been made in accordance with this Act and with any provisions made under this Act, and
(b) that the provisions of section 8(3)(a) have been complied with.

(3) Where a petition for sequestration of the estate of a debtor is presented by—
(a) a creditor, or
(b) a trustee acting under a trust deed,
the sheriff must grant warrant to cite the debtor to appear before the sheriff on such date as is specified in the warrant to show cause why sequestration should not be awarded.

(4) Any date specified under subsection (3) must be—
(a) no fewer than 6, and
(b) no more than 14,
days after the date of citation.

(5) The sheriff must forthwith award sequestration on that petition on being satisfied—
(a) if the debtor has not appeared, that proper citation has been made of the debtor,
(b) that the petition has been presented in accordance with this Act,
(c) that the provisions of section 13(1) have been complied with,
(d) that in the case of a petition by a trustee—
(i) at least one of the conditions in section 2(7)(a) applies, or
(ii) the petition includes an averment in accordance with section 2(7)(b), and
(e) that, in the case of a petition by a creditor, the requirements of this Act relating to apparent insolvency have been fulfilled.

(6) But subsection (5) is subject to section 23.

(7) In this Act, "the date of sequestration" means—
(a) where a debtor application is made, the date on which sequestration is awarded,
(b) where the petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, and sequestration is awarded, the date on which the sheriff granted warrant under subsection (3) (or, where more than one warrant is so granted, the date on which the first warrant is so granted).

Commencement Information
I22 S. 22 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

23 Circumstances in which sequestration is not to be awarded in pursuance of section 22(5)

(1) Sequestration must not be awarded in pursuance of section 22(5) if—
(a) cause is shown why sequestration cannot competently be awarded,
(b) the debtor forthwith pays or satisfies, or produces written evidence of the payment or satisfaction of—
(i) the debt in respect of which the debtor became apparently insolvent, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) any other debt due by the debtor to the petitioner and to any creditor concurring in the petition.

(2) Where the sheriff is satisfied that the debtor will, within 42 days beginning with the day the debtor appears before the sheriff, pay or satisfy the debts mentioned in sub-paragraphs (i) and (ii) of subsection (1)(b), the sheriff may continue the petition for no more than 42 days.

(3) The sheriff may continue the petition for such period as the sheriff thinks fit if satisfied—

(a) that a debt payment programme, under Part 1 of the 2002 Act, relating to the debts mentioned in sub-paragraphs (i) and (ii) of subsection (1)(b) has been applied for and has not yet been approved or rejected, or

(b) that such a debt payment programme will be applied for.

Commencement Information

I23 S. 23 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

[F27 23A Effect of sequestration on land attachment

(1) No land attachment of the heritable property of a debtor, created within the 6 months before the date of sequestration (whether or not subsisting at that date), is effectual to create a preference for the creditor.

(2) A creditor who creates a land attachment within the 6 months mentioned in subsection (1) is entitled to payment, out of the attached land or out of the proceeds of 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 serving the charge for payment, registering the notice of land attachment, serving a copy of that notice, and registering certificate of service of that copy.

(3) A notice of land attachment—

(a) registered on or after the date of sequestration against land forming part of the debtor's heritable estate (including any estate vesting under section 86(5) in the trustee in the sequestration) is of no effect,

(b) registered before that date and in relation to which, by that date, no land attachment is created is of no effect.

(4) It is not competent for a creditor to insist in a land attachment—

(a) created over the debtor's heritable estate before the beginning of the 6 months mentioned in subsection (1), and

(b) which subsists on the date of sequestration.

(5) But subsection (4) is subject to subsections (6) to (9).

(6) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—

(a) the trustee must concur in and ratify the deed implementing that contract, and

(b) the appointed person must account for and pay to the trustee in the sequestration any balance of the proceeds of sale (being the balance which

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 (disbursement of proceeds of sale of attached land).

(7) Subsection (6) does not apply where the deed implementing the contract is not registered within 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 26, in the Register of Inhibitions, or

(b) the certified copy of the determination of AiB awarding sequestration is recorded, under subsection (2) of that section, in that register.

(8) Where a decree of foreclosure has been granted but an extract of it has not been registered, the creditor may proceed to complete title to the land by registering that extract provided that the creditor does so before the expiry of the days mentioned in subsection (7).

(9) The Scottish Ministers may, as they think fit, prescribe a period in substitution for the days mentioned in subsection (7); and a different period may be prescribed for the purposes of subsection (8) than is prescribed for the purposes of subsection (7).

(10) Expressions used in this section which also occur in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 have the same meanings in this section as they have in that Chapter.**]**

Textual Amendments

F27 S. 23(A) inserted by 2007 asp 3, s. 127A(2) (as inserted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), sch. 8 para. 24(2) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)

Modifications etc. (not altering text)

C5 S. 23(A)(3)-(10) applied by 1986 c. 45, **s. 185(1)** (as substituted (30.11.2016) by S.I. 2016/1034, **Sch. 1 para. 4(3)(a)**)

24 Effect of sequestration on diligence generally

(1) The order of the sheriff, or as the case may be the determination of the debtor application by AiB, awarding sequestration has, as from the date of sequestration, in relation to diligence done (whether before or after that date) in respect of any part of the estate of the debtor, the effect mentioned in subsection (2).

(2) The effect is of—

(a) a decree of adjudication of the heritable estate of the debtor for payment of debts duly recorded in the Register of Inhibitions on the date of sequestration,

(b) an arrestment in execution and decree of furthcoming,

(c) an arrestment in execution and warrant for sale, and

(d) an attachment,

in favour of the creditors according to their respective entitlements.

(3) Where an inhibition on the estate of the debtor takes effect within the 60 days before the date of sequestration, any relevant right of challenge vests, at the date of sequestration, in the trustee in the sequestration as does any right of the inhibitor to receive payment for the discharge of the inhibition.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) But subsection (3) neither entitles the trustee to receive any payment made to the inhibitor before the date of sequestration nor affects the validity of anything done before that date in consideration of such payment.

(5) In subsection (3), "any relevant right of challenge" means any right to challenge a deed voluntarily granted by the debtor if it is a right which vested in the inhibitor by virtue of the inhibition.

(6) No arrestment, money attachment, interim attachment or attachment of the debtor's estate (including any estate vesting in the trustee under section 86(5)) executed—
   (a) within the 60 days before the date of sequestration and whether or not subsisting at that date, or
   (b) on or after that date,

   is effectual to create a preference for the arrester or attacher.

(7) The estate so arrested or attached is, or any funds released under section 73J(2) of the Debtors (Scotland) Act 1987 (automatic release of funds) or the proceeds of sale of such estate are, to be handed over to the trustee.

(8) An arrester or attacher whose arrestment, money attachment, interim attachment or attachment is executed within the period mentioned in subsection (6)(a) is entitled to payment, out of the arrested or attached estate or out of the proceeds of the sale of such estate, of the expenses incurred—
   (a) in obtaining—
      (i) warrant for interim attachment, or
      (ii) the extract of the decree or other document on which the arrestment, money attachment or attachment proceeded,
   (b) in executing the arrestment, money attachment, interim attachment or attachment, and
   (c) in taking any further action in respect of the diligence.

(9) Nothing in subsections (6) to (8) applies to an earnings arrestment, a current maintenance arrangement, a conjoined arrestment order or a deduction from earnings order under the Child Support Act 1991.

Modifications etc. (not altering text)

C6 S. 24(6)-(8) applied by 1956 c. 46, s. 47G(3) (as substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 4** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)

Commencement Information

I24 S. 24 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

25 Effect of sequestration on diligence: estate of deceased debtor

(1) **[**[F28]Sections 23A(1) and (2) and 24 apply**]** to the estate of a deceased debtor which—
   (a) has been sequestrated within 12 months after the date of death, or
   (b) was absolutely insolvent at that date and in respect of which a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 within 12 months after that date,

   but with the modifications mentioned in subsection (2).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The modifications are that—

(a) any reference to the date of sequestration is to be construed as a reference to the date of death, and

(b) any reference to the debtor is to be construed as a reference to the deceased debtor.

(3) It is not competent, on or after the date of sequestration, for any creditor [F29]... to be confirmed as executor-creditor on the estate.

(4) Subsections (5) and (6) apply where, within 12 months after the debtor's death—

(a) the debtor's estate is sequestrated, or

(b) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer the debtor's estate and that estate is absolutely insolvent.

(5) No confirmation as executor-creditor on that estate at any time after the debtor's death is effectual in a question with the trustee or the judicial factor.

(6) But the executor-creditor is entitled—

(a) out of the estate, or

(b) out of the proceeds of sale of the estate,

to the expenses incurred by the executor-creditor in obtaining the confirmation.

Textual Amendments

F28 Words in s. 25(1) substituted by 2007 asp 3, s. 127A(3)(a) (as inserted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 24(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)

F29 Words in s. 25(3) omitted by 2007 asp 3, s. 127A(3)(b) (as inserted (30.11.2016) by virtue of Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 24(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)

Commencement Information

I25 S. 25 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

26 Registration of warrant or determination of debtor application

(1) On the sheriff granting warrant under section 22(3) the sheriff clerk must forthwith send—

(a) a certified copy of the order granting the warrant to the Keeper of the Register of Inhibitions for recording in that register,

(b) a copy of that order to AiB, and

(c) where the debtor is taking part in a debt payment programme under Part 1 of the 2002 Act, a copy of that order to the DAS administrator ("DAS administrator" having the meaning given by regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141)).

(2) On awarding sequestration on a debtor application AiB must forthwith send a certified copy of AiB's determination of the application to the Keeper of the Register of Inhibitions for recording in that register.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Recording under subsection (1)(a) or (2) has the effect, as from the date of sequestration, of an inhibition and of a citation in an adjudication of the debtor's heritable estate at the instance of the creditors who subsequently have claims in the sequestration accepted under section 126.

(4) The effect mentioned in subsection (3) expires—

(a) on the recording by virtue of section 27(11)(a) of a certified copy of an order refusing to award sequestration or by virtue of section 30(9)(a) of a certified copy of an order recalling an award of sequestration,

(b) on the recording by virtue of section 18(7), 34(4) or 35(7) of a certified copy of a decision, or

(c) if the effect has not earlier expired by virtue of paragraph (a) or (b), at the end of 3 years beginning with the date of sequestration.

(5) But subsection (4)(c) is subject to subsections (6) and (7).

(6) The trustee may if not discharged send a memorandum, in a form prescribed by act of sederunt, to the Keeper of the Register of Inhibitions for recording in that register before the expiry of—

(a) the 3 years mentioned in subsection (4)(c), or

(b) a period for which the effect mentioned in subsection (3) has been renewed by virtue of subsection (7).

(7) The recording of a memorandum sent in accordance with subsection (6) renews the effect mentioned in subsection (3) for 3 years beginning with the expiry of—

(a) the 3 years mentioned in subsection (4)(c), or

(b) as the case may be, the period mentioned in subsection (6)(b).

(8) The trustee may, if appointed or reappointed under section 152, send a memorandum in a form prescribed by act of sederunt to the Keeper of the Register of Inhibitions for recording in that register before the expiry of that appointment.

(9) The recording of a memorandum sent in accordance with subsection (8) imposes the effect mentioned in subsection (3) for 3 years beginning with the day of notification in accordance with section 153(1).

Commencement Information

I26 S. 26 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

27 Further matters in relation to award of sequestration

(1) On application the sheriff may, at any time after sequestration has been awarded, transfer the sequestration to any other sheriff.

(2) But subsection (1) is subject to subsection (3).

(3) The debtor may, with the leave of the sheriff, appeal to the Sheriff Appeal Court against such a transfer.

(4) Where the sheriff makes an order refusing to award sequestration, the petitioner may appeal against the order within 14 days after the date on which the order is made.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) If, following a debtor application, AiB refuses to award sequestration, the debtor or a creditor concurring in the application may apply to AiB for a review of the refusal.

(6) Any application under subsection (5) must be made within 14 days beginning with the day on which AiB refuses to award sequestration.

(7) If an application under subsection (5) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm the refusal, or award sequestration, within 28 days beginning with that day.

(8) If AiB confirms the refusal to award sequestration under subsection (7)(b), the debtor or a creditor concurring in the application may, within 14 days beginning with the day of that confirmation, appeal to the sheriff.

(9) An award of sequestration is not subject to review otherwise than by recall under—
- (a) section 18(4),
- (b) sections 29 and 30,
- (c) section 34, or
- (d) section 35.

(10) Subsection (9) is without prejudice to any right to bring an action of reduction of an award of sequestration.

(11) Where a petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, the sheriff clerk is—
- (a) on the final determination or the abandonment of any appeal under subsection (4) in relation to the petition, or (if there is no such appeal) within the 14 days mentioned in that subsection, to send a certified copy of the order refusing to award sequestration to the Keeper of the Register of Inhibitions for recording in that register,
- (b) to send forthwith a copy of that order to—
  - (i) AiB, and
  - (ii) where the debtor is taking part in a debt payment programme under Part 1 of the 2002 Act, the DAS administrator ("DAS administrator" having the meaning given by regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141)).

(12) Where sequestration has been awarded the process of sequestration is not to fall asleep.

Commencement Information
I27 S. 27 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

28 Benefit from another estate

(1) Where a debtor learns, whether before or after the date of sequestration, that the debtor may derive benefit from another estate, the debtor must as soon as practicable after that date inform—
- (a) the trustee in the sequestration, of that fact, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the person who is administering that other estate, of the sequestration.

(2) A debtor who fails to comply with subsection (1) commits an offence.

(3) A debtor who commits an offence under subsection (2) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Commencement Information

I28 S. 28 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Recall of sequestration

29 Petitions for recall of sequestration

(1) A petition for recall of an award of sequestration may be presented to the sheriff by—

(a) the debtor,

(b) any creditor,

(c) any other person having an interest (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),

(d) the trustee in the sequestration, or

(e) AiB.

(2) Such a petition may not be presented to the sheriff if the only ground is that the debtor has paid, or is able to pay, the debtor's debts in full.

(3) Subsection (2) does not apply where—

(a) sequestration was awarded following a petition of a qualified creditor or qualified creditors, and

(b) a petition for recall of the award of sequestration includes the ground that the debtor was not apparently insolvent.

(4) A copy of the petition, along with a notice stating that the recipient of the notice may lodge answers to the petition within 14 days after service of the notice, must be served by the petitioner on—

(a) the debtor,

(b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration,

(c) the trustee, and

(d) AiB.

(5) On service, under subsection (4), of a copy of the petition AiB must enter particulars of the petition in the register of insolvencies.

(6) A petition under this section may be presented at any time.

(7) But subsection (6) is subject to sections 114(3) and 115(3).

(8) Notwithstanding that a petition has been presented under this section, the proceedings in the sequestration are to continue as if the petition had not been presented until the recall is granted.

(9) But subsection (8) is subject to section 30(7).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(10) Subsection (11) applies where a petitioner under this section, or a person who has lodged answers to the petition, withdraws or dies.

(11) Any person—
- (a) entitled to present, or
- (b) entitled to lodge answers to,

a petition under this section may be sisted in place of the person who has withdrawn or died.

Commencement Information
I29 S. 29 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

30 Recall of sequestration by sheriff

(1) The sheriff may recall the award of sequestration if satisfied that in all the circumstances of the case (including those arising after the date of the award) it is appropriate to do so.

(2) In particular, the sheriff may recall the award if satisfied—
- (a) that the debtor has paid the debtor's debts in full,
- (b) that a majority in value of the creditors reside in a country other than Scotland and that it is more appropriate for the debtor's estate to be administered in that other country, or
- (c) that another award of sequestration of the estate, or of an analogous remedy, as defined in section 17(8), has (or other such awards have) been granted.

(3) Where another award of sequestration of the debtor's estate has been granted, the sheriff may, after such intimation as the sheriff considers necessary, recall an award (whether or not the award in respect of which the petition for recall was presented).

(4) Where the sheriff intends to recall an award of sequestration on the ground that the debtor has paid the debtor's debts in full, the order recalling the award may not—
- (a) be made before the payment in full of the outlays and remuneration of the trustee and of the interim trustee, or
- (b) be subject to any conditions which are to be fulfilled before the order takes effect.

(5) On or before recalling an award of sequestration, the sheriff—
- (a) must make provision for the payment of the outlays and remuneration of the trustee in the sequestration (see section 50(1)) and of any interim trustee (see section 53(1))—
  - (i) by directing that such payment must be made out of the debtor's estate, or
  - (ii) by requiring that a person who was a party to the petition for sequestration, or as the case may be to the debtor application, must pay the whole or any part of those outlays and remuneration,
- (b) may direct that payment of the expenses of a creditor who was a petitioner for sequestration, or concurred in the debtor's application for sequestration, must be made out of the debtor's estate, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) may make any further order the sheriff considers necessary or reasonable in all the circumstances of the case.

(6) Subsection (5)(b) is without prejudice to subsection (8).

(7) Where the sheriff considers that it is inappropriate to recall, or to refuse to recall, an award of sequestration forthwith, the sheriff may order that the proceedings in the sequestration are to continue but are to be subject to such conditions as the sheriff may think fit.

(8) The sheriff may make such order in relation to the expenses in a petition for recall as the sheriff thinks fit.

(9) The sheriff clerk must send—

(a) a certified copy of any order recalling an award of sequestration to the Keeper of the Register of Inhibitions for recording in that register, and

(b) a copy of any interim or final order recalling, or refusing to recall, an award of sequestration or a copy of any order under section 114(3)(b) or 115(3)(b)—

(i) to AiB, and

(ii) if AiB is not the trustee in the sequestration, to the trustee in the sequestration.

Commencement Information

I30 S. 30 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

31 Application to Accountant in Bankruptcy for recall of sequestration

(1) An application for recall of an award of sequestration may be made to AiB on the ground that the debtor has paid or is able to pay the debtor's debts in full.

(2) An application may be made by—

(a) the debtor,

(b) any creditor (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),

(c) the trustee (where AiB is not the trustee), or

(d) any other person having an interest (whether or not a person who was a petitioner for the sequestration).

(3) The person making an application must, at the same time as applying to AiB, give to the persons mentioned in subsection (4)—

(a) a copy of the application, and

(b) a notice informing the recipient that the person has a right to make representations to AiB in relation to the application within 21 days beginning with the day on which the notice is given.

(4) The persons are—

(a) the debtor (where the debtor is not the applicant),

(b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration, and

(c) the trustee.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Despite an application being made, the proceedings in the sequestration are to continue as if the application had not been made until a recall of an award of sequestration is granted under section 34(1) (subject to any conditions imposed under section 34(3)).

(6) Where the applicant withdraws the application or dies, AiB may continue the application by substituting any person mentioned in subsection (2) for the applicant.

Commencement Information
I31 S. 31 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

32 Application under section 31: further procedure

(1) This section applies where an application is made under section 31.

(2) The trustee must prepare a statement on the debtor's affairs so far as within the knowledge of the trustee.

(3) The trustee must submit the statement to AiB—
- (a) at the same time as the trustee makes the application under section 31, or
- (b) where that application is made by another person, within 21 days beginning with the day on which notice is given under section 31(3)(b).

(4) The statement must—
- (a) indicate whether the debtor has agreed to—
  - (i) the interim trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the interim trustee (including any outlays and remuneration which are yet to be incurred), and
  - (ii) the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred),
- (b) state whether or not the debtor's debts have been paid in full (including the payment of the outlays and remuneration of the interim trustee and of the trustee),
- (c) where the debtor's debts have not been so paid—
  - (i) provide details of any debt which has not been paid, and
  - (ii) indicate whether, in the opinion of the trustee, the debtor's assets are likely to be sufficient to pay the debts in full (including the payment of the outlays and remuneration of the interim trustee and of the trustee) within 8 weeks beginning with the day on which the statement is submitted, and
- (d) provide details of any distribution of the debtor's estate.

(5) The trustee must notify every creditor known to the trustee that the application has been made—
- (a) where it is made by the trustee, within 7 days beginning with the day on which it is made, and
- (b) where it is made by a person other than the trustee, within 7 days beginning with the day on which notice is given under section 31(3)(b).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) If a creditor has not previously submitted a claim under section 46 or 122, the creditor must, in order to be included in the statement made by the trustee, submit a claim.

(7) That claim must be submitted—
- (a) in accordance with section 46(2) to (4), and
- (b) within 14 days beginning with the day on which notice is given under subsection (5).

(8) If any creditor submits a claim in accordance with subsection (7), the trustee must update and re-submit the statement within 7 days after the days mentioned in paragraph (b) of that subsection have expired.

(9) The trustee must update and re-submit the statement if—
- (a) the statement previously submitted did not state in accordance with subsection (4)(b) that the debtor's debts have been paid in full, and
- (b) before the day on which the application is determined by AiB, the trustee is able to make that statement.

Commencement Information

I32 S. 32 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

33 Determination where amount of outlays and remuneration not agreed

(1) This section applies where—
- (a) AiB receives an application under section 31, and
- (b) the statement submitted by the trustee under section 32 indicates that the amount of the outlays and remuneration of the trustee is not agreed.

(2) The trustee must—
- (a) at the same time as submitting the statement under section 32, provide AiB with—
  - (i) the trustee's accounts of the trustee's intromissions with the debtor's estate for audit, and
  - (ii) details of the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred), and
- (b) provide AiB with such other information in relation to that claim as may reasonably be requested by AiB.

(3) AiB must, within 28 days after the days mentioned in section 32(7)(b) have expired, issue a determination fixing the amount of the outlays and of the remuneration payable to the trustee.

(4) AiB may, within the 28 days mentioned in subsection (3), determine the expenses reasonably incurred by a creditor who was a petitioner for, or as the case may be concurred in a debtor application for, sequestration.

(5) Subsections (2) to (4) of section 133 apply to AiB for the purpose of issuing a determination in accordance with subsection (3) as they apply to the commissioners or to AiB for the purpose of fixing an amount under that section.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I33 S. 33 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

34 Recall of sequestration by Accountant in Bankruptcy

(1) AiB may recall an award of sequestration if—
- (a) the trustee has notified AiB, in the statement submitted under section 32, that the debtor's debts have been paid in full (including the outlays and remuneration of the interim trustee and the trustee), and
- (b) AiB is satisfied that in all the circumstances it is appropriate to do so.

(2) AiB may not recall an award of sequestration after—
- (a) where no appeal in made under section 37(5)(a), the day which is 8 weeks after the day on which the statement was first submitted under section 32(3), or
- (b) where such an appeal is made, such later day which is 14 days after the day on which the appeal is finally determined or abandoned.

(3) If AiB does not under subsection (1) recall an award of sequestration, the sequestration must continue but is to be subject to such conditions as AiB thinks fit.

(4) Without delay after granting recall under subsection (1), AiB must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

Commencement Information
I34 S. 34 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

35 Recall where Accountant in Bankruptcy trustee

(1) This section applies where AiB—
- (a) is the trustee, and
- (b) considers recall of an award of sequestration should be granted on the ground that the debtor has paid, or is able to pay, the debtor's debts in full (including the outlays and remuneration of the interim trustee and the trustee).

(2) AiB must notify the debtor and every creditor known to AiB that AiB considers subsection (1) applies.

(3) If a creditor has not previously submitted a claim under section 46 or 122, the creditor must, in order for the creditor's claim to a dividend out of the debtor's estate to be considered, submit a claim.

(4) The claim must be submitted—
- (a) in accordance with section 46(2) to (4), and
- (b) within 14 days beginning with the day on which notice is given under subsection (2).

(5) Before recalling an award of sequestration AiB must—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) take into account any representations made by an interested person within 21 days beginning with the day on which notice is given under subsection (2), and

(b) make a determination of AiB's fees and outlays calculated in accordance with regulations under section 205.

(6) AiB may recall an award of sequestration if satisfied that—

(a) the debtor has paid the debtor's debts in full (including the outlays and remuneration of the interim trustee and the trustee),

(b) those debts were paid in full within 8 weeks after the days mentioned in subsection (5)(a) have expired, and

(c) in all the circumstances it is appropriate to recall it.

(7) Without delay after recalling an award of sequestration under subsection (6), AiB must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

Commencement Information

I35 S. 35 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

36 Application for recall: remit to sheriff

(1) AiB may, at any time before deciding under section 34(1) whether to recall an award of sequestration, remit to the sheriff an application made under section 31.

(2) AiB may, at any time before deciding under section 35(6) whether to recall an award of sequestration, remit the case to the sheriff.

(3) If an application is remitted under subsection (1) or (2), the sheriff may dispose of the application or the case in accordance with section 30 as if it were a petition presented by AiB under section 29.

Commencement Information

I36 S. 36 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

37 Recall of sequestration by Accountant in Bankruptcy: review and appeal

(1) A person mentioned in subsection (2) may apply to AiB for a review of—

(a) a decision of AiB under section 34(1) or 35(6) to recall, or refuse to recall, an award of sequestration, or

(b) a determination of AiB under section 33(4).

(2) The persons are—

(a) the debtor,

(b) any creditor,

(c) the trustee, and

(d) any other person having an interest.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Any application under subsection (1) must be made within 14 days beginning with the day on which the decision or, as the case may be, the determination or requirement is made.

(4) If an application under subsection (1) is made, AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the decision, determination or requirement within 28 days beginning with that date.

(5) A person mentioned in subsection (2) may, within 14 days beginning with the day on which the decision, determination or requirement is made, appeal to the sheriff against—

(a) a determination of AiB under section 33(3) or 35(5)(b), or

(b) a decision of AiB under subsection (4)(b).

(6) Any decision of the sheriff on an appeal relating to a determination of AiB under section 33(3) or 35(5)(b) is final.

Commencement Information

I37 S. 37 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

38 Effect of recall of sequestration

(1) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor, or, as the case may be, the other person, would have been in if the sequestration had not been awarded.

(2) But subsection (1) is subject to subsection (3).

(3) A recall of an award of sequestration is not to—

(a) affect the interruption of prescription caused by—

(i) the presentation of the petition for sequestration,

(ii) the making of the debtor application, or

(iii) the submission of a claim under section 46 or 122,

(b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee in the sequestration, with a person acting in good faith, or

(c) affect a bankruptcy restrictions order which has not been revoked under section 161(1)(a).

Commencement Information

I38 S. 38 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 3

INITIAL STAGES OF SEQUESTRATION, STATUTORY MEETING AND TRUSTEE VOTE

Initial stages

39 Interim preservation of estate

(1) An interim trustee may, in pursuance of the function conferred by section 53(1), give general or particular directions to the debtor relating to the management of the debtor's estate.

(2) In exercising the function so conferred, an interim trustee may—
- (a) require the debtor to deliver up to the interim trustee—
  - (i) any money or valuables, or
  - (ii) any document relating to the debtor's business or financial affairs,

  belonging to, or in the possession of, the debtor or under the debtor's control,
- (b) place in safe custody anything mentioned in paragraph (a),
- (c) require the debtor to deliver up to the interim trustee any perishable goods belonging to the debtor or under the debtor's control,
- (d) arrange for the sale or disposal of such goods,
- (e) make, or cause to be made, an inventory or valuation of any property belonging to the debtor,
- (f) require the debtor to implement any transaction entered into by the debtor,
- (g) effect or maintain insurance policies in respect of the business or property of the debtor, or
- (h) carry on any business of the debtor or borrow money in so far as it is necessary for the interim trustee to do so to safeguard the debtor's estate.

(3) Section 111 applies to an interim trustee as it applies to a trustee.

(4) The sheriff, on the application of an interim trustee, may—
- (a) on cause shown, grant a warrant authorising the interim trustee to enter the house where the debtor resides or the debtor's business premises and to search for and take possession of anything mentioned in subsection (2)(a) or (c) (if need be, by opening shut and lock-fast places), or
- (b) make such other order to safeguard the debtor's estate as the sheriff thinks appropriate.

(5) Where AiB is the interim trustee, the debtor may apply to AiB for a review of a direction under subsection (1) on the ground that the direction is unreasonable.

(6) If an application under subsection (5) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm, amend or revoke the direction (whether or not substituting a new direction) within 28 days beginning with that day.

(7) The sheriff may, on an application made by the debtor made within 14 days beginning with the day on which AiB makes a decision under subsection (6)(b)—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) set aside a direction under subsection (1) or (6)(b) if the sheriff considers the direction to be unreasonable, and

(b) in any event, give such directions to the debtor regarding the management of the debtor's estate as the sheriff considers appropriate.

(8) The debtor must comply with a direction—

(a) under subsection (1) pending a decision by AiB under subsection (6)(b), and

(b) under subsection (6)(b) pending the final determination of any appeal (subject to any interim order of the sheriff).

(9) Where AiB is not the interim trustee, the sheriff, on an application by the debtor on the grounds that a direction under subsection (1) is unreasonable, may—

(a) set aside the direction if the sheriff considers it to be unreasonable, and

(b) in any event, give such directions to the debtor regarding the management of the debtor's estate as the sheriff considers appropriate.

(10) But, subject to any interim order of the sheriff, the debtor must comply with the direction appealed against pending the final determination of the appeal.

Commencement Information

I39 S. 39 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

40 Offences in relation to interim preservation of estate

(1) If a debtor—

(a) fails without reasonable excuse to comply with a direction under subsection (1), (6)(b), (7)(b) or (9)(b), or a requirement under subsection (2)(a), (c) or (f), of section 39, or

(b) obstructs the interim trustee where the interim trustee is acting in pursuance of subsection (4)(a) of that section,

then the debtor commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or—

(i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or

(ii) in any other case, to imprisonment for a term not exceeding 3 months,

or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or

(b) on conviction on indictment—

(i) to a fine, or

(ii) to imprisonment for a term not exceeding 2 years,

or both to a fine and to such imprisonment.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I40 S. 40 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

41 Statement of assets and liabilities etc.

(1) Where a debtor has made a debtor application then, within 7 days after the appointment of the trustee in the sequestration under section 51 (where the trustee is not AiB), the debtor must send to the trustee such statement of assets and liabilities as was sent to AiB in pursuance of section 8(3)(a).

(2) Where a petitioner for sequestration is a creditor, or a trustee acting under a trust deed, then, within 7 days after having been notified by the trustee as mentioned in section 51(13) the debtor must send to the trustee a statement of assets and liabilities.

(3) If the debtor—
- (a) fails to disclose any material fact in a statement of assets and liabilities sent to the trustee in accordance with subsection (1) or (2), or
- (b) makes a material misstatement in any such statement,

then the debtor commits of an offence.

(4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months (or both to such fine and to such imprisonment).

(5) In any proceedings for an offence under subsection (3), it is a defence for the accused to show that the accused had a reasonable excuse for the failure to disclose or for the making of the misstatement.

Commencement Information
I41 S. 41 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

42 Duties on receipt of list of assets and liabilities

(1) As soon as practicable after a trustee has received a statement of assets and liabilities—
- (a) the trustee must prepare a statement of the debtor's affairs so far as within the knowledge of the trustee, and
- (b) if, in the trustee's opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in section 129(1)(e) to (i) the trustee is so to indicate in the statement prepared under paragraph (a).

(2) Not later—
- (a) than 4 days before the date fixed for the statutory meeting, or
- (b) where the trustee does not intend to hold such a meeting, than 60 days after the date on which the sequestration is awarded,

the trustee must send to AiB the statement, copy statement and comments mentioned in subsection (3).

(3) The statement, copy statement and comments are—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the statement of assets and liabilities (unless that statement has already been received by AiB by virtue of section 8(3)(a)),

(b) subject to subsection (4), a copy of the statement prepared under subsection (1)(a), and

(c) written comments by the trustee indicating what in the trustee's opinion are the causes of the insolvency and to what extent the conduct of the debtor may have contributed to the insolvency.

(4) The trustee need not send the copy mentioned in subsection (3)(b) if the trustee has, in accordance with section 108(1)(c), sent a copy of the inventory and valuation to AiB.

(5) The written comments made under subsection (3)(c) are absolutely privileged.

(6) Subsections (2) and (5) do not apply in any case where AiB is the trustee.

Commencement Information

I42 S. 42 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Statutory meeting

43 Statutory meeting

A meeting of creditors called under section 44 is referred to in this Act as "the statutory meeting".

Commencement Information

I43 S. 43 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

44 Calling of statutory meeting

(1) The statutory meeting may be held at such time and place as the trustee in the sequestration may determine.

(2) But subsection (1) is subject to subsections (6) and (7).

(3) Not later than—

(a) 60 days after the date on which sequestration is awarded, or

(b) such greater number of days after that date as the sheriff may, on cause shown, allow,

the trustee must give notice to every creditor known to the trustee of whether or not the trustee intends to call the statutory meeting.

(4) A notice under subsection (3)—

(a) must be accompanied by a copy of the trustee's statement of the debtor's affairs, and

(b) where the trustee is notifying an intention not to hold the statutory meeting, must inform creditors of the effect of subsections (5) and (6).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Within 7 days after the giving of notice under subsection (3), any creditor may request the trustee to call the statutory meeting.

(6) Where a request under subsection (5) is made (or requests under that subsection are made) by not less than ¼ in value of the debtor's creditors, the trustee must call the statutory meeting not later than—
  (a) 28 days after the date on which notice is given under subsection (3), or
  (b) such greater number of days after that date as the sheriff may, on cause shown, allow.

(7) Where the trustee gives notice under subsection (3) that the trustee intends to call the statutory meeting, that meeting must be called within 28 days after the date on which the notice is given.

(8) No fewer than 7 days before the date fixed for the statutory meeting, the trustee—
  (a) must notify every creditor known to the trustee of the date, time and place of the meeting, and
  (b) must in the notification—
    (i) invite the submission of such claims as have not already been submitted, and
    (ii) inform the creditors of the trustee's duties under section 48(4).

(9) The creditors may continue the statutory meeting to a date not later than—
  (a) 7 days after the days mentioned in subsection (7) have expired, or
  (b) such greater number of days after that expiry as the sheriff may, on cause shown, allow.

Commencement Information
I44 S. 44 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

45 Procedure where no statutory meeting called

(1) Where the trustee in the sequestration does not call the statutory meeting and the 7 days mentioned in section 44(5) expire, the trustee must forthwith make a report to AiB on the circumstance of the sequestration.

(2) But subsection (1) does not apply if AiB is the trustee.

Commencement Information
I45 S. 45 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

46 Submission of claims for voting purposes

(1) For the purposes of voting at the statutory meeting a creditor (in this section and in section 47 referred to as “C”) must, in accordance with this section, submit a claim to the trustee in the sequestration at or before the meeting.

(2) C submits a claim under this section by producing to the trustee—
  (a) a statement of claim in the prescribed form, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt.

(3) But the trustee may dispense with any requirement under subsection (2) in respect of any debt or of any class of debt.

(4) Where C neither resides, nor has a place of business, in the United Kingdom, the trustee—

(a) must, if the trustee knows where C does reside or have a place of business and if no notification has been given to C under section 44(3), write to C informing C that C may submit a claim under this section, and

(b) may allow C to submit an informal claim in writing.

(5) If C has produced a statement of claim in accordance with subsection (2), C may at any time before the statutory meeting produce, in place of that statement of claim, another statement of claim specifying a different amount for C's claim.

(6) C may, in such circumstances as may be prescribed, state the amount of C's claim in foreign currency.

(7) The trustee must, on production of any document to the trustee under this section—

(a) initial the document,

(b) keep a record of it, stating the date on which it was produced to the trustee, and

(c) if requested by the person producing it, return it (if it is not a statement of claim) to that person.

(8) The submission of a claim under this section bars the effect of any enactment or rule of law relating to the limitation of actions.

(9) Schedule 2 has effect for determining the amount in respect of which C is entitled to claim.

Commencement Information

I46 S. 46 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

47 Offences in relation to submission of claims for voting purposes

(1) Subsections (2) and (3) apply where C produces under section 46—

(a) a statement of claim,

(b) account,

(c) voucher, or

(d) other evidence,

which is false.

(2) C commits an offence unless C shows that C neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false.

(3) The debtor commits an offence if the debtor—

(a) knew, or became aware, that the statement of claim, account, voucher or other evidence was false, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) failed, as soon as practicable after acquiring such knowledge, to report to the trustee that the statement of claim, account, voucher or other evidence was false.

(4) A person who commits an offence under subsection (2) or (3) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or—

(i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or

(ii) in any other case, to imprisonment for a term not exceeding 3 months,

or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or

(b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or both to a fine and to such imprisonment.

Commencement Information

I47 S. 47 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

48 Proceedings before trustee vote

(1) At the commencement of the statutory meeting the trustee in the sequestration must chair the meeting and, as the person chairing it, is—

(a) for the purposes of subsection (3), to accept or reject in whole or in part the claim of each creditor (and if the amount of the claim is stated in foreign currency, to convert that amount into sterling, in such manner as may be prescribed, at the rate of exchange prevailing at the close of business on the date of sequestration),

(b) on that being done, to invite the creditors to elect one of their number to chair the meeting in place of the trustee,

(c) to preside over the election, and

(d) to arrange for a record to be made of the proceedings at the meeting.

(2) But, if no person is elected in pursuance of subsection (1)(b), the trustee must chair the statutory meeting throughout.

(3) The acceptance of a claim in whole or in part under paragraph (a) of that subsection is, subject to section 49(6), to determine the entitlement of a creditor to vote at the statutory meeting.

(4) On the conclusion of the proceedings under subsection (1)—

(a) the trustee must make available for inspection—

(i) the statement of assets and liabilities, and

(ii) the statement prepared under section 42(1),

(b) the trustee must answer to the best of the trustee's ability any questions,

(c) the trustee must consider any representations put to the trustee by the creditors which relate to the debtor's—

(i) assets and business or financial affairs, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) conduct in relation to such assets and affairs,

(d) after the trustee considers any such representations as are mentioned in paragraph (c) if, in the trustee's opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in paragraphs (e) to (i) of section 129(1), the trustee is so to indicate,

(e) the trustee must determine whether it is necessary to revise the trustee's statement of the debtor's affairs, and

(f) if the trustee does so determine, the trustee must revise the statement either at, or as soon as may be after, the statutory meeting.

(5) Where the trustee does carry out such a revision, the trustee is as soon as possible after the statutory meeting to send a copy of the revised statement to every creditor known to the trustee.

Commencement Information

I48 S. 48 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Trustee vote

49 Trustee vote

(1) At the statutory meeting the creditors are, at the conclusion of the proceedings under section 48(4), to proceed to a vote at which they are—

(a) to confirm the appointment of the trustee appointed under section 51 (referred to in this section and in Part 4 as the "original trustee"), or

(b) to elect another person as the trustee in the sequestration (referred to in this section and in that Part as the "replacement trustee").

(2) The vote is referred to in this Act as a "trustee vote".

(3) None of the persons listed in subsection (5) is eligible for election as replacement trustee.

(4) No one who becomes a person so listed after being elected as replacement trustee is qualified to continue to act as trustee.

(5) The persons are—

(a) the debtor,

(b) a person not qualified to act as an insolvency practitioner,

(c) a person who, though qualified to act as an insolvency practitioner, is not qualified to act as such in relation to the debtor,

(d) a person who holds an interest opposed to the general interests of the creditors,

(e) a person who has not given an undertaking, in writing, to act as trustee, and

(f) AiB.

(6) None of the persons listed in subsection (7) is entitled to vote in the trustee vote.

(7) The persons are—

(a) anyone who, other than by succession, acquires after the date of sequestration a debt due by the debtor, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) any creditor to the extent that the creditor's debt is a postponed debt.

(8) Where AiB is the original trustee, if no creditor entitled to vote in the trustee vote attends the statutory meeting or no replacement trustee is elected, AiB must—
(a) forthwith report the proceedings at the statutory meeting to the sheriff, and
(b) continue to act as the trustee.

(9) Where AiB is not the original trustee, if no creditor entitled to vote in the trustee vote attends the statutory meeting or no replacement trustee is elected, the original trustee must—
(a) forthwith—
(i) notify AiB accordingly, and
(ii) report the proceedings at the statutory meeting to the sheriff, and
(b) continue to act as the trustee in the sequestration.

Commencement Information
I49 S. 49 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 4

TRUSTEES AND COMMISSIONERS

Trustees

50 Functions of trustee

(1) In every sequestration there is to be a trustee, whose general functions are—
(a) to recover, manage and realise the estate of the debtor, whether situated in Scotland or elsewhere,
(b) to distribute the estate among the debtor's creditors according to their respective entitlements,
(c) to ascertain the reasons for the debtor's insolvency and the circumstances surrounding it,
(d) to ascertain the state of the debtor's liabilities and assets,
(e) to maintain, for the purpose of providing an accurate record of the sequestration process, a sederunt book during the trustee's term of office,
(f) to keep regular accounts of the trustee's intromissions with the debtor's estate, such accounts being available for inspection at all reasonable times by the commissioners, if there are any, the creditors and the debtor, and
(g) whether or not the trustee is still acting in the sequestration, to supply AiB with such information as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.

(2) The trustee, in performing the trustee's functions under this Act, must have regard to advice offered to the trustee by the commissioners, if there are any.

(3) Where the trustee has reasonable grounds—
(a) to suspect that an offence has been committed in relation to a sequestration—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) by the debtor in respect of the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or

(ii) by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the trustee in respect of the debtor's assets, business or financial affairs, or

(b) to believe that any behaviour on the part of the debtor is of a kind that would result in a sheriff granting, under section 156(1), an application for a bankruptcy restrictions order,

the trustee must report the matter to AiB.

(4) A report under subsection (3) is absolutely privileged.

(5) Subsections (1)(g) and (3) do not apply in any case where AiB is the trustee.

(6) Where AiB is the trustee, AiB may apply to the sheriff for directions in relation to any particular matter arising in the sequestration.

(7) The debtor, a creditor or any other person having an interest may, if dissatisfied with any act, omission or decision of the trustee, apply to the sheriff in that regard.

(8) On an application under subsection (7), the sheriff may confirm, revoke, or modify the decision in question, confirm or annul the act in question, give the trustee directions or make such order as the sheriff thinks fit.

(9) The trustee must comply with the requirements of subsections (1)(a) to (d) and (2) only in so far as, in the trustee's view, to do so would be—

(a) of financial benefit to the debtor's estate, and

(b) in the interests of the creditors.

Commencement Information

I50 S. 50 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

51 Appointment of trustee

(1) Subsection (2) applies where the sheriff awards sequestration of the debtor's estate and the petition for the sequestration—

(a) nominates a person to be the trustee in the sequestration,

(b) states that the person—

(i) is qualified to act as an insolvency practitioner, and

(ii) has given an undertaking to act as the trustee in the sequestration, and

(c) has, annexed to it, a copy of the undertaking.

(2) The sheriff may, if—

(a) it appears to the sheriff that the person is so qualified and has given the undertaking, and

(b) no interim trustee is appointed under section 54(1),

appoint the person to be the trustee in the sequestration.

(3) Where the sheriff—

(a) awards sequestration of the debtor's estate,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) does not, under subsection (2), appoint a person to be the trustee in the sequestration, and

(c) no interim trustee is appointed under section 54(1),

the sheriff must appoint AiB to be the trustee in the sequestration.

(4) Subsections (5) and (7) apply where the sheriff—

(a) awards sequestration of the debtor's estate, and

(b) an interim trustee is appointed under section 54(1).

(5) The sheriff may appoint—

(a) the interim trustee, or

(b) subject to subsection (6), such other person as may be nominated by the petitioner,

to be the trustee in the sequestration.

(6) A person nominated under subsection (5)(b) may be appointed to be the trustee in the sequestration only if—

(a) it appears to the sheriff that the person is qualified to act as an insolvency practitioner and has given an undertaking to act as the trustee in the sequestration, and

(b) a copy of the undertaking has been lodged with the sheriff.

(7) Where the sheriff does not, under subsection (5), appoint a person to be the trustee in the sequestration, the sheriff must appoint AiB to be the trustee in the sequestration.

(8) Subsection (9) applies where AiB awards sequestration of the debtor's estate and the debtor application—

(a) nominates a person to be the trustee in the sequestration,

(b) states that the person—

(i) is qualified to act as an insolvency practitioner, and

(ii) has given an undertaking to act as the trustee in the sequestration, and

(c) has, annexed to it, a copy of the undertaking.

(9) AiB may, if it appears to AiB that the person is so qualified and has given that undertaking, appoint the person to be the trustee in the sequestration.

(10) But subsection (9) is subject to subsection (11).

(11) AiB is not to make an appointment under subsection (9) where—

(a) the debtor application is made by a debtor to whom section 2(2) applies, and

(b) AiB awards sequestration of the debtor's estate.

(12) Where AiB—

(a) awards sequestration of the debtor's estate, and

(b) does not, under subsection (9), appoint a person to be the trustee in the sequestration,

AiB is deemed to be appointed the trustee in the sequestration.

(13) Where a trustee is appointed in a sequestration for which the petition is presented by a creditor, or by a trustee acting under a trust deed, the appointee must, as soon as practicable, notify the debtor of the appointment.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(14) The trustee must, at the same time as notifying the debtor under subsection (13), send to the debtor for signature by the debtor a statement of undertakings in the form prescribed.

Commencement Information
I51 S. 51 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

52 Application to Accountant in Bankruptcy by trustee for a direction

(1) This section applies where AiB is not the trustee in the sequestration.

(2) The trustee may apply to AiB for a direction in relation to any particular matter arising in the sequestration.

(3) Before giving any such direction, AiB may refer the matter to the sheriff by making an application for a direction in relation to the matter.

(4) The trustee may apply to AiB for a review of a direction given by AiB under this section.

(5) An application for a review under subsection (4) may not be made—
- (a) by an interim trustee,
- (b) after the expiry of 14 days beginning with the day on which notice of the direction by AiB is given to the trustee, or
- (c) in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (3).

(6) If an application for a review under subsection (4) is made, AiB must—
- (a) take into account any representations made by the trustee, the debtor, any creditor or any other person having an interest, within 21 days beginning with the day on which the application is made, and
- (b) confirm, amend or revoke the direction within 28 days beginning with that day.

(7) The trustee may, within 14 days beginning with the day of a decision of AiB under subsection (6)(b), appeal to the sheriff against that decision.

Commencement Information
I52 S. 52 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Interim trustees

53 Functions of interim trustee

(1) An interim trustee's general function is to safeguard the debtor's estate pending the determination of the petition for sequestration.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) An interim trustee, whether or not still acting in the sequestration, must supply AiB with such information as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.

Commencement Information
I53 S. 53 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

54 Appointment of interim trustee

(1) Where a petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, the sheriff may appoint an interim trustee before sequestration is awarded if—
  (a) the debtor consents, or
  (b) the trustee acting under the trust deed or any creditor shows cause.

(2) For the purposes of the appointment of an interim trustee under subsection (1)—
  (a) where a person is nominated as mentioned in subsection (1)(a) of section 51 and the provisions of that subsection apply, the sheriff may appoint that person, and
  (b) where such a person is not appointed, the sheriff must appoint AiB.

(3) Where an interim trustee is appointed under subsection (1), the appointee is, as soon as practicable, to notify the debtor of the appointment.

(4) The interim trustee must, at the same time as notifying the debtor under subsection (3), send to the debtor for signature by the debtor a statement of undertakings in the form prescribed.

Commencement Information
I54 S. 54 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

55 Removal, resignation etc. of interim trustee

(1) This section applies where—
  (a) an interim trustee is appointed under section 54(1), and
  (b) the petition for sequestration has not been determined.

(2) Where, under section 200(4) the sheriff removes an interim trustee from office the sheriff must, on the application of AiB, appoint a new interim trustee.

(3) Without prejudice to that section or to subsection (2), where the sheriff is satisfied—
  (a) that the interim trustee is unable to act—
    (i) for a reason mentioned in subsection (4), or
    (ii) by, under or by virtue of any other provision of this Act, or
  (b) that the interim trustee's conduct has been such that the interim trustee should no longer continue to act in the sequestration,

then, on the application of the debtor, a creditor or AiB, the sheriff must remove the interim trustee from office and appoint a new interim trustee.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The reasons are—

(a) that the interim trustee is incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000), or

(b) that the interim trustee has some incapacity by virtue of which the interim trustee is unable to act as interim trustee.

(5) An interim trustee (not being AiB) may apply to the sheriff for authority to resign office; and if the sheriff is, in respect of the applicant, satisfied as is mentioned in subsection (3), the sheriff must grant the application.

(6) Where, following an application under subsection (5) the interim trustee resigns office, the sheriff must appoint a new interim trustee.

(7) Where the interim trustee dies, the sheriff must, on the application of the debtor, a creditor or AiB, appoint a new interim trustee.

(8) A person (other than AiB) may not be appointed to act as interim trustee in a sequestration if the person is ineligible, by virtue of section 49(3), for election as a replacement trustee.

(9) An interim trustee who, by virtue of subsection (8), is prohibited from acting as such must forthwith make an application under subsection (5).

(10) Subsections (1) to (3) of section 51 apply as regards the appointment of an interim trustee under this section as if, for any reference—

(a) to the sheriff awarding sequestration of the debtor's estate, there were substituted a reference to the sheriff appointing a new interim trustee, and

(b) to the petition for sequestration, there were substituted a reference to the application under this section for the appointment of a new interim trustee.

Commencement Information

I55 S. 55 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

56 Termination of interim trustee's functions where not appointed trustee

(1) This section applies where an interim trustee (not being AiB) is appointed under section 54(1) and the sheriff—

(a) awards sequestration and appoints another person as trustee under subsection (5) or (7) of section 51, or

(b) refuses to award sequestration.

(2) Where the sheriff awards sequestration and appoints another person as trustee in the sequestration, the interim trustee—

(a) must hand over to the other person everything in the interim trustee's possession which relates to the sequestration, and

(b) on that being done, must cease to act in the sequestration.

(3) The sheriff may make such order in relation to liability for the outlays and remuneration of the interim trustee as may be appropriate.

(4) Within 3 months after the sheriff awards, or refuses to award, sequestration the interim trustee must—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) submit to AiB—
  (i) the interim trustee's accounts for intromissions (if any) with the debtor's estate,
  (ii) a claim for outlays reasonably incurred by the interim trustee, and
  (iii) a claim for remuneration for work reasonably undertaken by the interim trustee, and
(b) send a copy of the interim trustee's accounts and claims to—
  (i) the debtor,
  (ii) the petitioner, and
  (iii) in a case where sequestration is awarded, the trustee and all creditors known to the interim trustee.

(5) On a submission being made under subsection (4)(a), AiB must—
(a) audit the accounts,
(b) issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee,
(c) send a copy of the determination to—
  (i) the interim trustee, and
  (ii) the persons mentioned in subsection (4)(b), and
(d) where a trustee (not being AiB) is appointed in the sequestration, send a copy of the audited accounts and of the determination to the trustee.

(6) On receiving a copy of the determination sent under subsection (5)(c)(i), the interim trustee may apply to AiB for a certificate of discharge.

(7) The grant of a certificate of discharge under this section by AiB has the effect of discharging the interim trustee from all liability (other than any liability arising from fraud)—
(a) to the debtor,
(b) to the petitioner, or
(c) to the creditors,

in respect of any act or omission of the interim trustee in exercising the functions conferred on the interim trustee by this Act.

Commencement Information
I56 S. 56 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

57 Appeal or review by virtue of section 56

(1) The interim trustee, or any person mentioned in subsection (4)(b) of section 56 may, within 14 days after the issuing of the determination under subsection (5)(b) of that section, appeal to the sheriff against the determination.

(2) The decision of the sheriff on an appeal under subsection (1) is final.

(3) The interim trustee must send to the persons mentioned in subsection (4)(b) of section 56 notice of any application under subsection (6) of that section and must inform them—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) that they may make written representations relating to it to AiB within 14 days after such notification, and

(b) of the effect mentioned in subsection (7) of that section.

(4) On the expiry of the 14 days mentioned in subsection (3)(a) AiB must, after considering any representations made to AiB—

(a) grant or refuse to grant the certificate of discharge, and

(b) notify accordingly the persons mentioned in section 56(4)(b).

(5) The interim trustee or any person mentioned in section 56(4)(b) may apply to AiB for a review of a determination under subsection (4).

(6) Any application under subsection (5) must be made within 14 days after the determination is issued.

(7) If an application under subsection (5) is made, AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the determination within 28 days beginning with that day.

(8) The interim trustee, or any person mentioned in subsection (4)(b) of section 56, may, within 14 days after a decision under subsection (7)(b), appeal to the sheriff against the decision.

(9) If, following an appeal under subsection (8), the sheriff determines that a certificate of discharge—

(a) which has been refused should be granted under section 56, the sheriff must order AiB to grant it,

(b) which has been granted should have been refused, the sheriff must revoke the certificate.

(10) Following any appeal under subsection (8), the sheriff clerk must send a copy of the decree of the sheriff to AiB.

(11) The decision of the sheriff on an appeal under subsection (8) is final.

Commencement Information

I57 S. 57 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

58 Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed trustee

(1) This section applies where AiB is appointed as interim trustee under section 54(1) and the sheriff—

(a) awards sequestration and appoints another person as trustee under section 51(5), or

(b) refuses to award sequestration.

(2) Where the sheriff awards sequestration and appoints another person as trustee in the sequestration, AiB—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) must hand over to the other person everything in AiB's possession which relates to the sequestration, and

(b) on that being done, must cease to act in the sequestration.

(3) The sheriff may make such order in relation to liability for the outlays and remuneration of AiB as may be appropriate.

(4) Within 3 months after the sheriff awards, or refuses to award, sequestration AiB must—

(a) send to the debtor and the petitioner—

(i) AiB's accounts for intromissions (if any) with the debtor's estate,

(ii) a determination of AiB's fees and outlays, calculated in accordance with regulations made under section 205, and

(iii) the notice mentioned in subsection (5), and

(b) in a case where sequestration is awarded, send a copy of those accounts, that determination and that notice to all creditors known to AiB.

(5) The notice is a notice in writing stating—

(a) that AiB has commenced procedure under this Act leading to discharge in respect of AiB's actings as interim trustee,

(b) that an application for a review may be made under section 59(1),

(c) that an appeal may be made to the sheriff under section 59(4), and

(d) that, in the circumstances mentioned in subsection (6), AiB is discharged from any liability incurred while acting as interim trustee.

(6) Subsection (7) applies where—

(a) the requirements of this section have been complied with, and

(b) either no appeal is made under section 59(4) or any such appeal is refused as regards the discharge of AiB.

(7) AiB is discharged from all liability (other than any liability arising from fraud)—

(a) to the debtor,

(b) to the petitioner, or

(c) to the creditors,

in respect of any act or omission of AiB in exercising the functions of interim trustee conferred on AiB by this Act.

Commencement Information

I58 S. 58 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

59 Review or appeal by virtue of section 58

(1) The debtor, the petitioner or any creditor may apply to AiB for a review of the discharge of AiB in respect of AiB's actings as interim trustee.

(2) Any application under subsection (1) must be made within 14 days beginning with the day on which notice is sent under section 58(4)(a)(iii) or (b).

(3) If an application for a review under subsection (1) is made, AiB must—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) take into account any representations made, within 21 days beginning with the day on which the application is made, by an interested person, and
(b) confirm or revoke the discharge within 28 days beginning with that day.

(4) The debtor, the petitioner or any creditor may appeal to the sheriff within 14 days beginning with—
(a) the day on which notice is sent under section 58(4)(a)(iii) or (b), against the determination mentioned in section 58(4)(a)(ii), or
(b) the day of a decision by AiB under subsection (3)(b), against that decision.

(5) The sheriff clerk must, following an appeal under subsection (4), send a copy of the decree to AiB.

(6) The decision of the sheriff on an appeal under subsection (4) is final.

Commencement Information
I59 S. 59 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Replacement trustees

60 Appointment of replacement trustee

(1) This section applies where a replacement trustee is elected by virtue of a trustee vote.

(2) On the election of the replacement trustee the original trustee must immediately make a report of the proceedings at the statutory meeting—
(a) where the original trustee was not AiB, to AiB, or
(b) where the original trustee was AiB, to the sheriff.

(3) The debtor, a creditor, the original trustee, the replacement trustee or AiB may object to any matter connected with the election—
(a) in the case of an objection by a person other than AiB, by applying to AiB,
(b) in the case of an objection by AiB, by application to the sheriff.

(4) Any objection under subsection (3) must—
(a) specify the grounds on which the objection is taken, and
(b) be made within 4 days beginning with the day of the statutory meeting.

(5) If there is no timeous objection under subsection (3), AiB must without delay declare the elected person to be the trustee in the sequestration.

(6) No expense in objecting under this section is to fall on the debtor's estate.

Commencement Information
I60 S. 60 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

61 Procedure in application to Accountant in Bankruptcy under section 60

(1) This section applies where an application is made to AiB under section 60(3)(a).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) AiB must—

(a) without delay give the original trustee, the replacement trustee, the objector and any other interested person an opportunity to make written submissions on the application, and

(b) make a decision.

(3) If AiB decides—

(a) to reject the objection in the application, AiB must without delay declare the elected person to be the trustee in the sequestration,

(b) to sustain the objection in the application, AiB must order the original trustee to arrange a new meeting at which a new trustee vote must be held.

(4) Sections 48, 49, 60 and 62, and this section, apply in relation to a meeting arranged by virtue of subsection (3)(b).

(5) The original trustee, the replacement trustee, the objector and any other interested party may apply to AiB for a review of a decision under subsection (2)(b).

(6) Any application under subsection (5) must be made within 14 days beginning with the day on which notice of the decision is given.

(7) If an application for a review under subsection (5) is made, AiB must—

(a) take into account any representations made by an interested party within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the decision within 28 days beginning with that day.

(8) The trustee, the objector or any other interested party may, within 14 days beginning with the day of a decision of AiB under subsection (7)(b), appeal to the sheriff against that decision.

(9) No expense in objecting under this section is to fall on the debtor's estate.

Commencement Information

I61 S. 61 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

62 Procedure in application under section 60, or appeal under section 61, to sheriff

(1) This section applies where there is—

(a) an application by AiB under section 60(3)(b), or

(b) an appeal under section 61(8).

(2) The sheriff must—

(a) without delay give the parties an opportunity to be heard on the application, and

(b) make a decision.

(3) If the sheriff decides—

(a) to reject an objection to the appointment of an elected person, the sheriff must without delay declare the elected person to be the trustee in the sequestration and make an order appointing the elected person to be the trustee in the sequestration, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) to sustain such an objection, the sheriff must order the original trustee to arrange a new meeting at which a new trustee vote must be held.

(4) Sections 48, 49, 60, 61 and this section, apply in relation to a meeting arranged by virtue of subsection (3)(b).

(5) Any declaration, appointment or decision of the sheriff under this section is final.

Commencement Information
I62 S. 62 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

63 Termination of original trustee's functions

(1) This section applies where—
(a) a replacement trustee is appointed under section 60, and
(b) the original trustee is not AiB.

(2) On the appointment of the replacement trustee, the original trustee—
(a) must hand over to the replacement trustee everything in the original trustee's possession which relates to the sequestration, including—
(i) the statement of assets and liabilities,
(ii) a copy of the statement of the debtor's affairs prepared under section 42(1)(a) (as revised under section 48(4)(f) if so revised), and
(iii) a copy of the written comments sent under section 42(2)), and
(b) on that being done, must cease to act in the sequestration.

(3) Within 3 months after the appointment of the replacement trustee, the original trustee must—
(a) submit to AiB—
(i) the original trustee's accounts for intromissions (if any) with the debtor's estate,
(ii) a claim for outlays reasonably incurred, and for remuneration for work reasonably undertaken, by the original trustee, and
(b) send to the replacement trustee a copy of what is submitted under paragraph (a).

(4) Where the original trustee was appointed under section 54(1) as the interim trustee in the sequestration, the original trustee's accounts and the claim referred to in subsection (3)(a)(ii) must include accounts and a claim for the period of the original trustee's appointment as interim trustee.

(5) On a submission being made under subsection (3)(a), AiB must—
(a) audit the accounts,
(b) issue a determination fixing the amount of the outlays and remuneration payable to the original trustee, and
(c) send a copy of—
(i) the determination to the original trustee, and
(ii) the audited accounts and the determination to the replacement trustee.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) The original trustee, the replacement trustee, the debtor or any creditor may appeal to the sheriff against the determination within 14 days after it is issued.

(7) The decision of the sheriff on an appeal under subsection (6) is final.

Commencement Information
I63 S. 63 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

64 Accountant in Bankruptcy's intromissions in capacity of original trustee

(1) This section applies where AiB was the original trustee and some other person is appointed as replacement trustee under section 60.

(2) On the appointment of the replacement trustee AiB—
- (a) must hand over to that person everything in AiB's possession—
  - (i) which relates to the sequestration, and
  - (ii) which AiB obtained in the capacity of original trustee (including the statement of assets and liabilities), and
- (b) on that being done, must cease to act as trustee.

(3) AiB must, within 3 months after the appointment of the replacement trustee, supply to that person—
- (a) AiB's accounts of AiB's intromissions (if any) as original trustee with the debtor's estate,
- (b) a determination of AiB's fees and outlays calculated in accordance with regulations under section 205, and
- (c) a copy of the notice mentioned in subsection (4)(b).

(4) AiB must send to the debtor and to all creditors known to AiB—
- (a) a copy of the determination mentioned in subsection (3)(b), and
- (b) a notice in writing stating—
  - (i) that AiB has commenced procedure under this Act leading to discharge in respect of AiB's actings as trustee,
  - (ii) that the accounts of AiB's intromissions (if any) with the debtor's estate are available for inspection at such address as AiB may determine,
  - (iii) that an application for a review may be made under subsection (5),
  - (iv) that an appeal may be made to the sheriff under subsection (8), and
  - (v) the effect of subsections (10) and (11).

(5) The replacement trustee, the debtor or any creditor may apply to AiB for a review of the discharge of AiB in respect of AiB's actings as trustee.

(6) Any application under subsection (5) must be made within 14 days beginning with the day on which notice is sent under subsection (4)(b).

(7) If an application under subsection (5) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm or revoke the discharge within 28 days beginning with that day.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) The replacement trustee, the debtor or any creditor may appeal to the sheriff within 14 days beginning with—
  (a) the day on which notice is sent under subsection (4)(b), against the determination mentioned in subsection (3)(b), or
  (b) the day of a decision of AiB under subsection (7)(b), against that decision.

(9) The decision of the sheriff on an appeal under subsection (8) is final.

(10) Subsection (11) applies where—
  (a) the requirements of this section have been complied with, and
  (b) either no appeal is made under subsection (8) or any such appeal is refused as regards the discharge of AiB.

(11) AiB is discharged from all liability (other than liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of AiB in exercising the functions of trustee in the sequestration.

Commencement Information
I64 S. 64 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

65 Discharge of original trustee

(1) On receiving a copy of the determination of AiB sent under section 63(5)(c)(i) the original trustee may apply to AiB for a certificate of discharge.

(2) The original trustee must send notice of the application to the debtor, to all creditors known to the original trustee and to the replacement trustee and must inform the debtor—
  (a) that the debtor, the replacement trustee or any creditor may, in relation to the application, make written representations to AiB within 14 days after such notification,
  (b) that the audited accounts of the original trustee's intromissions (if any) with the debtor's estate are available for inspection at the original trustee's office and that a copy of those accounts has been sent to the replacement trustee, and
  (c) of the effect mentioned in subsection (11).

(3) On the expiry of the 14 days mentioned in subsection (2)(a) AiB must, after considering any representations duly made to AiB—
  (a) grant or refuse to grant the certificate of discharge, and
  (b) notify accordingly (in addition to the original trustee) the debtor, the replacement trustee and all creditors who have made such representations.

(4) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may apply to AiB for a review of a determination under subsection (3).

(5) Any application under subsection (4) must be made within 14 days beginning with the day on which that determination is issued.

(6) If an application under subsection (4) is made, AiB must—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the determination (whether or not granting a certificate of discharge) within 28 days beginning with that day.

(7) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may, within 14 days after a decision under subsection (6)(b), appeal to the sheriff against that decision.

(8) If, on such appeal, the sheriff determines that a certificate of discharge which has been refused should be granted the sheriff must order AiB to grant it.

(9) The sheriff clerk must send a copy of the sheriff's decree to AiB.

(10) The decision of the sheriff on an appeal under subsection (7) is final.

(11) The grant of a certificate of discharge under this section by AiB has the effect of discharging the original trustee from all liability (other than liability arising from fraud) to the creditors, or to the debtor, in respect of any act or omission of the original trustee in exercising the functions conferred on the original trustee by this Act.

(12) This section does not apply where AiB is the original trustee.

Commencement Information

I65 S. 65 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

66 Replacement of trustee acting in more than one sequestration

(1) This section applies where a trustee acting as such in two or more sequestrations—

(a) dies,

(b) ceases, by virtue of section 49(4), to be qualified to continue to act as trustee, or

(c) becomes subject to the circumstances mentioned in subsection (2).

(2) The circumstances are that there is—

(a) a conflict of interest affecting the trustee, or

(b) a change in the personal circumstances of the trustee,

which prevents the trustee from carrying out the trustee's functions, or makes it impracticable for the trustee to carry out those functions.

(3) AiB may, in a case where subsection (1)(b) or (c) applies, determine that the trustee is removed from office in each sequestration in which the trustee has ceased to be qualified.

(4) AiB may appoint as the trustee in each sequestration in which the former trustee was acting a person—

(a) determined by AiB, and

(b) who consents to the appointment.

(5) A person may not be appointed under subsection (4) if the person is ineligible, by virtue of section 49(3), for election as a replacement trustee.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) If, in relation to any sequestration, AiB determines that no person is to be appointed under subsection (4), AiB is deemed to be the trustee in that sequestration.

(7) A determination or appointment under this section may be made—
- (a) on the application of any person having an interest, or
- (b) without an application, where AiB proposes to make a determination or appointment of AiB's own accord.

(8) The applicant must notify all interested persons where an application is made under subsection (7)(a).

(9) AiB must notify all interested persons where AiB proposes to make a determination or appointment by virtue of subsection (7)(b).

(10) A notice under subsection (8) or (9) must inform the recipient that the recipient has a right to make representations to AiB, in relation to the application or to the proposed determination or appointment, within 14 days beginning with the day on which the notice is given.

Commencement Information
I66 S. 66 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

67 Further provision as regards replacement under section 66

(1) Before making a determination or appointment under section 66, AIB must take into account any representations made by an interested person.

(2) AiB must notify any determination or appointment under section 66 to—
- (a) the former trustee (or, where the former trustee has died, the former trustee's representatives),
- (b) the debtor,
- (c) the trustee appointed under section 66 (where the trustee appointed is not AiB), and
- (d) each sheriff who awarded sequestration or to whom sequestration was transferred under section 27(1).

(3) The trustee appointed under section 66—
- (a) must notify the determination or appointment under that section to every creditor known to the trustee,
- (b) may require—
  - (i) delivery of all documents (other than the former trustee's accounts) relating to each sequestration in which the former trustee was acting and in the possession of the former trustee or of the former trustee's representatives,
  - (ii) delivery of a copy of the former trustee's accounts, and
  - (iii) the former trustee, or the former trustee's representatives, to submit the trustee's accounts for audit to the commissioners or, if there are no commissioners, to AiB.

(4) Where the trustee appointed under section 66 requires submission in accordance with subsection (3)(b)(iii), the commissioners or, as the case may be, AiB must issue a

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

determination fixing the amount of the outlays and remuneration payable to the former trustee, or the former trustee's representatives, in accordance with section 132.

Commencement Information
I67 S. 67 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

68 Review of determination or appointment under section 66

(1) A person mentioned in section 67(2)(a) or (b) or (3)(a) may apply to AiB for a review of any determination or appointment under that section.

(2) Any application under subsection (1) must be made within 14 days beginning with the day on which notice of the determination or appointment is given.

(3) If an application under subsection (1) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm, amend or revoke the determination or appointment within 28 days beginning with that day.

(4) A person mentioned in section 67(2)(a) or (b) or (3)(a) may, within 14 days beginning with the day of a decision of AiB under subsection (3)(b), appeal to the sheriff against that decision.

(5) AiB may refer a case to the court for a direction before—
- (a) making any determination or appointment under section 66,
- (b) issuing any determination under section 67(4), or
- (c) undertaking any review under this section.

(6) Any appeal under subsection (4) or referral under subsection (5) must be made—
- (a) by a single petition to the Court of Session where the appeal relates to two or more sequestrations and the sequestrations are, by virtue of section 15, in different sheriffdoms, and
- (b) in any other case, to the sheriff.

Commencement Information
I68 S. 68 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Resignation or death of trustee

69 Resignation or death of trustee

(1) The trustee in the sequestration (in this section referred to as “T”) may apply to AiB for authority to resign office and AiB must grant the application where satisfied that—
- (a) T is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause), or
- (b) T's conduct has been such that T should no longer continue to act in the sequestration.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) AiB may make the granting of an application under subsection (1) subject—
- (a) to the election of a new trustee, and
- (b) to such other conditions as AiB thinks appropriate in all the circumstances of the case.

(3) Where AiB grants an application under subsection (1), then—
- (a) except where paragraph (b) applies, the commissioners, or if there are no commissioners AiB, must call a meeting of the creditors, to be held within 28 days after T resigns, for the election by the creditors of a new trustee, and
- (b) if the application is granted subject to the election of a new trustee, T must call a meeting of the creditors, to be held within 28 days after the granting of the application, for such an election.

(4) Where the commissioners become, or if there are no commissioners AiB becomes, aware that T has died, they or as the case may be AiB are, as soon as practicable after becoming so aware, to call a meeting of creditors for the election by the creditors of a new trustee.

(5) The preceding provisions of this Part in relation to the election of a replacement trustee and the appointment of that trustee also apply, subject to any necessary modifications, in relation to the election and appointment of a new trustee in pursuance of subsections (1) to (3) or subsection (4).

(6) Where no new trustee is elected in pursuance of subsection (3) or (4), AiB may appoint as the new trustee in the sequestration—
- (a) a person who applies to AiB within 14 days beginning with the day of the meeting arranged under subsection (3) or (4), or
- (b) any other person as may be determined by AiB and who consents to the appointment.

(7) A person may not be appointed under subsection (6) if the person is ineligible, by virtue of section 49(3), for election as a replacement trustee.

(8) If, after the expiry of the days mentioned in subsection (6)(a), AiB determines that no person is to be appointed under subsection (6), AiB is deemed to be the new trustee in the sequestration.

(9) The new trustee (in this subsection and in subsection (11) referred to as “NT”) may require—
- (a) delivery to NT of all documents relating to the sequestration and in the possession of T or T's representatives (except that, in the case of T's accounts, NT is entitled to delivery only of a copy),
- (b) T or T's representatives to submit T's accounts for audit to the commissioners or, if there are no commissioners, to AiB.

(10) The commissioners are, or if there are no commissioners AiB is, to issue a determination fixing the amount of the outlays and remuneration payable to T or T's representatives in accordance with section 133.

(11) T or T's representatives, NT, the debtor or any creditor may within 14 days after a determination under subsection (10) is issued—
- (a) by the commissioners, appeal against it to AiB,
- (b) by AiB, appeal against it to the sheriff.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(12) A decision of AiB under subsection (11)(a) is appealable to the sheriff.

(13) The decision of the sheriff on an appeal under subsection (11)(b) or (12) is final.

Commencement Information
I69 S. 69 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Removal of trustee and appointment of new trustee

70 Removal of trustee other than where trustee is unable to act or should no longer continue to act: general

(1) The trustee in the sequestration (in this section and in sections 71 to 73 referred to as "T") may be removed from office—
- (a) by the creditors at a meeting called for the purpose if they also forthwith elect a new trustee, or
- (b) by order made by AiB if AiB is satisfied that, on the basis of circumstances other than those mentioned in section 72(2), there are reasons to remove T from office.

(2) An order removing T in accordance with subsection (1)(b) may be made—
- (a) on the application of—
  - (i) the commissioners, or
  - (ii) a person representing not less than ¼ in value of the creditors, or
- (b) in any other case where AiB is satisfied as mentioned in that subsection.

(3) "Creditors", in subsection (1)(a), does not include—
- (a) anyone who, other than by succession, acquires after the date of sequestration a debt due by the debtor, or
- (b) any creditor to the extent that the creditor's debt is a postponed debt.

(4) AiB must—
- (a) order any application by a person mentioned in subsection (2)(a) to be served on T,
- (b) enter particulars of the application in the register of insolvencies, and
- (c) before deciding whether or not to make an order under subsection (1)(b), give T the opportunity to make representations.

(5) AiB may—
- (a) in ordering, or
- (b) instead of ordering,

the removal of T from office under subsection (1)(b), make such further or other order as AiB thinks fit.

(6) This section and sections 71 to 75 do not apply where AiB is the trustee in the sequestration.

(7) This section is without prejudice to section 200(4).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I70 S. 70 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

71 Removal of trustee other than where trustee is unable to act or should no longer continue to act: review, appeal and election of new trustee

(1) T, the commissioners or any creditor may apply to AiB for a review of any decision of AiB under section 70(1)(b) or (5).

(2) Any application under subsection (1) must be made within 14 days beginning with the day on which the decision is given.

(3) If an application under subsection (1) for a review is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm, amend or revoke the decision within 28 days beginning with that day.

(4) T, the commissioners or any creditor may, within 14 days beginning with the day on which a decision of AiB under subsection (3)(b) is given, appeal to the sheriff against that decision.

(5) Subsection (6) applies where T has been removed from office—
- (a) under section 70(1)(b),
- (b) under section 200(4),
- (c) following a review under subsection (1), or
- (d) following an appeal under subsection (4).

(6) The commissioners (or if there are no commissioners AiB) must call a meeting of creditors, to be held within 28 days after the removal, for the election by the creditors of a new trustee.

(7) AiB may refer a case to the sheriff for a direction before—
- (a) making an order under section 70(1)(b) or (5), or
- (b) undertaking any review under this section.

(8) An application for a review under subsection (1) may not be made in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (7).

Commencement Information
I71 S. 71 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

72 Removal of trustee where trustee is unable to act or should no longer continue to act: general

(1) If AiB is satisfied that any of the circumstances mentioned in subsection (2) apply, AiB may—
- (a) declare the office of trustee to have become, or to be, vacant, and
- (b) make any necessary order—
  - (i) to enable the sequestration of the estate to proceed, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) to safeguard the estate pending the election of a new trustee.

(2) The circumstances are that—

(a) T is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever other than death), or

(b) T's conduct has been such that T should no longer continue to act in the sequestration.

(3) The declaration under subsection (1)(a), and any order under subsection (1)(b), may be made—

(a) on the application of the commissioners, of the debtor or of a creditor, or

(b) in any other case where AiB is satisfied as mentioned in subsection (1).

(4) AiB must order such intimation of an application by a person mentioned in subsection (3)(a) as AiB considers necessary.

(5) This section is without prejudice to section 200(4).

Commencement Information

I72 S. 72 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

73 Removal of trustee where trustee is unable to act or should no longer continue to act: review, appeal and election of new trustee

(1) If AiB makes a declaration under section 72(1)(a), the commissioners (or if there are no commissioners AiB) must call a meeting of creditors, to be held within 28 days beginning with the day of the declaration, for the election of a new trustee by the creditors.

(2) T, the commissioners, the debtor or any creditor may apply to AiB for a review of any declaration made under section 72(1)(a) or of any order made under section 72(1)(b).

(3) Any application under subsection (2) must be made within 14 days beginning with the day of the declaration.

(4) If an application under subsection (2) is made, AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the declaration or order within 28 days beginning with that day.

(5) T, the commissioners, the debtor or any creditor may, within 14 days beginning with the day of any decision of AiB under subsection (4)(b), appeal to the sheriff against that decision.

(6) AiB may refer a case to the sheriff for a direction before—

(a) making any declaration or any order under section 72(1), or

(b) undertaking any review under this section.

(7) An application for a review under subsection (2) may not be made in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (6).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I73 S. 73 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

74 Election or appointment of new trustee by virtue of section 71(6) or 73(1)

The preceding provisions of this Part in relation to the election of a replacement trustee and the appointment of that trustee also apply, subject to any necessary modifications, in relation to the election and appointment of a new trustee by virtue of section 71(6) or 73(1).

Commencement Information
I74 S. 74 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

75 Further provision as regards election or appointment of new trustee

Subsections (6) to (13) of section 69 apply for the purposes of sections 70 to 74 as those subsections apply for the purposes of section 69.

Commencement Information
I75 S. 75 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Commissioners

76 Commissioners

In any sequestration there may be elected, in accordance with section 77, commissioners, whose general functions are—

(a) to supervise the intromissions of the trustee in the sequestration with the sequestrated estate, and

(b) to advise the trustee.

Commencement Information
I76 S. 76 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

77 Election, resignation and removal of commissioners

(1) At the statutory meeting or at any subsequent meeting of creditors, the creditors (other than any such person as is listed in section 49(7)) may, from among the creditors or their mandatories, elect a commissioner or commissioners (or a new or additional commissioner or new or additional commissioners).

(2) No more than 5 commissioners are to hold office in any one sequestration at any one time.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) None of the persons listed in subsection (5) is eligible for election as a commissioner.

(4) Nor is anyone who becomes a person so listed after being elected as a commissioner entitled to continue to act as a commissioner.

(5) The persons are—

(a) any person listed in paragraph (a) or (d) of section 49(5), and

(b) a person who is an associate of the debtor or of the trustee in the sequestration.

(6) A commissioner may resign office at any time.

(7) A commissioner may be removed from office—

(a) if the commissioner is a mandatory of a creditor (see paragraphs 14 to 16 of schedule 6), by the creditor recalling the mandate and intimating in writing to the trustee that it is recalled,

(b) by the creditors (other than any such person as is listed in section 49(7)) at a meeting called for the purpose, or

(c) by order of the sheriff if the sheriff is satisfied that the commissioner is no longer acting in the interests of the efficient conduct of the sequestration.

(8) An order under subsection (7)(c) may be made on the application of—

(a) AiB,

(b) a person representing not less than ¼ in value of the creditors, or

(c) the trustee.

(9) The sheriff must—

(a) order an application by a person mentioned in subsection (8) to be served on the commissioner,

(b) order that the application be intimated to every creditor who has given a mandate to the commissioner, and

(c) before deciding whether or not to make an order under subsection (7)(c), give the commissioner the opportunity to make representations.

(10) On an application under subsection (7)(c), the sheriff may—

(a) in ordering the removal of the commissioner from office, make such further order as the sheriff thinks fit, or

(b) instead of removing the commissioner from office, make such other order as the sheriff thinks fit.

(11) The trustee, AiB, any commissioner or any creditor may, within 14 days after a decision of the sheriff on an application under subsection (7)(c), appeal against that decision.

(12) Subsection (7) is without prejudice to section 200(4).

Commencement Information

I77 S. 77 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 5

VESTING ETC.

Vesting

78 Vesting of estate at date of sequestration

(1) The whole estate of the debtor vests for the benefit of the creditors in the trustee in the sequestration, by virtue of the trustee's appointment, as at the date of sequestration.

(2) But subsection (1) is subject to section 88.

(3) It is not competent for—
  (a) the trustee, or
  (b) any person deriving title from the trustee,
to complete title, before the expiry of the period mentioned in subsection (4), to any heritable property in Scotland vested in the trustee by virtue of the trustee's appointment.

(4) The period is 28 days (or such other period as may be prescribed) beginning with the day on which the certified copy of—
  (a) the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 26 in the Register of Inhibitions, or
  (b) the determination of AiB awarding sequestration is recorded under subsection (2) of that section in that register.

(5) The exercise by the trustee of any power conferred on the trustee by this Act, in respect of any heritable estate vested in the trustee by virtue of that person's appointment, is not challengeable on the ground of a prior inhibition.

(6) Where the debtor has an uncompleted title to any heritable estate in Scotland, the trustee may complete title to that estate either in the trustee's own name or in the name of the debtor.

(7) But completion of title in the name of the debtor does not validate by accretion any unperfected right in favour of a person other than the trustee.

(8) Moveable property in respect of which, but for this subsection—
  (a) delivery or possession, or
  (b) intimation of assignation,
would be required in order to complete title vests in the trustee, by virtue of the trustee's appointment, as if at the date of sequestration (as the case may be) the trustee had taken delivery or possession of the property or had made intimation of its assignation to the trustee.

(9) Any non-vested contingent interest which the debtor has vests in the trustee as if an assignation of that interest had been executed by the debtor (and intimation of assignation made) at the date of sequestration.

(10) Any non-vested contingent interest vested in the trustee by virtue of subsection (9) is, where it remains so vested as at the date which is 4 years after the date of sequestration, re-invested in the debtor as if an assignation of that interest had been executed by the trustee (and intimation of assignation made) at that date.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(11) A person claiming a right to any estate claimed by the trustee may apply to the sheriff for the estate to be excluded from such vesting, a copy of the application being served on the trustee.

(12) The sheriff must grant the application if satisfied that the estate should not be so vested.

(13) Where any successor of a deceased debtor whose estate has been sequestrated has made up title to, or is in possession of, any part of that estate, the sheriff may on the application of the trustee order the successor to convey such estate to the trustee.

Commencement Information

I78 S. 78 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

79 Provision supplementary to section 78 and interpretation of Part 5

(1) In subsection (1) of section 78, the "whole estate of the debtor" means the debtor's whole estate at the date of sequestration (wherever situated) including—

(a) any income or estate vesting in the debtor on the date of sequestration,

(b) any property of the debtor title to which has not been completed by another person deriving right from the debtor, and

(c) the capacity to exercise and to take proceedings for exercising all such powers in, over or in respect of any property as—

(i) might have been exercised by the debtor for the debtor's own benefit as at, or on, the date of sequestration, or

(ii) might be exercised on a relevant date.

(2) But subsection (1) is subject to subsection (3) [F30]....

(3) The "whole estate of the debtor" does not include any interest of the debtor as tenant under—

(a) a tenancy which is an assured tenancy within the meaning of Part 2 of the Housing (Scotland) Act 1988,

(b) a protected tenancy within the meaning of the Rent (Scotland) Act 1984 in respect of which, by virtue of Part 8 of that Act, no premium can lawfully be required as a condition of assignation, [F31]...

(c) a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001**[**[F32], or

(d) a private residential tenancy within the meaning of the Private Housing (Tenancies) (Scotland) Act 2016**]**.

(4) On the date on which the trustee serves notice to that effect on the debtor, the interest of the debtor as tenant under any of the tenancies referred to in subsection (3) forms part of the debtor's estate and vests in the trustee as if it had vested in the trustee under section 86(5).

(5) In this Part "relevant date" means a date after the date of sequestration and before the date which is 4 years after the date of sequestration.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F30 Words in s. 79(2) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(11)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F31 Word in s. 79(3)(b) omitted (1.12.2017) by virtue of The Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017 (S.S.I. 2017/405), regs. 1, **4(2)(a)**

F32 S. 79(3)(d) and word inserted (1.12.2017) by The Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017 (S.S.I. 2017/405), regs. 1, **4(2)(b)**

Commencement Information

I79 S. 79 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

80 Property subject to restraint order

(1) Subsection (2) applies where—

(a) property is excluded from the debtor's estate by virtue of section 420(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),

(b) an order under section 50, 67A, 128, 131A, 198 or 215A of that Act has not been made in respect of the property,

(c) the restraint order is discharged, and

(d) immediately after the discharge of the restraint order the property is not detained under or by virtue of section 44A, 47J, 122A, 127J, 193A or 195J of that Act.

(2) The property vests in the trustee in the sequestration as part of the debtor's estate.

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's outlays and remuneration).

Commencement Information

I80 S. 80 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

81 Property released from detention

(1) Subsection (2) applies where—

(a) property is excluded from the debtor's estate by virtue of section 420(2)(b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),

(b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and

(c) the property is released.

(2) The property vests in the trustee in the sequestration as part of the debtor's estate.

Commencement Information

I81 S. 81 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

82 Property in respect of which receivership or administration order is made

(1) Subsection (2) applies where—

(a) property is excluded from the debtor's estate by virtue of section 420(2)(c) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the receiver or administrator (as the case may be).

(2) The property vests in the trustee in the sequestration as part of the debtor's estate.

Commencement Information

I82 S. 82 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

83 Property in respect of which realisation order is made

(1) Subsection (2) applies where—

(a) property is excluded from the debtor's estate by virtue of section 420(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the appropriate officer.

(2) The property vests in the trustee in the sequestration as part of the debtor's estate.

Commencement Information

I83 S. 83 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

84 Property subject to certain orders where confiscation order discharged or quashed

(1) Subsection (2) applies where—

(a) property is excluded from the debtor's estate by virtue of section 420(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property excluded from debtor's estate),

(b) a confiscation order is made under section 6, 92 or 156 of that Act, and

(c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

(2) Any such property vests in the trustee in the sequestration as part of the debtor's estate if it is in the hands of—

(a) a receiver appointed under Part 2 or 4 of that Act,

(b) an administrator appointed under Part 3 of that Act, or

(c) an appropriate officer (within the meaning of section 41A, 120A or 190A of that Act).

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's outlays and remuneration).

Commencement Information
I84 S. 84 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

85 Vesting of income received by debtor after sequestration

(1) Any income, of whatever nature, received by the debtor on a relevant date, other than income arising from the estate which is vested in the trustee in the sequestration, is to vest in the debtor.

(2) But subsection (1) is subject to sections 90 to 97.

Commencement Information
I85 S. 85 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

86 Further provision as regards vesting of estate

(1) Diligence in respect of a debt or obligation mentioned in subsection (2) is not competent against income vesting in the debtor under section 85.

(2) The debt or obligation is one in respect of which the debtor, if discharged under section 137, 138 or 140, would be discharged under section 145.

(3) For the purposes of subsection (1), diligence includes the making of a deduction from earnings order under the Child Support Act 1991.

(4) Subsection (5) applies where any estate, wherever situated—
(a) is acquired by the debtor on a relevant date, and
(b) would have vested in the trustee in the sequestration if it had been part of the debtor's estate on the date of sequestration.

(5) The estate vests in the trustee for the benefit of the creditors as at the date of acquisition.

(6) A person who holds estate vesting in the trustee under subsection (5) is, on production to the person of a copy of the order certified by the sheriff clerk, or as the case may be by AiB, appointing the trustee, to convey or deliver the estate to the trustee.

(7) But such a person incurs no liability to the trustee except to account for any proceeds of the conveyance which are in the person's hands if the person has, in good faith and without knowledge of the sequestration, conveyed the estate—
(a) to the debtor, or
(b) to anyone on the instructions of the debtor.

(8) The trustee is not entitled, by virtue of subsections (4) to (7), to any remedy against an appropriate bank or institution (in this section and in section 87(7) referred to as a

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"bank") in respect of a banking transaction entered into before the receipt by the bank of a notice under subsection (9) (whether or not the bank is aware of the sequestration).

(9) Where the trustee knows, or becomes aware, of any estate vested in the trustee under section 78 or this section which comprises funds held by a bank, the trustee must serve a notice on the bank—
- (a) informing the bank of the sequestration, and
- (b) specifying reasonable detail in order to allow the bank to identify the debtor and the funds held.

(10) A notice under subsection (9)—
- (a) must be in writing and may be sent—
  - (i) by first class post or by using a registered or recorded delivery postal service to the bank, or
  - (ii) in some other manner (including by electronic means) which the trustee reasonably considers likely to cause it to be delivered to the bank on the same or next day, and
- (b) is deemed to have been received the day after it is sent.

(11) Subsections (4) to (8) are without prejudice to—
- (a) section 85, and
- (b) any right acquired in the estate in good faith and for value.

Commencement Information
I86 S. 86 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

87 Dealings and circumstances of debtor after sequestration

(1) The debtor must immediately notify the trustee in the sequestration—
- (a) of any assets acquired by the debtor on a relevant date, or
- (b) of any other substantial change in the debtor's financial circumstances.

(2) A debtor who fails to comply with subsection (1) commits an offence.

(3) A debtor who commits an offence under subsection (2) is liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale,
- (b) to imprisonment for a term not exceeding 3 months, or
- (c) both to such fine and to such imprisonment.

(4) Any dealing of, or with, the debtor and relating to the debtor's estate vested in the trustee under section 78 or 86 is of no effect in a question with the trustee.

(5) But subsection (4) does not apply where the person seeking to uphold the dealing establishes that the trustee—
- (a) has abandoned to the debtor the property to which the dealing relates,
- (b) has expressly or impliedly authorised the dealing, or
- (c) is otherwise personally barred from challenging the dealing.

(6) Nor does subsection (4) apply where the person seeking to uphold the dealing establishes both—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) that the dealing is—
  (i) the performance of an obligation undertaken before the date of sequestration by a person obliged to the debtor in the obligation,
  (ii) the purchase from the debtor of goods for which the purchaser has given value to the debtor or is willing to give value to the trustee, or
  (iii) one which satisfies the conditions mentioned in subsection (10), and

(b) that the person dealing with the debtor was, at the time when the dealing occurred, unaware of the sequestration and had at that time no reason to believe that the debtor's estate had been sequestrated or was the subject of sequestration proceedings.

(7) Nor does subsection (4) apply where the dealing is a banking transaction entered into before the receipt by the bank of a notice under section 86(9) (whether or not the bank is aware of the sequestration).

(8) Where the trustee has abandoned heritable property to the debtor, notice (in such form as may be prescribed) given to the debtor by the trustee is sufficient evidence that the property is vested in the debtor.

(9) Where notice is given under subsection (8), the trustee is as soon as reasonably practicable after giving it to record a certified copy of it in the Register of Inhibitions.

(10) The conditions are that—

(a) the dealing constitutes—
  (i) the transfer of incorporeal moveable property, or
  (ii) the creation, transfer, variation or extinguishing of a real right in heritable property,

  for which the person dealing with the debtor has given adequate consideration to the debtor or is willing to give adequate consideration to the trustee,

(b) the dealing requires the delivery of a deed, and

(c) the delivery occurs during the period beginning with the date of sequestration and ending 7 days after the day on which—
  (i) the certified copy of the order of the sheriff granting warrant is recorded in the Register of Inhibitions under section 26(1)(a), or
  (ii) the certified copy of the determination of AiB awarding sequestration is recorded in that register under section 26(2).

Commencement Information
I87 S. 87 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Limitation on vesting

88 Limitation on vesting

(1) The following property of the debtor does not vest in the trustee in the sequestration—

(a) any property—
  (i) kept outside a dwellinghouse, and
  (ii) in respect of which attachment is, by virtue of section 11(1) of the 2002 Act, incompetent,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) any property—
(i) kept inside a dwellinghouse, and
(ii) not a non-essential asset for the purposes of Part 3 of that Act, and
(c) property held on trust by the debtor for any other person.

(2) The vesting of the debtor's estate in the trustee in the sequestration does not affect the right of hypothec of a landlord.

(3) Sections 78, 85 and 86 are without prejudice to the right of any secured creditor which is preferable to the rights of the trustee.

Commencement Information
I88 S. 88 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 6

DEBTOR'S CONTRIBUTION

Common financial tool

89 Assessment of debtor's contribution

(1) The Scottish Ministers may by regulations specify a method (the "common financial tool") to be used to assess an appropriate amount of a living debtor's income (the "debtor's contribution") to be paid to a trustee after the sequestration of the debtor's estate.

(2) Regulations under subsection (1) may in particular prescribe—
(a) a method for assessing a debtor's financial circumstances (including the debtor's assets, income, liabilities and expenditure),
(b) a method for determining a reasonable amount of expenditure for a debtor after the sequestration of the debtor's estate,
(c) the proportion of a debtor's income that is to constitute the debtor's contribution,
(d) that a method determined by another person must be used (with or without modification in accordance with regulations made under subsection (1)) as the common financial tool.

(3) The common financial tool must ensure that the amount of reasonable expenditure for a debtor is not less than the total amount of any income received by the debtor by way of guaranteed minimum pension (within the meaning of the Pension Schemes Act 1993).

(4) The common financial tool must ensure that an amount is allowed for—
(a) aliment for the debtor, and
(b) the debtor's relevant obligations.

(5) The "debtor's relevant obligations" are any obligation of—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) aliment owed by the debtor ("obligation of aliment" having the meaning given by section 1(2) of the Family Law (Scotland) Act 1985),

(b) the debtor to make a periodical allowance to a former spouse or former civil partner, and

(c) the debtor to pay child support maintenance under the Child Support Act 1991.

(6) The amount allowed for the debtor's relevant obligations referred to in paragraphs (a) and (b) of subsection (5) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance.

Commencement Information

I89 S. 89 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Payments by debtor following sequestration

90 Debtor contribution order: general

(1) AiB must make an order fixing the debtor's contribution (a "debtor contribution order")—

(a) in the case of a debtor application, at the same time as awarding sequestration of the debtor's estate,

(b) in the case of an award of sequestration following a petition under section 2(1)(b), after considering initial proposals for the debtor's contribution provided by the trustee.

(2) In a case referred to in subsection (1)(b), the trustee must send initial proposals for the debtor's contribution within **[**[F33]12**]** weeks beginning with the date of the award of sequestration.

(3) In making a debtor contribution order, AiB must use the common financial tool to assess the debtor's contribution.

(4) A debtor contribution order may fix the amount of the debtor's contribution as zero.

(5) A debtor contribution order may be made irrespective of sections 11 and 12 of the Welfare Reform and Pensions Act 1999.

(6) A debtor contribution order may provide that a third person must pay to the trustee a specified proportion of money due to the debtor by way of income.

(7) Where a third person pays a sum of money to the trustee in accordance with subsection (6), the third person is discharged from any liability to the debtor to the extent of the sum so paid.

(8) AiB must, immediately following the making of a debtor contribution order, give written notice of the order to—

(a) the debtor,

(b) the trustee, and

(c) any third person mentioned in the order.

(9) A debtor contribution order must not take effect on a date before the expiry of 14 days beginning with the day of notification of the order.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F33 Word in s. 90(2) substituted (29.3.2021) by The Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/148), regs. 1, **5(1)** (with regs. 3(b), 5(2))

Commencement Information

I90 S. 90 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

91 Debtor contribution order: payment period and intervals

(1) A debtor contribution order must contain provision requiring the debtor to pay the debtor's contribution (if not zero)—

(a) during the payment period, and

(b) at regular intervals determined by the person making or varying the order.

(2) In subsection (1)(a), "payment period" means—

(a) the 48 months beginning with the date of the first payment,

(b) such shorter period as is determined by the person making or varying the order, or

(c) such longer period as is—

(i) determined by the trustee where there is a period during which the debtor did not pay an amount required under the debtor contribution order, or

(ii) agreed by the debtor and the trustee.

(3) The person making or varying the order may determine a shorter period under subsection (2)(b) only if, in the opinion of that person, the value of—

(a) the debtor's contribution during the shorter period, and

(b) any other estate of the debtor taken possession of by the trustee,

would be sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 129.

(4) AiB must, when making a debtor contribution order—

(a) determine the date of the first payment, or

(b) in a case where the debtor's contribution is fixed as zero, determine the date which is to be deemed the date of the first payment under the order.

Commencement Information

I91 S. 91 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

92 Debtor contribution order: review and appeal

(1) The debtor, the trustee or any other interested person may apply to AiB for a review of a debtor contribution order.

(2) An application under subsection (1) must be made within 14 days beginning with the day on which the order is made.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) If an application under subsection (1) is made, the order is suspended until the determination of that review by AiB.

(4) If an application under subsection (1) is made, AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the order within 28 days beginning with that day.

(5) The trustee or the debtor may, within 14 days beginning with the date of any decision of AiB under subsection (4)(b), appeal to the sheriff against that decision.

Commencement Information

I92 S. 92 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

93 Effect of debtor contribution order

(1) The debtor must pay to the trustee any debtor's contribution (if not zero)—

(a) as fixed by AiB in making the debtor contribution order, or

(b) as varied in accordance with section 95.

(2) The requirement to pay the debtor's contribution applies irrespective of the debtor's discharge.

(3) If the value of the debtor's estate and income when taken possession of by the trustee is sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 129, any debtor contribution order ceases to have effect.

Commencement Information

I93 S. 93 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

94 Deductions from debtor's earnings and other income

(1) Subsections (2) to (6) apply where, under a debtor contribution order—

(a) the debtor is required to pay to the trustee an amount from the debtor's earnings or other income, or

(b) in accordance with section 90(6), a third person is required to pay to the trustee money otherwise due to the debtor by way of income.

(2) The debtor must give the person mentioned in subsection (3) an instruction to make—

(a) deductions of specified amounts from the debtor's earnings or other income, and

(b) payments to the trustee of the amounts so deducted.

(3) The person—

(a) in the case of an amount to be paid from the debtor's earnings from employment, is the person by whom the debtor is employed,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in the case of an amount to be paid from other earnings or income of the debtor, is a third person who is required to pay the earnings or income to the debtor, and

(c) in the case mentioned in subsection (1)(b), is the third person who is required to pay the income to the trustee.

(4) The trustee may give the person mentioned in subsection (3) an instruction of the type mentioned in subsection (2) if the debtor fails—

(a) to comply with the requirements imposed by that subsection, and

(b) to pay the debtor's contribution in respect of 2 payment intervals applying by virtue of the debtor contribution order.

(5) A person mentioned in subsection (3) must comply with an instruction provided in accordance with subsection (2) or (4).

(6) Where the person by whom the debtor is employed or another third person pays a sum of money to the trustee in accordance with this section, that person is discharged from any liability to the debtor to the extent of the sum so paid.

(7) The Scottish Ministers may by regulations make provision about instructions to be provided under this section, including in particular—

(a) the form in which an instruction must be made,

(b) the manner in which an instruction provided in accordance with subsection (2) or (4) affects the recipient of that instruction, and

(c) the consequence of any failure of a recipient of an instruction provided in accordance with subsection (2) or (4) to comply with the duty imposed by subsection (5).

Commencement Information

I94 S. 94 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

95 Variation and removal of debtor contribution order by trustee

(1) The trustee may vary or quash a debtor contribution order—

(a) on the application of the debtor, following any change in the debtor's circumstances,

(b) if the trustee considers it to be appropriate, following any such change, or

(c) if the trustee considers it to be appropriate when—

(i) sending a report to AiB under section 137(4), or

(ii) granting a discharge under section 138(2).

(2) In deciding whether to vary or quash a debtor contribution order, the trustee must use the common financial tool to assess the debtor's contribution.

(3) A decision by the trustee under subsection (1)(b) must not take effect before the expiry of 14 days beginning with the day on which the decision is made.

(4) The trustee must notify in writing the persons mentioned in subsection (5) immediately following—

(a) any variation or quashing of a debtor contribution order, or

(b) any refusal of an application as respects such an order.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The persons are—
- (a) the debtor,
- (b) AiB (if the trustee is not AiB),
- (c) any third person required to make a payment under the debtor contribution order or under section 94(5), and
- (d) any other interested person.

Commencement Information
I95 S. 95 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

96 Payment break

(1) The trustee may, on the application of the debtor, extend the payment period of a debtor contribution order by granting a payment break.

(2) A "payment break" is a period not exceeding 6 months during which payments under the debtor contribution order are deferred.

(3) A debtor may apply for a payment break if—
- (a) there has been a reduction of at least 50% in the debtor's disposable income (as determined using the common financial tool) as a result of any of the circumstances mentioned in subsection (4) arising in relation to the debtor, and
- (b) the debtor has not previously applied for a payment break in relation to a debtor contribution order applying after the sequestration of the debtor's estate.

(4) The circumstances are—
- (a) a period of unemployment or a change in employment,
- (b) a period of leave from employment because of—
  - (i) the birth or adoption of a child, or
  - (ii) the need to care for a dependant,
- (c) a period of illness of the debtor,
- (d) a divorce,
- (e) a dissolution of civil partnership,
- (f) a separation from a person to whom the debtor is married or with whom the debtor is in civil partnership, and
- (g) the death of a person who, along with the debtor, cared for a dependant of the debtor.

(5) An application for a payment break must specify the period during which the debtor wishes payments to be deferred.

(6) If, in the opinion of the trustee, a payment break is fair and reasonable, the trustee may grant it on such conditions and for such period as the trustee thinks fit.

(7) The trustee must notify in writing the grant of a payment break to—
- (a) the debtor,
- (b) AiB (if the trustee is not AiB), and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) any third person required to make a payment under the debtor contribution order.

(8) If the trustee decides not to grant a payment break, the trustee must notify the debtor of that decision and of the reasons for that decision.

(9) The payment period in a debtor contribution order is deemed to be varied by the addition to the period of any payment break granted under this section.

Commencement Information
I96 S. 96 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

97 Sections 95 and 96: review and appeal

(1) The debtor or any other interested person may apply to AiB for a review of a decision by the trustee under section 95 or 96.

(2) Any application under subsection (1) must be made within 14 days beginning with the day on which the decision is made.

(3) If an application under subsection (1) relates to a decision by the trustee under section 95(1)(b), the decision is suspended until the determination of that review by AiB.

(4) If an application under subsection (1) is made, AiB must—
(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
(b) confirm, amend or revoke the decision within 28 days beginning with that day.

(5) The trustee or the debtor may, within 14 days beginning with the date of any decision of AiB under subsection (4)(b), appeal to the sheriff against that decision.

Commencement Information
I97 S. 97 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 7

SAFEGUARDING INTERESTS OF CREDITORS

Gratuitous alienations and unfair preferences

98 Gratuitous alienations

(1) Subsection (2) applies where—
(a) by an alienation (whether before or after the coming into force of this Act) by a debtor—
(i) any of the debtor's property has been transferred, or
(ii) any claim or right of the debtor has been discharged or renounced,

(b) any of the following has occurred—

(i) the debtor's estate has been sequestrated (other than, in the case of an individual, after the debtor has died),

(ii) the debtor has granted a trust deed which has become a protected trust deed,

(iii) the debtor has died and within 12 months after the date of death the debtor's estate has been sequestrated, or

(iv) the debtor has died, the debtor's estate was absolutely insolvent at the date of death and within those 12 months a judicial factor has been appointed under section 11A of the 1889 Act (see section 107) to administer that estate, and

(c) the alienation took place on a relevant day.

(2) The alienation is challengeable by—

(a) any creditor who is a creditor by virtue of a debt incurred on or before (as the case may be) the date of sequestration, the granting of the trust deed or the debtor's death, or

(b) (as the case may be) the trustee in the sequestration, the trustee acting under the trust deed or the judicial factor.

(3) For the purposes of paragraph (c) of subsection (1), the day on which an alienation takes place is the day on which the alienation becomes completely effectual.

(4) In that paragraph, "relevant day" means, if the alienation has the effect of favouring—

(a) a person who is an associate of the debtor, a day not earlier than 5 years before, or

(b) any other person, a day not earlier than 2 years before,

(as the case may be) the date of sequestration, the granting of the trust deed or the date of death.

(5) On a challenge being brought under subsection (2), the court must grant decree—

(a) of reduction, or

(b) for such restoration of property to the debtor's estate, or such other redress, as may be appropriate.

(6) Except that the court is not to grant such decree if the person seeking to uphold the alienation establishes—

(a) that immediately, or at any other time, after the alienation the debtor's assets were greater than the debtor's liabilities,

(b) that the alienation was made for adequate consideration, or

(c) that the alienation was—

(i) a birthday, Christmas or other conventional gift, or

(ii) a gift made, for a charitable purpose, to a person who is not an associate of the debtor,

being a gift which, having regard to all the circumstances, it was reasonable for the debtor to make.

(7) Subsection (6) is without prejudice to any right acquired, in good faith and for value, from or through the transferee in the alienation.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) In subsection (6)(c)(ii), "charitable purpose" means any charitable, benevolent or philanthropic purpose whether or not it is charitable within the meaning of any rule of law.

(9) For the purposes of subsections (1) to (8), an alienation in implementation of a prior obligation is deemed to be one for which there was no consideration, or no adequate consideration, to the extent that the prior obligation was undertaken for no consideration, or no adequate consideration.

(10) This section is without prejudice to the operation of section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 (which provides that a policy of assurance may be effected in trust for spouse, future spouse and children) including the operation of that section as applied by section 132 of the Civil Partnership Act 2004.

(11) A trustee in a sequestration, a trustee acting under a protected trust deed or a judicial factor appointed under section 11A of the 1889 Act has the same right as a creditor has under any rule of law to challenge an alienation of a debtor made for no consideration or for no adequate consideration.

Commencement Information
I98 S. 98 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

99 Unfair preferences

(1) Subsection (5) applies to a transaction entered into (whether before or after the coming into force of this Act) by a debtor which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors, being a preference created not earlier than 6 months before—

(a) the date of sequestration of the debtor's estate (if, in the case of an individual, a date within the debtor's lifetime),

(b) the granting by the debtor of a trust deed which has become a protected trust deed,

(c) the debtor's death where, within 12 months after the date of death—

(i) the debtor's estate is sequestrated,

(ii) a judicial factor is appointed under section 11A of the 1889 Act to administer the debtor's estate and that estate was absolutely insolvent at the date of death.

(2) But subsection (5) does not apply to—

(a) a transaction in the ordinary course of trade or business,

(b) a payment in cash for a debt which when it was paid had become payable,

(c) a transaction by which the parties undertake reciprocal obligations (whether the performance by the parties of their respective obligations is to occur at the same time or at different times),

(d) the granting of a mandate by a debtor authorising an arrestee to pay over the arrested funds, or part of the arrested funds, to the arrester where—

(i) there has been a decree for payment or a warrant for summary diligence, and

(ii) the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution.

(3) Paragraphs (b) and (c) of subsection (2) are to be disregarded if the transaction in question was collusive with the purpose of prejudicing the general body of creditors.

(4) For the purposes of subsection (1), the day on which a preference is created is the day on which it becomes completely effectual.

(5) The transaction is challengeable by—
- (a) any creditor who is a creditor by virtue of a debt incurred on or before (as the case may be) the date of sequestration, the granting of the protected trust deed or the debtor's death, or
- (b) (as the case may be) the trustee in the sequestration, the trustee acting under the protected trust deed or the judicial factor.

(6) On a challenge being brought under subsection (5) the court, if satisfied that the transaction challenged is a transaction to which that subsection applies, must grant decree—
- (a) of reduction, or
- (b) for such restoration of property to the debtor's estate, or such other redress, as may be appropriate.

(7) Subsection (6) is without prejudice to any right acquired, in good faith and for value, from or through the creditor in whose favour the preference was created.

(8) A trustee in a sequestration, a trustee acting under a protected trust deed or a judicial factor appointed under section 11A of the 1889 Act has the same right as a creditor has under any rule of law to challenge a preference created by a debtor.

Commencement Information
I99 S. 99 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Recall of certain orders

100 Recall of order for payment of capital sum on divorce or on dissolution of civil partnership

(1) This section applies where—
- (a) a court has, under section 8(2) of the Family Law (Scotland) Act 1985 and whether before or after the coming into force of this Act, made—
  - (i) an order for the payment by a debtor of a capital sum,
  - (ii) an order for the transfer of property by the debtor, or
  - (iii) a pension sharing order,
- (b) on the date of the making of the order the debtor was absolutely insolvent or was rendered so by implementation of the order, and
- (c) within 5 years after the making of the order—
  - (i) the debtor's estate has been sequestrated other than on the death of the debtor,
  - (ii) the debtor has granted a trust deed which has (whether or not within the 5 years) become a protected trust deed,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(iii) the debtor has died and, within 12 months after the date of death, the debtor's estate has been sequestrated, or

(iv) the debtor has died and, within those 12 months, a judicial factor has been appointed under section 11A of the 1889 Act to administer the debtor's estate.

(2) The court, on the application of (as the case may be) the trustee in the sequestration, the trustee acting under the trust deed or the judicial factor, may make an order for recall of the order in question and—

(a) for the repayment to the applicant of the whole or part of any sum already paid under the order,

(b) for the return to the applicant of all or part of any property already transferred under the order, or

(c) (where such property has been sold) for payment to the applicant of all or part of the proceeds of sale.

(3) But before making an order under subsection (2), the court must have regard to all the circumstances including, in particular, the financial and other circumstances (in so far as made known to the court) of the person against whom the order would be made.

Commencement Information

I100 S. 100 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Excessive contributions

101 Recovery of excessive pension contributions

(1) Where a debtor's estate has been sequestrated and the debtor—

(a) has rights under an approved pension arrangement, or

(b) has excluded rights under an unapproved pension arrangement,

the trustee in the sequestration may apply to the court for an order under this section.

(2) Subsection (3) applies where the court is satisfied—

(a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and

(b) that the making of any of the relevant contributions ("the excessive contributions") has unfairly prejudiced the debtor's creditors.

(3) The court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(4) Subsection (5) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the debtor under—

(a) the arrangement, or

(b) any other pension arrangement,

having at any time become subject to a debit under section 29(1)(a) of the 1999 Act (see section 107), less than it would otherwise have been.

(5) Where this subsection applies—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) any relevant contributions which were represented by the rights which became subject to the debit are, for the purposes of subsection (2), to be taken to be contributions of which the rights under the arrangement are the fruits, and

(b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) are to be treated as excessive contributions before any which are so represented by virtue of that paragraph.

(6) In subsections (2) to (5), "relevant contributions" means contributions to the arrangement or to any other pension arrangement—

(a) which the debtor has at any time made on the debtor's own behalf, or

(b) which have at any time been made on the debtor's behalf.

(7) The court must, in determining whether it is satisfied under subsection (2)(b), consider in particular—

(a) whether any of the contributions were made for the purpose of putting assets beyond the reach of, or of any of, the debtor's creditors, and

(b) whether the total amount of any contributions—

(i) made by or on behalf of the debtor to pension arrangements, and

(ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pensions arrangements,

is an amount which is excessive in view of the debtor's circumstances when those contributions were made.

(8) For the purposes of this section and of sections 102 and 103, rights of a debtor under an unapproved pension arrangement are excluded rights if they are rights which are excluded from the debtor's estate by virtue of regulations under section 12 of the 1999 Act.

(9) In the recovery provisions (see section 103(7))—

"approved pension arrangement" has the same meaning as in section 11 of the 1999 Act, and

"unapproved pension arrangement" has the same meaning as in section 12 of that Act.

Commencement Information

I101 S. 101 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

102 Orders under section 101

(1) Without prejudice to the generality of section 101(3), an order under that section may include provision—

(a) requiring the person responsible for the arrangement to pay an amount to the trustee,

(b) adjusting the liabilities of the arrangement in respect of the debtor,

(c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the debtor under the arrangement,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the debtor's case with any requirement under section 103(1) or in giving effect to the order.

(2) In subsection (1), references to adjusting the liabilities of the arrangement in respect of a person include, in particular, reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the 1999 Act (pension sharing orders).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 101 is the lesser of—

(a) the amount of the excessive contributions, and

(b) the value of the debtor's rights under the arrangement (if the arrangement is an approved pension arrangement) or of the debtor's excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under section 101 which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the trustee must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—

(a) the amount of the liabilities immediately before the reduction, and

(b) their amount immediately after the reduction,

is equal to the restoration amount.

(7) An order under section 101 in respect of an arrangement—

(a) is binding on the person responsible for the arrangement, and

(b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

Commencement Information

I102 S. 102 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

103 Orders under section 101: supplementary

(1) The person responsible for—

(a) an approved pension arrangement under which a debtor has rights,

(b) an unapproved pension arrangement under which a debtor has excluded rights, or

(c) a pension arrangement under which a debtor has at any time had rights,

must, on the trustee in the sequestration making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under section 101.

(2) Nothing in—

(a) any provision of section 159 of the Pension Schemes Act 1993 or section 91 of the Pensions Act 1995 (which prevent assignation and the making of orders that restrain a person from receiving anything which the person is prevented from assigning),

(b) any provision of any enactment (whether passed or made before or after the passing of the 1999 Act) corresponding to any of the provisions mentioned in paragraph (a), or

(c) any provision of the arrangement in question corresponding to any of those provisions,

applies to a court exercising its powers under section 101.

(3) Where any sum is required by an order under section 101 to be paid to the trustee, that sum is to be comprised in the debtor's estate.

(4) Regulations made by the Secretary of State may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

(a) any such value as is mentioned in section 102(4)(b),

(b) any such amounts as are mentioned in section 102(6)(a) and (b).

(5) The power conferred by subsection (4) includes power to provide for calculation or verification—

(a) in such manner as may, in the particular case, be approved by a prescribed person, or

(b) in accordance with guidance from time to time prepared by a prescribed person.

(6) References in the recovery provisions to the person responsible for a pension arrangement are to—

(a) the trustees, managers or provider of the arrangement, or

(b) the person having, in relation to the arrangement, functions corresponding to those of a trustee, manager or provider.

(7) In this section and in section 101, "the recovery provisions" means this section and sections 101 and 102.

(8) Regulations under subsection (4) may contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

(9) In subsection (5), "prescribed" means prescribed by the regulations.

Commencement Information

I103 S. 103 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

104 Excessive contributions in pension-sharing cases: general

(1) For the purposes of section 98, a pension-sharing transaction is taken—

(a) to be a transaction, entered into by the transferor (in this section referred to as "TR") with the transferee (in this section referred to as "TE"), by which the appropriate amount is transferred by TR to TE, and

(b) to be capable of being an alienation challengeable under that section only so far as it is a transfer of so much of the appropriate amount as is recoverable.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) For the purposes of section 99, a pension-sharing transaction is taken—
  (a) to be something (namely a transfer of the appropriate amount to TE) done by TR, and
  (b) to be capable of being an unfair preference given to TE only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(3) For the purposes of section 100, a pension-sharing transaction is taken—
  (a) to be a pension sharing order made by the court under section 8(2) of the Family Law (Scotland) Act 1985, and
  (b) to be an order capable of being recalled under that section only so far as it is a payment or transfer of so much of the appropriate amount as is recoverable.

(4) Subsection (5) applies where—
  (a) an alienation is challenged under section 98,
  (b) a transaction is challenged under section 99, or
  (c) an application is made under section 100 for the recall of an order made in divorce proceedings.

(5) If any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question must be determined in accordance with subsections (6) to (10).

(6) The court is first to determine the extent, if any, to which TR's rights under the shared arrangement at the time of the transaction appear to have been, whether directly or indirectly, the fruits of contributions (“personal contributions”) to the shared arrangement or any other pension arrangement—
  (a) which TR has at any time made on TR's own behalf, or
  (b) which have at any time been made on TR's behalf.

(7) Where it appears that those rights were to any extent the fruits of personal contributions, the court is then to determine the extent, if any, to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced TR's creditors (“the unfair contributions”).

(8) If it appears to the court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.

(9) If it appears to the court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the court that the transfer could not have been so made.

(10) In making the determination mentioned in subsection (7) the court must consider in particular—
  (a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of TR's creditors or any of them, and
  (b) whether the total amount of any personal contributions represented, at the time the pension sharing arrangement was made, by rights under pension arrangements is an amount which is excessive in view of TR's circumstances when those contributions were made.

(11) In this section and sections 105 and 106—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of section 29(1) of the 1999 Act (creation of pension credits and debits),

"pension-sharing transaction" means an order or provision falling within section 28(1) of that Act (orders and agreements which activate pension-sharing),

"shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates,

"transferee" (or "TE"), in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made, and

"transferor" (or "TR"), in relation to a pension-sharing transaction, means the person to whose rights the transaction relates.

Commencement Information

I104 S. 104 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

105 Excessive contributions in pension-sharing cases: recovery orders

(1) In this section and section 106, "recovery order" means, in any proceedings to which section 104 applies—

(a) a decree granted under section 98(5),

(b) a decree granted under section 99(6), or

(c) an order made under section 100(2).

(2) A recovery order may include provision—

(a) requiring the person responsible for a pension arrangement in which TE (see section 104(11)) has acquired rights derived directly or indirectly from the pension-sharing transaction (again see that section) to pay an amount to the trustee,

(b) adjusting the liabilities of the pension arrangement in respect of TE,

(c) adjusting any liabilities of the pension arrangement in respect of any other person that derive, directly or indirectly, from rights of TE under the arrangement,

(d) for the recovery by the person responsible for the pension arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the debtor's case with any requirement under section 106(1) or in giving effect to the order.

(3) Subsection (2) is without prejudice to the generality of section 98(5), 99(6) or 100(2).

(4) In subsection (2), references to adjusting the liabilities of a pension arrangement in respect of a person include, in particular, reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(5) The maximum amount which the person responsible for an arrangement may be required to pay by a recovery order is the smallest of—

(a) so much of the appropriate amount (see section 104(11)) as is recoverable in accordance with section 104,

(b) so much, if any, of the amount of the unfair contributions (within the meaning given by section 104(7)) as is not recoverable by way of an order under

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

section 101 containing provision such as is mentioned in section 102(1)(a), and

(c) the value of the debtor's rights under the arrangement acquired by TE as a consequence of the transfer of the appropriate amount.

(6) A recovery order which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the trustee must provide for the liabilities of the arrangement to be correspondingly reduced.

(7) For the purposes of subsection (6), liabilities are correspondingly reduced if the difference between—

(a) the amount of the liabilities immediately before the reduction, and

(b) their amount immediately after the reduction,

is equal to the restoration amount.

(8) A recovery order in respect of an arrangement—

(a) is binding on the person responsible for the arrangement, and

(b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

Commencement Information

I105 S. 105 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

106 Recovery orders: supplementary

(1) The person responsible for a pension arrangement under which TE has, at any time, acquired rights by virtue of the transfer of the appropriate amount (see section 104(11)) is, on the trustee making a written request, to provide the trustee with such information about the arrangement and the rights under it of TR and TE as the trustee may reasonably require for, or in connection with, the making of an application for a recovery order.

(2) Nothing in the provisions mentioned in subsection (3) applies to a court exercising its power to make a recovery order (see section 105(1)).

(3) The provisions are—

(a) any provision of section 159 of the Pension Schemes Act 1993 or section 91 of the Pensions Act 1995 (which prevent assignation and the making of orders which restrain a person from receiving anything the person is prevented from assigning),

(b) any provision of any enactment (whether passed or made before or after the passing of the 1999 Act) corresponding to any of the provisions mentioned in paragraph (a), or

(c) any provision of the arrangement in question corresponding to any of those provisions.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

(a) any such value as is mentioned in section 105(5)(c),

(b) any such amounts as are mentioned in section 105(7)(a) and (b).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The power conferred by subsection (4) includes power to provide for calculation or verification—

(a) in such manner as may, in the particular case, be approved by a prescribed person, or

(b) in accordance with guidance from time to time prepared by a prescribed person.

(6) References in the recovery provisions to the person responsible for a pension arrangement are to—

(a) the trustees, managers or providers of the arrangement, or

(b) the person having, in relation to the arrangement, functions corresponding to those of a trustee, manager or provider.

(7) In this section—

"prescribed" means prescribed by regulations,

"the recovery provisions" means this section and sections 98, 99, 100 and 105, and

"regulations" means regulations made by the Secretary of State.

(8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

Commencement Information
I106 S. 106 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

107 References in Part 7 to "the 1889 Act" and to "the 1999 Act"

In this Part, references—

to "the 1889 Act" are to the Judicial Factors (Scotland) Act 1889, and

to "the 1999 Act" are to the Welfare Reform and Pensions Act 1999.

Commencement Information
I107 S. 107 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 8

ADMINISTRATION OF ESTATE BY TRUSTEE

General

108 Taking possession of estate by trustee

(1) The trustee in the sequestration must—

(a) for the purpose of recovering the estate of the debtor under section 50(1)(a), take possession as soon as may be after the trustee's appointment—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) of the debtor's whole estate so far as vesting in the trustee under sections 78 and 86, and

(ii) of any document in the debtor's possession or control relating to the debtor's assets or the debtor's business or financial affairs,

(b) make up and maintain an inventory and valuation of the estate, and

(c) forthwith thereafter send a copy of the inventory and valuation to AiB.

(2) Paragraph (a) of subsection (1) is subject to section 113.

(3) The trustee is entitled to have access to, and to make a copy of, any document relating to the assets or the business or financial affairs of the debtor—

(a) sent by or on behalf of the debtor to a third party, and

(b) in the third party's hands.

(4) If a person obstructs the trustee in the trustee's exercise, or attempted exercise, of a power conferred by subsection (3), the sheriff may, on the trustee's application, order the person to cease obstructing the trustee.

(5) The trustee may require delivery to the trustee of any title deed or other document of the debtor, even if a right of lien is claimed over it.

(6) Subsection (5) is without prejudice to any preference of the holder of the lien.

Commencement Information

I108 S. 108 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

109 Management and realisation of estate

(1) The trustee in the sequestration, as soon as may be after the trustee's appointment, must consult with AiB concerning the exercise of the trustee's functions under section 50(1)(a).

(2) The trustee must comply with any general or specific directions given to the trustee (as the case may be)—

(a) by the creditors,

(b) on the application under this subsection of the commissioners, by the sheriff, or

(c) by AiB,

as to the exercise by the trustee of such functions.

(3) But subsection (2) is subject to subsections (4), (9) and (12).

(4) Subsections (1) and (2) do not apply where the trustee is AiB.

(5) The trustee may—

(a) carry on or close down any business of the debtor,

(b) bring, defend or continue any legal proceedings relating to the estate of the debtor,

(c) create a security over any part of the estate,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(d) where any right, option or other power forms part of the debtor's estate, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power,

(e) borrow money in so far as it is necessary for the trustee to do so to safeguard the debtor's estate, and

(f) effect or maintain insurance policies in respect of the business or property of the debtor.

(6) Any sale of the debtor's estate by the trustee may either be by public sale or by private bargain.

(7) The following rules apply to the sale of any part of the debtor's heritable estate over which a heritable security is held by a creditor or creditors if the rights of the secured creditor or creditors are preferable to those of the trustee—

(a) the trustee may sell that part only with the concurrence of every such creditor unless the trustee obtains a sufficiently high price to discharge every such security,

(b) the following acts are precluded—

(i) the taking of steps by a creditor to enforce the creditor's security over the part after the trustee has intimated to the creditor that the trustee intends to sell the part,

(ii) the commencement by the trustee of the procedure for the sale of the part after the creditor has intimated to the trustee that the creditor intends to commence the procedure for its sale,

(c) except that where the trustee or a creditor has given intimation under paragraph (b) but has unduly delayed in proceeding with the sale then, if authorised by the sheriff in the case of—

(i) sub-paragraph (i) of that paragraph, any creditor to whom intimation has been given may enforce the creditor's security, or

(ii) sub-paragraph (ii) of that paragraph, the trustee may sell the part.

(8) The function of the trustee under section 50(1)(a) to realise the debtor's estate includes the function of selling, with or without recourse against the estate, debts owing to the estate.

(9) The trustee may sell any perishable goods without complying with any directions given to the trustee under subsection (2)(a) or (c) if the trustee considers that compliance with such directions would adversely affect the sale.

(10) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this section.

(11) It is not competent for the trustee or an associate of the trustee, or for any commissioner, to purchase any of the debtor's estate in pursuance of this section.

(12) The trustee—

(a) must comply with the requirements of subsection (7) of this section, and

(b) may do anything permitted by this section,

only in so far as, in the trustee's view, it would be of financial benefit to the estate of the debtor, and in the interests of the creditors, to do so.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C7 S. 109(4)(6)(10)(11) applied by 1986 c. 45, s. 185(1) (as substituted (30.11.2016) by S.I. 2016/1034, Sch. 1 para. 4(3)(a))

Commencement Information

I109 S. 109 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Contractual powers and money received

110 Contractual powers of trustee

(1) The trustee in the sequestration may, as respects any contract entered into by the debtor before the date of sequestration—

(a) adopt it (except where adoption is precluded by its express or implied terms) if the trustee considers that its adoption would be beneficial to the administration of the debtor's estate, or

(b) refuse to adopt it.

(2) But subsection (1) is subject to subsections (3) and (10).

(3) The trustee must, within 28 days after the receipt by the trustee of a request in writing from any party to a contract entered into by the debtor, adopt or refuse to adopt the contract.

(4) The 28 days mentioned in subsection (3) may be extended—

(a) in a case where AiB is the trustee, by the sheriff on the application of AiB, and

(b) in any other case, by AiB on the application of the trustee.

(5) The trustee may, within 14 days beginning with the day of the decision, apply to AiB for a review of a decision of AiB under subsection (4)(b).

(6) If an application for a review under subsection (5) is made, AiB must—

(a) take into account any representations made by an interested party within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the decision within 28 days beginning with that day.

(7) The trustee may, within 14 days beginning with the day of the decision, appeal to the sheriff against a decision by AiB under subsection (6)(b).

(8) AiB may refer a case to the sheriff for a direction before—

(a) making a decision under subsection (4)(b), or

(b) undertaking any review under this section.

(9) An application for a review under subsection (5) may not be made in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (8).

(10) If, within the 28 days mentioned in subsection (3) or as the case may be within the longer period allowed by virtue of subsection (4), the trustee does not reply in writing to a request under subsection (3), the trustee is deemed to have refused to adopt the contract.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(11) The trustee may enter into any contract where the trustee considers that to do so would be beneficial for the administration of the debtor's estate.

Commencement Information
I110 S. 110 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

111 Money received by trustee

(1) All money received by the trustee in the sequestration in the exercise of the trustee's functions must be deposited by the trustee in the name of the debtor's estate in an interest-bearing account in an appropriate bank or institution.

(2) But subsection (1) is subject to subsections (3) and (5).

(3) In any case where the trustee is AiB, all money received by AiB in the exercise of AiB's functions as trustee must be deposited by AiB in an interest-bearing account in an appropriate bank or institution—
  (a) in the name of the debtor's estate, or
  (b) in the name of the Scottish Ministers.

(4) But subsection (3) is subject to subsection (5).

(5) The trustee may at any time retain in the trustee's hands a sum not exceeding £200 or such other sum as may be prescribed.

Commencement Information
I111 S. 111 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Debtor's home

112 Debtor's family home

(1) This section applies where a debtor's sequestrated estate includes any right or interest in the debtor's family home.

(2) At the end of 3 years beginning with the date of sequestration, the right or interest—
  (a) ceases to form part of the debtor's sequestrated estate, and
  (b) is reinvested in the debtor (without disposition, conveyance, assignation or other transfer).

(3) Subsection (2) does not apply if—
  (a) during the 3 years mentioned in subsection (2), the trustee in the sequestration—
    (i) disposes of or otherwise realises the right or interest,
    (ii) concludes missives for sale of the right or interest,
    (iii) sends a memorandum to the Keeper of the Register of Inhibitions under section 26(6),

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(iv) completes title in the Land Register of Scotland, or as the case may be in the Register of Sasines, in relation to the right or interest,

(v) commences proceedings to obtain the authority of the sheriff under section 113(1)(b) to sell or dispose of the right or interest,

(vi) commences proceedings in an action for division and sale of the family home,

(vii) commences proceedings in an action for the purpose of obtaining vacant possession of the family home,

(viii) enters with the debtor into an agreement such as is mentioned in subsection (4), or

(ix) commences an action under section 98 in respect of the right or interest, or

(b) the trustee in the sequestration—

(i) does not, at any time during the 3 years mentioned in subsection (2), know about the facts giving rise to a right of action under section 98, but

(ii) commences an action under that section reasonably soon after becoming aware of those facts.

(4) The agreement referred to in subsection (3)(a)(viii) is an agreement that the debtor is to incur a specified liability to the debtor's estate (with or without interest from the date of the agreement) in consideration of which the right or interest is to—

(a) cease to form part of the debtor's sequestrated estate, and

(b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).

(5) If the debtor does not inform the trustee or AiB of the right or interest within 3 months beginning with the date of sequestration then the 3 years mentioned in subsection (2) is to be taken—

(a) not to begin with the date of sequestration, but

(b) to begin instead with the date on which the trustee becomes aware of the right or interest.

(6) The sheriff may, on the trustee's application, substitute for the 3 years mentioned in subsection (2) a longer period—

(a) in prescribed circumstances, and

(b) in such other circumstances as the sheriff thinks appropriate.

(7) The Scottish Ministers may, by regulations—

(a) make provision for this section to have effect with the substitution, in such circumstances as may be specified in the regulations, of a shorter period for the 3 years mentioned in subsection (2),

(b) prescribe circumstances in which this section does not apply,

(c) prescribe circumstances in which a sheriff may disapply this section,

(d) make provision requiring the trustee to give notice that this section applies or does not apply,

(e) make provision about compensation,

(f) make such provision as they consider necessary or expedient in consequence of regulations made under paragraphs (a) to (e), or

(g) modify sub-paragraphs (i) to (viii) of subsection (3)(a) so as to—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) add or remove a matter, or
(ii) vary a matter,
referred to in that subsection.

(8) In this section, "family home" has the same meaning as in section 113.

Commencement Information
I112 S. 112 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

113 Power of trustee in relation to debtor's family home

(1) Before the trustee in the sequestration (in this section referred to as "T"), or the trustee acting under the trust deed (in this section referred to as "TU"), sells or disposes of any right or interest in the debtor's family home, T or TU must—
(a) obtain the relevant consent, or
(b) where unable to obtain that consent, obtain the authority of the sheriff in accordance with subsection (2) or as the case may be (3).

(2) Where T or TU requires to obtain the authority of the sheriff in terms of subsection (1)(b), the sheriff, after having regard to all the circumstances of the case including—
(a) the needs and financial resources of the debtor's spouse or former spouse,
(b) the needs and financial resources of the debtor's civil partner or former civil partner,
(c) the needs and financial resources of any child of the family,
(d) the interests of the creditors, and
(e) the length of the period during which (whether before or after the relevant date) the family home was used as a residence by any of the persons referred to in paragraphs (a) to (c),
may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 3 years) as the sheriff may consider reasonable in the circumstances or may grant the application subject to such conditions as the sheriff may prescribe.

(3) Subsection (2) applies to an action brought by T or TU—
(a) for division and sale of, or
(b) for the purpose of obtaining vacant possession of,
the debtor's family home as that subsection applies to an application under subsection (1)(b).

(4) Before commencing proceedings to obtain the authority of the sheriff under subsection (2) or (3), T or TU must give notice of the proceedings to the local authority in whose area the home is situated.

(5) Notice under subsection (4) must be given in such form and manner as may be prescribed.

(6) For the purposes of subsection (3), any reference in subsection (2) to the granting of the application is to be construed as a reference to the granting of decree in the action.

(7) In this section—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"family home" means any property in which, at the relevant date, the debtor had a right or interest (whether alone or in common with another person), being property which was occupied at that date as a residence—

(a) by—

(i) the debtor and the debtor's spouse or civil partner,

(ii) the debtor's spouse or civil partner,

(iii) the debtor's former spouse or former civil partner,

in any of those cases, whether with or without a child of the family, or

(b) by the debtor with a child of the family,

"child of the family" includes—

(a) any child or grandchild of either—

(i) the debtor, or

(ii) the debtor's spouse or civil partner (or former spouse or civil partner), and

(b) any person who has been brought up or accepted by either—

(i) the debtor, or

(ii) the debtor's spouse or civil partner (or former spouse or civil partner),

as if a child of the debtor, spouse, civil partner or former spouse or civil partner,

(whatever age the child, grandchild or person may be),

"relevant consent" means, in relation to the sale or disposal of any right or interest in a family home—

(a) in a case where the family home is occupied by the debtor's spouse or civil partner (or former spouse or civil partner), the consent of the spouse or civil partner (or as the case may be former spouse or civil partner) whether or not the family home is also occupied by the debtor,

(b) where paragraph (a) does not apply, in a case where the family home is occupied by the debtor with a child of the family, the consent of the debtor, and

"relevant date" means the day immediately preceding the date of sequestration or, as the case may be, the day immediately preceding the date the trust deed was granted.

Commencement Information

I113 S. 113 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Rights of spouse or civil partner

114 Protection of rights of spouse against arrangements intended to defeat them

(1) Subsections (2) and (3) apply where a debtor's sequestrated estate includes a matrimonial home in respect of which—

(a) the debtor, immediately before the date the order was made appointing the trustee, was an entitled spouse, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the other spouse is a non-entitled spouse.

(2) Where the trustee in the sequestration knows—

(a) that the debtor is married to the non-entitled spouse, and

(b) where the non-entitled spouse is residing,

the trustee must inform the non-entitled spouse, within 14 days beginning with the date mentioned in subsection (1)(a), of the fact that sequestration of the debtor's estate has been awarded, of the right of petition which exists under section 29 and of the effect of subsection (3).

(3) On the petition under section 29 of the non-entitled spouse presented either within 40 days beginning with the date mentioned in subsection (1)(a) or within 10 weeks beginning with the date of the award of sequestration the sheriff, if satisfied that the purpose of the petition for sequestration, or as the case may be the debtor application, was wholly or mainly to defeat the occupancy rights of the non-entitled spouse, may—

(a) under section 30, recall the sequestration, or

(b) make such order as the sheriff thinks appropriate to protect the occupancy rights of the non-entitled spouse.

(4) The reference in subsection (1)(a) to the date the order is made appointing the trustee is, in a case where more than one trustee is appointed in the sequestration, to be construed as a reference to the date the first order is made appointing a trustee.

(5) In this section—

"entitled spouse" and "non-entitled spouse" are to be construed in accordance with section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981,

"matrimonial home" has the meaning given by section 22 of that Act, and

"occupancy rights" has the meaning given by section 1(4) of that Act.

Commencement Information

I114 S. 114 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

115 Protection of rights of civil partner against arrangements intended to defeat them

(1) Subsections (2) and (3) apply where a debtor's sequestrated estate includes a family home in respect of which—

(a) the debtor, immediately before the date the order was made appointing the trustee, was an entitled partner, and

(b) the other partner in the civil partnership is a non-entitled partner.

(2) Where the trustee in the sequestration knows—

(a) that the debtor is in civil partnership with the non-entitled partner, and

(b) where the non-entitled partner is residing,

the trustee must inform the non-entitled partner, within 14 days beginning with the date mentioned in subsection (1)(a), of the fact that sequestration of the debtor's estate has been awarded, of the right of petition which exists under section 29 and of the effect of subsection (3).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) On the petition under section 29 of the non-entitled partner presented either within 40 days beginning with the date mentioned in subsection (1)(a) or within 10 weeks beginning with the date of the award of sequestration the sheriff, if satisfied that the purpose of the petition for sequestration, or as the case may be the debtor application, was wholly or mainly to defeat the occupancy rights of the non-entitled partner, may—

(a) under section 30, recall the sequestration, or

(b) make such order as the sheriff thinks appropriate to protect the occupancy rights of the non-entitled partner.

(4) The reference in subsection (1)(a) to the date the order is made appointing the trustee is, in a case where more than one trustee is appointed in the sequestration, to be construed as a reference to the date the first order is made appointing a trustee.

(5) In this section—

"entitled partner" and "non-entitled partner" are to be construed in accordance with section 101 of the Civil Partnership Act 2004,

"family home" has the meaning given by section 135 of that Act, and

"occupancy rights" means the rights conferred by section 101(1) of that Act.

Commencement Information

I115 S. 115 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Account of state of affairs

116 Debtor's account of state of affairs

(1) This section applies to a debtor who—

(a) has not been discharged under this Act, or

(b) is subject to a debtor contribution order.

(2) The trustee in the sequestration must, at the end of—

(a) 6 months beginning with the date of sequestration, and

(b) each subsequent 6 months,

require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.

Commencement Information

I116 S. 116 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Financial education for debtor

117 Financial education for debtor

(1) The trustee must notify a living debtor that the debtor is required to undertake a prescribed course of financial education (a "financial education course") specified by the trustee if, in the opinion of the trustee—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) any of the circumstances mentioned in subsection (2) applies, and
(b) undertaking the course would be appropriate for the debtor.

(2) The circumstances are—
(a) that in the 5 years ending on the date on which the sequestration was awarded—
(i) the debtor's estate was sequestrated,
(ii) the debtor granted a protected trust deed,
(iii) an analogous remedy (as defined in section 17(8)) was in force in respect of the debtor, or
(iv) the debtor participated in a debt management programme under which the debtor made regular payments,
(b) that the debtor is subject to, or under investigation with a view to an application being made for, a bankruptcy restrictions order,
(c) that the trustee considers that the pattern of the debtor's behaviour, whether before or after the award of sequestration, is such that the debtor would benefit from a financial education course, and
(d) that the debtor agrees to undertake a financial education course.

(3) The trustee must decide whether to issue a notification under subsection (1)—
(a) within 6 months beginning with the date of the award of sequestration, and
(b) in a case where section 143 applies, as soon as reasonably practicable after—
(i) the trustee ascertains the whereabouts of the debtor, or
(ii) the debtor makes contact with the trustee.

(4) A debtor must not be required to undertake or, as the case may be, complete the financial course specified by the trustee if, in the opinion of the trustee, the debtor—
(a) is unable to participate in the course as a result of the debtor's health (including by reason of disability or of physical or mental illness), or
(b) has completed a financial education course in the 5 years ending on the date on which the sequestration of the debtor's estate was awarded.

(5) Regulations under subsection (1) may in particular—
(a) prescribe the content, format and method of delivery of a course,
(b) prescribe different courses for different circumstances, or
(c) make provision for particular courses to be specified by a trustee where particular circumstances in subsection (2) apply.

(6) In subsection (2)(a)(iv), "debt management programme" includes in particular a programme approved in accordance with section 2 of the 2002 Act.

Commencement Information
I117 S. 117 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 9

EXAMINATION OF DEBTOR

Private and public examination

118 Private examination

(1) The trustee in the sequestration may request—

(a) the debtor to appear before the trustee and to give information relating to the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or

(b) the debtor's spouse or civil partner, or any other person who the trustee believes can give such information to give that information.

(2) In this Act any such spouse, civil partner or other person is referred to as a "relevant person".

(3) The trustee may, if the trustee considers it necessary, apply to the sheriff for an order to be made under subsection (4).

(4) On an application under subsection (3), the sheriff may make an order requiring the debtor or a relevant person to attend for private examination before the sheriff on a date and at a time specified in the order.

(5) But subsection (4) is subject to section 120(3).

(6) A date specified in an order under subsection (4) must be not earlier than 8 days nor later than 16 days after the date of the order.

(7) A person who fails without reasonable excuse to comply with an order under subsection (4) commits an offence.

(8) A person who commits an offence under subsection (7) is liable, on summary conviction—

(a) to a fine not exceeding level 5 on the standard scale, or

(b) to imprisonment for a term not exceeding 3 months,

or both to such fine and to such imprisonment.

(9) Where the debtor is an entity whose estate may be sequestrated by virtue of section 6(1), the references, in this section and in sections 119 to 121, to the debtor are to be construed, unless the context otherwise requires, as references to a person representing the entity.

Commencement Information

I118 S. 118 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

119 Public examination

(1) At least 8 weeks before the end of the first accounting period the trustee in the sequestration—

(a) may, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) if requested to do so by AiB or by the commissioners (if any) or by ¼ in value of the creditors, must,

apply to the sheriff for an order for the public examination before the sheriff of the debtor, or of a relevant person, relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs.

(2) Except that on cause shown such application may be made by the trustee at any time.

(3) On an application under subsection (1), the sheriff must make an order requiring the debtor or the relevant person to attend for examination before the sheriff in open court on a date and at a time specified in the order.

(4) But subsection (3) is subject to section 120(3).

(5) A date specified in an order under subsection (3) must be not earlier than 8 days nor later than 16 days after the date of the order.

(6) On the sheriff making an order under subsection (3), the trustee must—

(a) send to AiB a notice in such form, and containing such particulars, as may be prescribed,

(b) send a copy of the notice—

(i) to every creditor known to the trustee, and

(ii) where the order is in respect of a relevant person, to the debtor, and

(c) inform each person sent a copy under paragraph (b) that the person may participate in the examination.

(7) AiB must enter particulars of the notice sent under subsection (6)(a) in the register of insolvencies.

(8) A person who fails without reasonable excuse to comply with an order under subsection (3) commits an offence.

(9) A person who commits an offence under subsection (8) is liable, on summary conviction—

(a) to a fine not exceeding level 5 on the standard scale, or

(b) to imprisonment for a term not exceeding 3 months,

or both to such fine and to such imprisonment.

Commencement Information

I119 S. 119 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

120 Provisions ancillary to sections 118 and 119

(1) If a debtor or relevant person is residing in Scotland, the sheriff may on the application of the trustee grant a warrant (which may be executed by a messenger-at-arms or sheriff officer anywhere in Scotland) to apprehend the debtor or relevant person and to have the apprehended person taken to the place of the examination.

(2) But a warrant under subsection (1) must not be granted unless the sheriff is satisfied that it is necessary to grant it to secure the attendance of the debtor or relevant person at the examination.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) If the debtor or relevant person is for any good reason prevented from attending for examination, the sheriff may grant a commission to take the examination of the debtor or relevant person (the commissioner being, in this section and in section 121, referred to as an "examining commissioner").

(4) Subsection (3) is without prejudice to subsection (5).

(5) The sheriff or the examining commissioner may at any time adjourn the examination to such day as the sheriff or examining commissioner may fix.

(6) The sheriff or examining commissioner may order the debtor or a relevant person to produce for inspection any document—

(a) in the custody or control of the person so ordered, and

(b) relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs,

and to deliver the document or a copy of the document to the trustee in the sequestration for further examination by the trustee.

Commencement Information

I120 S. 120 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Conduct of examination

121 Conduct of examination

(1) The examination, whether before the sheriff or an examining commissioner, must be taken on oath.

(2) At the examination—

(a) the trustee in the sequestration (or a solicitor or counsel acting on behalf of the trustee) and, in the case of public examination, any creditor may question the debtor or a relevant person, and

(b) the debtor may question a relevant person,

as to any matter relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs.

(3) The debtor or a relevant person—

(a) is required to answer any question relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs, and

(b) is not excused from answering any such question on the ground—

(i) that the answer may incriminate, or tend to incriminate, the person questioned, or

(ii) of confidentiality.

(4) Except that—

(a) a statement made by the debtor or a relevant person in answer to any such question is not admissible in evidence in any subsequent criminal proceedings against the person making it (except where the proceedings are in respect of a charge of perjury relating to the statement), and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) a person subject to examination is not required to disclose any information received from a person not called for examination if the information is confidential between the two persons.

(5) The rules relating to the recording of evidence in ordinary causes specified in the first schedule of the Sheriff Courts (Scotland) Act 1907 apply in relation to the recording of evidence at the examination before the sheriff or examining commissioner.

(6) The debtor's deposition at the examination must be subscribed by the debtor and by the sheriff (or, as the case may be, the examining commissioner).

(7) The trustee must send a copy of the record of the examination to AiB.

(8) A relevant person is entitled, as if the person were a witness in an ordinary civil cause in the sheriff court, to fees or allowances in respect of the person's attendance at the examination.

(9) Except that the sheriff may disallow or restrict the entitlement to such fees or allowances if the sheriff thinks it appropriate to do so in all the circumstances.

Commencement Information
I121 S. 121 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 10

CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

Submission and adjudication of claims

122 Submission of claims to trustee

(1) A creditor must submit a claim in accordance with this section to the trustee in the sequestration in order to obtain an adjudication as to that person's entitlement—
(a) to vote at a meeting of creditors other than the statutory meeting, or
(b) (so far as funds are available) to a dividend out of the debtor's estate in respect of any accounting period.

(2) Where the claim is by virtue of—
(a) paragraph (a) of subsection (1), it must be submitted at or before the meeting,
(b) paragraph (b) of that subsection, it must be submitted in accordance with subsection (4).

(3) But subsection (1) is subject to subsections (4), (7) and (8) and to section 131(6) to (9).

(4) A creditor must, in order to obtain an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate, submit a claim to the trustee not later than the relevant day.

(5) The "relevant day", in relation to a creditor, means—
(a) where notice is given to the creditor under section 44(3), the day which is 120 days after the day on which that notice is given,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) where no such notice is given, the day which is 120 days after the day on which the trustee gives notice to the creditor inviting the submission of claims.

(6) If a creditor submits a claim to the trustee after the relevant day, the trustee may, in respect of any accounting period, provide an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate if—

(a) the claim is submitted not later than 8 weeks before the end of the accounting period, and

(b) there were exceptional circumstances which prevented the claim from being submitted before the relevant day.

(7) Subsection (8) applies as regards a claim submitted by a creditor—

(a) under section 46 and accepted in whole or in part by the trustee for the purpose of voting at the statutory meeting, or

(b) under this section and not rejected in whole.

(8) The claim is deemed to have been re-submitted for the purpose of obtaining an adjudication as to the creditor's entitlement both to vote at any subsequent meeting and (so far as funds are available) to a dividend in respect of an accounting period or as the case may be of any subsequent accounting period.

(9) A creditor submits a claim under this section by producing to the trustee—

(a) a statement of claim in the prescribed form, and

(b) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt.

(10) But the trustee, with the consent of the commissioners if any, may dispense with any requirement under subsection (9) in respect of any debt or of any class of debt.

(11) Where a creditor (in this subsection referred to as "C") neither resides, nor has a place of business, in the United Kingdom, the trustee—

(a) must, if the trustee knows where C does reside or have a place of business and if no notification has been given to C under section 44(3), write to C informing C that C may submit a claim under this section, and

(b) may allow C to submit an informal claim in writing.

(12) Where a creditor has submitted a claim under this section (or under section 46 a statement of claim which has been deemed re-submitted as mentioned in subsection (8)), the creditor may at any time submit a further claim under this section specifying a different amount for the creditor's claim.

(13) But a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the trustee requires the secured creditor to discharge, or convey or assign, the security under paragraph 4(3) of schedule 2.

Commencement Information

I122 S. 122 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

123 Evidence as to validity or amount of claim

(1) The trustee in the sequestration, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under section 122, may require—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the creditor to produce further evidence, or
(b) any other person who the trustee believes can produce relevant evidence to produce such evidence.

(2) If the creditor (or as the case may be the other person) refuses or delays to do so, the trustee may apply to the sheriff for an order requiring the creditor (or the other person) to attend for private examination before the sheriff.

(3) At any private examination under subsection (2)—
(a) a solicitor or counsel may act on behalf of the trustee, or
(b) the trustee may appear on the trustee's own behalf.

(4) Sections 118(4) to (7) and 121(1) apply, subject to any necessary modifications, to the examination of the creditor (or the other person) as they apply to the examination of a relevant person.

(5) References in subsections (1) and (4) to the creditor in a case where the creditor is an entity mentioned in section 6(1) are to be construed, unless the context otherwise requires, as references to a person representing the entity.

Commencement Information
I123 S. 123 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

124 False claims etc.

(1) Subsections (2) and (3) apply where a creditor produces under section 122 or 123—
(a) a statement of claim,
(b) account,
(c) voucher, or
(d) other evidence,
which is false.

(2) The creditor commits an offence unless it is shown that the creditor neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false.

(3) The debtor commits an offence if the debtor—
(a) knew, or became aware, that the statement of claim, account, voucher or other evidence was false, and
(b) failed, as soon as practicable after acquiring such knowledge, to report to the trustee that the statement of claim, account, voucher or other evidence was false.

(4) A person convicted of an offence under subsection (2) or (3) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum, or—
(i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
(ii) in any other case, to imprisonment for a term not exceeding 3 months,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or

(b) on conviction on indictment—

(i) to a fine, or

(ii) to imprisonment for a term not exceeding 2 years,

or both to a fine and to such imprisonment.

Commencement Information

I124 S. 124 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

125 Further provision as to claims

(1) A creditor may, in such circumstances as may be prescribed, state the amount of the creditor's claim under section 122 in foreign currency.

(2) The trustee in the sequestration must, on production of any document to the trustee for the purposes of any of sections 122 to 124—

(a) initial the document, and

(b) if requested by the person producing it, return it (if it is not a statement of claim) to that person.

(3) The submission of a claim under section 122 bars the effect of any enactment or rule of law relating to the limitation of actions.

(4) Schedule 2 has effect for determining the amount in respect of which the creditor is entitled to claim.

Commencement Information

I125 S. 125 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

126 Adjudication of claims: general

(1) At the commencement of every meeting of creditors (other than the statutory meeting) the trustee in the sequestration must, for the purposes of section 128 so far as it relates to voting at the meeting, accept or reject the claim of each creditor.

(2) Subsection (3) applies where funds are available for payment of a dividend out of the debtor's estate in respect of an accounting period.

(3) For the purpose of determining who is entitled to such a dividend, the trustee—

(a) must, not later than 4 weeks before the end of the period, accept or reject every claim submitted (or deemed to have been re-submitted) to the trustee under this Act, and

(b) must, at the same time, make a decision on any matter required to be specified under paragraph (a) or (b) of subsection (7).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The trustee must then, as soon as reasonably practicable, send a list of every claim so accepted or rejected (including its amount and whether it has been accepted or rejected) to the debtor and to every creditor known to the trustee.

(5) If the amount of a claim is stated in foreign currency, the trustee in adjudicating under subsection (1) or (3) on the claim must convert the amount into sterling, in such manner as may be prescribed, at the rate of exchange prevailing at the close of business on the date of sequestration.

(6) Where the trustee rejects a claim, the trustee must forthwith notify the claimant, giving reasons for the rejection.

(7) Where the trustee accepts or rejects a claim, the trustee must record the trustee's decision on the claim, specifying—
   (a) the amount of the claim accepted by the trustee,
   (b) the category of debt, and the value of any security, as decided by the trustee, and
   (c) if the trustee is rejecting the claim, the trustee's reasons for doing so.

(8) Any reference in this section or in section 127 to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

Commencement Information
I126 S. 126 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

127 Adjudication of claims: review and appeal

(1) The debtor or any creditor may apply to AiB for a review of—
   (a) the acceptance or rejection of any claim, or
   (b) a decision in respect of any matter requiring to be specified under section 126(7)(a) or (b).

(2) The debtor may make an application under subsection (1) only if the debtor satisfies AiB that the debtor has, or is likely to have, a pecuniary interest in the outcome of the review.

(3) Any application under subsection (1) must be made, in the case of a review relating to an acceptance or rejection—
   (a) under subsection (1) of section 126, within 14 days beginning with the day of the decision to accept or reject the claim, and
   (b) under subsection (3) of that section, within 28 days beginning with that day.

(4) If an application under subsection (1) is made, AiB must—
   (a) take into account any representations made by an interested party within 21 days beginning with the day on which the application is made, and
   (b) confirm, amend or revoke the decision within 28 days beginning with that day.

(5) The debtor or any creditor may, within 14 days beginning with the day of a decision by AiB under subsection (4)(b), appeal to the sheriff against that decision.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) The debtor may appeal under subsection (5) only if the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.

Commencement Information

I127 S. 127 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Entitlement to vote and draw a dividend

128 Voting and drawing a dividend

(1) A creditor whose claim has been accepted in whole or in part by the trustee in the sequestration or on review or appeal under section 127 is entitled, in a case where the acceptance is under (or on review or appeal arising from)—

(a) section 126(1), to vote on any matter at the meeting of creditors for the purpose of voting at which the claim is accepted, or

(b) section 126(3), to payment out of the debtor's estate of a dividend in respect of the accounting period for the purposes of which the claim is accepted.

(2) But—

(a) paragraph (a) of subsection (1) is subject to sections 70(1)(a) and 77(1) and (7)(b), and

(b) the entitlement mentioned in paragraph (b) of that subsection arises only in so far as the estate has funds available, having regard to section 129, to make the payment in question.

(3) No vote may be cast, by virtue of a debt, more than once on any resolution put to a meeting of creditors.

[F34](4) . . . . . .

[F34](5) . . . . . .

[F34](6) . . . . . .

[F34](7) . . . . . .

Textual Amendments

F34 S. 128(4)-(7) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(12)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I128 S. 128 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Distribution

129 Priority in distribution

(1) The funds of the debtor's estate must be distributed by the trustee in the sequestration to meet the following debts in the order in which they are mentioned—

(a) the outlays and remuneration of an interim trustee in the administration of the debtor's estate,

(b) the outlays and remuneration of the trustee in the sequestration in the administration of the debtor's estate,

(c) where the debtor has died—

(i) deathbed and funeral expenses reasonably incurred, and

(ii) expenses reasonably incurred in administering the deceased's estate,

(d) the expenses reasonably incurred by a creditor who is a petitioner for, or concurs in a debtor application for, sequestration,

(e) ordinary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),

(f) secondary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),

(g) ordinary **[**[F35]non-preferential**]** debts (that is to say, debts which are neither secured debts nor debts mentioned in any other paragraph of this subsection),

[[F36](ga) secondary non-preferential debts,**]**

[[F36](gb) tertiary non-preferential debts,**]**

(h) interest, between the date of sequestration and the date of payment of the debt, at the rate specified in subsection (10) on—

(i) the ordinary preferred debts,

(ii) the secondary preferred debts, [F37]...

(iii) the ordinary **[**[F38]non-preferential**]** debts,

[[F39](iv) the secondary non-preferential debts, and**]**

[[F39](v) the tertiary non-preferential debts.**]**

(i) any postponed debt.

(2) In this Act—

"preferred debt" means a debt listed in Part 1 of schedule 3 of this Act,

"ordinary preferred debt" means a debt within any of paragraphs 1 to 6 of that Part, and

"secondary preferred debt" means a debt within **[**[F40]any of paragraphs 7 to 8A**]** of that Part.

(3) Part 2 of that schedule has effect for the interpretation of Part 1 of that schedule.

[[F41](3A) In subsection (1), "secondary non-preferential debts" and "tertiary non-preferential debts" have the meanings given by section 129A.**]**

(4) In this Act, "postponed debt" means—

(a) a loan made to the debtor, in consideration of a share of the profits in the debtor's business, which is postponed under section 3 of the Partnership Act 1890 to the claims of other creditors,

(b) a loan made to the debtor by the debtor's spouse or civil partner, or

(c) a creditor's right to—

(i) anything vesting in the trustee by virtue of a successful challenge under section 98, or

(ii) the proceeds of sale of anything so vesting.

(5) A debt falling within any of paragraphs (c) to (i) of subsection (1) has the same priority as any other debt falling within the same paragraph and, where the funds of the estate are inadequate to enable the debts mentioned in the paragraph in question to be paid in full, those debts are to abate in equal proportions.

(6) Any surplus remaining after all the debts mentioned in this section have been paid in full must be made over to the debtor or the debtor's successors or assignees.

(7) In subsection (6), "surplus"—

(a) includes any kind of estate, but

(b) does not include any unclaimed dividend.

[F42](8) . . . . . .

(9) Nothing in this section affects—

(a) any right of a secured creditor which is preferable to the rights of the trustee,

(b) any preference of the holder of a lien over a title deed, or other document, which has been delivered to the trustee in accordance with a requirement under section 108(5).

(10) The rate of interest referred to in paragraph (h) of subsection (1) is whichever is the greater of—

(a) the prescribed rate at the date of sequestration, and

(b) the rate applicable to that debt apart from the sequestration.

Textual Amendments

F35 Word in s. 129(1)(g) inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **43(2)(a)** (with art. 3)

F36 S. 129(1)(ga)(gb) inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **43(2)(b)** (with art. 3)

F37 Word in s. 129(1)(h) omitted (19.12.2018) by virtue of The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **43(2)(c)(i)** (with art. 3)

F38 Word in s. 129(1)(h)(iii) inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **43(2)(c)(ii)** (with art. 3)

F39 S. 129(1)(h)(iv)(v) inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **43(2)(c)(iii)** (with art. 3)

F40 Words in s. 129(2) substituted (with application in accordance with s. 98(7) of the amending Act) by Finance Act 2020 (c. 14), **s. 98(3)**

F41 S. 129(3A) inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **43(3)** (with art. 3)

F42 S. 129(8) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(13)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C8 S. 129 modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(4), **127** (with reg. 108)

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I129 S. 129 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

[F43 129A Section 129: interpretation

(1) In this Act, "secondary non-preferential debts" means non-preferential debts issued by a relevant financial institution under an instrument where—
  (a) the original contractual maturity of the instrument is of at least one year,
  (b) the instrument is not a derivative and contains no embedded derivative, and
  (c) the relevant contractual documentation and where applicable the prospectus related to the issue of the debts explain the priority of the debts under this Act.

(2) In subsection (1)(b), "derivative" has the same meaning as in Article 2(5) of Regulation (EU) No 648/2012.

(3) For the purposes of subsection (1)(b) an instrument does not contain an embedded derivative merely because—
  (a) it provides for a variable interest rate derived from a broadly used reference rate, or
  (b) it is not denominated in the domestic currency of the person issuing the debt (provided that the principal, repayment and interest are denominated in the same currency).

(4) In this Act, "tertiary non-preferential debts" means all subordinated debts, including (but not limited to) debts under Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).

(5) In this section, "relevant financial institution" means any of the following—
  (a) a credit institution,
  (b) an investment firm,
  (c) a financial holding company,
  (d) a mixed financial holding company,
  F44[(da) an investment holding company,]
  [F45(e) a financial institution which is—
    (i) a subsidiary of an entity referred to in paragraphs (a) to (da), and
    (ii) covered by the supervision of that entity on a consolidated basis by the Financial Conduct Authority in accordance with Part 9C rules or by the Prudential Regulation Authority in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms or CRR rules, or,]
  (f) a mixed-activity holding company.

(6) The definitions in Article 4 of Regulation (EU) No. 575/2013 apply for the purposes of subsection (5) [F46except for the definitions of "consolidated basis" and "consolidated situation"].

F47[(7) For the purposes of subsection (5)—
  "on a consolidated basis" means on the basis of the consolidated situation;

"consolidated situation" means the situation that results from an entity being treated, for the purposes of Part 9C rules, Regulation (EU) 575/2013 or CRR rules (as appropriate), as if that entity and one or more other entities formed a single entity;

"CRR rules" has the meaning given in section 144A of the Financial Services and Markets Act 2000;

"Part 9C rules" has the meaning given in section 143F of the Financial Services and Markets Act 2000.**]]**

Textual Amendments

F43 S. 129A inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **44** (with art. 3)

F44 S. 129A(5)(da) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **10(2)(a)**

F45 S. 129A(5)(e) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **10(2)(b)**

F46 Words in s. 129A(6) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **10(3)**

F47 S. 129A(7) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **10(4)**

Modifications etc. (not altering text)

C9 S. 129A modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(4), **128** (with reg. 108)

130 Accounting periods

(1) The trustee in the sequestration must make up accounts of the trustee's intromissions with the debtor's estate in respect of each accounting period.

(2) In this Act, "accounting period" is to be construed as follows—

(a) the first accounting period is the period of 12 months, or such shorter period as may be determined or agreed in accordance with subsection (5), either period beginning with the date on which sequestration is awarded, and

(b) any subsequent accounting period is the period of 12 months beginning when its immediately preceding accounting period ends.

(3) But—

(a) paragraph (a) of subsection (2) is subject to subsection (4), and

(b) paragraph (b) of subsection (2) is subject to the exception that—

(i) in a case where AiB is not the trustee, the trustee and the commissioners (or, if there are no commissioners, the trustee and AiB) agree, or

(ii) in a case where AiB is the trustee, the trustee determines,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

an accounting period is to be some other period beginning when its immediately preceding accounting period ends, it is that other period.

(4) Where the trustee was appointed under section 54(1) as interim trustee in the sequestration, the first accounting period is—
- (a) the period—
  - (i) beginning with the date of the appointment as interim trustee, and
  - (ii) ending on the date 12 months after that on which sequestration is awarded, or
- (b) such shorter period as may be determined or agreed in accordance with subsection (5).

(5) This subsection applies where the trustee considers that the funds of the debtor's estate are sufficient to pay a dividend in accordance with section 131(1) in respect of—
- (a) in a case where the trustee is AiB, a shorter period of not less than 6 months determined by AiB, and
- (b) in any other case, a shorter period of not less than 6 months agreed—
  - (i) between the trustee and the commissioners, or
  - (ii) if there are no commissioners, between the trustee and AiB.

(6) An agreement under sub-paragraph (i), or determination under sub-paragraph (ii), of subsection (3)(b)—
- (a) may be made in respect of one accounting period or more,
- (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, is not to have effect unless made before the day on which that accounting period would, but for the agreement or determination, have ended, and
- (c) may provide for different accounting periods to be of different duration.

Commencement Information
I130 S. 130 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

131 Distribution in accordance with accounting periods

(1) The trustee in the sequestration must pay, under section 135(1), a dividend out of the estate in respect of each accounting period—
- (a) if the funds of the debtor's estate are sufficient, and
- (b) after making allowance for future contingencies.

(2) But subsection (1) is subject to the following subsections.

(3) The trustee may pay—
- (a) the debts mentioned in paragraphs (a) to (d) of section 129(1), other than the trustee's own remuneration, at any time,
- (b) the preferred debts at any time but only with the consent of the commissioners or, if there are no commissioners, of AiB.

(4) If, in respect of an accounting period, the trustee—
- (a) is not ready to pay a dividend, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) considers it would be inappropriate to pay a dividend because the expense of doing so would be disproportionate to the amount of the dividend,

the trustee may, with the consent of the commissioners or, if there are no commissioners, of AiB, postpone the payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(5) Where a review or appeal is made under section 127 as respects the acceptance or rejection of a creditor's claim, the trustee must, at the time of payment of dividends and until the review or appeal is determined, set aside an amount which would be sufficient, if the determination in the review or appeal were to provide for the creditor's claim being accepted in full, to pay a dividend in respect of that claim.

(6) Subsection (7) applies where a creditor—

(a) has failed to produce evidence in support of the creditor's claim earlier than 8 weeks before the end of an accounting period on being required to do so under section 123(1), and

(b) has given a reason for such failure which is acceptable to the trustee.

(7) The trustee must set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the trustee to be satisfied under that section, an amount which would be sufficient, were the claim accepted in full, to pay a dividend in respect of that claim.

(8) Where a creditor submits a claim to the trustee later than 8 weeks before the end of an accounting period but more than 8 weeks before the end of a subsequent accounting period in respect of which, after making allowance for future contingencies, funds are available for the payment of a dividend, the trustee must, if the trustee accepts the claim in whole or in part, pay to the creditor—

(a) the same dividend as has, or dividends as have, already been paid to creditors of the same class in respect of any accounting period or periods, and

(b) whatever dividend may be payable to the creditor in respect of the subsequent accounting period mentioned above.

(9) Paragraph (a) of subsection (8) is without prejudice to any dividend which has already been paid.

(10) In the declaration of, and payment of, a dividend, a payment must not be made more than once by virtue of the same debt.

(11) Any dividend paid in respect of a claim must be paid to the creditor.

Commencement Information

I131 S. 131 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Procedure after end of accounting period

132 Submission of accounts and scheme of division

(1) Within 2 weeks after the end of an accounting period the trustee in the sequestration must, in respect of that period, submit to the commissioners (or, if there are no commissioners, to AiB))—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the trustee's accounts of the trustee's intromissions with the estate of the debtor for audit and, where funds are available after making allowance for future contingencies, a scheme of division of the divisible funds, and

(b) a claim for the outlays reasonably incurred by the trustee and for the trustee's remuneration.

(2) Where documents mentioned in subsection (1) are submitted to the commissioners, the trustee must send a copy of them to AiB.

(3) All accounts in respect of legal services incurred by the trustee are, before they are paid by the trustee, to be submitted for taxation to the auditor of the court before which the sequestration is pending.

(4) But subsection (3) is subject to subsection (5).

(5) The trustee may pay the account without submitting it for taxation where—

(a) any such account has been agreed between the trustee and the person entitled to payment in respect of that account,

(b) the trustee is not an associate of that person, and

(c) the commissioners have (or, if there are no commissioners, AiB has) determined that the account need not be submitted for taxation.

(6) This section and sections 133 to 135 do not apply where AiB is the trustee in the sequestration.

Commencement Information

I132 S. 132 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

133 Audit of accounts and determination as to outlays and remuneration payable to trustee

(1) Within 6 weeks after the end of an accounting period—

(a) the commissioners (or, as the case may be, AiB)—

(i) may audit the accounts, and

(ii) must issue a determination fixing the amount of the outlays and the remuneration payable to the trustee in the sequestration, and

(b) the trustee must make the audited accounts, scheme of division and that determination available for inspection by the debtor and the creditors.

(2) The basis for fixing the amount of the remuneration payable to the trustee may be a commission calculated by reference to the value of the debtor's estate which has been realised by the trustee.

(3) But there is in any event to be taken into account—

(a) the work which, having regard to that value, was reasonably undertaken by the trustee, and

(b) the extent of the trustee's responsibilities in administering the debtor's estate.

(4) In fixing the amount of such remuneration in respect of any accounting period, the commissioners (or, as the case may be, AiB) may take into account any adjustment which the commissioners or AiB may wish to make in the amount of remuneration fixed in respect of any earlier accounting period.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I133 S. 133 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

134 Appeal against determination as to outlays and remuneration payable to trustee

(1) Not later than 8 weeks after the end of an accounting period the trustee in the sequestration, the debtor or any creditor may appeal against a determination issued under section 133(1)(a)(ii)—
  (a) to AiB where it is a determination of the commissioners, and
  (b) to the sheriff where it is a determination of AiB.

(2) But subsection (1) is subject to subsection (4).

(3) The determination of AiB in an appeal under paragraph (a) of subsection (1) is appealable to the sheriff (whose decision on an appeal under this subsection or under paragraph (b) of subsection (1) is final).

(4) The debtor may appeal under subsection (1) if, and only if, the debtor satisfies AiB, or as the case may be the sheriff, that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.

(5) Before the debtor or a creditor appeals under subsection (1) or (3), the debtor or, as the case may be, the creditor must give notice to the trustee of the intention to appeal.

Commencement Information
I134 S. 134 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

135 Further provision as to procedure after end of accounting period

(1) The trustee in the sequestration must pay to the creditors their dividends in accordance with the scheme of division on—
  (a) the expiry of the 8 weeks mentioned in section 134(1), or
  (b) if there is an appeal under that subsection, on the final determination of the last such appeal.

(2) There must be deposited by the trustee, in an appropriate bank or institution, any dividend—
  (a) allocated to a creditor but not cashed or uplifted, or
  (b) dependent on a claim in respect of which an amount has been set aside under subsection (5) or (7) of section 131.

(3) If a creditor's claim is revalued, the trustee may—
  (a) in paying any dividend to that creditor, make such adjustment to it as the trustee considers necessary to take account of that revaluation, or
  (b) require the creditor to repay to the trustee the whole or part of a dividend already paid to the creditor.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I135 S. 135 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

136 Procedure after end of accounting period where Accountant in Bankruptcy is trustee

(1) In any case where AiB is the trustee in the sequestration, AiB must at the end of each accounting period—
  (a) prepare accounts of AiB's intromissions with the estate of the debtor, and
  (b) make a determination of AiB's fees and outlays calculated in accordance with regulations under section 205.

(2) Such accounts and determination must be available for inspection by the debtor and the creditors by not later than 6 weeks after the end of the accounting period to which they relate.

(3) In making a determination as mentioned in subsection (1), AiB may take into account any adjustment which AiB may wish to make in the amount of AiB's remuneration fixed in respect of any earlier accounting period.

(4) Not later than 8 weeks after the end of an accounting period the debtor or any creditor may appeal to the sheriff against AiB's determination.

(5) But subsection (4) is subject to subsection (7).

(6) The decision of the sheriff on an appeal under subsection (4) is final.

(7) The debtor may appeal under subsection (4) if, and only if, the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.

(8) Before the debtor or a creditor appeals under subsection (4), the debtor or as the case may be the creditor must give notice to AiB of the intention to appeal.

(9) On the expiry of the 8 weeks mentioned in subsection (4), AiB must pay to the creditors their dividends in accordance with the scheme of division.

(10) There must be deposited by AiB, in an appropriate bank or institution, any dividend—
  (a) allocated to a creditor but not cashed or uplifted, or
  (b) dependent on a claim in respect of which an amount has been set aside under subsection (5) or (7) of section 131.

(11) If a creditor's claim is revalued, AiB may—
  (a) in paying any dividend to that creditor, make such adjustment to it as AiB considers necessary to take account of that revaluation, or
  (b) require the creditor to repay to AiB the whole or part of a dividend already paid to the creditor.

Commencement Information
I136 S. 136 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 11

DISCHARGE

Discharge of debtor

137 Discharge of debtor where Accountant in Bankruptcy not trustee

(1) This section applies where AiB is not the trustee.

(2) AiB may, by granting a certificate of discharge in the prescribed form, discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded.

(3) Before deciding whether to discharge the debtor under subsection (2), AiB must—
- (a) consider the report provided by the trustee under subsection (4), and
- (b) take into account any representations received during the 28 days mentioned in subsection (6)(b).

(4) The trustee must prepare and send a report to AiB—
- (a) without delay after the date which is 10 months after the date on which sequestration is awarded, and
- (b) if the debtor is not otherwise discharged, before sending to AiB the documentation referred to in section 148(1)(b)(i).

(5) The report must include—
- (a) information about—
  - (i) the debtor's assets, liabilities, financial affairs and business affairs,
  - (ii) the debtor's conduct in relation to those assets, liabilities and affairs,
  - (iii) the sequestration, and
  - (iv) the debtor's conduct in the course of the sequestration,
- (b) a statement of whether, in the opinion of the trustee, the debtor has as at the date of the report—
  - (i) complied with any debtor contribution order,
  - (ii) co-operated with the trustee in accordance with section 215,
  - (iii) complied with the statement of undertakings,
  - (iv) made a full and fair surrender of the debtor's estate,
  - (v) made a full disclosure of all claims which the debtor is entitled to make against any other persons, and
  - (vi) delivered to the trustee every document under the debtor's control relating to the debtor's estate, financial affairs or business affairs, and
- (c) a statement of whether the trustee has, as at the date that the report is sent to AiB, carried out all of the trustee's functions in accordance with section 50.

(6) The trustee must, at the same time as sending a report to AiB under this section, give to the debtor and to every creditor known to the trustee—
- (a) a copy of the report, and
- (b) a notice informing the recipient that the recipient has a right to make representations to AiB in relation to the report within 28 days beginning with the day on which the notice is given.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) A discharge under this section is not to take effect before the expiry of 14 days beginning with the day of notification of the decision.

Commencement Information
I137 S. 137 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

138 Discharge of debtor where Accountant in Bankruptcy trustee

(1) This section applies where AiB is the trustee.

(2) AiB may, by granting a certificate of discharge in the prescribed form, discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded.

(3) AiB must, as soon as practicable after the date which is 12 months after the date on which sequestration is awarded—
- (a) decide whether to discharge the debtor under subsection (2),
- (b) notify the debtor and every creditor known to AiB of that decision, and
- (c) send a report to those persons.

(4) The report must give an account of—
- (a) the debtor's assets, liabilities, financial affairs and business affairs,
- (b) the debtor's conduct in relation to those assets, liabilities and affairs,
- (c) the sequestration, and
- (d) the debtor's conduct in the course of the sequestration, including compliance with the statement of undertakings.

(5) Subsection (6) applies where—
- (a) AiB refuses to discharge the debtor under subsection (2), and
- (b) the debtor is not otherwise discharged.

(6) AiB must, as soon as practicable after the date which is 12 months after the date of the refusal—
- (a) decide whether to discharge or refuse to discharge the debtor under subsection (2),
- (b) notify the debtor and every creditor known to AiB of that decision, and
- (c) send a report giving an account of the matters mentioned in subsection (4) to those persons.

(7) Discharge under this section is not to take effect before the expiry of 14 days beginning with the day of notification of the decision to discharge.

Commencement Information
I138 S. 138 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

139 Discharge of debtor: review and appeal

(1) The trustee or the debtor may apply to AiB for a review of a decision to refuse to discharge the debtor under section 137(2) or 138(2).

(2) Any creditor may apply to AiB for a review of a decision to discharge the debtor under section 137(2) or 138(2).

(3) Any application under subsection (1) or (2) must be made within 14 days beginning with the day of the notification of the decision in question.

(4) If an application is made under subsection (2), the discharge is suspended until the determination of the review by AiB.

(5) If an application is made under subsection (1) or (2), AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm or revoke the decision within 28 days beginning with that day.

(6) The debtor, the trustee or any creditor may appeal to the sheriff, against any decision of AiB under subsection (5)(b), within 14 days beginning with the day of the decision.

Commencement Information

I139 S. 139 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

140 Discharge of debtor to whom section 2(2) applies

(1) Where section 2(2) applies to a debtor, the debtor is discharged on the date which is 6 months after the date on which sequestration is awarded.

(2) A debtor may, following discharge, apply to AiB for a certificate of discharge in the prescribed form.

Commencement Information

I140 S. 140 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

141 Deferral of discharge where debtor cannot be traced

(1) Subsection (2) applies where the trustee—

(a) having made reasonable inquiries, is unable to ascertain the whereabouts of the debtor, and

(b) as a result is unable to carry out the trustee's functions in accordance with section 50.

(2) The trustee must—

(a) notify the debtor by sending to the last known address of the debtor a deferral notice in the prescribed form,

(b) give a deferral notice to every creditor known to the trustee, and

(c) where the trustee is not AiB, apply in the prescribed form to AiB for a deferral.

(3) Any deferral application under subsection (2)(c) must be made by the trustee—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) no earlier than the date which is 8 months after the date on which sequestration is awarded, and

(b) no later than the date which is 10 months after the date on which sequestration is awarded.

(4) After receiving a deferral application, AiB must—

(a) take into account any representations made by an interested person within 14 days beginning with the day on which the application is made, and

(b) if satisfied of the matters mentioned in subsection (5), issue a certificate deferring discharge indefinitely.

(5) The matters are—

(a) that the trustee is unable to ascertain the whereabouts of the debtor, and

(b) it would not be reasonably practicable for the trustee to continue to search for the debtor.

(6) Where AiB is the trustee and has given a deferral notice in accordance with subsection (2)(b), AiB must—

(a) take into account any representations made by an interested person within 14 days beginning with the day on which the deferral notice is given, and

(b) if satisfied that it would not be reasonably practicable to continue to search for the debtor, issue a certificate deferring discharge indefinitely.

(7) Where a certificate is issued under subsection (4)(b) or (6)(b), AiB must make an appropriate entry in the register of insolvencies.

Commencement Information

I141 S. 141 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

142 Debtor not traced: new trustee

(1) This section applies where a certificate is issued under section 141(4)(b).

(2) The trustee may apply to AiB, in the prescribed form, for authority to resign office.

(3) An application under subsection (2) must include details of every creditor known to the trustee.

(4) An application under subsection (2) may not be made—

(a) if, after the certificate is issued, the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee, or

(b) after the date which is 6 months after that on which the certificate is issued.

(5) Where an application is made under subsection (2), AiB must issue to the trustee who made the application a notice in the prescribed form granting the application.

(6) Where a notice is issued under subsection (5)—

(a) AiB is deemed to be the trustee,

(b) AiB must notify every creditor known to AiB that AiB is deemed to be the trustee,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) the former trustee is not entitled to recover, other than by a claim in the final distribution of the debtor's estate, outlays and remuneration payable under sections 132 and 133, and

(d) subsections (9) to (13) of section 69 apply in relation to the appointment of AiB as the new trustee as they apply in relation to the appointment of a new trustee under that section.

Commencement Information

I142 S. 142 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

143 Debtor not traced: subsequent debtor contact

(1) This section applies where—

(a) a certificate is issued under section 141(4)(b) or (6)(b), and

(b) the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee.

(2) Where AiB is the trustee, AiB may discharge the debtor at any time after the date which is 12 months after that on which—

(a) the whereabouts of the debtor were ascertained, or

(b) the debtor made contact with the trustee.

(3) Where AiB is not the trustee, the trustee must prepare and send a report to AiB without delay after the date which is 10 months after the earlier of—

(a) the date on which the whereabouts of the debtor were ascertained by the trustee, and

(b) the date on which the debtor made contact with the trustee.

(4) If the trustee sends a report to AiB under subsection (3)—

(a) the report must include the matters which, in a report sent to AiB, are included in accordance with subsection (5) of section 137, and

(b) subsection (6) of that section applies to a report sent under this section as it applies to a report sent in accordance with subsection (4) of that section.

(5) After receiving a report under subsection (3), AiB may discharge the debtor by granting a certificate of discharge in the prescribed form.

(6) Before deciding whether to discharge the debtor under subsection (5), AiB must—

(a) consider the report prepared under subsection (3), and

(b) take into account any representations received during the 28 days mentioned in subsection (6)(b) of section 137 (as applied in accordance with subsection (4)).

(7) Discharge under subsection (2) or (5) is not to take effect before the expiry of 14 days beginning with the day of notification of the decision to discharge.

(8) Discharge under subsection (2) or (5) is deemed for the purposes of section 145 to have been given under section 137(2).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I143 S. 143 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

144 Subsequent debtor contact: review and appeal

(1) The debtor may apply to AiB for a review of a decision under section 143(2) or (5) to refuse to discharge the debtor.

(2) Any creditor may apply to AiB for a review of a decision under section 143(2) or (5) to discharge the debtor.

(3) Any application under subsection (1) or (2) must be made within 14 days beginning with the day of notification of the decision in question.

(4) If an application for a review under subsection (2) is made, the discharge is suspended until the determination of that review by AiB.

(5) If an application for a review under subsection (1) or (2) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm or revoke the decision within 28 days beginning with the day on which the application is made.

(6) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of AiB under subsection (5)(b) within 14 days beginning with the day of the decision.

Commencement Information
I144 S. 144 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

145 Effect of discharge under section 137, 138 or 140

(1) On the discharge of the debtor under section 137, 138 or 140 the debtor is discharged of all debts and obligations contracted by the debtor, or for which the debtor was liable, at the date of sequestration.

(2) Subsection (1) is subject to subsections (3) and (5).

(3) The debtor is not discharged by virtue of subsection (1) from—
- (a) any liability to pay a fine or other penalty due to the Crown,
- (b) any liability to pay a fine imposed in a justice of the peace court (or a district court),
- (c) any liability under a compensation order (within the meaning of section 249 of the Criminal Procedure (Scotland) Act 1995,
- (d) any liability to forfeiture of a sum of money deposited in court under section 24(6) of the Criminal Procedure (Scotland) Act 1995,
- (e) any liability incurred by reason of fraud or breach of trust,
- (f) any obligation to pay—
  - (i) aliment, or any sum of an alimentary nature, under any enactment or rule of law, or

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) any periodical allowance payable on divorce by virtue of a court order or under an obligation, or

(g) the obligation imposed on the debtor by section 215.

(4) The obligations mentioned in paragraph (f) of subsection (3) do not include—

(a) aliment, or a periodical allowance, which could be included in the amount of a creditor's claim under paragraph 2 of schedule 2, or

(b) child support maintenance within the meaning of the Child Support Act 1991 which was unpaid in respect of any period before the date of sequestration of—

(i) any person by whom it was due to be paid, or

(ii) any employer by whom it was, or was due to be, deducted under section 31(5) of that Act.

(5) The discharge of the debtor under section 137, 138 or 140 does not affect any right of a secured creditor for an obligation in respect of which the debtor has been discharged, to enforce the security in respect of that obligation.

(6) In subsection (3)(a), the reference to a fine or other penalty due to the Crown includes a reference to a confiscation order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.

(7) Nothing in this section affects regulations in relation to which section 73B of the Education (Scotland) Act 1980 (regulations relating to student loans) applies.

Commencement Information

I145 S. 145 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

146 Discharge under section 140: conditions

(1) This section applies where a debtor is discharged under section 140.

(2) During the relevant period the debtor must comply with the condition in subsection (3) before the debtor, either alone or jointly with another person, obtains credit—

(a) to the extent of £2,000 (or such other sum as may be prescribed) or more, or

(b) of any amount where, at the time of obtaining credit, the debtor has debts amounting to £1,000 (or such other sum as may be prescribed) or more.

(3) The condition is that the debtor must inform the person who is providing credit to the debtor (or, as the case may be, jointly to the debtor and another person) that the debtor is required to comply with the conditions in this section.

(4) During the relevant period, the debtor must not engage (whether directly or indirectly) in a business under a name other than that to which the discharge relates unless the debtor complies with the condition in subsection (5).

(5) The condition is that the debtor must inform any person with whom the debtor enters into any business transaction of the name of the business to which the discharge relates.

(6) In this section, “relevant period” means the 6 months beginning with the date of discharge.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I146 S. 146 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

147 Section 146: sanctions

(1) If a debtor fails to comply with the requirement imposed by subsection (2) or (4) of section 146, that section applies in relation to the debtor as if the relevant period were the 12 months beginning with the date of discharge.

(2) If a debtor fails to comply with the requirement imposed by subsection (2) or (4) of section 146 during the period when the section applies in relation to the debtor by virtue of subsection (1), the debtor commits an offence.

(3) A debtor who commits an offence under subsection (2) is liable on summary conviction—
- (a) to a fine not exceeding the statutory maximum,
- (b) to imprisonment for—
  - (i) a term not exceeding 3 months, or
  - (ii) if the person has previously been convicted of an offence inferring dishonest appropriation of property (or an attempt at such appropriation), a term not exceeding 6 months, or
- (c) both to such fine and to such imprisonment.

(4) A debtor who commits an offence under subsection (2) is liable on conviction on indictment—
- (a) to a fine,
- (b) to imprisonment for a term not exceeding 2 years, or
- (c) both to such fine and to such imprisonment.

Commencement Information
I147 S. 147 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Discharge of trustee

148 Discharge of trustee

(1) After the trustee in the sequestration has made a final division of the debtor's estate and has inserted the trustee's final audited accounts in the sederunt book, the trustee—
- (a) must pay to AiB any unclaimed dividends and unapplied balances,
- (b) on that being done—
  - (i) must send to AiB the sederunt book (in the format specified by subsection (2)) and a copy of the audited accounts, and
  - (ii) may at the same time apply to AiB for a certificate of discharge.

(2) The trustee must send an electronic version of the sederunt book in such format as AiB may from time to time direct.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) AiB must deposit any unclaimed dividends and any unapplied balances paid to AiB under subsection (1)(a) in an appropriate bank or institution.

(4) The trustee must send, to the debtor and to all the creditors known to the trustee, notice of any application under subsection (1)(b)(ii) and must inform the debtor and such creditors—

(a) that written representations relating to the application may be made by them to AiB within 14 days after the notification,

(b) that the sederunt book is available for inspection following a request made to AiB and contains the audited accounts of, and scheme of division in, the sequestration, and

(c) of the effect mentioned in subsection (7).

(5) On the expiry of the 14 days mentioned in subsection (4)(a), AiB, after examining the documents sent to AiB and considering any representations duly made to AiB, must—

(a) grant or refuse to grant the certificate of discharge, and

(b) notify accordingly—

(i) the trustee,

(ii) the debtor, and

(iii) all creditors who made such representations.

(6) Any certificate of discharge granted under subsection (5)—

(a) must take effect after the expiry of the 14 days mentioned in section 149(2), and

(b) has no effect if an application for review is made under section 149(1).

(7) The grant of a certificate of discharge under this section has the effect of discharging the trustee from all liability (other than any liability arising from fraud)—

(a) to the debtor, or

(b) to the creditors,

in respect of any act or omission of the trustee in exercising the functions conferred on the trustee by this Act (including, where the trustee was also the interim trustee, the functions of interim trustee).

(8) This section and section 149 do not apply in any case where AiB is trustee.

Commencement Information

I148 S. 148 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

149 Further provision as regards discharge of trustee

(1) The trustee, the debtor or any creditor who has made representations under subsection (4)(a) of section 148 may apply to AiB for a review of a determination under subsection (5) of that section.

(2) Any application under subsection (1) must be made within 14 days beginning with the day of the determination.

(3) If an application for a review under subsection (1) is made, AiB must—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) take into account any representations made, within 21 days beginning with the day on which the application is made, by an interested person, and

(b) confirm, amend or revoke the determination (whether or not issuing a new certificate of discharge) within 28 days beginning with that day.

(4) Within 14 days after a decision under subsection (3)(b)—

(a) the trustee,

(b) the debtor, or

(c) any creditor who made representations under section 148(4)(a),

may appeal against the decision to the sheriff.

(5) If, on an appeal under subsection (4), the sheriff determines that a certificate of discharge which has been refused should be granted the sheriff must order AiB to grant it.

(6) The sheriff clerk must send AiB a copy of the sheriff's decree.

(7) The decision of the sheriff on an appeal under subsection (4) is final.

(8) Where a certificate of discharge is granted under section 148 or by virtue of this section, AiB must make an appropriate entry in—

(a) the register of insolvencies, and

(b) in the sederunt book.

(9) The provisions of this section apply (subject to any necessary modifications)—

(a) where a trustee has died, to the trustee's executor, or

(b) where a trustee has resigned office or been removed from office, to that trustee,

as they apply to a trustee who has made a final division of the debtor's estate in accordance with the preceding provisions of this Act.

Commencement Information

I149 S. 149 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

150 Unclaimed dividends

(1) Any person producing evidence of that person's right may apply to AiB to receive a dividend deposited under section 148(3) or 151(2), if the application is made not later than 7 years after the date of deposit.

(2) If AiB is satisfied of that person's right to the dividend, AiB must authorise the bank or institution in which the deposit was made to pay to the person the amount of the dividend and of any interest which has accrued on the dividend.

(3) AiB is, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 148(3) or 151(2), to hand over the deposit receipt or other voucher relating to the dividend or balance to the Scottish Ministers who on that being done are entitled to payment of the amount due (principal and interest) from the bank or institution in which the deposit was made.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I150 S. 150 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

151 Discharge of Accountant in Bankruptcy

(1) This section applies where AiB has acted as the trustee in the sequestration.

(2) AiB must deposit any unclaimed dividends and any unapplied balances in an appropriate bank or institution.

(3) AiB must send to the debtor and to all creditors known to AiB—
- (a) a determination of AiB's fees and outlays calculated in accordance with regulations under section 205,
- (b) a notice in writing stating—
  - (i) that AiB has commenced the procedure under this Act leading to discharge in respect of AiB's actings as trustee,
  - (ii) that the sederunt book relating to the sequestration is available for inspection following a request made to AiB,
  - (iii) that an application for review may be made under subsection (4),
  - (iv) that an appeal may be made to the sheriff under subsection (7), and
  - (v) the effect of subsections (9) and (10).

(4) The debtor or any creditor may apply to AiB for review of the discharge of AiB in respect of AiB's actings as trustee.

(5) Any application under subsection (4) must be made within 14 days beginning with the day on which notice is sent under subsection (3)(b).

(6) If an application under subsection (4) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm or revoke the discharge within 28 days beginning with that day.

(7) The debtor or any creditor may, within 14 days beginning with the day on which a decision is made by AiB under subsection (6)(b), appeal to the sheriff against that decision.

(8) The decision of the sheriff on an appeal under subsection (7) is final.

(9) Subsection (10) applies where—
- (a) the requirements of this section have been complied with, and
- (b) no appeal is made under subsection (7) or such an appeal is made but is refused as regards the discharge of AiB.

(10) AiB is discharged from all liability (other than any liability arising from fraud)—
- (a) to the debtor, or
- (b) to the creditors,

in respect of any act or omission of AiB in exercising the functions of trustee in the sequestration (including, where the trustee was also the interim trustee, the functions of interim trustee).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I151 S. 151 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 12

ASSETS DISCOVERED AFTER DISCHARGE OF TRUSTEE

152 Assets discovered after discharge of trustee: appointment of trustee

(1) This section applies where—
- (a) the trustee is discharged—
  - (i) under section 148,
  - (ii) by virtue of section 149, or
  - (iii) under section 151, and
- (b) after that discharge but within 5 years beginning with the date on which sequestration is awarded, the trustee or AiB becomes aware of any newly identified estate with a value of not less than £1,000 (or such other sum as may be prescribed).

(2) In this section, "newly identified estate" means any part of the debtor's estate which—
- (a) vested in the trustee in accordance with section 78 or 86, and
- (b) was not, before the trustee was discharged, known to the trustee.

(3) AiB may—
- (a) in a case where the trustee was discharged under section 148—
  - (i) on the application of the trustee who was discharged, reappoint that person as trustee on the debtor's estate, or
  - (ii) appoint AiB as trustee on that estate, or
- (b) in a case where AiB was discharged under section 151, reappoint AiB as trustee on that estate.

(4) AiB may make an appointment or reappointment under subsection (3) only if, in the opinion of AiB, the value of the newly identified estate is likely to exceed the costs of—
- (a) the appointment or reappointment, and
- (b) the recovery, management, realisation and distribution of the newly identified estate.

(5) Where the trustee was discharged under section 148 and applies for reappointment under subsection (3)(a)(i), the discharged trustee must provide to AiB the information mentioned in subsection (8)(a) to (c).

(6) Where the trustee was discharged under section 148 and does not apply for reappointment under subsection (3)(a)(i), the discharged trustee must—
- (a) provide AiB with details of any newly identified estate that the discharged trustee becomes aware of, where that estate has a value not less than the value mentioned in subsection (1), and
- (b) if requested by AiB, provide AiB with the information mentioned in subsection (8)(b) and (c).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) Where AiB was discharged under section 151, AiB must record and consider the information mentioned in subsection (8).

(8) The information is—
- (a) the estimated value of the newly identified estate,
- (b) the reason why the newly identified estate forms part of the debtor's estate,
- (c) the reason why the newly identified estate was not recovered,
- (d) the estimated outlays and remuneration of the trustee following an appointment or reappointment under subsection (3), and
- (e) the likely distribution under section 129 following such an appointment or reappointment.

(9) This section is without prejudice to any other right to take action following the discharge of the trustee.

Commencement Information
I152 S. 152 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

153 Assets discovered after discharge of trustee: notice

(1) AiB must notify the debtor and any other person AiB considers to have an interest where—
- (a) an application is made under section 152(3)(a)(i), or
- (b) AiB proposes to make an appointment or reappointment under section 152(3)(a)(ii) or (b).

(2) A notice under subsection (1) must inform the recipient that the recipient has a right to make representations to AiB, within 14 days beginning with the day on which the notice is given, in relation to the application or the proposed appointment or reappointment.

(3) Before making an appointment or reappointment under section 152, AiB must take into account any representations made by an interested person.

(4) If AiB makes an appointment or reappointment under section 152, AiB must as soon as is practicable notify the debtor of the appointment or reappointment.

(5) Any notice under subsection (4) must include information in relation to the debtor's duty, under section 215, to co-operate with the trustee.

Commencement Information
I153 S. 153 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

154 Assets discovered after discharge of trustee: appeal

Where AiB makes or refuses to make an appointment or reappointment under section 152, an interested person may, within 14 days after AiB's decision, appeal to the sheriff against that decision.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I154 S. 154 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 13

BANKRUPTCY RESTRICTIONS ORDERS AND INTERIM BANKRUPTCY RESTRICTIONS ORDERS

Bankruptcy restrictions orders

155 Bankruptcy restrictions order

(1) Where sequestration of a living debtor's estate is awarded, an order (to be known as a "bankruptcy restrictions order") in respect of the debtor may be made—
  (a) by AiB, or
  (b) on the application of AiB, by the sheriff.

(2) If AiB proposes to make a bankruptcy restrictions order, AiB must so notify the debtor.

(3) A notice under subsection (2) must inform the debtor that the debtor has a right to make representations to AiB in relation to the proposed bankruptcy restrictions order.

(4) Before making a bankruptcy restrictions order, AiB must take into account any representations made by the debtor.

Commencement Information
I155 S. 155 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

156 Grounds for making bankruptcy restrictions order

(1) A bankruptcy restrictions order must be made if AiB, or as the case may be the sheriff, thinks it appropriate having regard to the conduct, whether before or after the date of sequestration, of the debtor.

(2) AiB, or as the case may be the sheriff, is in particular to take into account any of the following kinds of behaviour on the part of the debtor—
  (a) failing to keep records which account for a loss of property—
    (i) by the debtor, or
    (ii) by a business carried on by the debtor,
  where the loss occurred in the period beginning 2 years before the date of presentation of the petition for sequestration, or as the case may be the date the debtor application was made, and ending with the date of the application for a bankruptcy restrictions order,
  (b) failing to produce records of that kind on demand by—
    (i) AiB,
    (ii) the interim trustee, or
    (iii) the trustee in the sequestration,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) failing to supply accurate information to an authorised person for the purpose of the granting under section 9 of a certificate for sequestration of the debtor's estate,

(d) making a gratuitous alienation, or any other alienation, for no consideration or for no adequate consideration, which a creditor has, under any rule of law, right to challenge,

(e) creating an unfair preference, or any other preference, which a creditor has, under any rule of law, right to challenge,

(f) making an excessive pension contribution,

(g) failing to supply goods or services which were wholly or partly paid for, where the failure has given rise to a claim submitted by a creditor under section 46 or 122,

(h) trading at a time before the date of sequestration when the debtor knew, or ought to have known, that the debtor was unable to meet the debtor's debts,

(i) incurring, before the date of sequestration, a debt which the debtor had no reasonable expectation of being able to pay,

(j) failing to account satisfactorily to the sheriff, AiB, the interim trustee or the trustee, for—

(i) a loss of property, or

(ii) an insufficiency of property to meet the debtor's debts,

(k) carrying on any gambling, speculation or extravagance—

(i) which may have contributed materially to, or increased the extent of, the debtor's debts, or

(ii) which took place between the date of presentation of the petition for sequestration, or as the case may be the date the debtor application was made, and the date on which sequestration is awarded,

(l) neglect of business affairs, being neglect of a kind which may have contributed materially to, or increased the extent of, the debtor's debts,

(m) fraud or breach of trust,

(n) failing to co-operate with—

(i) AiB,

(ii) the interim trustee, or

(iii) the trustee in the sequestration.

(3) AiB, or as the case may be the sheriff, must in particular also consider whether the debtor—

(a) has previously been sequestrated, and

(b) remained undischarged from that sequestration at any time during the 5 years ending with the date of the sequestration to which the application relates.

(4) For the purposes of subsection (2)—

"excessive pension contribution" is to be construed in accordance with section 101, and

"gratuitous alienation" means an alienation challengeable under section 98.

Commencement Information

I156 S. 156 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

157 Bankruptcy restrictions order: application of section 218(13)

(1) Where—

(a) AiB thinks it appropriate, AiB may, or

(b) as the case may be, the sheriff thinks it appropriate, the sheriff may,

specify in a bankruptcy restrictions order that section 218(13) is to apply to the debtor, during the period the debtor is subject to the order, as if the debtor were a debtor within the meaning of section 219(2)(a).

(2) But for the purposes of subsection (1), section 219(2) has effect as if, for paragraph (c) of that section, there were substituted—

"(c) the "relevant information" about the status of the debtor is the information that (as the case may be)—

(i) the debtor is subject to a bankruptcy restrictions order, or

(ii) where the debtor's estate has been sequestrated and the debtor has not been discharged, that fact.".

Commencement Information

I157 S. 157 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

158 Timing for making a bankruptcy restrictions order

(1) AiB must make, or apply to the sheriff for, any bankruptcy restrictions order within the period which begins with the date of sequestration and ends with the date on which the debtor's discharge becomes effective.

(2) But subsection (1) is subject to subsection (3).

(3) After the end of the period referred to in subsection (1), AiB may—

(a) make a bankruptcy restrictions order, or

(b) make an application for a bankruptcy restrictions order,

with the permission of the sheriff.

Commencement Information

I158 S. 158 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

159 Duration of bankruptcy restrictions order and application for revocation or variation

(1) A bankruptcy restrictions order—

(a) comes into force when made, and

(b) ceases to have effect at the end of a day specified, for the purposes of this paragraph, in the order.

(2) The day specified under subsection (1)(b)—

(a) in the case of an order made by AiB—

(i) must not be before the expiry of 2 years beginning with the day on which the order is made, but

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) must be within 5 years beginning with that day, and

(b) in the case of an order made by the sheriff—

(i) must not be before the expiry of the 5 years beginning with the day on which the order is made, but

(ii) must be within 15 years beginning with that day.

(3) On an application by the debtor, the person mentioned in subsection (4) may—

(a) revoke a bankruptcy restrictions order, or

(b) vary it.

(4) The person is, in the case of a bankruptcy restrictions order —

(a) made by AiB, AiB, and

(b) made by the sheriff, the sheriff.

(5) If an application under subsection (3) is made to AiB, AiB must—

(a) take into account any representations made, within 21 days beginning with the day on which the application is made, by an interested person, and

(b) confirm, revoke or vary the order within 28 days beginning with that day.

(6) The debtor may appeal to the sheriff against any decision of AiB under subsection (5)(b) within 14 days beginning with the date of the decision.

(7) The sheriff may—

(a) in determining such an appeal, or

(b) otherwise on an application by AiB,

make an order providing that the debtor may not make another application under subsection (3) for such period as may be specified in the order.

(8) Variation under subsection (3)(b) may include providing for such an order to cease to have effect at the end of a day earlier than that specified under subsection (1)(b).

Commencement Information

I159 S. 159 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Interim bankruptcy restrictions orders

160 Interim bankruptcy restrictions orders

(1) Subsection (2) applies at any time—

(a) after AiB notifies the debtor under section 155(2) that AiB proposes to make a bankruptcy restrictions order, and

(b) before AiB decides whether to make the order.

(2) AiB may make an interim bankruptcy restrictions order if AiB thinks—

(a) that there are *prima facie* grounds to suggest that a bankruptcy restrictions order will be made, and

(b) that it is in the public interest to make such an order.

(3) Subsection (4) applies at any time between—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the making of an application to the sheriff for a bankruptcy restrictions order, and
(b) the determination of that application.

(4) The sheriff may, on the application of AiB, make an interim bankruptcy restrictions order if the sheriff thinks—
(a) that there are *prima facie* grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
(b) that it is in the public interest to make an interim bankruptcy restrictions order.

(5) An interim bankruptcy restrictions order—
(a) has the same effect as a bankruptcy restrictions order, and
(b) comes into force on being made.

(6) An interim bankruptcy restrictions order ceases to have effect—
(a) where it was made by AiB, on AiB deciding whether or not to make a bankruptcy restrictions order,
(b) where it was made by the sheriff, on the determination of the application for the bankruptcy restrictions order, or
(c) if the sheriff discharges it on the application of AiB or of the debtor.

(7) Where a bankruptcy restrictions order is made in respect of a debtor who is subject to an interim bankruptcy restrictions order, subsection (2) of section 159 has effect in relation to the bankruptcy restrictions order as if the reference in that subsection to the day the order is made were a reference to the day the interim bankruptcy restrictions order is made.

Commencement Information
I160 S. 160 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Effect of recall of sequestration

161 Bankruptcy restrictions orders and interim bankruptcy restrictions orders: effect of recall of sequestration

(1) Where an award of sequestration of a debtor's estate is recalled under section 30(1)—
(a) the sheriff may revoke any bankruptcy restrictions order or interim bankruptcy restrictions order in force in respect of the debtor, and
(b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.

(2) Where the sheriff refuses to revoke, under subsection (1)(a), a bankruptcy restrictions order or interim bankruptcy restrictions order the debtor may, within 28 days after the date on which the award of sequestration is recalled, appeal to the Sheriff Appeal Court against the refusal.

(3) The decision of the Sheriff Appeal Court on an appeal under subsection (2) is final.

(4) Where an award of sequestration of a debtor's estate is recalled under section 34(1) or 35(6)—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) AiB may revoke any bankruptcy restrictions order or interim bankruptcy restrictions order in force in respect of the debtor, and

(b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.

(5) Where AiB refuses to revoke under subsection (4) a bankruptcy restrictions order or interim bankruptcy restrictions order, the debtor may apply to AiB for a review of the refusal.

(6) Any application under subsection (5) must be made within 14 days beginning with the day on which the award of sequestration is recalled.

(7) If an application under subsection (5) is made, AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm the refusal or revoke the order within 28 days beginning with that day.

(8) The debtor may appeal to the sheriff against any decision of AiB under subsection (7)(b) within 14 days beginning with the day of the decision.

(9) The decision of the sheriff on an appeal under subsection (8) is final.

Commencement Information

I161 S. 161 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 14

VOLUNTARY TRUST DEEDS FOR CREDITORS

General

162 Voluntary trust deeds for creditors

Sections 163 to 193 and schedule 4 have effect in relation to voluntary trust deeds executed on or after the date on which this Part comes into force.

Commencement Information

I162 S. 162 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Protected trust deeds: protected status

163 Protected status: general

(1) A trust deed has protected status (and is to be known as a "protected trust deed") where—

(a) the conditions set out in sections 164, 165, 166(2) (where it applies) and 167 to 170 are met, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the deed is registered under section 171(2) in the register of insolvencies.

(2) And it has that status from the date on which it is so registered (that date being, in this Part, referred to as the "date of protection").

Commencement Information
I163 S. 163 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Conditions for protected status

164 Protected status: the debtor

(1) The debtor must be—
(a) a living individual who,
(b) a partnership which,
(c) a limited partnership (within the meaning of the Limited Partnerships Act 1907) which,
(d) a trust which,
(e) a corporate body which, or
(f) an unincorporated body which,
grants a trust deed for a single estate.

(2) The debtor must not be—
(a) a debtor whose estate has been sequestrated if the trustee in the sequestration has not been discharged under section 148 or 151, or
(b) an entity referred to in section 6(2).

(3) The total amount of the debtor's debts (including interest) as at the date on which the debtor grants the trust deed must be not less than £5,000.

Commencement Information
I164 S. 164 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

165 Protected status: the trustee

The trustee under the trust deed must be a person who would not be disqualified under section 49(3) to (5) from acting as the replacement trustee were the debtor's estate being sequestrated.

Commencement Information
I165 S. 165 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

166 Exclusion of a secured creditor from trust deed

(1) The conditions set out in subsection (2) apply where a secured creditor is, by virtue of an agreement such as is mentioned in paragraph (b)(ii) of the definition of "trust deed"

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

in section 228(1) (in this Part referred to as "the trust deed definition"), excluded from a trust deed.

(2) Before the debtor grants the trust deed—

(a) the trustee must provide the debtor and the secured creditor with a valuation, made by a chartered surveyor or other suitably qualified person, of the dwellinghouse (or part) which is to be excluded from the estate conveyed as mentioned in paragraph (b)(i) of the trust deed definition,

(b) the debtor must, in such form as may be prescribed for the purposes of this paragraph, request obtaining the secured creditor's agreement not to claim under the trust deed for any of the debt in respect of which the security is held, and

(c) any agreement so obtained must be set out in such form as may be prescribed for the purposes of this paragraph.

Commencement Information

I166 S. 166 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

167 Statements in and advice regarding trust deed

(1) The trust deed must state—

(a) that, subject to any exclusion mentioned in paragraph (b)(i) of the trust deed definition, all of the debtor's estate (other than property listed in section 88(1) or which would be excluded under any other provision of this Act or of any other enactment from vesting in the trustee of a sequestrated estate) is conveyed to the trustee, and

(b) that the debtor agrees to convey to the trustee, for the benefit of creditors generally, any estate (wherever situated) which—

(i) is acquired by the debtor during the 4 years beginning with the date on which the trust deed is granted, and

(ii) would have been conveyed to the trustee by virtue of paragraph (a) had it been part of the debtor's estate on the date on which the trust deed was granted.

(2) Where the debtor's dwellinghouse, or part of the debtor's dwellinghouse, is excluded as mentioned in paragraph (b)(i) of the trust deed definition from the estate conveyed to the trustee, the trust deed must also include details—

(a) of any secured creditor who has agreed not to claim under the trust deed for any of the debt in respect of which the security is held, and

(b) of that debt.

(3) Before the debtor grants the trust deed—

(a) the trustee must advise the debtor that granting the deed may result—

(i) in the debtor's estate being sequestrated,

(ii) in the debtor's being refused credit, whether before or after the debtor's discharge under section 184,

(iii) subject to any exclusion mentioned in paragraph (b)(i) of the trust deed definition, in the debtor's not being able to remain in the debtor's current place of residence,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(iv) subject to any such exclusion, in the debtor's being required to relinquish property which the debtor owns,

(v) in the debtor's being required to make contributions from income for the benefit of creditors,

(vi) in damage to the debtor's business interests and employment prospects, and

(vii) in the fact of the debtor's having granted a trust deed becoming public information,

(b) the trustee must provide the debtor with a copy of a debt advice and information package, and

(c) the trustee and the debtor must both sign a statement to the effect that the trustee has fulfilled the duties referred to in this subsection.

Commencement Information

I167 S. 167 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

168 Payment of debtor's contribution

(1) The trust deed must state that the debtor is, during the payment period mentioned in subsection (2), to pay any contributions from income for the benefit of creditors (including, where the debtor is an individual, any contribution required by the common financial tool) at regular intervals.

(2) The payment period is—

(a) a period of 48 months beginning with the date on which the trust deed is granted,

(b) such period shorter than 48 months as is determined by the trustee, or

(c) such period longer than 48 months as is—

(i) determined by the trustee where there has been a period during which the debtor has not paid those contributions, or

(ii) agreed between the debtor and the trustee.

(3) The trustee may, under subsection (2)(b), determine a shorter payment period only if, in the trustee's opinion, payment of those contributions (from income or otherwise) during that period would allow distribution of the debtor's estate to meet in full the total amount, as at the date on which the debtor grants the trust deed, of the debtor's debts (including interest).

(4) Where the debtor is an individual, those contributions must be such as to result, over the payment period, in the payment of a sum less than the total amount, as at the date on which the debtor grants the trust deed, of the debtor's debts (including interest).

(5) In calculating those contributions for the purposes of subsections (1) and (4), the whole of the debtor's surplus income over the amount allowed for expenditure in the statement of the debtor's income and expenditure supplied under section 170(1)(d)(ii) must be applied.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I168 S. 168 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

169 Notice in register of insolvencies

After the trust deed has been delivered to the trustee, the trustee must without delay send a notice in such form as may be prescribed for the purposes of this section to AiB for publication by registration in the register of insolvencies.

Commencement Information
I169 S. 169 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

170 Documents to be sent to creditors

(1) Not later than 7 days after the date of registration under section 169, the trustee must send to every creditor known to the trustee (other than any secured creditor who has, as mentioned in paragraph (b)(ii) of the trust deed definition, agreed not to claim under the trust deed for any of the debt in respect of which the security is held)—

(a) a copy of the trust deed,

(b) a copy of such form as may be prescribed for the purposes of a creditor making a statement of claim,

(c) a copy of the notice mentioned in section 169,

(d) a statement of the debtor's affairs, prepared by the trustee, containing—

(i) a list of the debtor's assets and liabilities,

(ii) a statement of the debtor's income and expenditure as at the date on which the trust deed was granted (being, where the debtor is a living individual, a statement in the **[**[F48]form prescribed for that purpose by the Protected Trust Deeds (Forms) (Scotland) Regulations 2016**]**),

(iii) a statement as to the extent to which those assets and that income will not vest in the trustee,

(iv) a statement as to whether, and if so on what basis, the **[**[F49]EU**]** insolvency proceedings regulation applies to the trust deed,

[F50](v) . . . . . .

(vi) a statement as to whether the creditors are likely to be paid a dividend and the amount of the dividend that is expected to be paid,

(vii) if the case is one in which there is an exclusion such as is mentioned in paragraph (b)(i) of the trust deed definition, a statement by the trustee, on the basis of the information for the time being available to the trustee, as to what the effect of that exclusion is likely to be on any such dividend,

(viii) a statement that the trustee on request must provide a copy of any valuation held by the trustee which has been made by a third party and which relates to an asset of the debtor, any statement showing the amount due by the debtor under a security and any document showing the income for the time being of the debtor,

(ix) a copy of any agreement referred to in section 175(1),

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(x) a statement explaining the conditions which require to be fulfilled before the trust deed will become a protected trust deed and the consequences of its so becoming,

(xi) details of any protected trust deed in respect of which, in the 6 months preceding publication of the notice provided for in section 169, the debtor has been discharged in terms of section 184(1) (or regulation 24(1) of the Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013/318)) or been refused a letter of discharge under section 184(8) (or regulation 24(8) of those regulations), and

(xii) where a secured creditor's agreement has been obtained by virtue of paragraph (b) of section 166(2), a statement containing the valuation made by virtue of paragraph (a) of that section and a statement of the amount owed, in respect of the security held, to that creditor, and

(e) a statement, in such form as may be prescribed for the purposes of this paragraph, of the trustee's anticipated realisations from the trust deed.

(2) The trust deed must be acceded to by the creditors to whom the trustee is required by subsection (1) to send documents (those creditors being in this Part referred to as "the notified creditors") but is deemed to have been acceded to by them unless, within the relevant period, the trustee receives notification in writing from a majority in number, or no fewer than ⅓ in value, of them that they object to the trust deed being granted protected status.

Textual Amendments

F48 Words in s. 170(1)(d)(ii) substituted (30.11.2016) by S.S.I. 2016/398, **reg. 2(2)**

F49 Word in s. 170(1)(d)(iv) substituted (26.6.2017) by The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(12)** (with reg. 9)

F50 S. 170(1)(d)(v) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(14)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I170 S. 170 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Registration for protected status

171 Registration for protected status

(1) As soon as reasonably practicable after the expiry of the relevant period (and in any event within 4 weeks after that expiry), the trustee must send to AiB for registration in the register of insolvencies—

(a) a copy of the trust deed,

(b) either—

(i) a copy of every form of agreement obtained by virtue of section 166(2)(c), or

(ii) a statement by the trustee that no such form of agreement has been obtained,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) a statement by the trustee that those creditors, if any, who have objected in writing to the trust deed during the relevant period do not constitute a majority in number, or ⅓ or more in value, of the creditors,

(d) a copy of the statement referred to in section 167(3)(c),

(e) a copy of the statement referred to in section 170(1)(d),

(f) a copy of any agreement referred to in section 175(1),

(g) a statement, in the form prescribed for the purposes of section 170(1)(e), of the trustee's anticipated realisations from the trust deed,

(h) where the debtor, being a living individual, makes a contribution from income—

(i) a statement that the amount of the contribution is in accordance with the common financial tool as assessed by the trustee, and

(ii) any evidence or explanation required in applying the common financial tool

[[F51](i) a statement by the trustee, in the form prescribed for that purpose in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016, that—

(i) the documents and statements required under paragraphs (a) to (h) of this subsection accompany the statement, and

(ii) the conditions set out in sections 164 to 170 have been met**]**.

(2) AiB must register the trust deed in the register of insolvencies if—

(a) AiB has received all the documents required to be sent under subsection (1),

(b) the conditions set out in sections 164 to 170 have been met, and

(c) AiB is satisfied, in accordance with the common financial tool, with the amount of the contribution determined.

(3) Subsection (4) applies where AiB notifies the trustee either—

(a) that the trust deed is registered in the register of insolvencies, or

(b) that such registration is refused.

(4) The trustee must, within 7 days after being so notified, notify the debtor and every creditor known to the trustee that the trust deed is so registered or refused.

Textual Amendments

F51 S. 171(1)(i) inserted (30.11.2016) by S.S.I 2016/398, reg. 2(4)

Commencement Information

I171 S. 171 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Effect of protected status etc.

172 Effect of protected status: general

(1) Where a trust deed has protected status then—

(a) subject to section 177, a creditor who (either or both)—

(i) is not a notified creditor, or

(ii) notified the trustee, during the relevant period, of objection to the trust deed,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

has no higher right to recover the debt than a creditor who has acceded to, or been deemed by virtue of section 170(2) to have acceded to, the trust deed, and

(b) an application for sequestration of the debtor's estate may not be made by the debtor while the trust deed subsists.

(2) A creditor ceases to be deemed (by virtue of section 170(2)) to have acceded to a trust deed if the trustee refuses a request by the debtor to apply to AiB for discharge in terms of section 184(8).

(3) Where a secured creditor's agreement has been obtained by virtue of section 166(2)(b) and the trust deed becomes a protected trust deed, that creditor is not entitled—

(a) to make a claim under the protected trust deed for any of the debt in respect of which the security is held,

(b) to do diligence against the assets conveyed to the trustee under the protected trust deed, or

(c) to petition for the sequestration of the debtor during the subsistence of the protected trust deed.

Commencement Information
I172 S. 172 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

173 Effect of protected status on diligence against earnings

(1) This section applies where a trust deed has protected status.

(2) On the date of protection, any current earnings arrestment, maintenance arrestment, or, subject to subsection (3), conjoined arrestment order ceases to have effect.

(3) Any sum paid, before the date of protection, by the employer to the sheriff clerk under a conjoined arrestment order must be disbursed by the sheriff clerk under section 64 of the Debtors (Scotland) Act 1987 even if the date of disbursement is after the date of protection.

(4) A deduction from earnings order under that Act of 1987 is not competent after the date of protection to secure the payment of any amount due by the debtor under a maintenance calculation (within the meaning of that Act) in respect of which a claim could be made under the trust deed.

(5) The execution of an earnings arrestment or the making of a conjoined arrestment order is not competent, after the date of protection, to enforce a debt in respect of which the creditor is entitled to make a claim under the trust deed.

Commencement Information
I173 S. 173 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

[F52 173A Effect of protected status on essential supplies

(1) An insolvency-related term of a contract for the supply of essential goods or services to a debtor ceases to have effect if—

(a) a trust deed granted by the debtor is granted protected status, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the supply is for the purpose of a business which is or has been carried on by or on behalf of the debtor.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of subsection (1) to the extent that—

(a) it provides for the contract or the supply to terminate, or any other thing to take place, because the individual becomes subject to an insolvency procedure other than a trust deed,

(b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the individual becomes subject to an insolvency procedure other than a trust deed, or

(c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after a trust deed granted by the debtor is granted protected status.

(3) Where an insolvency-related term of a contract ceases to have effect under this section the supplier may—

(a) terminate the contract, if the condition in subsection (4) is met,

(b) terminate the supply, if the condition in subsection (7) is met.

(4) The condition in this subsection is that—

(a) the trustee under the trust deed consents to the termination of the contract,

(b) on application by the supplier the court grants permission for the termination of the contract, or

(c) any charges in respect of the supply that are incurred after the date of protection of the trust deed are not paid within the period of 28 days beginning with the day on which payment is due.

(5) An application by the supplier under subsection (4)(b) is to be made to the sheriff who, had a petition for sequestration of the estate been presented at the date the trust deed was granted, would have had jurisdiction to hear that petition in terms of section 15(1) or (3).

(6) The court may grant permission under subsection (4)(b) only if satisfied that the continuation of the contract would cause the supplier hardship.

(7) The condition in this subsection is that—

(a) the supplier gives written notice to the trustee under the trust deed that the supply will be terminated unless the trustee personally guarantees the payment of any charges in respect of the continuation of the supply after the date of protection of the trust deed, and

(b) the trustee does not give that guarantee within the period of 14 days beginning with the day the notice is received.

(8) For the purposes of securing that the interests of suppliers are protected, where—

(a) an insolvency-related term of a contract (the "original term") ceases to have effect by virtue of subsection (1), and

(b) a subsequent trust deed granted by the debtor is granted protected status,

the contract is treated for the purposes of subsections (1) to (7) as if, immediately before the subsequent trust deed granted by the debtor is granted protected status, it included an insolvency-related term identical to the original term.

(9) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 222(4).

(10) An insolvency-related term of a contract for the supply of essential goods or services to a debtor is a provision of the contract under which—

(a) the contract or the supply would terminate, or any other thing would take place, because a trust deed granted by the debtor is granted protected status,

(b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because a trust deed granted by the debtor is granted protected status, or

(c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before a trust deed granted by the debtor is granted protected status.

(11) Subsection (1) does not have effect in relation to a contract entered into before 1st August 2017.**]**

Textual Amendments

F52 S. 173A inserted (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **6**

174 Deductions by virtue of protected trust deed from debtor's earnings

(1) This section applies where—

(a) a debtor is required to pay to the trustee, by virtue of a protected trust deed, a contribution from income for the benefit of creditors,

(b) in respect of that contribution, an amount is required to be paid from the debtor's earnings from employment, and

(c) the debtor has failed on two consecutive occasions to pay that amount to the trustee.

(2) Following a request by the trustee, the debtor must give the debtor's employer an instruction, in such form as may be prescribed for the purposes of this section, to make—

(a) deductions of specified amounts from the debtor's earnings, and

(b) payments to the trustee of the amounts so deducted.

(3) The trustee may give the debtor's employer an instruction, in such form as may be prescribed for the purposes of this section (being a form to the same effect as is mentioned in subsection (2)), if the debtor fails to comply with the requirement imposed by that subsection.

(4) If agreed between the debtor and the trustee, the debtor may give the debtor's employer a variation to an instruction mentioned in subsection (2).

(5) The employer must comply with any instruction given in accordance with subsection (2) or (3) (or, if an instruction under subsection (2) is varied in accordance with subsection (4), with that instruction as so varied).

(6) The instruction having been delivered, the employer must, while it is in effect—

(a) deduct the sum specified in it on every pay day, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) pay the sum deducted to the trustee as soon as it is reasonable to do so.

(7) Where an employer fails without good cause to make a payment due under an instruction, the employer is—

(a) liable to pay on demand by a trustee the amount that should have been paid, and

(b) not entitled to recover from a debtor the amount paid to the debtor in breach of the instruction.

(8) An employer may, on making a payment due under an instruction—

(a) charge a fee equivalent to the fee chargeable for the time being under section 71 (employer's fee for operating diligence against earnings) of the Debtors (Scotland) Act 1987, and

(b) deduct that fee from the balance due to the debtor.

(9) The trustee must, without delay after the discharge of a debtor under section 184, notify in writing any person who has received an instruction under subsection (2) or (3) (or an instruction under subsection (2) varied in accordance with subsection (4)) that the instruction is recalled.

Commencement Information

I174 S. 174 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

175 Agreement in respect of debtor's heritable property

(1) Subject to the conditions in subsection (2), the trustee may, in such form as may be prescribed for the purposes of this section as at the date on which the trust deed is granted, agree—

(a) not to realise any specified heritable estate of the debtor which has been conveyed to the trustee,

(b) to relinquish the trustee's interest in respect of such heritable estate, and

(c) to recall any notice of inhibition in respect of such heritable estate in accordance with paragraph 3(3) of schedule 4.

(2) The conditions are that the debtor must—

(a) pay any amount determined by the trustee by a date so determined,

(b) pay a monthly amount so determined for a period so determined (being, in a case where there is a contribution from income, a period following the payment period applicable by virtue of section 168(2)), and

(c) co-operate with the administration of the trust.

(3) The amount of the debtor's payments under paragraphs (a) and (b) of subsection (2) must be determined in accordance with a valuation made by a chartered surveyor, or other qualified third party, of the debtor's heritable estate as at the date of grant of the trust deed.

(4) If the debtor fails to fulfil a condition mentioned in subsection (2), the trustee may withdraw from the agreement.

(5) The trustee must, as soon as is practicable, send a copy of the agreement (in the form mentioned in subsection (1)) to AiB and to every creditor known to the trustee other

than any secured creditor who has, as mentioned in paragraph (b)(ii) of the trust deed definition, agreed not to claim under the trust deed for any of the debt in respect of which the security is held.

(6) This section does not apply to the debtor's dwellinghouse (or any part of that dwellinghouse) if the dwellinghouse or part is, by virtue of an exclusion such as is mentioned in paragraph (b)(i) of the trust deed definition, excluded from the estate conveyed to the trustee.

Commencement Information
I175 S. 175 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

176 Dividend payments

(1) If the funds of the debtor's estate are sufficient, the trustee must pay a dividend out of it to the creditors no later than 6 weeks after the end of—
  (a) a first dividend period of 24 months beginning with the date on which the trust deed is granted, and
  (b) any subsequent dividend period of 6 months beginning with the end of the previous dividend period.

(2) The funds of the debtor's estate are "sufficient" if, after—
  (a) deduction of the trustee's fees and of any outlays payable under this Part, and
  (b) making allowance for future contingencies,

  a dividend may be paid to the creditors amounting to at least 5 pence for each pound sterling of the debtor's debt, as at the date of protection, under the trust deed.

Commencement Information
I176 S. 176 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

177 Sequestration petition by qualified creditor

(1) A qualified creditor who is not a notified creditor or who has notified the trustee of objection to the trust deed within the relevant period may—
  (a) not later than 5 weeks after the date of registration under section 169 of the notice mentioned in that section, or
  (b) at any time if the creditor avers that the provision for distribution of the estate is, or is likely to be, unduly prejudicial to a creditor or class of creditors,

  present a petition to the sheriff for sequestration of the debtor's estate.

(2) Subsection (1)(b) is subject to section 13(2)(a).

(3) The sheriff may award sequestration in pursuance of—
  (a) subsection (1)(a), only if satisfied that to do so would be in the best interests of the creditors, and
  (b) subsection (1)(b), only if satisfied that the creditor's averment is correct.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I177 S. 177 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

178 Creditor's application as respects intromissions of trustee

(1) A creditor who is not sent a copy of the notice mentioned in section 169 or who has notified the trustee of objection to the trust deed within the relevant period may apply to the sheriff under this section.

(2) Where on such an application the sheriff is satisfied, on grounds other than those on which a petition under section 177(1)(b) has been or could have been presented by the creditor, that the intromissions of the trustee with the estate of the debtor have been so unduly prejudicial to the creditor's claim that the creditor should not be bound by the trustee's discharge, the sheriff may order that the creditor is not to be so bound.

(3) On the sheriff making an order under subsection (2), the sheriff clerk must—
  (a) send a copy of the order to the trustee, and
  (b) send a copy of the order to AiB for registration in the register of insolvencies.

(4) Any application under subsection (1) must be made within 28 days after the registration in the register of insolvencies of the trustee's statement of realisation and distribution of estate under the protected trust deed, as mentioned in section 186(8)(b).

(5) The sheriff to whom the application may be made is the sheriff to whom a petition for sequestration would be brought in respect of the debtor by virtue of section 15(1) or (3).

Commencement Information
I178 S. 178 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Administration, accounting and discharge

179 Directions to trustee under protected trust deed

(1) AiB may give directions to the trustee under a protected trust deed as to how the trustee should conduct the administration of the trust.

(2) On a direction being issued by virtue of subsection (1) its terms must be intimated to the debtor and to all known creditors.

(3) The direction may be issued on the initiative of AiB or (at AiB's discretion) on the request of the trustee, the debtor or any creditor.

(4) The trustee must, unless subsection (5) applies, comply with the direction within 30 days beginning with the day on which the direction is given.

(5) Where the trustee has appealed under section 188(1)(c) and the appeal has been dismissed by the sheriff or withdrawn by the trustee, the trustee must comply with the direction within 30 days beginning with the day of dismissal or withdrawal.

(6) If it appears to AiB that the trustee has failed, without reasonable excuse, to comply with the direction, AiB may report the matter to the sheriff who, after hearing the trustee on the matter, may—
  (a) censure the trustee, or
  (b) make such other order as the circumstances of the case require.

Commencement Information
I179 S. 179 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

180 Information and notification obligations of trustee under protected trust deed

(1) Where the trustee under a protected trust deed makes a determination to shorten or lengthen the payment period by virtue of section 168, the trustee must without delay notify the debtor accordingly.

(2) Whether or not still acting in the administration of the trust under a protected trust deed, the trustee must supply AiB with such information relating to the trust deed as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.

(3) If it appears to AiB that the trustee has failed, without reasonable excuse, to supply information to AiB which is requested in accordance with subsection (2), AiB may report the matter to the sheriff who, after hearing the trustee on the matter, may—
  (a) censure the trustee, or
  (b) make such other order as the circumstances of the case require.

(4) On the trustee under a protected trust deed being replaced with a new trustee, the new trustee must without delay notify AiB accordingly.

Commencement Information
I180 S. 180 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

181 Administration of trust under protected trust deed

(1) At intervals of not more than 12 months (the first such interval beginning with the date on which the trust deed was granted) and within 6 weeks after the end of each interval, the trustee under a protected trust deed must send the trustee's accounts of the trustee's intromissions with the debtor's estate in administering the trust during the period in question—
  (a) to the debtor,
  (b) to each creditor, and
  (c) (unless they are sent under section 186) to AiB.

(2) At such intervals the trustee must send to AiB, the debtor and each creditor a report, in such form as may be prescribed for the purposes of this subsection, on the management of the trust during the period in question.

(3) Subsection (4) applies where—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) within 21 days after the date on which the report is sent, the trustee receives notification in writing from—

(i) a majority in number, or

(ii) no fewer than ⅓ in value,

of the creditors that they object to a course of action recommended in the report, and

(b) the expected final dividend to ordinary creditors set out in the report is at least 20% lower than the expected dividend to ordinary creditors set out in the form prescribed for the purposes of section 170(1)(e).

(4) The trustee must request under section 179(3) a direction as to the administration of the trust.

(5) The debtor or any creditor may, within 14 days after receiving a statement by virtue of subsection (1), require AiB to exercise the function mentioned in section 200(1)(a) (in so far as relating to trustees under protected trust deeds) by carrying out an examination of the administration of the trust by the trustee.

(6) In determining the amount of any contribution from income to be made by the debtor—

(a) the trustee may take account of any social security benefit paid to the debtor, but

(b) any contribution must not include an amount derived from social security benefit.

Commencement Information

I181 S. 181 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

182 Retention of documents by trustee under protected trust deed

The trustee under a protected trust deed must retain the following documents (or copies of those documents) for at least 12 months after the date of the trustee's discharge by the creditors under section 186—

(a) the trust deed,

(b) the statement mentioned in section 167(3)(c),

(c) the notice mentioned in section 169,

(d) the statement mentioned in section 170(1)(d),

(e) all statements of objection or accession received from creditors,

(f) the statement of anticipated realisations provided for in section 170(1)(e),

(g) any written agreement relating to the debtor's heritable estate and mentioned in section 175(1),

(h) all reports sent under section 181(2),

(i) any adjudication on a creditor's claim,

(j) any scheme of division among creditors,

(k) any circular sent to creditors with accounts,

(l) the debtor's discharge from the trust deed,

(m) the application to creditors for the trustee's discharge,

(n) the statement of realisation and distribution provided for in section 186(8)(b),

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(o) any decree, interlocutory decree, direction or order granted by the court and relating to the administration of the trust, and

(p) any other document relating to the administration of the trust if it is a document which AiB, by notice to the trustee prior to the trustee's discharge, identifies as a document the trustee should retain.

Commencement Information

I182 S. 182 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

183 Remuneration payable to trustee under protected trust deed

(1) For work done by the trustee in administering the trust, the trustee under a protected trust deed is entitled to remuneration consisting only of—

(a) a fixed fee which must be set out in a form prescribed for the purposes of this paragraph,

(b) an additional fee based on a percentage of the total assets and contributions realised by the trustee, being a fee set out in a form so prescribed, and

(c) outlays incurred—

(i) after the date on which the trust deed is granted, or

(ii) before that date on a single valuation of any item of the debtor's heritable estate specified or valued in such a valuation.

(2) In the event of unforeseen circumstances the fixed fee may by increased by—

(a) approval by a majority in value of the notified creditors, or

(b) approval by AiB (all notified creditors having first been asked to approve the increase).

(3) AiB must approve an increase in the fixed fee if satisfied—

(a) that a majority in value of the notified creditors have not refused to approve the increase, and

(b) that the increase is required for work to be completed by the trustee for the benefit of the creditors generally, being work which was not foreseen in submitting a form by virtue of section 170(1)(e).

(4) In deciding whether or not to grant the approval mentioned in subsection (2)(b), AiB may determine the amount of any increase in the fixed fee.

(5) The trustee is entitled to include work done in seeking to comply with section 166(2) (whether or not a secured creditor has agreed not to claim under the trust deed) in the fixed fee and any outlays incurred.

(6) Any debt due to a third party for work done before the granting of the trust deed does not rank higher than any other creditor's claim.

(7) The trustee is entitled to recover from the debtor's estate any audit fee charged by AiB under paragraph 1 or 2 of schedule 4 in accordance with such rate as may be prescribed under section 205.

(8) AiB may, at any time, audit the trustee's accounts and fix the outlays of the trustee in the administration of the trust.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I183 S. 183 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

184 Protected trust deed: discharge of debtor

(1) If the conditions set out in subsection (2) are met then, subject to subsections (6) and (9) and to section 185(1)—

(a) the debtor falls to be discharged from all debts and obligations —

(i) in terms of the protected trust deed, or

(ii) for which the debtor was liable as at the date that deed was granted, and

(b) the trustee under the protected trust deed must send—

(i) to AiB, an application for discharge of the debtor from the trust deed (being an application in such form as may be prescribed for the purposes of this paragraph), and

(ii) to the debtor, a copy of that application.

(2) The conditions are—

(a) that the trustee makes a statement (being a statement in such form as may be prescribed for the purposes of this paragraph) that, to the best of the trustee's knowledge, the debtor has—

(i) met the debtor's obligations in terms of the trust deed, and

(ii) co-operated with the administration of the trust, and

(b) any notice of inhibition under paragraph 3 of schedule 4 has been recalled or has expired.

(3) Subject to subsection (9), on receipt of the application referred to in subsection (1)(b)(i), AiB must register it in the register of insolvencies and the date of discharge is the date on which it is so registered.

(4) AiB must without delay notify the trustee of—

(a) the fact of registration, and

(b) the date of the debtor's discharge.

(5) The trustee must, within 7 days after receipt of the notification mentioned in subsection (4), notify the debtor and every creditor known to the trustee of the information set out in that notification.

(6) The letter of discharge does not—

(a) discharge the debtor from—

(i) any liability arising after the date on which the protected trust deed was granted,

(ii) any liability or obligation mentioned in section 145(3),

(iii) any liability for a debt in respect of which a security is held if the secured creditor has, as mentioned in paragraph (b)(ii) of the trust deed definition, agreed not to claim under the trust deed for any of the debt in respect of which the security is held, or

(b) affect the rights of a secured creditor.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) For the purposes of subsection (2)(a)(i), it is not a failure to meet the debtor's obligations for the debtor to refuse to —

(a) consent to the sale of the debtor's dwellinghouse (or of a part of that dwellinghouse) if the dwellinghouse or part is excluded, as mentioned in paragraph (b)(i) of the trust deed definition, from the estate conveyed to the trustee,

(b) give a relevant consent in terms of section 113(1)(a).

(8) If, on request by the debtor or as soon as reasonably practicable after the end of the period for which payments are required under the trust deed, the trustee refuses to apply to AiB for discharge of the debtor, the trustee must—

(a) inform the debtor by notice in writing—

(i) of the fact and the reason for the refusal,

(ii) that the debtor is not discharged from the debtor's debts and obligations in terms of the trust deed, and

(iii) of the debtor's right to apply to the sheriff for a direction under section 189(1), and

(b) send a copy of the notice to AiB within 21 days after the date of issue of the notice.

(9) AiB may refuse to register under subsection (3) an application sent under subsection (1)(b)(i) if not satisfied that the debtor has—

(a) met the debtor's obligations in terms of the trust deed, or

(b) co-operated with the administration of the trust.

(10) If AiB does so refuse, AiB must provide written notification of the refusal and of the reason for it to the trustee and the debtor.

(11) Within 7 days after the date on which the trustee receives any such notification as is mentioned in subsection (10), the trustee must send a copy of it to every creditor known to the trustee.

Commencement Information

I184 S. 184 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

185 Student loans

(1) Section 184 does not affect the right to recover any debt arising from a student loan.

(2) In subsection (1), "student loan" means a loan made by virtue of—

(a) section 73(f) of the Education (Scotland) Act 1980,

(b) section 1 of the Education (Student Loans) Act 1990,

(c) section 22 of the Teaching and Higher Education Act 1998, or

(d) Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760).

Commencement Information

I185 S. 185 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

186 Protected trust deed: discharge of trustee

(1) This section applies where a trustee under a protected trust deed has made the final distribution of the trust estate among the creditors.

(2) Within 28 days after the date of final distribution, the trustee must apply for discharge to such of those creditors as have acceded (or are deemed to have acceded) to the trust deed.

(3) Any application under subsection (2) must be in such form as may be prescribed for the purposes of that subsection.

(4) The trustee must send AiB by the date of application—

(a) a copy of the application, and

(b) the accounts of the trustee's intromissions for the last period for which accounts must be sent under section 181(1).

(5) For the purposes of subsection (2), the "date of final distribution" is the date on which all of the estate distributed has been placed beyond the control of the trustee.

(6) A creditor who does not respond to the application within 14 days after it is made is deemed to have agreed to the trustee's discharge.

(7) If a majority of the creditors in value consent to the application the trustee is discharged.

(8) On being discharged, the trustee must within 28 days of the discharge—

(a) inform AiB of the discharge,

(b) send AiB, for registration in the register of insolvencies, a statement of realisation and distribution of estate under the protected trust deed, and

(c) send AiB, where accounts submitted under subsection (4)(b) require to be revised, a copy of the revised accounts.

(9) A statement under subsection (8)(b) must be in such form as may be prescribed for the purposes of that subsection.

(10) Where the trustee's discharge is granted under this section, the discharge also applies as regards any previous trustee under the trust deed unless, under section 189, a person with an interest obtains an order to the contrary from the sheriff.

Commencement Information

I186 S. 186 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

187 Electronic delivery of notices etc. under this Part

(1) Any notice or document authorised or required under this Part may be given, delivered or sent by electronic means, provided the intended recipient—

(a) has consented (whether in the specific case or generally) to electronic delivery and has not withdrawn that consent, and

(b) has supplied an electronic address for delivery.

(2) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered under this Part where—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the sender can produce a copy of the electronic message—
(i) which contained the notice or other document or to which the notice or other document was attached, and
(ii) which shows the time and date the message was sent, and
(b) that electronic message was sent to the address supplied under subsection (1)(b).

(3) This section does not apply where some other form of delivery is required by rules of court or by order of the court.

Commencement Information
I187 S. 187 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Appeals and directions

188 Protected trust deed: appeal

(1) The persons mentioned in subsection (2) may appeal to the sheriff against—
(a) any refusal by AiB to register a trust deed if it is a refusal on the grounds that AiB is not satisfied as mentioned in section 171(2)(c),
(b) any determination by AiB fixing the remuneration payable to the trustee under a protected trust deed,
(c) any direction under section 179(1) to the trustee, or
(d) any refusal by AiB under section 184(9).

(2) The persons are—
(a) the trustee,
(b) the debtor, if able to satisfy the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal, and
(c) any creditor, if able to satisfy the sheriff that the creditor has, or is likely to have any such interest in that outcome.

(3) The trustee may appeal to the sheriff against a refusal by the creditors to grant the trustee's discharge under section 186(2).

(4) The debtor may appeal to the sheriff against a refusal by the trustee to apply under section 184(1)(b)(i) for the debtor's discharge.

(5) Any appeal under subsection (1) must be made within 21 days after the refusal, determination or direction appealed against.

(6) The sheriff to whom any appeal under this section is to be made is the sheriff who, had a petition for the sequestration of the estate been presented at the date the trust deed was granted, would have had jurisdiction to hear that petition in terms of section 15(1) or (3).

(7) The decision of the sheriff on an appeal under this section is final.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I188 S. 188 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

189 Protected trust deed: sheriff's direction

(1) Any person with an interest may at any time apply to the sheriff for a direction as regards the administration of a trust under a protected trust deed.

(2) A direction by virtue of subsection (1) may include—
  (a) any order the sheriff thinks fit to make in the interests of justice, or
  (b) an order to cure any defect in procedure.

(3) The sheriff to whom any application under this section is to be made is the sheriff who, had a petition for the sequestration of the estate been presented at the date the trust deed was granted, would have had jurisdiction to hear that petition in terms of section 15(1) or (3).

Commencement Information
I189 S. 189 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Application for conversion to sequestration

[F53]190 Application for conversion to sequestration

. . . . . .

Textual Amendments
F53 Ss. 190-192 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(15)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

[F53]191 Contents of affidavit required under section 190(2)

. . . . . .

Textual Amendments
F53 Ss. 190-192 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(15)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

[F53]192 Powers of Accountant in Bankruptcy on application for conversion to sequestration

. . . . . .

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F53 Ss. 190-192 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(15)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Part 14: general

193 Interpretation of Part 14

In this Part—

F54 …

"the date of protection" has the meaning given by section 163(2),

"the date of protection" has the meaning given by section 163(2),

"the notified creditors" has the meaning given by section 170(2),

"the relevant period" means the period of 5 weeks beginning with the date of registration of the notice referred to in section 169,

"remuneration" means reasonable fees and outlays, and

"the trust deed definition" has the meaning given by section 166(1).

Textual Amendments

F54 Definition in s. 193 repealed (30.11.2016) by S.S.I. 2016/398, **reg. 2(3)**

Commencement Information

I190 S. 193 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

194 Regulations modifying Part 14

(1) The Scottish Ministers may by regulations modify (or add to) the provisions of this Part but, subject to subsections (2) and (3), only in so far as corresponding modifications or additions might, before the coming into force of this Part, have been made by virtue of paragraph 5(1) of schedule 5 of the Bankruptcy (Scotland) Act 1985 to the Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013/318).

(2) Regulations under subsection (1) may make provision enabling applications to be made to the court.

(3) Regulations under subsection (1) may contain such modifications of the provisions of this Act as appear to the Scottish Ministers to be necessary in consequence of those regulations.

Commencement Information

I191 S. 194 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 15

MORATORIUM ON DILIGENCE

195 Moratorium on diligence: notice of intention to make debtor application under section 2(1)(a)

(1) A person may give written notice to AiB of the person's intention—
- (a) to make a debtor application under section 2(1)(a),
- (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, or
- (c) to apply for the approval of a debt payment programme in accordance with section 2 of the 2002 Act.

(2) A person may not give notice under subsection (1) if that person has given such notice in the immediately preceding 12 months.

(3) AiB 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 AiB considers appropriate in relation to that person.

(4) The registers are—
- (a) the register of insolvencies, and
- (b) the register of debt payment programmes (in this Part referred to as the "DAS register") established and maintained in accordance with section 7 of the 2002 Act.

Commencement Information
I192 S. 195 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

196 Moratorium on diligence: notice of intention to make debtor application under section 6

(1) A person may give written notice to AiB of the person's intention to make a debtor application under section 6.

(2) A person may not give notice under subsection (1) in respect of an estate if any person has given such notice in respect of the same estate in the immediately preceding 12 months.

(3) AiB 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 AiB considers appropriate in relation to that person.

Commencement Information
I193 S. 196 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

197 Moratorium on diligence following notice under section 195(1) or 196(1)

(1) This section applies where a person gives notice under section 195(1) or 196(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 198.

(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, or

(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) where an arrestment mentioned in subsection (1) of section 73J of the Debtors (Scotland) Act 1987 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 must be disregarded for the purpose of determining the period mentioned in subsection (3) of that section 73J.

(5) Despite subsection (3)(b), it is competent to—

(a) auction an article which has been attached in accordance with the 2002 Act 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 of a share of a ship) or cargo, or

(d) execute—

(i) an earnings arrestment,

(ii) a current maintenance arrestment, or

(iii) a conjoined arrestment order,

which came into effect before the day on which the moratorium period in relation to the person began.

Commencement Information
I194 S. 197 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

198 Period of moratorium

(1) The moratorium period applying in relation to a person is the period which—

(a) begins on the day on which an entry is made under section 195(3) or 196(3) in the register of insolvencies, and

(b) ends on—

(i) the day which is **[**[F55]6 weeks**][**[F55]6 months**]** 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).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 2002 Act, or

(d) written notice is given to AiB—

(i) by the person withdrawing the notice given under section 195(1), or

(ii) by or on behalf of the person withdrawing the notice given under section 196(1).

(3) This subsection applies if, on the day which is **[**[F56]6 weeks**][**[F56]6 months**]** after the day on which the moratorium began under subsection (1)(a)—

(a) a debtor application has been made for sequestration of the estate of the person who is the subject of the moratorium,

(b) the moratorium has not ended by virtue of subsection (2)(a), and

(c) no decision has been made by AiB under section 27(7)(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 27(6) where no application for review is made under section 27(5), or

(ii) the day on which a decision is made by AiB under section 27(7)(b) where an application for review is made, or

(c) the day on which written notice is given to AiB—

(i) by the person withdrawing the notice given under section 195(1), or

(ii) by or on behalf of the person withdrawing the notice given under section 196(1).

(5) This subsection applies if, on the day which is **[**[F57]6 weeks**][**[F57]6 months**]** 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 by virtue of 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 **[**[F58]13 weeks after the day on which the moratorium began under subsection (1)(a)**][**[F58]7 weeks after the day on which the moratorium would have ended but for this subsection**]**, or

(c) the day on which written notice is given to AiB by the person withdrawing the notice given under section 195(1).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) This subsection applies if, on the day which is **[**[F59]6 weeks**][**[F59]6 months**]** 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 2002 Act,

(b) the moratorium has not ended by virtue of 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 2002 Act,

(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 AiB by the person withdrawing the notice given under section 195(1).

Textual Amendments

F55 Words in s. 198(1)(b)(i) substituted (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 2 para. 4(a)(i)** (with ss. 11-13) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 12(1)**)

F56 Words in s. 198(3) substituted (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 2 para. 4(a)(ii)** (with ss. 11-13) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 12(1)**)

F57 Words in s. 198(5) substituted (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 2 para. 4(a)(iii)** (with ss. 11-13) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 12(1)**)

F58 Words in s. 198(6)(b) substituted (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 2 para. 4(b)** (with ss. 11-13) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 12(1)**)

F59 Words in s. 198(7) substituted (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), **sch. 2 para. 4(a)(iv)** (with ss. 11-13) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 12(1)**)

Commencement Information

I195 S. 198 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 16

ACCOUNTANT IN BANKRUPTCY

Appointment

199 Accountant in Bankruptcy

(1) The Accountant in Bankruptcy (in this Act referred to as "AiB") is appointed by the Scottish Ministers and is an officer of the court.

(2) The Scottish Ministers may appoint a member of the staff of AiB—

(a) to be Depute Accountant in Bankruptcy, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) as Depute Accountant in Bankruptcy, to exercise all the functions of AiB at any time when AiB is unable to do so.

Commencement Information
I196 S. 199 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Functions

200 Supervisory functions of Accountant in Bankruptcy

(1) AiB has, in the administration of sequestration and personal insolvency, the following general functions—
- (a) as regards interim trustees (not being AiB), trustees in sequestrations (not being AiB), trustees under protected trust deeds and commissioners—
  - (i) supervision of the performance by them of the functions conferred on them by this Act, or by any other enactment or by any rule of law, and
  - (ii) the investigation of any complaints made against them,
- (b) the determination of debtor applications,
- (c) the maintenance of a register (in this Act referred to as the "register of insolvencies"), in such form as may be prescribed,
- (d) the preparation of an annual report, and
- (e) such other functions as may from time to time be conferred on AiB by the Scottish Ministers.

(2) The register of insolvencies is to contain particulars of—
- (a) persons who are the subject of notices under sections 195(1) and 196(1),
- (b) estates which have been sequestrated,
- (c) trust deeds sent to AiB for registration,
- (d) bankruptcy restrictions orders and interim bankruptcy restrictions orders,
- (e) the winding up and receivership of business associations which the Court of Session has jurisdiction to wind up, and
- (f) any other document specified in regulations made under subsection (1) or any other enactment.

(3) The annual report must be presented to the Scottish Ministers and the Court of Session and must contain—
- (a) statistical information relating to—
  - (i) the state of all sequestrations of which particulars have been registered in the register of insolvencies during the year to which the report relates,
  - (ii) the winding up and receivership of business associations of which particulars have been registered in the register of insolvencies during the year to which the report relates,
- (b) particulars of trust deeds registered as protected trust deeds in that year, and
- (c) particulars of the performance of AiB's functions under this Act.

(4) If it appears to AiB that a person mentioned in subsection (1)(a) has failed, without reasonable excuse, to perform a duty imposed on that person by any provision of this

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Act, or by any other enactment or by any rule of law, AiB must report the matter to the sheriff who, after hearing the person on the matter, may—

(a) remove the person from office,

(b) censure the person, or

(c) make such other order as the circumstances of the case may require.

(5) Subsection (6) applies where AiB has reasonable grounds to suspect that an offence has been committed—

(a) by a person mentioned in subsection (1)(a) in the performance of the person's functions under this Act or any other enactment or any rule of law,

(b) in relation to a sequestration, by the debtor in respect of the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or

(c) in relation to a sequestration, by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the trustee in the sequestration in respect of the debtor's assets or the debtor's business or financial affairs.

(6) AiB must report the matter to the Lord Advocate.

(7) AiB must—

(a) make the register of insolvencies available for inspection at all reasonable times, and

(b) provide any person, on request, with a certified copy of an entry in the register.

(8) Regulations under subsection (1)(c) may in particular prescribe circumstances where information need not be in included in the register of insolvencies if, in the opinion of AiB, inclusion of the information would be likely to jeopardise the safety or welfare of any person.

(9) In subsections (2) and (3), "business association" has the meaning given in section C2 of Part 2 of schedule 5 of the Scotland Act 1998.

Commencement Information

I197 S. 200 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

201 Performance of certain functions of Accountant in Bankruptcy

(1) The functions of AiB, other than functions conferred by section 200, may be carried out on AiB's behalf by any member of AiB's staff authorised by AiB to do so.

(2) Without prejudice to subsection (1), AiB may appoint, on such terms and conditions as AiB considers appropriate, such persons as AiB considers fit to perform on AiB's behalf any of AiB's functions in respect of the sequestration of the estate of any debtor.

(3) A person appointed under subsection (2) must comply with such general or specific directions as AiB may from time to time give to such person as to the performance of those functions.

(4) AiB may pay a person so appointed such fee as AiB may consider appropriate.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I198 S. 201 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

202 Further duty of Accountant in Bankruptcy

AiB is, on receiving any notice under section 109(1) of the Insolvency Act 1986 in relation to a community interest company, to forward a copy of that notice to the Regulator of Community Interest Companies.

Commencement Information
I199 S. 202 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Directions to Accountant in Bankruptcy

203 Directions to Accountant in Bankruptcy

(1) The Scottish Ministers may, after consultation with the Lord President of the Court of Session, give AiB general directions as to the performance of AiB's functions under this Act.

(2) Directions under this section may be given in respect of—
  (a) all cases, or
  (b) any class or description of cases,
but are not to be given in respect of a particular case.

(3) AiB must comply with any directions given under this section.

Commencement Information
I200 S. 203 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Conduct of proceedings in the sheriff court

204 Conduct of proceedings in the sheriff court

(1) A person authorised by AiB may conduct civil proceedings in the sheriff court in relation to a function of AiB (including the functions listed in section 200).

(2) In subsection (1), “civil proceedings” are proceedings which are not in respect of an offence.

Commencement Information
I201 S. 204 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Fees for Accountant in Bankruptcy

205 Fees for Accountant in Bankruptcy

(1) The Scottish Ministers may prescribe—

(a) the fees and outlays to be payable to AiB in respect of the exercise of any of AiB's functions under this Act,

(b) the time at or by which, and the manner in which, such fees and outlays are to be paid, and

(c) the circumstances, if any, in which AiB may allow—

(i) exemption from payment, or

(ii) the remission or modification of payment,

of any such fees or outlays.

(2) The Secretary of State may prescribe by regulations—

(a) the fees and outlays to be payable to AiB in respect of the exercise of any of AiB's functions under the Insolvency Act 1986,

(b) the time at or by which, and the manner in which, such fees and outlays are to be paid, and

(c) the circumstances, if any, in which AiB may allow—

(i) exemption from payment, or

(ii) the remission or modification of payment,

of any such fees or outlays.

Commencement Information

I202 S. 205 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 17

MISCELLANEOUS

206 Liabilities and rights of co-obligants

(1) Where a creditor has an obligant bound to the creditor along with the debtor for the whole or part of the debt, the obligant is not freed or discharged from the obligant's liability for the debt by reason of the discharge of the debtor or by virtue of the creditor's voting or drawing a dividend or assenting to, or not opposing, the discharge of the debtor.

(2) Subsection (3) applies where—

(a) the creditor has had a claim accepted in whole or in part, and

(b) the obligant holds a security over any part of the debtor's estate

(3) The obligant must account to the trustee in the sequestration so as to put the estate in the same position as if the obligant had paid the debt to the creditor and thereafter had had the obligant's claim accepted in whole or in part in the sequestration after deduction of the value of the security.

(4) The obligant may require and obtain at the obligant's own expense from the creditor an assignation of the debt on payment of the amount of the debt and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(5) Subsection (4) is without prejudice to any right, under any rule of law, of a co-obligant who has paid the debt.

(6) In this section, "obligant" includes cautioner.

Commencement Information

I203 S. 206 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

[F61]207 Member State [[F60]insolvency practitioner] deemed creditor

. . . . . .

Textual Amendments

F60 Words in s. 207 heading substituted (26.6.2017) by The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(17)** (with reg. 9)

F61 S. 207 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(15)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

[F63]208 Trustee's duty to provide certain notices and copies of documents to member State [[F62]insolvency practitioner]

. . . . . .

Textual Amendments

F62 Words in s. 208 heading substituted (26.6.2017) by The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(19)** (with reg. 9)

F63 S. 208 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(15)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

209 Extortionate credit transactions

(1) This section applies where—

(a) a debtor is, or has been, party to a transaction for, or involving, the provision of credit to the debtor, and

(b) the debtor's estate is sequestrated.

(2) The sheriff may, on the application of the trustee in the sequestration, make an order with respect to the transaction if the transaction—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) is, or was, extortionate, and
(b) was not entered into more than 3 years before the date of sequestration.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
(a) the terms of the transaction are, or were, such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
(b) the transaction otherwise grossly contravened ordinary principles of fair dealing.

(4) It is to be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is, or as the case may be was, extortionate.

(5) An order under this section with respect to a transaction may contain such one or more of the following as the sheriff thinks fit—
(a) provision setting aside the whole or part of any obligation created by the transaction,
(b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,
(c) provision requiring any person who is a party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the debtor,
(d) provision requiring any person to surrender to the trustee any property held by the person as security for the purposes of the transaction,
(e) provision directing accounts to be taken between any persons.

(6) Any sums required to be paid, or property required to be surrendered, to the trustee in accordance with an order under this section vest in the trustee.

(7) The powers conferred by this section are exercisable, in relation to a transaction, concurrently with any powers exercisable under this Act in relation to that transaction as a gratuitous alienation or unfair preference.

(8) In this section, "credit" has the same meaning as in the Consumer Credit Act 1974.

Commencement Information
I204 S. 209 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

210 Sederunt book and other documents

(1) Whoever by virtue of this Act for the time being holds the sederunt book must make it available for inspection at all reasonable hours by any interested party; but this subsection is subject to subsection (2).

(2) As regards any case in which the person on whom a duty is imposed by subsection (1) is AiB, the Scottish Ministers may by regulations—
(a) limit the period for which the duty is so imposed, and
(b) prescribe conditions in accordance with which the duty is to be carried out.

(3) The trustee must insert in the sederunt book the information listed in schedule 5.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The Scottish Ministers may by regulations modify schedule 5.

(5) An entry in the sederunt book is sufficient evidence of the facts stated in that entry, (except where the entry is founded on by the trustee in the sequestration in the trustee's own interest).

(6) Notwithstanding any provision of this Act, the trustee is not bound to insert in the sederunt book a document of a confidential nature.

(7) The trustee is not bound to exhibit to a person other than a commissioner or AiB any document in the trustee's possession which is of a confidential nature.

(8) An extract from the register of insolvencies bearing to be signed by AiB is sufficient evidence of the facts stated in the extract.

Commencement Information
I205 S. 210 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

211 Power of court to cure defects in procedure

(1) On the application of a person having an interest, the sheriff may—
- (a) if there has been a failure to comply with a requirement of this Act (or of regulations under this Act), make an order—
  - (i) waiving the failure, and
  - (ii) so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure, or
- (b) if for any reason anything required or authorised to be done in, or in connection with, the sequestration process cannot be done, make such order as may be necessary to enable the thing to be done.

(2) An order under subsection (1) may waive a failure to comply with a requirement mentioned in section 212(1)(a) or (b) only if the failure relates to—
- (a) a document to be lodged with the sheriff,
- (b) a document issued by the sheriff, or
- (c) a time limit specified in relation to proceedings before the sheriff or a document relating to those proceedings.

(3) In an order under subsection (1), the sheriff may impose such conditions, including conditions as to expenses, as the sheriff thinks fit and may—
- (a) authorise, or dispense with, the performance of any act in the sequestration process,
- (b) appoint as trustee on the debtor's estate AiB or a person who would be eligible to be elected under section 49 (whether or not in place of an existing trustee),
- (c) extend or waive a time limit specified in or under this Act.

(4) Subsection (5) applies where the sheriff, or as the case may be the Court of Session, considers that a remit from the sheriff to the Court of Session is desirable because of the importance or complexity of the matters raised by an application under subsection (1).

(5) The application—
- (a) may at any time be so remitted—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) of the sheriff's own accord, or

(ii) on an application by a person having an interest, and

(b) must be so remitted, if the Court of Session so directs on an application by any such person.

Commencement Information

I206 S. 211 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

212 Power of Accountant in Bankruptcy to cure defects in procedure

(1) AiB may make an order—

(a) correcting a clerical or incidental error in a document required by or under this Act, or

(b) waiving a failure—

(i) to comply with a time limit specified by or under this Act, and

(ii) for which no provision is made by or under this Act.

(2) An order under subsection (1) may be made—

(a) on the application of any person having an interest, or

(b) without an application if AiB proposes to correct or waive a matter mentioned in that subsection.

(3) The applicant must notify all interested persons where an application is made under subsection (2)(a).

(4) AiB must notify all interested persons where AiB proposes to make an order by virtue of subsection (2)(b).

(5) A notice under subsection (3) or (4) must inform the recipient that the recipient has a right to make representations to AiB in relation to the application or the proposed order within 14 days beginning with the day on which the notice is given.

(6) Before making an order under subsection (1), AiB must take into account any representations made by an interested person.

(7) An order under subsection (1) may—

(a) so far as practicable, restore any person prejudiced by the error or failure to the position that person would have been in but for the error or failure, and

(b) impose such conditions, including conditions as to expenses, as AiB thinks fit.

(8) After making an order under subsection (1) which affects a matter recorded in the Register of Inhibitions, AiB must without delay send a certified copy of the order to the keeper of that register for recording in that register.

Commencement Information

I207 S. 212 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

213 Decision under section 212(1): review

(1) An interested person may apply to AiB for a review of a decision of AiB to make, or refuse to make, an order under section 212(1).

(2) Any application under subsection (1) must be made within 14 days beginning with the day of that decision.

(3) If an application under subsection (1) is made, AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the decision within 28 days beginning with the day on which the application is made.

(4) An interested person may appeal to the sheriff against a decision by AiB under subsection (3)(b) within 14 days beginning with the day of that decision.

(5) The decision of the sheriff on an appeal under subsection (4) is final.

Commencement Information

I208 S. 213 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

214 Review of decision by Accountant in Bankruptcy: grounds of appeal

(1) For the avoidance of doubt, an appeal under a provision mentioned in subsection (2) may be made on—

(a) a matter of fact,

(b) a point of law, or

(c) the merits.

(2) The provisions are—

(a) section 27(8),

(b) section 37(5),

(c) section 52(7),

(d) section 57(8),

(e) section 59(4),

(f) section 61(8),

(g) section 64(8),

(h) section 65(7),

(i) section 68(4),

(j) section 71(4),

(k) section 73(5),

(l) section 92(5),

(m) section 97(5),

(n) section 110(7),

(o) section 127(5),

(p) section 139(6),

(q) section 144(6),

(r) section 149(4),

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(s) section 151(7),
(t) section 161(8),
(u) section 213(4), and
(v) paragraph 3(9) of schedule 2.

Commencement Information
I209 S. 214 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

215 Debtor to co-operate with trustee

(1) The debtor must take every practicable step (and in particular must execute any document) which may be necessary to enable the trustee in the sequestration to perform the functions conferred on the trustee by this Act.

(2) If the sheriff, on the trustee's application, is satisfied—
(a) that the debtor has failed to execute a document in compliance with subsection (1), the sheriff may authorise the sheriff clerk to do so, or
(b) that the debtor has failed to comply in any other respect with that subsection, the sheriff may order the debtor to do so.

(3) The execution, by virtue of paragraph (a) of subsection (2), of a document by the sheriff clerk has the like force and effect in all respects as if it had been executed by the debtor.

(4) If the debtor fails to comply with an order under subsection (2)(b) then the debtor commits an offence.

(5) If the debtor is convicted of an offence under subsection (4) then the debtor is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum, or—
(i) in a case where the debtor has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
(ii) in any other case, to imprisonment for a term not exceeding 3 months,
or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii),
(b) on conviction on indictment—
(i) to a fine or to imprisonment for a term not exceeding 2 years, or
(ii) both to a fine and to such imprisonment.

(6) In this section, “debtor” includes a debtor discharged under this Act.

Commencement Information
I210 S. 215 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

216 Arbitration and compromise

(1) The trustee in the sequestration may (but if there are commissioners then only with their consent or with the consent of the creditors or of the sheriff)—

(a) refer to arbitration any claim or question, of whatever nature, arising in the course of the sequestration, or

(b) make a compromise with regard to any claim, of whatever nature, made against or on behalf of the sequestrated estate.

(2) Where a claim or question is referred to arbitration under this section, AiB may vary any time limit for carrying out a procedure under this Act.

(3) A decree arbitral on a reference under paragraph (a) of subsection (1), or a compromise under paragraph (b) of that subsection, is binding on the creditors and on the debtor.

Commencement Information

I211 S. 216 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

217 Meetings of creditors and commissioners

Part 1 of schedule 6 has effect in relation to meetings of creditors other than the statutory meeting, Part 2 in relation to all meetings of creditors and Part 3 in relation to meetings of commissioners.

Commencement Information

I212 S. 217 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

218 General offences by debtor etc.

(1) Subsection (2) applies where, during the relevant period, a debtor makes a false statement in relation to the debtor's assets or financial or business affairs —

(a) to a creditor, or

(b) to a person concerned in the administration of the debtor's estate.

(2) Unless the debtor shows that the debtor neither knew nor had reason to believe that the statement was false, the debtor commits an offence.

(3) Subsection (4) applies where, during the relevant period, a debtor or some other person acting in the debtor's interest (whether or not with the debtor's authority)—

(a) destroys,

(b) damages,

(c) conceals,

(d) disposes of, or

(e) removes from Scotland,

any part of the debtor's estate or any document relating to the debtor's assets or business or financial affairs.

(4) Unless the perpetrator shows that it was not done with intent to prejudice the creditors, the perpetrator commits an offence.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) If, after the date of sequestration of the estate of a debtor, the debtor (being a person who is absent from Scotland) fails when required by the court to come to Scotland for any purpose connected with the administration of that estate, then the debtor commits an offence.

(6) Subsection (7) applies where, during the relevant period, a debtor or some other person acting in the debtor's interest (whether or not with the debtor's authority) falsifies any document relating to the debtor's assets or business or financial affairs.

(7) Unless the perpetrator shows that the perpetrator had no intention to mislead the trustee, a commissioner or any creditor, the perpetrator commits an offence.

(8) If a debtor whose estate is sequestrated—
   (a) knows that a person has falsified a document relating to the debtor's assets or business or financial affairs, and
   (b) fails, within one month of acquiring that knowledge, to report it to the trustee in the sequestration,

   then the debtor commits an offence.

(9) Subsection (10) applies where, during the relevant period, a person (in this subsection and in subsection (10) referred to as "P") who is absolutely insolvent—
   (a) transfers anything to another person for an inadequate consideration, or
   (b) grants an unfair preference to any of P's creditors.

(10) Unless P shows that it was not done with intent to prejudice P's creditors, P commits an offence.

(11) Subsection (12) applies where, at any time in the period of one year ending with the sequestration of the estate of a debtor who is engaged in trade or business, the debtor otherwise than in the ordinary course of the trade or business pledges or disposes of property which the debtor has obtained on credit and has not paid for.

(12) Unless the debtor shows that it was not done with intent to prejudice the debtor's creditors, the debtor commits an offence.

(13) If a debtor, either alone or jointly with another person, obtains credit—
   (a) to the extent of £2,000 or such other sum as may be prescribed or more, or
   (b) of any amount where, at the time the credit is obtained, the debtor has debts amounting to £1,000 or such other sum as may be prescribed or more,

   without giving the person from whom the credit is obtained the relevant information about the debtor's status, then the debtor commits an offence.

Commencement Information
I213 S. 218 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

219 General offences: supplementary and penalties

(1) For the purpose of calculating an amount of credit mentioned in subsection (13) of section 218 or of debts mentioned in paragraph (b) of that subsection, no account is to be taken of any credit obtained or, as the case may be, of any liability for charges in respect of—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) any of the supplies mentioned in section 222(4), and

(b) any council tax (within the meaning of section 99(1) of the Local Government Finance Act 1992.

(2) For the purposes of section 218(13)—

(a) "debtor" means—

(i) a person whose estate has been sequestrated,

(ii) a person who has been adjudged bankrupt in England and Wales or in Northern Ireland, or

(iii) a person subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England and Wales,

being, in the case of a person mentioned in sub-paragraph (i) or (ii), a person who has not been discharged,

(b) the reference to the debtor obtaining credit includes a reference to a case where goods—

(i) are hired to the debtor under a hire-purchase agreement, or

(ii) are agreed to be sold to the debtor under a conditional sale agreement, and

(c) the "relevant information" about the status of the debtor is the information that (as the case may be)—

(i) the debtor's estate has been sequestrated and that the debtor has not been discharged,

(ii) the debtor is an undischarged bankrupt in England and Wales or in Northern Ireland, or

(iii) the debtor is subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England and Wales.

(3) In section 218—

"the relevant period" means the period commencing one year immediately before the date of sequestration of the debtor's estate and ending with the debtor's discharge, and

references to intent to prejudice creditors include references to intent to prejudice an individual creditor.

(4) If a person does, or fails to do, in England and Wales or in Northern Ireland anything which if done, or as the case may be not done, in Scotland is an offence under section 218(2), (4), (7), (8), (10) or (12), then that person commits an offence under the subsection in question.

(5) A person convicted of an offence under section 218 is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or—

(i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or

(ii) in any other case, to imprisonment for a term not exceeding 3 months,

or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or

(b) on conviction on indictment, to a fine, or—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) in the case of an offence under section 218(2), (4), (7) or (12), to imprisonment for a term not exceeding 5 years, or

(ii) in any other case, to imprisonment for a term not exceeding 2 years,

or both to a fine and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii).

Commencement Information
I214 S. 219 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

220 Summary proceedings

(1) Summary proceedings for an offence under this Act may be commenced at any time within 12 months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to the Lord Advocate's knowledge.

(2) But such proceedings must not be commenced by virtue of this section more than 3 years after the commission of the offence.

(3) Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date of commencement of summary proceedings) has effect for the purposes of this section as it has for the purposes of that section.

(4) For the purposes of subsection (1), a certificate of the Lord Advocate as to the date on which the evidence in question came to the Lord Advocate's knowledge is conclusive evidence of the date on which it did so.

Commencement Information
I215 S. 220 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

221 Outlays of insolvency practitioner in actings as interim trustee or trustee

The Scottish Ministers may, by regulations, provide for the premium (or a proportionate part of the premium) of any bond of caution or other security required, for the time being, to be given by an insolvency practitioner to be taken into account as part of the outlays of the practitioner in the practitioner's actings as an interim trustee or as trustee in the sequestration.

Commencement Information
I216 S. 221 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

222 Supplies by utilities

(1) This section applies where on any day ("the relevant day")—

(a) sequestration is awarded in a case where a debtor application was made,

(b) a warrant is granted under section 22(3) in a case where the petition was presented by a creditor or by a trustee acting under a trust deed, or

(c) the debtor grants a trust deed.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) If a request falling within subsection (3) is made for the giving, after the relevant day, of any of the supplies mentioned in subsection (4), the supplier—

(a) may make it a condition of the giving of the supply that the office holder personally guarantee the payment of any charges in respect of the supply, and

(b) is not to make it a condition (or to do anything which has the effect of making it a condition) of the giving of the supply that any outstanding charges in respect of a supply given to the debtor before the relevant day are paid.

(3) A request falls within this subsection if it is made—

(a) by or with the concurrence of the office holder, and

(b) for the purposes of any business which is, or has been, carried on by or on behalf of the debtor.

(4) The supplies are—

(a) a supply of gas by a gas supplier, within the meaning of Part 1 of the Gas Act 1986,

[[F64](aa) a supply of gas by a person within paragraph 1 of schedule 2A of the Gas Act 1986 (supply by landlords etc.),**]**

(b) a supply of electricity by an electricity supplier, within the meaning of Part 1 of the Electricity Act 1989,

[[F65](ba) a supply of electricity by a class of person within Class A (small suppliers) or Class B (resale) of schedule 4 of the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270),**]**

(c) a supply of water by Scottish Water, [F66]...

[[F67](ca) a supply of water by a water services provider within the meaning of the Water Services etc. (Scotland) Act 2005,

(cb) a supply of water by a person who has an interest in the premises to which the supply is given,**]**

(d) a supply of communications services by a provider of a public electronic communications service.

[[F68](e) a supply of communications services by a person who carries on a business which includes giving such supplies, and

(f) a supply of goods or services mentioned in subsection (5A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.**]**

(5) In subsection (4)(d) "communications services" do not include electronic communications services to the extent that they are used to broadcast, or otherwise transmit, programme services (within the meaning of the Communications Act 2003).

[[F69](5A) The goods and services referred to in subsection (4)(f) are—

(a) point of sale terminals,

(b) computer hardware and software,

(c) information, advice and technical assistance in connection with the use of information technology,

(d) data storage and processing,

(e) website hosting.**]**

(6) In this section, "the office holder" means, as the case may be—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the interim trustee,
(b) the trustee in the sequestration, or
(c) the trustee acting under a trust deed.

Textual Amendments

F64 S. 222(4)(aa) inserted (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **7(2)(a)**

F65 S. 222(4)(ba) inserted (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **7(2)(b)**

F66 Word in s. 222(4) repealed (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **7(2)(c)**

F67 S. 222(4)(ca)(cb) inserted (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **7(2)(c)**

F68 S. 222(4)(e)(f) inserted (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **7(2)(d)**

F69 S. 222(5A) inserted (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **7(3)**

Commencement Information

I217 S. 222 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

223 Disqualification provisions: power to make regulations

(1) The Scottish Ministers may make regulations under this section in relation to a disqualification provision.

(2) A "disqualification provision" is a provision, made by or under any enactment, which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a relevant debtor or a category of relevant debtors from—
(a) being elected or appointed to an office or position,
(b) holding an office or position, or
(c) becoming or remaining a member of a body or group.

(3) In subsection (2), the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables the person to be dismissed.

(4) Regulations under subsection (1) may repeal or revoke the disqualification provision.

(5) Regulations under subsection (1) may amend, or modify the effect of, the disqualification provision—
(a) so as to reduce the category of relevant debtors to whom the disqualification provision applies,
(b) so as to extend the disqualification provision to some or all natural persons who are subject to a bankruptcy restrictions order,
(c) so that the disqualification provision applies only to some or all natural persons who are subject to a bankruptcy restrictions order,
(d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.

(6) Regulations made by virtue of subsection (5)(d) may provide for a discretion to be subject to—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the approval of a specified person or body,
(b) appeal to a specified person, body, court or tribunal.

(7) The Scottish Ministers may be specified for the purposes of subsection (5)(d) or (6)(a) or (b).

(8) In this section, "bankruptcy restrictions order" includes—
(a) a bankruptcy restrictions order made under paragraph 1 of schedule 4A of the Insolvency Act 1986, and
(b) a bankruptcy restrictions undertaking entered into under paragraph 7 of that schedule.

(9) In this section, "relevant debtor" means a debtor—
(a) whose estate has been sequestrated,
(b) who has granted (or on whose behalf has been granted) a trust deed,
(c) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland, or
(d) who, in England and Wales or in Northern Ireland, has made an agreement with the debtor's creditors—
(i) for a composition in satisfaction of the debtor's debts,
(ii) for a scheme of arrangement of the debtor's affairs, or
(iii) for some other kind of settlement or arrangement.

(10) Regulations under this section may make—
(a) provision generally or for a specified purpose only,
(b) different provision for different purposes, and
(c) transitional, consequential or incidental provision.

Commencement Information
I218 S. 223 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

224 Regulations: applications to Accountant in Bankruptcy etc.

(1) The Scottish Minsters may, by regulations, make provision in relation to the procedure to be followed in relation to—
(a) an application to AiB under this Act,
(b) an application to AiB for a review under this Act,
(c) any other decision made by AiB under this Act.

(2) In this section, "decision" includes any appointment, determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation made by AiB.

(3) Regulations under subsection (1) may in particular make provision for, or in connection with—
(a) the procedure to be followed by the person making an application,
(b) the form of any report or other document that may be required for the purposes of an application or a decision,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) the form of a statement of undertakings that must be given by the debtor when making a debtor application,
(d) time limits applying in relation to the procedure,
(e) the procedure to be followed in connection with the production and recovery of documents relating to an application or a decision,
(f) the procedure to be followed (including provision about those entitled to participate) in determining an application or making a decision, and
(g) the procedure to be followed after an application is determined or a decision is made.

(4) Regulations under subsection (1) may—
(a) include such supplementary, incidental or consequential provision as the Scottish Minsters consider appropriate, or
(b) modify any enactment (including this Act).

(5) This section is without prejudice to section 194.

Commencement Information
I219 S. 224 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 18

GENERAL

225 Regulations: general

(1) This section relates to regulations made under this Act by the Scottish Ministers.

(2) Such regulations may make different provision for different cases or classes of case.

(3) Subject to subsections (4) and (5), the regulations are subject to the negative procedure.

(4) Regulations under—
(a) section 2(4), (5) or (8)(a), 4(2)(b), 7(1), 9(4), 89(1), 94(7), 112(7)(g), 166(2)(b) or (c), 169, 170(1)(b) or (e), 174(2) or (3), 175(1), 181(2), 183(1)(a) or (b), 184(1)(b) or (2)(a), 186(3) or (9), 194(1) or 223,
(b) section 224(1) and containing provisions which add to, replace or omit any part of the text of an Act or of an Act of the Scottish Parliament, or
(c) paragraph 2(7) of schedule 1,

are subject to the affirmative procedure.

(5) Regulations made under section 237(2) are not subject to the negative procedure or to the affirmative procedure.

[F70]226 Modification of regulation making powers

. . . . . .

Textual Amendments

F70 S. 226 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(15)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

227 Variation of references to time, money etc.

For any reference in this Act to—

(a) a period of time,

(b) an amount of money, or

(c) a fraction,

there may be prescribed, in substitution, some other period or as the case may be some other amount or fraction.

Commencement Information

I220 S. 227 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

228 Interpretation

(1) In this Act, unless the context otherwise requires—

"the 2002 Act" means the Debt Arrangement and Attachment (Scotland) Act 2002,

"Accountant in Bankruptcy" (or "AiB") is to be construed in accordance with section 199,

"accounting period" is to be construed in accordance with section 130(2),

"apparent insolvency" and "apparently insolvent" are to be construed in accordance with section 16,

"appropriate bank or institution" means—

(a) the Bank of England,

(b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,

(c) an EEA firm of the kind mentioned in paragraph 5(b) of schedule 3 of that Act which has permission under paragraph 15 of that schedule (as a result of qualifying for authorisation under paragraph 12 of that schedule) to accept deposits, or

(d) a person who is exempt from the general prohibition in respect of accepting deposits as a result of an exemption order made under section 38(1) of that Act,

"associate" is to be construed in accordance with section 229,

"bankruptcy restrictions order" has the meaning given by section 155(1),

"business" means the carrying on of any activity, whether for profit or not,

"centre of main interests" has the same meaning as in the **[**[F71]EU**]** insolvency proceedings regulation,

"commissioner", except in the expression "examining commissioner", is to be construed in accordance with section 76,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"common financial tool" has the meaning given by section 89(1),

"court" means Court of Session or sheriff,

[F72] …

"DAS register" has the meaning given by section 195(4)(b),

"date of sequestration" has the meaning given by section 22(7),

"debt advice and information package" has the meaning given by section 3(2),

"debtor" includes, without prejudice to the expression's generality, an entity whose estate may be sequestrated by virtue of section 6, a deceased debtor, a deceased debtor's executor or a person entitled to be appointed a deceased debtor's executor,

"debtor application" means an application for sequestration made to AiB under section 2(1)(a), 5(a) or 6(3)(a), (4)(b) or (7)(a),

"debtor contribution order" has the meaning given by section 90(1),

"debtor's contribution" has the meaning given by section 89(1),

[F73] …

"establishment" has the meaning given by **[**[F74]Article 2(10) of the EU**]** insolvency proceedings regulation,

[[F75]"the EU insolvency proceedings regulation" means Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings **[**[F76]as it forms part of domestic law on and after exit day**]**,**]**

"examination" means a private examination under section 118 or a public examination under section 119,

"examining commissioner" is to be construed in accordance with section 120(3),

"interim bankruptcy restrictions order" is to be construed in accordance with section 160,

"interim trustee" is to be construed in accordance with sections 53 and 54,

[F77] …

[F78] …

"money adviser" has the meaning given by section 4(2),

[F79] …

"original trustee" is to be construed in accordance with section 49(1)(a),

"postponed debt" has the meaning given by section 129(4),

"preferred debt" has the meaning given by section 129(2),

"prescribed" means prescribed by regulations made by the Scottish Ministers,

"protected trust deed" is to be construed in accordance with section 163,

"qualified creditor" and "qualified creditors" are to be construed in accordance with section 7(1),

"qualified to act as an insolvency practitioner" is to be construed in accordance with section 390 of the Insolvency Act 1986 (persons not qualified to act as insolvency practitioners),

"register of insolvencies" has the meaning given by section 200(1)(c),

"relevant person" has the meaning given by section 118(2),

"replacement trustee" is to be construed in accordance with section 49(1)(b),

[F80] …

"secured creditor" means a creditor who holds a security for a debt over any part of the debtor's estate,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"security" means any security, heritable or moveable, or any right of lien, retention or preference,

"sederunt book" means the sederunt book maintained under section 50(1)(e),

"sequestration proceedings" includes a debtor application (and analogous expressions are to be construed accordingly),

"statement of assets and liabilities" means a document (including a copy of a document) in such form as may be prescribed containing—

(a) a list of the debtor's assets and liabilities,

(b) a list of the debtor's income and expenditure, and

(c) such other information as may be prescribed,

"statement of undertakings" means the statement of debtor undertakings sent to the debtor under section 51(14) or 54(4) or, in the case of a debtor application, given by the debtor in making the application,

"statutory meeting" has the meaning given by section 43,

F81 …

F82 …

"trust deed" means—

(a) a voluntary trust deed granted by or on behalf of a debtor whereby the debtor's estate (other than such of that estate as would not, under any provision of this or any other enactment, vest in the trustee were that estate sequestrated) is conveyed to the trustee for the benefit of the debtor's creditors generally, and

(b) any other trust deed which would fall within paragraph (a) but for—

(i) the exclusion from the estate conveyed to the trustee of the whole or part of the debtor's dwellinghouse, where a secured creditor holds a security over it, and

(ii) the fact that the debtor's estate is not conveyed to the trustee for the benefit of creditors generally because the secured creditor has, at the debtor's request, agreed before the trust deed is granted not to claim under the trust deed for any of the debt in respect of which the security is held,

"trustee vote" is to be construed in accordance with section 49(1) and (2), and

"unfair preference" means a preference created as is mentioned in subsection (1) of section 99 by a transaction to which subsection (5) of that section applies.

(2) The expressions in the definition of "appropriate bank or institution" in subsection (1) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000,

(b) any relevant order under that section, and

(c) schedule 2 of that Act.

(3) In paragraph (b)(i) of the definition of "trust deed" in subsection (1), "the debtor's dwellinghouse" means a dwellinghouse (including any yard, garden, outbuilding or other pertinents) which, on the day immediately preceding the date the trust deed was granted—

(a) the debtor (whether alone or in common with any other person)—

(i) owned, or

(ii) leased under a long lease ("long lease" having the same meaning as in section 9(2) of the Land Registration etc. (Scotland) Act 2012), and

(b) was the debtor's sole or main residence.

(4) For the purposes of subsection (3)(b), a dwellinghouse may be the debtor's sole or main residence irrespective of whether it is used, to any extent, by the debtor for the purposes of any profession, trade or business.

(5) Any reference in this Act to a debtor being absolutely insolvent is to be construed as a reference to the debtor's liabilities being greater than the debtor's assets; and any reference to a debtor's estate being absolutely insolvent is to be construed accordingly.

(6) Any reference in this Act to value of the creditors is, in relation to any matter, a reference to the value of their claims as accepted for the purposes of that matter.

(7) Any reference in this Act to "the creditors" in the context of their giving consent or doing any other thing is, unless the context otherwise requires, to be construed as a reference to the majority in value of such creditors as vote in that context at a meeting of creditors.

(8) Any reference in this Act to any of the actings mentioned in subsection (9) barring the effect of any enactment or rule of law relating to the limitation of actions is to be construed as a reference to that act having the same effect, for the purposes of that enactment or rule of law, as an effective acknowledgement of the creditor's claim.

(9) The actings are—

(a) the presentation of a petition for sequestration,

(b) the concurrence in a debtor application, and

(c) the submission of a claim.

(10) Any reference in this Act to any such enactment as is mentioned in subsection (8) does not include a reference to an enactment which implements or gives effect to any international agreement or obligation.

(11) Any reference in this Act, however expressed, to the time when a petition for sequestration is presented is to be construed as a reference to the time when the petition is received by the sheriff clerk.

(12) Any reference in this Act, however expressed, to the time when a debtor application is made is to be construed as a reference to the time when the application is received by AiB.

Textual Amendments

F71 Word in s. 228(1) substituted (26.6.2017) by The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(21)(a)** (with reg. 9)

F72 Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(i)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F73 Words in s. 228(1) omitted (26.6.2017) by virtue of The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(21)(c)** (with reg. 9)

F74 Words in s. 228(1) substituted (26.6.2017) by The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(21)(d)** (with reg. 9)

F75 Words in s. 228(1) inserted (26.6.2017) by The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(21)(e)** (with reg. 9)

F76 Words in s. 228(1) inserted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(b)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F77 Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(ii)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F78 Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(iii)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F79 Words in s. 228(1) omitted (19.12.2018) by virtue of The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **45** (with art. 3)

F80 Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(iv)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F81 Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(v)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

F82 Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(vi)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

229 Meaning of "associate"

(1) For the purposes of this Act, any question whether a person is an associate of another person must be determined in accordance with the following provisions of this section.

(2) Subsection (1) is subject to section 230(1).

(3) And any reference, whether in the following provisions of this section or in regulations under section 230(1), to a person being an associate of another person is to be taken to be a reference to their being associates of each other.

(4) A person (in this subsection referred to as "A") is an associate of a natural person (in this subsection referred to as "B") if A is—

(a) B's spouse or civil partner,

(b) a relative of B or of B's spouse or civil partner, or

(c) the spouse or civil partner of such a relative.

(5) A person (in this subsection referred to as "C") is an associate of any person (in this subsection referred to as "D") with whom C is in partnership and of any person who is an associate of D.

(6) A firm is an associate of any person who is a member of the firm.

(7) For the purposes of this section, a person (in this subsection referred to as "E") is a relative of a natural person (in this subsection referred to as "F") if E is F's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant treating any relationship of the half-blood as a relationship of the whole-blood and the stepchild or adopted child of someone (in this subsection referred to as "S") as S's child.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) References in this section to a spouse or civil partner include references to a former spouse or civil partner and a reputed spouse or civil partner.

(9) A person (in this subsection referred to as "G") is an associate of any person whom G employs or by whom G is employed.

(10) For the purposes of subsection (9), any director or other officer of a company is to be treated as employed by the company.

(11) A company is an associate of another company if—
- (a) the same person has control of both, or if a person (in this subsection referred to as "H") has control of one and persons who are H's associates have control of the other, or
- (b) a group of two or more persons has control of each company and the groups either—
  - (i) consist of the same persons, or
  - (ii) could be regarded as consisting of the same persons by treating (in one case or more) a member of either group as replaced by a person of whom that member is an associate.

(12) A company is an associate of another person (in this subsection referred to as "J") if—
- (a) J has control of it, or
- (b) J and persons who are J's associates together have control of it.

(13) For the purposes of this section, a person (in this subsection referred to as "K") is taken to have control of a company—
- (a) if the directors of the company, or of another company which has control of it, (or any of them) are accustomed to act in accordance with K's directions or instructions, or
- (b) if K is entitled to exercise, or control the exercise of, ⅓ or more of the voting power at any general meeting of the company or of another company which has control of the company.

(14) Where two or more persons together satisfy either of the conditions mentioned in subsection (13), they are taken to have control of the company.

(15) In subsections (10) to (14), "company" includes any body corporate (whether incorporated in Great Britain or elsewhere).

Modifications etc. (not altering text)

C10 S. 229 applied (31.5.2021 for specified purposes) by 2004 c. 35, s. 69A(14)(c) (as inserted by Pension Schemes Act 2021 (c. 1), **ss. 109(2)**, 131(1); S.I. 2021/620, reg. 2(1)(b))

230 "Associates": regulations for the purposes of section 229

(1) The Scottish Ministers may by regulations—
- (a) amend section 229 so as to provide further categories of persons who, for the purposes of this Act, are to be associates of other persons, and
- (b) provide that any or all of subsections (4) to (15) of that section (or any subsection added to that section by virtue of paragraph (a))—
  - (i) is to cease to apply, whether in whole or in part, or

(ii) is to apply subject to such modifications as they may specify in the regulations.

(2) The Scottish Ministers may in the regulations make such incidental or transitional provision as they consider appropriate.

[F84]231 Proceedings under [[F83]EU] insolvency proceedings regulation: modified definition of "estate"

. . . . . .

Textual Amendments

F83 Word in s. 231 heading substituted (26.6.2017) by The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(23)** (with reg. 9)

F84 S. 231 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(17)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

232 Crown application

This Act binds the Crown as creditor only.

Commencement Information

I221 S. 232 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

233 Re-enactment

Schedule 7, derived from Part 2 of schedule 7 of the Bankruptcy (Scotland) Act 1985 (and re-enacting sections 10 and 189 of the Bankruptcy (Scotland) Act 1913), has effect.

Commencement Information

I222 S. 233 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

234 Modifications, repeals, savings, revocations and transitional provisions

(1) Schedule 8 makes provision for the modification of enactments.

(2) The enactments mentioned in schedule 9 are repealed, or as the case may be revoked, to the extent mentioned in the second column of that schedule.

(3) Nothing in this Act affects—

(a) any of the enactments repealed, revoked or amended by this Act in the enactment's operation in relation to—

(i) a sequestration as regards which the petition was presented, or the debtor application was made before, or

(ii) a trust deed executed before,

the coming into force of this Act, or

(b) any power to repeal, revoke or amend any such enactment, in so far as the power relates to such operation of the enactment.

(4) The apparent insolvency of a debtor may be constituted for the purposes of this Act even though the circumstance founded on for such constitution occurred on a date before the coming into force of this Act; and for those purposes the apparent insolvency is taken to have been constituted on the date in question.

(5) If a debtor whose estate is sequestrated after the coming into force of this Act is liable, by virtue of a transaction entered into before the date on which section 102 of the Bankruptcy (Scotland) Act 1913 was repealed, to pay royalties or a share of the profits to any person in respect of copyright, or interest in copyright, comprised in the sequestrated estate, then that section applies in relation to the trustee in the sequestration as it applied, before its repeal, in relation to any trustee in bankruptcy (within the meaning of that Act).

(6) Where sequestration of a debtor's estate is awarded under this Act a person—

(a) does not commit an offence under any provision of this Act in respect of anything done before the date of commencement of that provision, but

(b) instead commits an offence under the Bankruptcy (Scotland) Act 1985 (or as the case may be under the Bankruptcy (Scotland) Act 1913) in respect of anything so done which would have been an offence under that Act if the award of sequestration had been made under that Act.

(7) Unless the context otherwise requires, any reference in any enactment or document—

(a) to notour bankruptcy, or to a person being notour bankrupt, is to be construed as a reference to apparent insolvency, or to a person being apparently insolvent, within the meaning of section 16 of this Act,

(b) to a person's estate being sequestrated under the Bankruptcy (Scotland) Act 1913 or the Bankruptcy (Scotland) Act 1985 is to be construed as, or as including, a reference to its being sequestrated under this Act, and

(c) to a trustee in sequestration or to a trustee in bankruptcy, is to be construed as a reference to a trustee in a sequestration within the meaning of this Act,

(analogous references being construed accordingly).

(8) Unless the context otherwise requires, any reference in any enactment or document—

(a) to a "gratuitous alienation" is to be construed as including a reference to an alienation challengeable under section 98(2), or

(b) to a "fraudulent preference" or to an "unfair preference" is to be construed as including a reference to an unfair preference within the meaning of this Act.

Commencement Information

I223 S. 234 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

235 Continuity of the law

(1) The repeal and re-enactment of a provision by this Act does not affect the continuity of the law.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) a provision repealed by this Act, being a provision in force or effective immediately before the coming into force of this Act, has effect after that coming into force as if done under (or for the purposes of or in reliance on) the corresponding provision of this Act.

(3) Any reference (express or implied) in this Act or in any other enactment or document to a provision of this Act is to be construed, so far as the context permits, as including, as respects times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.

(4) Any reference (express or implied) in any enactment or document to a provision repealed by this Act is to be construed, so far as the context permits, as including, as respects times, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to that corresponding provision.

(5) Subsections (1) to (4) have effect in place of section 19(3) to (5) of the Interpretation and Legislative Reform (Scotland) Act 2010 (effect of repeal and re-enactment); but nothing in this section affects any other provision of that Act.

(6) This section is without prejudice to section 234(3) and to any specific transitional provision or saving contained in this Act.

(7) References in this section to this Act include subordinate legislation made under or by virtue of this Act.

Commencement Information
I224 S. 235 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

236 Sequestrations to which this Act applies

This Act applies to sequestrations as regards which the petition is presented, or the debtor application is made on or after the day on which this section comes into force.

Commencement Information
I225 S. 236 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

237 Commencement

(1) This section and sections 225, 226, 228 to 230 and 238 come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Different days may, under subsection (2), be appointed for different purposes and for different provisions.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

238 Short title

The short title of this Act is the Bankruptcy (Scotland) Act 2016.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 1

(introduced by section 2(6))

DEBTOR TO WHOM SECTION 2(2) APPLIES: APPLICATION OF ACT

Modification of certain provisions of Act

1 (1) Where section 2(2) applies in relation to a debtor, this Act applies subject to the modifications mentioned in sub-paragraphs (2) to (6).

(2) Section 42 applies as if for subsection (1) there were substituted—

"(1) This section applies where AiB receives by virtue of section 8(3)(a) the statement of assets and liabilities in relation to a debtor to whom section 2(2) applies.

(1A) As soon as practicable, AiB must prepare a statement of the debtor's affairs, so far as within the knowledge of AiB, stating that, because 2(2) applies in relation to the debtor, no claims may be submitted by creditors under section 46 or 122.

(1B) AiB must send a copy of the statement prepared under subsection (1A) to every known creditor of the debtor.".

(3) Section 50(1) applies as if paragraphs (e) and (f) were omitted.

(4) Section 116 applies as if for subsection (2) there were substituted—

"(2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.".

(5) Section 151 applies as if—

(a) subsections (2) to (6) and (9)(a) were omitted, and

(b) for subsection (7) there were substituted—

"(7) The debtor or any creditor may, within 14 days beginning with the day on which the debtor is discharged under section 140(1), appeal to the sheriff against the discharge of AiB in respect of AiB's actings as trustee.".

(6) Sections 44, 46, 48, 49, 60, 63 to 65, 122, 131 and 210(3) do not apply.

Commencement Information

I226 Sch. 1 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Accountant in Bankruptcy's duty to consider whether paragraph 1 should cease to have effect

2 (1) This paragraph applies where paragraph 1 applies in relation to a debtor.

(2) If AiB considers that the circumstances mentioned in any of sub-paragraphs (3) to (6) apply in relation to the debtor, AiB must consider whether paragraph 1 should cease to have effect in relation to the debtor.

(3) The circumstances are that—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) AiB becomes aware the debtor application submitted under section 2 contains an error, and

(b) the nature of the error is such that the debtor was not at the time of application a debtor to whom section 2(2) applies.

(4) The circumstances are that—

(a) AiB becomes aware that the debtor application submitted under section 2 deliberately misrepresents, or fails to state, a fact that was the case at the time of application, and

(b) the nature of the misrepresentation or the omission of the fact is such that the debtor was not at that time a debtor to whom section 2(2) applies.

(5) The circumstances are that, at any time after the date on which the debtor application is made—

(a) the total value of the debtor's assets (leaving out of account any liabilities and any assets that, under section 88(1), would not vest in a trustee) exceeds £5,000 or such other sum as may be prescribed, or

(b) AiB assesses the debtor, under the common financial tool, as being able to make a contribution.

(6) The circumstances are that, at any time after the date of sequestration—

(a) AiB is not satisfied that the debtor has co-operated with the trustee, and

(b) AiB considers that if paragraph 1 were to cease to have effect it would be—

(i) of financial benefit to the estate of the debtor, and

(ii) in the interests of the creditors.

(7) The Scottish Ministers may by regulations modify this paragraph—

(a) by modifying the circumstances in which paragraph 1 ceases to have effect,

(b) in consequence of any modification made under sub-paragraph (7)(a).

Commencement Information

I227 Sch. 1 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Procedure where Accountant in Bankruptcy considers paragraph 1 should cease to have effect

3 (1) If AiB considers under paragraph 2(2) that paragraph 1 should cease to have effect in relation to a debtor, AiB must notify the debtor of that fact and of the matters mentioned in sub-paragraph (2).

(2) The matters are—

(a) the circumstances mentioned in paragraph 2 which AiB considers apply in relation to the debtor, and

(b) that the debtor may make representations to AiB within 14 days beginning with the giving of notification under sub-paragraph (1).

(3) On the expiry of the 14 days mentioned in sub-paragraph (2)(b) and after having taken into account any representations made by the debtor under that sub-paragraph, AIB must decide whether paragraph 1 should cease to have effect in relation to the debtor.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If AiB decides that paragraph 1 should cease to have effect in relation to the debtor, AiB must, as soon as practicable after reaching that decision, give notice in writing to the debtor—

(a) of the decision, and

(b) of the effect of the decision.

Commencement Information

I228 Sch. 1 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Debtor's right of appeal against decision under paragraph 3

4 (1) This paragraph applies where AiB gives notice to a debtor under paragraph 3(4).

(2) The debtor may appeal to the sheriff against the decision.

(3) Any such appeal must be lodged within 14 days after the day on which the notice is given.

(4) If the sheriff grants the appeal, paragraph 1 continues to have effect in relation to the debtor.

(5) If the sheriff refuses the appeal, or if it is abandoned or withdrawn, paragraph 1 ceases to have effect in relation to the debtor.

Commencement Information

I229 Sch. 1 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Decision that paragraph 1 ceases to have effect: modification of certain provisions of Act

5 (1) Where paragraph 1 ceases to have effect in relation to a debtor, this Act applies subject to sub-paragraphs (2) to (4).

(2) The debtor must send to the trustee a statement of assets and liabilities—

(a) where no appeal is taken under paragraph 4, within 7 days beginning with the expiry of the period during which an appeal may be made under that paragraph, or

(b) where an appeal is refused or, as the case may be, abandoned or withdrawn, within 7 days beginning with—

(i) the day on which notice is given of the outcome of the appeal, or

(ii) as the case may be, its abandonment or withdrawal.

(3) Section 44 applies as if, in subsection (3)(a), for the words "sequestration is awarded" there were substituted " paragraph 1 of schedule 1 ceases to have effect in relation to the debtor ".

(4) Section 116 applies as if for subsection (2) there were substituted—

"(2) The trustee in the sequestration must require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) within 60 days beginning with the day on which paragraph 1 of schedule 1 ceases to have effect in relation to the debtor,

(b) on the expiry of 6 months beginning with the day on which the account is given under paragraph (a), and

(c) on the expiry of each subsequent 6 months.".

Commencement Information

I230 Sch. 1 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

SCHEDULE 2

(introduced by sections 7(4), 46(9) and 125(4))

DETERMINATION OF AMOUNT OF CREDITOR'S CLAIM

Amount which may be claimed generally

1 (1) Subject to the provisions of this schedule, the amount in respect of which a creditor is entitled to claim is the accumulated sum of principal and any interest which is due on the debt as at the date of sequestration.

(2) If a debt does not depend on a contingency but would not be payable but for the sequestration until after the date of the sequestration, the amount of the claim must be calculated as if the debt were payable on that date but subject to the deduction of interest at the rate specified in section 129(10) from that date until the date for payment of the debt.

(3) In calculating the amount of a creditor's claim, the creditor must deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the debtor or by the usage of trade.

Commencement Information

I231 Sch. 2 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Claims for aliment and for periodical allowance on divorce or on dissolution of civil partnership

2 (1) A person entitled to aliment, however arising, from a living debtor as at the date of sequestration, or from a deceased debtor immediately before the debtor's death, is not entitled to include in the amount of the person's claim—

(a) any unpaid aliment for any period before the date of sequestration unless the amount of the aliment has been quantified by court decree or by any legally binding obligation which is supported by evidence in writing, and—

(i) in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses), or

(ii) in the case of civil partners (or, where the aliment is payable to a former civil partner in respect of a child after dissolution of a civil partnership, former civil partners),

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

they were living apart during that period, or

(b) any aliment for a period after the date of sequestration.

(2) Sub-paragraph (1) applies to a periodical allowance payable on divorce or on dissolution of a civil partnership—

(a) by virtue of a court order, or

(b) under any legally binding obligation which is supported by evidence in writing,

as it applies to aliment and as if, for sub-paragraphs (i) and (ii) of sub-paragraph (1)(a) and the word "they" which immediately follows sub-paragraph (ii), there were substituted "the payer and payee".

Commencement Information

I232 Sch. 2 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Debts depending on contingency

3 (1) The amount which a creditor is entitled to claim does not include a debt in so far as its existence or amount depend on a contingency.

(2) But sub-paragraph (1) is subject to sub-paragraph (3).

(3) On an application by the creditor—

(a) to the trustee in the sequestration, or

(b) if there is no trustee, to AiB,

the trustee, or AiB, must put a value on the debt in so far as it is contingent.

(4) The amount in respect of which the creditor is then entitled to claim is that value but no more.

(5) And where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

(6) An interested person may apply to AiB for a review of a valuation under sub-paragraph (3) by the trustee.

(7) Any application under sub-paragraph (6) must be made within 14 days beginning with the day of the valuation.

(8) If an application under sub-paragraph (6) is made, AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm or vary the valuation within 28 days beginning with that day.

(9) An interested person may appeal to the sheriff against a decision by AiB under sub-paragraph (8)(b) within 14 days beginning with the day of the decision.

(10) AiB may refer a case to the sheriff for a direction before making a decision under sub-paragraph (8)(b).

(11) An appeal to the sheriff under sub-paragraph (9) may not be made in relation to a matter on which AiB has applied for a direction under sub-paragraph (10).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I233 Sch. 2 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Secured debts

4 (1) A secured creditor, in calculating the amount of the secured creditor's claim, must deduct the value of any security as estimated by the secured creditor.

(2) But if the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the debtor's estate, the secured creditor is not required to make a deduction of the value of that security.

(3) The trustee in the sequestration may, at any time after the expiry of 12 weeks after the date of sequestration, require the secured creditor, at the expense of the debtor's estate, to discharge the security or convey or assign it to the trustee on payment to the creditor of the value specified by the creditor.

(4) The amount in respect of which the creditor is then entitled to claim is any balance of the creditor's debt remaining after receipt of the payment.

(5) A creditor whose security has been realised, in calculating the amount of the creditor's claim, must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

Commencement Information
I234 Sch. 2 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Valuation of claims against partners for debts of the partnership

5 (1) Where a creditor claims, in respect of a debt of a partnership, against the estate of one of its partners, the creditor must estimate the value of—

(a) the debt to the creditor from the firm's estate where that estate has not been sequestrated, or

(b) the creditor's claim against that estate where it has been sequestrated,

and deduct that value from the creditor's claim against the partner's estate.

(2) The amount in respect of which the creditor is entitled to claim on the partner's estate is the balance remaining after that deduction is made.

Commencement Information
I235 Sch. 2 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 3

(introduced by section 129(2) and (3))

PREFERRED DEBTS

PART 1

LIST OF PREFERRED DEBTS

Contributions to occupational pension schemes etc.

1 Any sum which is owed by the debtor and is a sum to which schedule 4 of the Pension Schemes Act 1993 (contributions to occupational pension scheme and state scheme premiums) applies.

Commencement Information
I236 Sch. 3 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Remuneration of employees etc.

2 (1) So much of any amount which—

(a) is owed by the debtor to a person who is or has been an employee of the debtor, and

(b) is payable by way of remuneration in respect of the whole or any part of the 4 months which immediately precedes the relevant date,

as does not exceed the prescribed amount.

(2) An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated (whether before, on or after that date).

(3) So much of any amount owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within sub-paragraph (1) or (2).

Commencement Information
I237 Sch. 3 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

3 So much of any amount which—

(a) is ordered, whether before or after the relevant date, to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985, and

(b) is so ordered in respect of a default made by the debtor before that date in the discharge of the debtor's obligations under that Act,

as does not exceed such amount as may be prescribed.

Commencement Information
I238 Sch. 3 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Levies on coal and steel production

4 Any sums due at the relevant date from the debtor in respect of—

(a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the Treaty establishing the European Coal and Steel Community, or

(b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of that Community.

Commencement Information
I239 Sch. 3 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Debts owed to the Financial Services Compensation Scheme

5 Any debt owed by the debtor to the scheme manager of the Financial Services Compensation Scheme under section 215(2A) of the Financial Services and Markets Act 2000.

Commencement Information
I240 Sch. 3 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Deposits covered by Financial Services Compensation Scheme

6 So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.

Commencement Information
I241 Sch. 3 para. 6 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Other deposits

7 So much of any amount owed at the relevant date by the debtor to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to that person or those persons.

Commencement Information
I242 Sch. 3 para. 7 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

8 An amount owed at the relevant date by the debtor to one or more eligible persons in respect of a deposit which—

(a) was made through a **[**[F85]non-UK**]** branch of a credit institution authorised by the competent authority of **[**[F86]the United Kingdom**]**, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) would have been an eligible deposit if it had been made through **[**[F87]a UK**]** branch of that credit institution.

Textual Amendments

F85 Word in sch. 3 para. 8(a) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(2)(a)(i)** (with regs. 24-26)

F86 Words in sch. 3 para. 8(a) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(2)(a)(ii)** (with regs. 24-26)

F87 Words in sch. 3 para. 8(b) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(2)(b)** (with regs. 24-26)

Commencement Information

I243 Sch. 3 para. 8 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

[[F88]*Certain HMRC debts*

Textual Amendments

F88 Sch. 3 para. 8A and cross-heading inserted (with application in accordance with s. 98(7) of the amending Act) by Finance Act 2020 (c. 14), **s. 98(4)**

8A (1) Any amount owed at the relevant date by the debtor to the Commissioners in respect of—

(a) value added tax, or

(b) a relevant deduction.

(2) In sub-paragraph (1), the reference to "any amount" is subject to any regulations under section 99(1) of the Finance Act 2020.

(3) For the purposes of sub-paragraph (1)(b) a deduction is "relevant" if—

(a) the debtor is required, by virtue of an enactment, to make the deduction from a payment made to another person and to pay an amount to the Commissioners on account of the deduction,

(b) the payment to the Commissioners is credited against any liabilities of the other person, and

(c) the deduction is of a kind specified in regulations under section 99(3) of the Finance Act 2020.

(4) In this paragraph "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.**]**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 2

INTERPRETATION OF PART 1

Meaning of "the relevant date"

9 In Part 1, "the relevant date" means—

(a) in relation to a debtor other than a deceased debtor, the date of sequestration, and

(b) in relation to a deceased debtor, the date of death.

Commencement Information

I244 Sch. 3 para. 9 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Amounts payable by way of remuneration

10 (1) For the purposes of paragraph 2, a sum is payable by the debtor to a person by way of remuneration in respect of any period if—

(a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or

(b) it is an amount falling within sub-paragraph (2) and is payable by the debtor in respect of that period.

(2) An amount falls within this sub-paragraph if it is—

(a) a guarantee payment under section 28(1) to (3) of the Employment Rights Act 1996 (entitlement to payment for workless day),

(b) a payment for time off under section 53(1) (looking for new employment or making arrangements for training for future employment) or 56(1) (antenatal care) of that Act,

(c) remuneration on suspension on medical grounds under section 64 of that Act,

(d) a payment for time off under section 169(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (trade union duties), or

(e) remuneration under a protective award made by an employment tribunal under section 189 of that Act (redundancy dismissal with compensation).

(3) For the purposes of paragraph 2(2), holiday remuneration is deemed, in the case of a person ("P") whose employment has been terminated by or in consequence of the award of sequestration of P's employer's estate, to have accrued to P in respect of a period of employment if, by virtue of P's contract of employment or of any enactment, that remuneration would have accrued in respect of that period if P's employment had continued until P became entitled to be allowed the holiday.

(4) In sub-paragraph (3), "enactment" includes an order made or direction given under an enactment.

(5) Without prejudice to the preceding provisions of this paragraph—

(a) any remuneration payable by the debtor to a person in respect of a period—

(i) of holiday, or

(ii) of absence from work through sickness or other good cause,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

is deemed to be wages, or as the case may be salary, in respect of services rendered to the debtor in that period, and

(b) references in this paragraph to remuneration in respect of a period of holiday include references to any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social services as earnings in respect of that period.

Commencement Information
I245 Sch. 3 para. 10 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Meaning of "prescribed"

11 In paragraphs 2 and 3, "prescribed" means prescribed by regulations made by the Secretary of State.

Commencement Information
I246 Sch. 3 para. 11 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Meaning of "scheme manager"

12 In paragraph 5, "the scheme manager" has the meaning given in section 212(1) of the Financial Services and Markets Act 2000.

Commencement Information
I247 Sch. 3 para. 12 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Meaning of "eligible deposit"

13 (1) In paragraphs 6 to 8, "eligible deposit" means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.

(2) For the purposes of those paragraphs and of this paragraph, a "deposit" means rights of the kind described in paragraph 22 of schedule 2 of the Financial Services and Markets Act 2000 (deposits).

(3) In paragraphs 7 and 8, "eligible person" means—

(a) an individual, or

[[F89](b) any micro, small or medium-sized enterprise, as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.**]**

(4) In paragraph 8—

(a) "credit institution" has the meaning given in Article 4.1(1) of the capital requirements regulation,

[[F90](b) "UK branch" means a branch, as defined in Article 4(1)(17) of the capital requirements regulation, which is established in the United Kingdom, and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) "non-UK branch" means a branch, as so defined, which is established outside the United Kingdom.**]**

[[F91](5) In sub-paragraph (4)(a) and (b), "the capital requirements regulation" means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.**]**

Textual Amendments

F89 Sch. 3 para. 13(3)(b) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(3)(a)** (with regs. 24-26)

F90 Sch. 3 para. 13(4)(b)(c) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(3)(b)** (with regs. 24-26)

F91 Sch. 3 para. 13(5) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(3)(c)** (with regs. 24-26)

Commencement Information

I248 Sch. 3 para. 13 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Transitional provisions

14 Regulations under paragraph 2 or 3 may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

Commencement Information

I249 Sch. 3 para. 14 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

SCHEDULE 4

(introduced by section 162)

VOLUNTARY TRUST DEEDS FOR CREDITORS

Remuneration of trustee

1 Whether or not—

(a) provision is made in the trust deed for auditing the accounts of the trustee in the sequestration and for determining the method of fixing the trustee's remuneration, or

(b) the trustee and the creditors have agreed on such auditing and the method of fixing that remuneration,

the debtor, the trustee or any creditor may, at any time before the final distribution of the debtor's estate among the creditors, have the trustee's accounts audited by, and the trustee's remuneration fixed by, AiB.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I250 Sch. 4 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Accountant in Bankruptcy's power to carry out audit

2 AiB may, at any time, audit the trustee's accounts and fix the trustee's remuneration.

Commencement Information
I251 Sch. 4 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Registration of notice of inhibition

3 (1) The trustee, from time to time after the trust deed is delivered to the trustee, may cause a notice in such form as is prescribed by act of sederunt to be recorded in the Register of Inhibitions.

(2) Such recording has the same effect as the recording in that register of letters of inhibition against the debtor.

(3) The trustee, after—

(a) the debtor's estate has been distributed finally among the debtor's creditors, or

(b) the trust deed has otherwise ceased to be operative,

must cause a notice in such form as is so prescribed to be recorded in that register recalling the notice recorded under sub-paragraph (1).

Commencement Information
I252 Sch. 4 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Lodging of claim to bar effect of limitation of actions

4 The submission to the trustee, acting under a trust deed, of a claim by a creditor bars the effect of any enactment or rule of law relating to limitation of actions.

Commencement Information
I253 Sch. 4 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Valuation of claims

5 (1) Unless the trust deed otherwise provides, schedule 2 applies in relation to a trust deed as it applies to a sequestration but subject to the following modifications.

(2) In paragraphs 1, 2 and 4, for the word “sequestration”, wherever it occurs, there is substituted “ granting of the trust deed ”.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In paragraph 3(3), for paragraphs (a) and (b) and the words "the trustee or sheriff" which immediately follow paragraph (b) there is substituted "the trustee".

Commencement Information
I254 Sch. 4 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

SCHEDULE 5

(introduced by section 210(3))

INFORMATION TO BE INCLUDED IN THE SEDERUNT BOOK

1 A copy of the debtor application made under section 2(1)(a).

Commencement Information
I255 Sch. 5 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

2 A copy of the petition presented under section 2(1)(b).

Commencement Information
I256 Sch. 5 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

3 Where the trustee is AiB, a copy of the statement of assets and liabilities sent to AiB in accordance with section 8(3)(a).

Commencement Information
I257 Sch. 5 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

[F92]3A. . . . . .

Textual Amendments
F92 Sch. 5 para. 3A omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(18)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

4 A copy of the award of sequestration under section 22(1) or (5).

Commencement Information
I258 Sch. 5 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

5 A copy of the warrant to cite the debtor granted under section 22(3).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I259 Sch. 5 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

6 Where the trustee is not AiB—
(a) the audited accounts sent to the trustee by AiB in accordance with section 56(5)(d), and
(b) the determination fixing the amount of the outlays and remuneration payable to the interim trustee sent to the trustee by AiB in accordance with that section.

Commencement Information
I260 Sch. 5 para. 6 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

7 Where the trustee is AiB—
(a) the accounts audited by AiB in accordance with section 56(5)(a), and
(b) the determination, issued in accordance with section 56(5)(b), fixing the amount of the outlays and remuneration payable to the interim trustee.

Commencement Information
I261 Sch. 5 para. 7 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

8 Where AiB is appointed interim trustee and the sheriff awards sequestration in accordance with section 58(1)(a)—
(a) the accounts of AiB's intromissions (if any) with the debtor's estate, and
(b) the determination of AiB's fees and outlays calculated in accordance with regulations under section 205.

Commencement Information
I262 Sch. 5 para. 8 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

9 A copy of—
(a) an order—
(i) recalling or refusing to recall an award of sequestration by the sheriff under section 30, and
(ii) sent to the trustee under subsection (9)(b)(ii) of that section, or
(b) a grant of (or a refusal to grant), under section 34(1), 35(6) or 37, recall of an award of sequestration.

Commencement Information
I263 Sch. 5 para. 9 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

10 A copy of an order under section 114(3)(b) or 115(3)(b) sent to the trustee under section 30(9)(b).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I264 Sch. 5 para. 10 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

11 Where the trustee is a replacement trustee appointed under section 60—

(a) a copy of the audited accounts, and determination, sent under section 63(5)(c)(ii),

(b) on that appointment, such information as is appropriate to provide a record of the sequestration process before that appointment (except that no entry is to be made in relation to any written comments made by the original trustee under section 42(3)(c)), and

(c) an entry recording a certificate of discharge issued to the original trustee under section 65.

Commencement Information
I265 Sch. 5 para. 11 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

12 Where the trustee is not AiB, a copy of a statement of assets and liabilities sent to the trustee under section 41(1) or (2).

Commencement Information
I266 Sch. 5 para. 12 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

13 A copy of a notice given under section 44(3).

Commencement Information
I267 Sch. 5 para. 13 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

14 Where the trustee is not AiB, a copy of a report made under section 45(1).

Commencement Information
I268 Sch. 5 para. 14 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

15 Where the trustee is a replacement trustee appointed under section 60 and AiB was the original trustee, on that appointment, such information as is appropriate to provide a record of the sequestration process before that appointment.

Commencement Information
I269 Sch. 5 para. 15 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

16 A copy of an initial proposal for the debtor's contribution provided by the trustee under section 90(1)(b).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I270 Sch. 5 para. 16 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

17 A copy of a debtor contribution order applying to the debtor.

Commencement Information
I271 Sch. 5 para. 17 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

18 A copy of a decree issued under section 98 affecting the sequestrated estate.

Commencement Information
I272 Sch. 5 para. 18 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

19 A copy of a decree of recall issued following an application under section 100(2).

Commencement Information
I273 Sch. 5 para. 19 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

20 A copy of a decree under section 99 affecting the sequestrated estate.

Commencement Information
I274 Sch. 5 para. 20 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

21 The inventory and valuation of the estate, made up and maintained in accordance with section 108(1)(b).

Commencement Information
I275 Sch. 5 para. 21 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

22 A copy of an account given by the debtor under section 116(2).

Commencement Information
I276 Sch. 5 para. 22 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

23 The debtor's deposition at an examination subscribed under section 121(6).

Commencement Information
I277 Sch. 5 para. 23 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

24 A copy of the record of an examination sent to AiB under section 121(7).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I278 Sch. 5 para. 24 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

25 An appropriate entry in relation to the production of any document to the trustee in accordance with section 125(2), stating the date when it was produced to the trustee.

Commencement Information
I279 Sch. 5 para. 25 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

26 Where the trustee accepts or rejects a claim under section 126, the decision on the claim, specifying—

(a) the amount of the claim accepted by the trustee,

(b) the category of debt, and the value of any security, as decided by the trustee, and

(c) if the claim is rejected, the reason.

Commencement Information
I280 Sch. 5 para. 26 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

27 A copy of a decision of AiB under subsection (4)(b) of section 127 and of the sheriff under subsection (5) of that section.

Commencement Information
I281 Sch. 5 para. 27 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

28 An agreement or determination in respect of the accounting period under section 130(3)(b)(i) or (ii).

Commencement Information
I282 Sch. 5 para. 28 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

29 Where the trustee is not AiB, the audited accounts, the scheme of division and the final determination in relation to the trustee's outlays and remuneration as mentioned in section 136.

Commencement Information
I283 Sch. 5 para. 29 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

30 A copy of the certificate of discharge given to the debtor under section 137(2), 138(2) or 143(5).

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I284 Sch. 5 para. 30 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

31 A copy of the certificate deferring discharge where the debtor cannot be traced issued under section 141(4)(b) or (6)(b).

Commencement Information
I285 Sch. 5 para. 31 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

32 Where AiB has acted as trustee, after making the final division of the debtor's estate—

(a) AiB's final accounts of AiB's intromissions (if any) with the debtor's estate,
(b) the scheme of division (if any), and
(c) a determination of AiB's fees and outlays calculated in accordance with regulations under section 205.

Commencement Information
I286 Sch. 5 para. 32 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

33 Where AiB has acted as trustee and is discharged from all liability as mentioned in section 151(10), an appropriate entry in relation to such discharge.

Commencement Information
I287 Sch. 5 para. 33 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

34 A decision of the court under section 211 and of AiB under section 212.

Commencement Information
I288 Sch. 5 para. 34 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

35 A copy of a decree arbitral or, as the case may be, an appropriate entry recording the compromise referred to in section 216(1)(b).

Commencement Information
I289 Sch. 5 para. 35 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

36 The minutes of the meeting referred to in paragraphs 8 to 10 of schedule 6.

Commencement Information
I290 Sch. 5 para. 36 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

37 A copy of the minutes of a meeting sent to AiB in accordance with paragraph 25 of that schedule.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I291 Sch. 5 para. 37 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

38 Where a meeting of commissioners is called in accordance with paragraph 26 of that schedule—

(a) a record of the deliberations of the commissioners at the meeting,

(b) where the trustee is not clerk in accordance with paragraph 30 of that schedule, a record of the deliberations of the commissioners transmitted by the commissioner acting as clerk (such commissioner to authenticate the insertion when made), and

(c) in relation to any matter agreed without a meeting, the minute recording that agreement signed in accordance with paragraph 32(b) of that schedule.

Commencement Information
I292 Sch. 5 para. 38 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

39 A copy of any decision (including any determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation) relating to the sequestration which is—

(a) issued by AiB, and

(b) not otherwise mentioned in this schedule.

Commencement Information
I293 Sch. 5 para. 39 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

40 A copy of any decree, interlocutory decree, direction or order relating to the sequestration which is—

(a) granted by the court, and

(b) not otherwise mentioned in this schedule.

Commencement Information
I294 Sch. 5 para. 40 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 6

(introduced by section 217)

MEETINGS OF CREDITORS AND COMMISSIONERS

PART 1

MEETINGS OF CREDITORS OTHER THAN THE STATUTORY MEETING

Calling of meeting

1 The trustee in the sequestration must call a meeting of creditors if required to do so—
(a) by order of the sheriff,
(b) by 1/10 in number or ⅓ in value of the creditors,
(c) by a commissioner, or
(d) by AiB.

Commencement Information
I295 Sch. 6 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

2 Any such meeting must be held not later than 28 days after—
(a) the issuing of the order under paragraph 1(a), or
(b) the receipt by the trustee of the requirement under paragraph 1(b), (c) or (d).

Commencement Information
I296 Sch. 6 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

3 The trustee, or a commissioner who has given notice to the trustee, may at any time call a meeting of creditors.

Commencement Information
I297 Sch. 6 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

4 The trustee, calling a meeting under paragraph 1 or 3, or a commissioner, calling a meeting under paragraph 3, is no fewer than 7 days before the date fixed for the meeting to notify—
(a) every creditor known to the trustee or, as the case may be, to the commissioner, and
(b) AiB,
of the date, time and place fixed for the holding of the meeting and of the meeting's purpose.

Commencement Information
I298 Sch. 6 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

5 Where—

(a) a requirement has been made under paragraph 1, but

(b) no meeting has been called by the trustee,

AiB may, of AiB's own accord or on the application of any creditor, call a meeting of creditors.

Commencement Information

I299 Sch. 6 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

6 AiB, calling a meeting under paragraph 5, is no fewer than 7 days before the date fixed for the meeting to take reasonable steps to notify the creditors of the date, time and place fixed for the holding of the meeting and of the meeting's purpose.

Commencement Information

I300 Sch. 6 para. 6 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

7 It is not necessary to notify under paragraph 4 or 6 any creditor whose accepted claim is less than £50 or such sum as may be prescribed, unless the creditor has in writing requested such notification.

Commencement Information

I301 Sch. 6 para. 7 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Role of trustee at meeting

8 At the commencement of a meeting the trustee is to be the person chairing the meeting and as such is, after carrying out the trustee's duties under section 126(1)—

(a) to invite the creditors to elect one of their number to chair the meeting in the trustee's place, and

(b) to preside over the election.

Commencement Information

I302 Sch. 6 para. 8 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

9 If no person is elected in pursuance of paragraph 8, the trustee must chair the meeting throughout.

Commencement Information

I303 Sch. 6 para. 9 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

10 The trustee is to arrange for a record to be made of the proceedings at the meeting.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I304 Sch. 6 para. 10 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Appeals

11 The trustee, a creditor or any other person having an interest may, within 14 days after the date of a meeting called under paragraph 4 or 6, appeal to the sheriff against a resolution of the creditors at the meeting.

Commencement Information
I305 Sch. 6 para. 11 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 2

ALL MEETINGS OF CREDITORS

Validity of proceedings

12 No proceedings at a meeting are invalidated by reason only that a notice or other document relating to the calling of the meeting, being a notice required to be sent or given under a provision of this Act, has not been received by, or come to the attention of, any creditor before the meeting.

Commencement Information
I306 Sch. 6 para. 12 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Locus of meeting

13 **[**[F93]Every meeting must be held either—

(a) in such place (whether or not in the sheriffdom) as is, in the opinion of the person calling the meeting, the most convenient for the majority of the creditors, or

(b) by such electronic means as would, in the opinion of the person calling the meeting, be most convenient to allow the majority of the creditors to participate in the meeting without being together in the same place.

Textual Amendments
F93 Sch. 6 paras. 13, 13A substituted for sch. 6 para. 13 (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 12(2)(a)** (with s. 9) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 9(1)**)

Commencement Information
I307 Sch. 6 para. 13 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

13A Where a meeting is to be held in pursuance of paragraph 13(b), the references in paragraphs 4 and 6 to the place fixed for the holding of the meeting are to be read as references to the electronic means by which attendees are to be able to attend the meeting without being together in the same place.**]**

Textual Amendments

F93 Sch. 6 paras. 13, 13A substituted for sch. 6 para. 13 (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 12(2)(a)** (with s. 9) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 9(1)**)

Mandatories

14 A creditor may authorise in writing a person to represent the creditor at a meeting.

Commencement Information

I308 Sch. 6 para. 14 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

15 A creditor must lodge with the trustee, before the commencement of the meeting, any authorisation given under paragraph 14.

Commencement Information

I309 Sch. 6 para. 15 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

16 Any reference in paragraph 8, or in the following provisions of this Part, to a creditor includes a reference to a person authorised under paragraph 14 by a creditor.

Commencement Information

I310 Sch. 6 para. 16 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Quorum

17 The quorum at any meeting is one creditor.

Commencement Information

I311 Sch. 6 para. 17 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Voting at meeting

18 Any question at a meeting is to be determined by a majority in value of the creditors who vote on that question.

Commencement Information

I312 Sch. 6 para. 18 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Objections by creditors

19 At any meeting the person chairing it may allow or disallow any objection by a creditor, other than (if the person chairing the meeting is not the trustee) an objection relating to a creditor's claim.

Commencement Information
I313 Sch. 6 para. 19 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

20 A person aggrieved by the determination of the person chairing the meeting in respect of an objection may appeal to the sheriff against the determination.

Commencement Information
I314 Sch. 6 para. 20 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

21 If the person chairing the meeting is in doubt as to whether to allow or disallow an objection, the meeting must proceed as if no objection had been made, except that for the purposes of appeal the objection is to be deemed to have been disallowed.

Commencement Information
I315 Sch. 6 para. 21 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Adjournment of meeting

22 If no creditor has appeared at a meeting by half an hour after the time appointed for its commencement, the person chairing the meeting may adjourn it to such other day as that person may appoint, being a day no fewer than 7, nor more than 21, days after that on which the meeting is adjourned.

Commencement Information
I316 Sch. 6 para. 22 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

23 The person chairing the meeting may, with the consent of a majority in value of the creditors who vote on a resolution to adjourn a meeting, adjourn the meeting.

Commencement Information
I317 Sch. 6 para. 23 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

24 Any adjourned meeting must be held at the same time **[**[F94]and place**][**[F94], and at the same place or by the same electronic means,**]** as the original meeting, unless **[**[F95]in the resolution another time or place is specified**][**[F95]the resolution otherwise specifies**]**.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F94 Words in sch. 6 para. 24 substituted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 12(2)(b)(i)** (with s. 9) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 9(1)**)

F95 Words in sch. 6 para. 24 substituted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 12(2)(b)(ii)** (with s. 9) (which affecting provision expires (1.10.2022) by virtue of the Coronavirus (Scotland) Act 2020 (asp 7), **s. 9(1)**)

Commencement Information

I318 Sch. 6 para. 24 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Minutes of meeting

25 The minutes of every meeting must be signed by the person who chaired the meeting and within 14 days after the meeting must be sent to AiB.

Commencement Information

I319 Sch. 6 para. 25 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

PART 3

MEETINGS OF COMMISSIONERS

26 The trustee—

(a) may call a meeting of commissioners at any time, and

(b) must call such a meeting—

(i) on being required to do so by order of the sheriff, or

(ii) on being requested to do so by AiB or by any commissioner.

Commencement Information

I320 Sch. 6 para. 26 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

27 If the trustee fails to call a meeting of commissioners within 14 days after being required or requested to do so under paragraph 26, a commissioner may call a meeting of commissioners.

Commencement Information

I321 Sch. 6 para. 27 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

28 The trustee must give the commissioners at least 7 days' notice of a meeting called by the trustee unless the commissioners decide that they do not require such notice.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I322 Sch. 6 para. 28 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

29 The trustee is to act as clerk at a meeting of commissioners.

Commencement Information
I323 Sch. 6 para. 29 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

30 If the commissioners are considering the performance of the functions of the trustee under any provision of this Act, the trustee must withdraw from the meeting if requested to do so by the commissioners and in such a case a commissioner must—
(a) act as clerk, and
(b) transmit a record of the deliberations of the commissioners to the trustee.

Commencement Information
I324 Sch. 6 para. 30 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

31 The quorum at a meeting of commissioners is one commissioner and the commissioners may act by a majority of the commissioners present at the meeting.

Commencement Information
I325 Sch. 6 para. 31 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

32 Any matter may be agreed by the commissioners without a meeting if such agreement—
(a) is unanimous, and
(b) is subsequently recorded in a minute signed by the commissioners.

Commencement Information
I326 Sch. 6 para. 32 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

SCHEDULE 7
(introduced by section 233)

RE-ENACTMENT OF SECTIONS 10 AND 189 OF THE BANKRUPTCY (SCOTLAND) ACT 1913

Arrestments and attachments

1 (1) Subject to sub-paragraph (2), all arrestments and attachments which have been executed within 60 days prior to the constitution of the apparent insolvency of the debtor, or within 4 months after its constitution, rank *pari passu* as if they had all been executed on the same date.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Any such arrestment which is executed on the dependence of an action must be followed up without undue delay.

(3) A creditor judicially producing, in a process relative to the subject of such arrestment or attachment, liquid grounds of debt or decree of payment within the 60 days or 4 months referred to in sub-paragraph (1) is entitled to rank as if the creditor had executed an arrestment or an attachment.

(4) If, in the meantime—

(a) the first or any subsequent arrester obtains a decree of furthcoming and recovers payment, that arrester, or

(b) an attaching creditor carries through an auction or receives payment in respect of an attached article upon its redemption, that attaching creditor,

is accountable for the sum recovered to those who, by virtue of this Act, may eventually be found to have a ranking *pari passu* on the sum; and is liable in an action at their instance for payment to them proportionately, after allowing out of the fund the expense of such recovery.

(5) Arrestments executed for attaching the same effects of the debtor after the 4 months subsequent to the constitution of the debtor's apparent insolvency do not compete with those within the 60 days or 4 months referred to in sub-paragraph (1) but may rank with each other on any reversion of the fund attached in accordance with any enactment or rule of law relating to such ranking.

(6) Any reference in sub-paragraphs (1) to (5) to a debtor is to be construed as including a reference to an entity whose apparent insolvency may, by virtue of subsection (6) of section 16 of this Act, be constituted under subsection (1) of that section.

(7) This paragraph applies in respect of arrestments and attachments executed whether before or after the coming into force of this Act.

(8) Nothing in this paragraph applies to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.

Commencement Information

I327 Sch. 7 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Exemptions from stamp or other duties for conveyances, deeds etc. relating to sequestrated estates

2 Any—

(a) conveyance, assignation, instrument, discharge, writing or deed relating solely to the estate of a debtor which has been or may be sequestrated, under either this or any former Act, being estate which after the execution of the document in question is and remains the property of the debtor, for the benefit of the debtor's creditors, or of the trustee in the sequestration,

(b) discharge to the debtor,

(c) deed, assignation, instrument, or writing for reinvesting the debtor in the estate,

(d) article of roup or sale, or submission,

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(e) other instrument or writing whatsoever relating solely to the estate of the debtor, and

(f) other deed or writing forming part of the proceedings ordered under such sequestration,

is exempt from all stamp duties or other Government duty.

Commencement Information
I328 Sch. 7 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

SCHEDULE 8

(introduced by section 234(1))

MODIFICATION OF ENACTMENTS

Judicial Factors (Scotland) Act 1889

1 In section 11A(2) of the Judicial Factors (Scotland) Act 1889 (application for judicial factor on estate of person deceased), for the words "73(2) of the Bankruptcy (Scotland) Act 1985, section 51" there is substituted " 228(5) of the Bankruptcy (Scotland) Act 2016, section 129 ".

Commencement Information
I329 Sch. 8 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Sheriff Courts (Scotland) Act 1907

2 In section 34 of the Sheriff Courts (Scotland) Act 1907 (removings), for the words "1856" there is substituted " 1985 or 2016 ".

Commencement Information
I330 Sch. 8 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Conveyancing (Scotland) Act 1924

3 In section 44(4)(c) (limitation of effect of entries in the Register of Inhibitions)—

(a) after the words "1985", where they first occur, there is inserted " or the Bankruptcy (Scotland) Act 2016 ", and

(b) in paragraph (b)—

(i) after the words "1985" there is inserted " or (1)(a) of section 26 of the Bankruptcy (Scotland) Act 2016 ", and

(ii) for the words "that section" there is substituted " the said section 14 or (4) of the said section 26 ".

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I331 Sch. 8 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Administration of Justice Act 1956

4 In section 47G of the Administration of Justice Act 1956 (ranking of arresting creditor of demise charterer in sequestration or winding up of owner), for subsection (3) there is substituted—

"(3) Subsections (6) to (8) of section 24 of the Bankruptcy (Scotland) Act 2016 (further provision as regards the effect of sequestration on diligence) and, in so far as applying and modifying those subsections, section 185(1)(a) and (2) of the Insolvency Act 1986 (application of sequestration provisions relating to diligence on winding up) shall apply to such an arrestment as they apply to any other arrestment.".

Commencement Information
I332 Sch. 8 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Conveyancing and Feudal Reform (Scotland) Act 1970

5 In section 19(3) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (calling up of standard security), for the words "1913" there is substituted " 2016 ".

Commencement Information
I333 Sch. 8 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Prescription and Limitation (Scotland) Act 1973

6 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.

(2) In section 9(1) (definition of "relevant claim" for purposes of sections 6, 7 and 8 of the Act)—

(a) in paragraph (b), for the words "22 or 48 of the Bankruptcy (Scotland) Act 1985" there is substituted " 46 or 122 of the Bankruptcy (Scotland) Act 2016 ", and

(b) in paragraph (c), for the words "5(2)(c) of the Bankruptcy (Scotland) Act 1985" there is substituted " 228(1) of the Bankruptcy (Scotland) Act 2016 ".

(3) In section 22A(3) (10 years' prescription of obligations), in paragraph (b) of the definition of "relevant claim", for the words "22 or 48 of the Bankruptcy (Scotland) Act 1985" there is substituted " 46 or 122 of the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I334 Sch. 8 para. 6 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Local Government (Scotland) Act 1973

7 In section 31 of the Local Government (Scotland) Act 1973 (disqualification for nomination, election and holding office as member of local authority)—

(a) in subsection (2)(b), for the words "1985" there is substituted " 2016 ", and

(b) in subsection (3B)(a), for the words "56A of the Bankruptcy (Scotland) Act 1985" there is substituted " 155 of the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I335 Sch. 8 para. 7 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Education (Scotland) Act 1980

8 In section 73B(12) of the Education (Scotland) Act 1980 (regulations relating to student loans), for the words "54, 54A or 54C of the Bankruptcy (Scotland) Act 1985 or on an order being made under paragraph 11 of Schedule 4 to that Act" there is substituted " 137, 138 or 140 of the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I336 Sch. 8 para. 8 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Family Law (Scotland) Act 1985

9 (1) The Family Law (Scotland) Act 1985 is amended as follows.

(2) In section 14(5)(b) (incidental orders), for the words "41 of the Bankruptcy (Scotland) Act 1985" there is substituted " 114 of the Bankruptcy (Scotland) Act 2016 ".

(3) In section 16(3)(b) (agreements on financial provision), for the words "10(5) of the Bankruptcy (Scotland) Act 1985" there is substituted " 17(7) of the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I337 Sch. 8 para. 9 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Legal Aid (Scotland) Act 1986

10 In Part 2 of schedule 2 of the Legal Aid (Scotland) Act 1986 (civil legal aid: excepted proceedings), in paragraph 3(d), for the words "5(2)(a) of the Bankruptcy (Scotland) Act 1985" there is substituted " 2(1)(a) of the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I338 Sch. 8 para. 10 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Debtors (Scotland) Act 1987

11 (1) The Debtors (Scotland) Act 1987 is amended as follows.

(2) In section 9(10)(b) (effect of time to pay order on diligence), for the words "7 of the Bankruptcy (Scotland) Act 1985" there is substituted " 16 of the Bankruptcy (Scotland) Act 2016 ".

(3) In section 13(2) (saving of creditor's rights and remedies), for the words "24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985" there is substituted " 1 of schedule 7 of the Bankruptcy (Scotland) Act 2016 ".

(4) In section 66 (recall and variation of conjoined arrestment order)—

(a) in subsection (2)(e), for the words "13 of the Bankruptcy (Scotland) Act 1985 or the permanent" there is substituted " 55 of the Bankruptcy (Scotland) Act 2016 or the ", and

(b) in subsection (7), the words "the permanent" are omitted.

(5) In section 67 (equalisation of diligences not to apply), for the words "24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985" there is substituted " 1 of schedule 7 of the Bankruptcy (Scotland) Act 2016 ".

(6) In section 72(5) (effect of sequestration on diligence against earnings), for the words "12(4) of the Bankruptcy (Scotland) Act 1985" there is substituted " 22(7) of the Bankruptcy (Scotland) Act 2016 ".

(7) In section 93(4) (recovery from debtor of expenses of certain diligences)—

(a) in paragraph (b), for the words "1985" there is substituted " 2016 ", and

(b) in paragraph (f), for the words "Schedule 5 to the Bankruptcy (Scotland) Act 1985" there is substituted " schedule 4 of the Bankruptcy (Scotland) Act 2016 ".

Commencement Information

I339 Sch. 8 para. 11 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Agricultural Holdings (Scotland) Act 1991

12 (1) The Agricultural Holdings (Scotland) Act 1991 is amended as follows.

(2) In section 21(6) (notice to quit and notice of intention to quit), after the words "under the" there is inserted " Bankruptcy (Scotland) Act 2016, the ".

(3) In section 22(2)(f) (restrictions on operation of notices to quit), for the words "7 of the Bankruptcy (Scotland) Act 1985" there is substituted " 16 of the Bankruptcy (Scotland) Act 2016 ".

(4) In section 41(3)(b) (direction by Land Court that holding be treated as market garden), for the words "7 of the Bankruptcy (Scotland) Act 1985" there is substituted " 16 of the Bankruptcy (Scotland) Act 2016 ".

(5) In section 85(1) (interpretation), in the definition of—

(a) "landlord", for the words from ", tutor" to the end there is substituted " or tutor of a landlord or the trustee or interim trustee in the sequestration of a landlord's estate; ", and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) "tenant", for the words from ", curator" to the end there is substituted " or curator bonis of a tenant or the trustee or interim trustee in the sequestration of a tenant's estate; ".

Commencement Information
I340 Sch. 8 para. 12 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Crofters (Scotland) Act 1993

13 In paragraph 10 of schedule 2 of the Crofters (Scotland) Act 1993 (the statutory conditions), for the words "1985" there is substituted " 2016 ".

Commencement Information
I341 Sch. 8 para. 13 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Proceeds of Crime (Scotland) Act 1995

14 In paragraph 2(1)(j) of schedule 1 of the Proceeds of Crime (Scotland) Act 1995 (administrators), for the words "74 of the Bankruptcy (Scotland) Act 1985" there is substituted " 229 of the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I342 Sch. 8 para. 14 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Education (Scotland) Act 1996

15 In paragraph 4 of schedule 1 of the Education (Scotland) Act 1996 (the Scottish Qualifications Authority), in sub-paragraph (2)(b), for the words "1985" there is substituted " 2016 ".

Commencement Information
I343 Sch. 8 para. 15 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Adults with Incapacity (Scotland) Act 2000

16 In section 87(4) of the Adults with Incapacity (Scotland) Act 2000 (interpretation), for the words "5 to the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted " 4 of the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I344 Sch. 8 para. 16 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

International Criminal Court (Scotland) Act 2001

17 (1) Schedule 6 of the International Criminal Court (Scotland) Act 2001 (freezing orders in respect of property liable to forfeiture) is amended as follows.

(2) In paragraph 8 (sequestration)—

(a) in sub-paragraph (1)(a), for the words "12(4) of the 1985" there is substituted " 22(7) of the 2016 ",

(b) in sub-paragraph (2), for the words "22 of that Act or the permanent trustee in accordance with section 48" there is substituted " 46 of that Act or the trustee in the sequestration in accordance with section 122 ",

(c) in sub-paragraph (2)(a), for the words "31(8) of the 1985" there is substituted " 79(1) of the 2016 ",

(d) in sub-paragraph (2)(b), for the words "32A" there is substituted " 90 ",

(e) in sub-paragraph (2)(c), for the words "31(10) or 32(6) of that Act vests in the permanent trustee" there is substituted " 79(4) or 86(5) of that Act vests in the trustee in the sequestration ",

(f) in sub-paragraph (3), for the words "1985" there is substituted " 2016 ",

(g) in sub-paragraph (4), for the words "2(5) of the 1985" there is substituted " 54(1) of the 2016 ", and

(h) sub-paragraph (5) is omitted.

(3) In paragraph 12 (interpretation)—

(a) the definition of "the 1985 Act" is omitted, and

(b) after the definition of "the 1986 Act" there is inserted—

""the 2016 Act" means the Bankruptcy (Scotland) Act 2016;".

Commencement Information

I345 Sch. 8 para. 17 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Debt Arrangement and Attachment (Scotland) Act 2002

18 (1) The Debt Arrangement and Attachment (Scotland) Act 2002 is amended as follows.

(2) In section 9Q(3) (recovery of expenses of interim attachment)—

(a) in paragraph (b), for the words "1985 (c.66)" there is substituted " 2016 ", and

(b) in paragraph (f), for the words "5 to the 1985" there is substituted " 4 of the 2016 ".

(3) In section 31(1) (disposal of proceeds of auction), for the words "37 (effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted " 24 (further provision as regards the effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 2016 ".

(4) In section 40(3) (recovery from debtor of expenses of attachment)—

(a) in paragraph (b), for the words "1985 (c.66)" there is substituted " 2016 ", and

(b) in paragraph (f), for the words "5 to the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted " 4 of the Bankruptcy (Scotland) Act 2016 ".

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I346 Sch. 8 para. 18 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Agricultural Holdings (Scotland) Act 2003

19 In section 93 of the Agricultural Holdings (Scotland) Act 2003 (interpretation), in the definition of—

(a) "landlord"—

(i) after the word "guardian" there is inserted " or ", and

(ii) for the words from "or permanent" to the end there is substituted " of a landlord or the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of a landlord's estate; ".

(b) "tenant"—

(i) after the word "guardian" there is inserted " or ", and

(ii) for the words from "or permanent" to the end there is substituted " of a tenant or the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of a tenant's estate; ".

Commencement Information
I347 Sch. 8 para. 19 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Fire (Scotland) Act 2005

20 In schedule 1A of the Fire (Scotland) Act 2005 (the Scottish Fire and Rescue Service), in paragraph 5(2)(c), after the words "(c.66)" there is inserted " , the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I348 Sch. 8 para. 20 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Further and Higher Education (Scotland) Act 2005

21 In schedule 2B of the Further and Higher Education (Scotland) Act 2005 (regional boards)—

(a) in paragraph 6(2)(c), after the words "1985" there is inserted " , the Bankruptcy (Scotland) Act 2016 ", and

(b) in paragraph 6(2)(d), for the words "under either of those Acts" there is substituted " by virtue of paragraph 7 of schedule 4A of that Act of 1986 ".

Commencement Information
I349 Sch. 8 para. 21 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Charities and Trustee Investment (Scotland) Act 2005

22 In section 70(3)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (disqualification: supplementary)—

(a) in sub-paragraph (i), for the words "54, 54A, 54C or 75(4) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted " 137, 138 or 140 of the Bankruptcy (Scotland) Act 2016 ", and

(b) sub-paragraph (ii) is omitted.

Commencement Information

I350 Sch. 8 para. 22 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Licensing (Scotland) Act 2005

23 In section 28(8) of the Licensing (Scotland) Act 2005 (period of effect of premises licence), for the words "1985 (c.66)" there is substituted " 2016 ".

Commencement Information

I351 Sch. 8 para. 23 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Bankruptcy and Diligence etc. (Scotland) Act 2007

24 (1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.

(2) After section 127 there is inserted—

"**127A Amendment of Bankruptcy (Scotland) Act 2016**

(1) The Bankruptcy (Scotland) Act 2016 is amended as follows.

(2) After section 23 there is inserted—

"**23A Effect of sequestration on land attachment**

(1) No land attachment of the heritable property of a debtor, created within the 6 months before the date of sequestration (whether or not subsisting at that date), is effectual to create a preference for the creditor.

(2) A creditor who creates a land attachment within the 6 months mentioned in subsection (1) is entitled to payment, out of the attached land or out of the proceeds of 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 serving the charge for payment, registering the notice of land attachment, serving a copy of that notice, and registering certificate of service of that copy.

(3) A notice of land attachment—

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) registered on or after the date of sequestration against land forming part of the debtor's heritable estate (including any estate vesting under section 86(5) in the trustee in the sequestration) is of no effect,

(b) registered before that date and in relation to which, by that date, no land attachment is created is of no effect.

(4) It is not competent for a creditor to insist in a land attachment—

(a) created over the debtor's heritable estate before the beginning of the 6 months mentioned in subsection (1), and

(b) which subsists on the date of sequestration.

(5) But subsection (4) is subject to subsections (6) to (9).

(6) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—

(a) the trustee must concur in and ratify the deed implementing that contract, and

(b) the appointed person must account for and pay to the trustee in the sequestration any balance of the proceeds of sale (being the balance 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 (disbursement of proceeds of sale of attached land).

(7) Subsection (6) does not apply where the deed implementing the contract is not registered within 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 26, in the Register of Inhibitions, or

(b) the certified copy of the determination of AiB awarding sequestration is recorded, under subsection (2) of that section, in that register.

(8) Where a decree of foreclosure has been granted but an extract of it has not been registered, the creditor may proceed to complete title to the land by registering that extract provided that the creditor does so before the expiry of the days mentioned in subsection (7).

(9) The Scottish Ministers may, as they think fit, prescribe a period in substitution for the days mentioned in subsection (7); and a different period may be prescribed for the purposes of subsection (8) than is prescribed for the purposes of subsection (7).

(10) Expressions used in this section which also occur in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 have the same meanings in this section as they have in that Chapter.”.

(3) In section 25 (effect of sequestration on diligence: estate of deceased debtor) —

(a) in subsection (1), for the words “Section 24 applies” there is substituted “ Sections 23A(1) and (2) and 24 apply ” and

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in subsection (3), the words "to raise or insist in an adjudication against the estate of a debtor (including any estate vesting under section 86(5) or" are omitted.".

(3) In section 195(4) (recovery from debtor of expenses of money attachment)—

(a) in paragraph (a), for the words "1985 Act" there is substituted " Bankruptcy (Scotland) Act 2016 ", and

(b) in paragraph (e), for the words "the 1985 Act" there is substituted " that Act of 2016 ".

Commencement Information

I352 Sch. 8 para. 24 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Criminal Proceedings etc. (Reform) (Scotland) Act 2007

25 In section 73(2)(b) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (disqualification where sequestration or bankruptcy), for the words "1985 (c.66)" there is substituted " 2016 ".

Commencement Information

I353 Sch. 8 para. 25 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Legal Services (Scotland) Act 2010

26 (1) The Legal Services (Scotland) Act 2010 is amended as follows.

(2) In section 58(3)(a) (conditions for disqualification)—

(a) the words "or undertaking" are omitted, and

(b) after the words "1985," there is inserted " the Bankruptcy (Scotland) Act 2016, ".

(3) In section 64(3)(b) (factors as to fitness)—

(a) the words "or undertaking" are omitted, and

(b) after the words "1985," there is inserted " the Bankruptcy (Scotland) Act 2016, ".

Commencement Information

I354 Sch. 8 para. 26 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Housing (Scotland) Act 2010

27 (1) The Housing (Scotland) Act 2010 is amended as follows.

(2) In section 60(3) (power to remove officers), for the words "has the meaning given by the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted " is to be construed in accordance with section 16 of the Bankruptcy (Scotland) Act 2016 ".

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In section 165 (interpretation), in paragraph (c)(i) of the definition of "undischarged bankrupt", after the words "1985 (c.66)" there is inserted " , the Bankruptcy (Scotland) Act 2016 ".

Commencement Information
I355 Sch. 8 para. 27 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Food (Scotland) Act 2015

28 In section 58(1) of the Food (Scotland) Act 2015 (general interpretation), in the definition of "undischarged bankrupt"—

(a) in paragraph (c), after the words "1985" there is inserted " , the Bankruptcy (Scotland) Act 2016 ", and

(b) in paragraph (d), for the words "either of those Acts" there is substituted " that Act of 1985 or that Act of 1986 ".

Commencement Information
I356 Sch. 8 para. 28 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

SCHEDULE 9

(introduced by section 234(2))

REPEALS AND REVOCATIONS

PART 1

REPEALS

Commencement Information
I357 Sch. 9 Pt. 1 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Enactment	***Extent of repeal***
Courts of Law Fees (Scotland) Act 1895	Section 4.
Bankruptcy (Scotland) Act 1985	The whole Act.
Debtors (Scotland) Act 1987	In schedule 6, paragraphs 27 and 28.
Bankruptcy (Scotland) Act 1993	The whole Act.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995	In schedule 3, paragraph 15(4). In schedule 4, paragraph 58.
Housing (Scotland) Act 2001	In schedule 10, paragraph 10.

Status: *Point in time view as at 17/08/2022.*
Changes to legislation: *Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Water Industry (Scotland) Act 2002	In schedule 7, paragraph 16.
Debt Arrangement and Attachment (Scotland) Act 2002	In schedule 3, paragraph 15.
Bankruptcy and Diligence etc. (Scotland) Act 2007	Sections 1 and 2. Sections 5 to 32. Sections 35 and 36. Schedule 1. In schedule 5, paragraph 13.
Home Owner and Debtor Protection (Scotland) Act 2010	Part 2.
Bankruptcy and Debt Advice (Scotland) Act 2014	The whole Act.

PART 2

REVOCATIONS

Commencement Information
I358 Sch. 9 Pt. 2 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

Enactment	***Extent of revocation***
Debt Arrangement Scheme (Scotland) Regulations 2004 (S.S.I. 2004/468)	In schedule 3, paragraphs 1 and 2.
Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 (S.S.I. 2008/81)	Regulation 4.
Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82)	Regulation 8.
Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141)	In schedule 2, paragraphs 1 and 2.
Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013 No. 318)	The whole instrument.
Common Financial Tool etc. (Scotland) Regulations 2014 (S.S.I. 2014/290	Regulations 6 to 10.
Common Financial Tool etc. (Scotland) Amendment Regulations (S.S.I. 2015/149)	In regulation 4, paragraphs (5) to (7).

Status:
Point in time view as at 17/08/2022.

Changes to legislation:
Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.