

Bankruptcy (Scotland) Act 2016 2016 asp 21

BANKRUPTCY (SCOTLAND) ACT 2016

PART 1

APPLICATION OR PETITION FOR SEQUESTRATION

Applications and petitions

- 1 Sequestration
- 2 Sequestration of estate of living debtor
- 3 Debt advice and information package
- 4 Money advice
- 5 Sequestration of estate of deceased debtor
- 6 Sequestration of other estates
- 7 Qualified creditor and qualified creditors
- 8 Debtor applications: general
- 9 Certificate for sequestration
- 10 Death or withdrawal
- 11 Debtor application: provision of information
- 12 Petition for sequestration of estate: provision of information
- 13 Further provisions relating to presentation of petitions
- 14 Further provisions relating to debtor applications

Jurisdiction

15 Jurisdiction

Meaning of "apparent insolvency"

16 Meaning of "apparent insolvency"

Concurrent proceedings

- 17 Concurrent proceedings for sequestration or analogous remedy
- 18 Powers in relation to concurrent proceedings

Creditor's oath

19 Creditor's oath

PART 2

SEQUESTRATION: AWARD AND RECALL

Incomplete or inappropriate debtor applications

- 20 Debtor application: incomplete application
- 21 Refusal of debtor application: inappropriate application

Award of sequestration

- 22 When sequestration is awarded
- 23 Circumstances in which sequestration is not to be awarded in pursuance of section 22(5)
- 24 Effect of sequestration on diligence generally
- 25 Effect of sequestration on diligence: estate of deceased debtor
- 26 Registration of warrant or determination of debtor application
- 27 Further matters in relation to award of sequestration
- 28 Benefit from another estate

Recall of sequestration

- 29 Petitions for recall of sequestration
- 30 Recall of sequestration by sheriff
- 31 Application to Accountant in Bankruptcy for recall of sequestration
- 32 Application under section 31: further procedure
- 33 Determination where amount of outlays and remuneration not agreed
- 34 Recall of sequestration by Accountant in Bankruptcy
- 35 Recall where Accountant in Bankruptcy trustee
- 36 Application for recall: remit to sheriff
- 37 Recall of sequestration by Accountant in Bankruptcy: review and appeal
- 38 Effect of recall of sequestration

PART 3

INITIAL STAGES OF SEQUESTRATION, STATUTORY MEETING AND TRUSTEE VOTE

Initial stages

- 39 Interim preservation of estate
- 40 Offences in relation to interim preservation of estate
- 41 Statement of assets and liabilities etc.
- 42 Duties on receipt of list of assets and liabilities

Statutory meeting

- 43 Statutory meeting
- 44 Calling of statutory meeting
- 45 Procedure where no statutory meeting called
- 46 Submission of claims for voting purposes
- 47 Offences in relation to submission of claims for voting purposes
- 48 Proceedings before trustee vote

Trustee vote

49 Trustee vote

PART 4

TRUSTEES AND COMMISSIONERS

Trustees

- 50 Functions of trustee
- 51 Appointment of trustee
- 52 Application to Accountant in Bankruptcy by trustee for a direction

Interim trustees

- 53 Functions of interim trustee
- 54 Appointment of interim trustee
- 55 Removal, resignation etc. of interim trustee
- 56 Termination of interim trustee's functions where not appointed trustee
- 57 Appeal or review by virtue of section 56
- 58 Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed trustee
- 59 Review or appeal by virtue of section 58

Replacement trustees

- 60 Appointment of replacement trustee
- 61 Procedure in application to Accountant in Bankruptcy under section 60
- 62 Procedure in application under section 60, or appeal under section 61, to sheriff
- 63 Termination of original trustee's functions
- 64 Accountant in Bankruptcy's intromissions in capacity of original trustee
- 65 Discharge of original trustee
- 66 Replacement of trustee acting in more than one sequestration
- 67 Further provision as regards replacement under section 66
- 68 Review of determination or appointment under section 66

Resignation or death of trustee

69 Resignation or death of trustee

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
- 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
- 72 Removal of trustee where trustee is unable to act or should no longer continue to act: general
- 73 Removal of trustee where trustee is unable to act or should no longer continue to act: review, appeal and election of new trustee
- Figure 74 Election or appointment of new trustee by virtue of section 71(6) or 73(1)
- 75 Further provision as regards election or appointment of new trustee

Commissioners

- 76 Commissioners
- 77 Election, resignation and removal of commissioners

PART 5

VESTING ETC.

Vesting

- 78 Vesting of estate at date of sequestration
- 79 Provision supplementary to section 78 and interpretation of Part 5
- 80 Property subject to restraint order
- 81 Property released from detention
- 82 Property in respect of which receivership or administration order is made
- 83 Property in respect of which realisation order is made
- 84 Property subject to certain orders where confiscation order discharged or quashed
- 85 Vesting of income received by debtor after sequestration
- 86 Further provision as regards vesting of estate
- 87 Dealings and circumstances of debtor after sequestration

Limitation on vesting

88 Limitation on vesting

PART 6

DEBTOR'S CONTRIBUTION

Common financial tool

89 Assessment of debtor's contribution

Payments by debtor following sequestration

- 90 Debtor contribution order: general
- 91 Debtor contribution order: payment period and intervals
- 92 Debtor contribution order: review and appeal
- 93 Effect of debtor contribution order
- 94 Deductions from debtor's earnings and other income
- 95 Variation and removal of debtor contribution order by trustee
- 96 Payment break
- 97 Sections 95 and 96: review and appeal

PART 7

SAFEGUARDING INTERESTS OF CREDITORS

Gratuitous alienations and unfair preferences

- 98 Gratuitous alienations
- 99 Unfair preferences

Recall of certain orders

100 Recall of order for payment of capital sum on divorce or on dissolution of civil partnership

Excessive contributions

- 101 Recovery of excessive pension contributions
- 102 Orders under section 101
- 103 Orders under section 101: supplementary
- 104 Excessive contributions in pension-sharing cases: general
- 105 Excessive contributions in pension-sharing cases: recovery orders
- 106 Recovery orders: supplementary
- 107 References in Part 7 to "the 1889 Act" and to "the 1999 Act"

PART 8

ADMINISTRATION OF ESTATE BY TRUSTEE

General

- 108 Taking possession of estate by trustee
- 109 Management and realisation of estate

Contractual powers and money received

- 110 Contractual powers of trustee
- 111 Money received by trustee

Debtor's home

- 112 Debtor's family home
- 113 Power of trustee in relation to debtor's family home

Rights of spouse or civil partner

- 114 Protection of rights of spouse against arrangements intended to defeat them
- 115 Protection of rights of civil partner against arrangements intended to defeat them

Account of state of affairs

116 Debtor's account of state of affairs

Financial education for debtor

117 Financial education for debtor

PART 9

EXAMINATION OF DEBTOR

Private and public examination

- 118 Private examination
- 119 Public examination
- 120 Provisions ancillary to sections 118 and 119

Conduct of examination

121 Conduct of examination

PART 10

CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

Submission and adjudication of claims

- 122 Submission of claims to trustee
- 123 Evidence as to validity or amount of claim
- 124 False claims etc.
- 125 Further provision as to claims
- 126 Adjudication of claims: general
- 127 Adjudication of claims: review and appeal

Entitlement to vote and draw a dividend

128 Voting and drawing a dividend

Distribution

- 129 Priority in distribution
- 130 Accounting periods
- 131 Distribution in accordance with accounting periods

Procedure after end of accounting period

- 132 Submission of accounts and scheme of division
- 133 Audit of accounts and determination as to outlays and remuneration payable to trustee
- 134 Appeal against determination as to outlays and remuneration payable to trustee
- 135 Further provision as to procedure after end of accounting period
- 136 Procedure after end of accounting period where Accountant in Bankruptcy is trustee

PART 11

DISCHARGE

Discharge of debtor

- 137 Discharge of debtor where Accountant in Bankruptcy not trustee
- 138 Discharge of debtor where Accountant in Bankruptcy trustee
- 139 Discharge of debtor: review and appeal
- 140 Discharge of debtor to whom section 2(2) applies
- 141 Deferral of discharge where debtor cannot be traced
- 142 Debtor not traced: new trustee
- 143 Debtor not traced: subsequent debtor contact
- 144 Subsequent debtor contact: review and appeal
- 145 Effect of discharge under section 137, 138 or 140
- 146 Discharge under section 140: conditions
- 147 Section 146: sanctions

Discharge of trustee

- 148 Discharge of trustee
- 149 Further provision as regards discharge of trustee
- 150 Unclaimed dividends
- 151 Discharge of Accountant in Bankruptcy

PART 12

ASSETS DISCOVERED AFTER DISCHARGE OF TRUSTEE

- 152 Assets discovered after discharge of trustee: appointment of trustee
- 153 Assets discovered after discharge of trustee: notice
- 154 Assets discovered after discharge of trustee: appeal

PART 13

BANKRUPTCY RESTRICTIONS ORDERS AND INTERIM BANKRUPTCY RESTRICTIONS ORDERS

Bankruptcy restrictions orders

- 155 Bankruptcy restrictions order
- 156 Grounds for making bankruptcy restrictions order
- 157 Bankruptcy restrictions order: application of section 218(13)
- 158 Timing for making a bankruptcy restrictions order
- 159 Duration of bankruptcy restrictions order and application for revocation or variation

Interim bankruptcy restrictions orders

160 Interim bankruptcy restrictions orders

Effect of recall of sequestration

161 Bankruptcy restrictions orders and interim bankruptcy restrictions orders: effect of recall of sequestration

PART 14

VOLUNTARY TRUST DEEDS FOR CREDITORS

General

162 Voluntary trust deeds for creditors

Protected trust deeds: protected status

163 Protected status: general

Conditions for protected status

- 164 Protected status: the debtor
- 165 Protected status: the trustee
- 166 Exclusion of a secured creditor from trust deed
- 167 Statements in and advice regarding trust deed
- 168 Payment of debtor's contribution
- 169 Notice in register of insolvencies
- 170 Documents to be sent to creditors

Registration for protected status

171 Registration for protected status

Effect of protected status etc.

- 172 Effect of protected status: general
- 173 Effect of protected status on diligence against earnings
- 174 Deductions by virtue of protected trust deed from debtor's earnings
- 175 Agreement in respect of debtor's heritable property
- 176 Dividend payments
- 177 Sequestration petition by qualified creditor
- 178 Creditor's application as respects intromissions of trustee

Administration, accounting and discharge

- 179 Directions to trustee under protected trust deed
- 180 Information and notification obligations of trustee under protected trust deed
- 181 Administration of trust under protected trust deed
- 182 Retention of documents by trustee under protected trust deed
- 183 Remuneration payable to trustee under protected trust deed
- 184 Protected trust deed: discharge of debtor
- 185 Student loans
- 186 Protected trust deed: discharge of trustee
- 187 Electronic delivery of notices etc. under this Part

Appeals and directions

- 188 Protected trust deed: appeal
- 189 Protected trust deed: sheriff's direction

Application for conversion to sequestration

- 190 Application for conversion to sequestration
- 191 Contents of affidavit required under section 190(2)
- 192 Powers of Accountant in Bankruptcy on application for conversion to sequestration

Part 14: general

- 193 Interpretation of Part 14
- 194 Regulations modifying Part 14

PART 15

MORATORIUM ON DILIGENCE

- 195 Moratorium on diligence: notice of intention to make debtor application under section 2(1)(a)
- 196 Moratorium on diligence: notice of intention to make debtor application under section 6
- 197 Moratorium on diligence following notice under section 195(1) or 196(1)
- 198 Period of moratorium

PART 16

ACCOUNTANT IN BANKRUPTCY

Appointment

199 Accountant in Bankruptcy

Functions

- 200 Supervisory functions of Accountant in Bankruptcy
- 201 Performance of certain functions of Accountant in Bankruptcy
- 202 Further duty of Accountant in Bankruptcy

Directions to Accountant in Bankruptcy

203 Directions to Accountant in Bankruptcy

Conduct of proceedings in the sheriff court

204 Conduct of proceedings in the sheriff court

Fees for Accountant in Bankruptcy

205 Fees for Accountant in Bankruptcy

PART 17

MISCELLANEOUS

- 206 Liabilities and rights of co-obligants
- 207 Member State liquidator deemed creditor
- 208 Trustee's duty to provide certain notices and copies of documents to member State liquidator
- 209 Extortionate credit transactions
- 210 Sederunt book and other documents
- 211 Power of court to cure defects in procedure
- 212 Power of Accountant in Bankruptcy to cure defects in procedure
- 213 Decision under section 212(1): review
- 214 Review of decision by Accountant in Bankruptcy: grounds of appeal
- 215 Debtor to co-operate with trustee
- 216 Arbitration and compromise
- 217 Meetings of creditors and commissioners
- 218 General offences by debtor etc.
- 219 General offences: supplementary and penalties
- 220 Summary proceedings
- 221 Outlays of insolvency practitioner in actings as interim trustee or trustee
- 222 Supplies by utilities
- 223 Disqualification provisions: power to make regulations
- 224 Regulations: applications to Accountant in Bankruptcy etc.

PART 18

GENERAL

- 225 Regulations: general
- 226 Modification of regulation making powers
- 227 Variation of references to time, money etc.

- 228 Interpretation
- 229 Meaning of "associate"
- 230 "Associates": regulations for the purposes of section 229
- 231 Proceedings under EC insolvency proceedings regulation: modified definition of "estate"
- 232 Crown application
- 233 Re-enactment
- 234 Modifications, repeals, savings, revocations and transitional provisions
- 235 Continuity of the law
- 236 Sequestrations to which this Act applies
- 237 Commencement
- 238 Short title

SCHEDULE 1 — DEBTOR TO WHOM SECTION 2(2) APPLIES: APPLICATION OF ACT

- 1 Modification of certain provisions of Act
- 2 Accountant in Bankruptcy's duty to consider whether paragraph 1 should cease to have effect
- 3 Procedure where Accountant in Bankruptcy considers paragraph 1 should cease to have effect
- 4 Debtor's right of appeal against decision under paragraph 3
- 5 Decision that paragraph 1 ceases to have effect: modification of certain provisions of Act

SCHEDULE 2 — DETERMINATION OF AMOUNT OF CREDITOR'S CLAIM

- 1 Amount which may be claimed generally
- 2 Claims for aliment and for periodical allowance on divorce or on dissolution of civil partnership
- 3 Debts depending on contingency
- 4 Secured debts
- 5 Valuation of claims against partners for debts of the partnership

SCHEDULE 3 — PREFERRED DEBTS

- PART 1 LIST OF PREFERRED DEBTS
- 1 Contributions to occupational pension schemes etc.
- 2 Remuneration of employees etc.
- 3 So much of any amount which— (a) is ordered, whether...
- 4 Levies on coal and steel production
- 5 Debts owed to the Financial Services Compensation Scheme
- 6 Deposits covered by Financial Services Compensation Scheme
- 7 Other deposits
- 8 An amount owed at the relevant date by the debtor...
- PART 2 INTERPRETATION OF PART 1
- 9 Meaning of "the relevant date"
- 10 Amounts payable by way of remuneration
- 11 Meaning of "prescribed"
- 12 Meaning of "scheme manager"
- 13 Meaning of "eligible deposit"
- 14 Transitional provisions

SCHEDULE 4 — VOLUNTARY TRUST DEEDS FOR CREDITORS

- 1 Remuneration of trustee
- 2 Accountant in Bankruptcy's power to carry out audit
- 3 Registration of notice of inhibition
- 4 Lodging of claim to bar effect of limitation of actions
- 5 Valuation of claims

SCHEDULE 5 — INFORMATION TO BE INCLUDED IN THE SEDERUNT BOOK

- 1 A copy of the debtor application made under section 2(1)(a)....
- 2 A copy of the petition presented under section 2(1)(b).
- 3 Where the trustee is AiB, a copy of the statement...
- 4 A copy of the award of sequestration under section 22(1)...
- 5 A copy of the warrant to cite the debtor granted...
- 6 Where the trustee is not AiB— (a) the audited accounts...
- 7 Where the trustee is AiB— (a) the accounts audited by...
- 8 Where AiB is appointed interim trustee and the sheriff awards...
- 9 A copy of— (a) an order— (i) recalling or refusing...
- 10 A copy of an order under section 114(3)(b) or 115(3)(b)...
- 11 Where the trustee is a replacement trustee appointed under section...
- 12 Where the trustee is not AiB, a copy of a...
- 13 A copy of a notice given under section 44(3).
- 14 Where the trustee is not AiB, a copy of a...
- 15 Where the trustee is a replacement trustee appointed under section...
- 16 A copy of an initial proposal for the debtor's contribution...
- 17 A copy of a debtor contribution order applying to the...
- 18 A copy of a decree issued under section 98 affecting...
- 19 A copy of a decree of recall issued following an...
- 20 A copy of a decree under section 99 affecting the...
- 21 The inventory and valuation of the estate, made up and...
- 22 A copy of an account given by the debtor under...
- 23 The debtor's deposition at an examination subscribed under section 121(6)....
- A copy of the record of an examination sent to...
- 25 An appropriate entry in relation to the production of any...
- 26 Where the trustee accepts or rejects a claim under section...
- 27 A copy of a decision of AiB under subsection (4)(b)...
- 28 An agreement or determination in respect of the accounting period...
- 29 Where the trustee is not AiB, the audited accounts, the...
- 30 A copy of the certificate of discharge given to the...
- 31 A copy of the certificate deferring discharge where the debtor...
- 32 Where AiB has acted as trustee, after making the final...
- 33 Where AiB has acted as trustee and is discharged from...
- 34 A decision of the court under section 211 and of...
- 35 A copy of a decree arbitral or, as the case...
- 36 The minutes of the meeting referred to in paragraphs 8...
- 37 A copy of the minutes of a meeting sent to...
- 38 Where a meeting of commissioners is called in accordance with...
- 39 A copy of any decision (including any determination, direction, award,...
- 40 A copy of any decree, interlocutory decree, direction or order...

SCHEDULE 6 — MEETINGS OF CREDITORS AND COMMISSIONERS

PART 1 — MEETINGS OF CREDITORS OTHER THAN THE STATUTORY MEETING

- 1 Calling of meeting
- 2 Any such meeting must be held not later than 28...
- 3 The trustee, or a commissioner who has given notice to...
- 4 The trustee, calling a meeting under paragraph 1 or 3,...
- 5 Where— (a) a requirement has been made under paragraph 1,...
- 6 AiB, calling a meeting under paragraph 5, is no fewer...
- 7 It is not necessary to notify under paragraph 4 or...
- 8 Role of trustee at meeting
- 9 If no person is elected in pursuance of paragraph 8,...
- 10 The trustee is to arrange for a record to be...
- 11 Appeals
 - PART 2 ALL MEETINGS OF CREDITORS
- 12 Validity of proceedings
- 13 Locus of meeting
- 14 Mandatories
- 15 A creditor must lodge with the trustee, before the commencement...
- 16 Any reference in paragraph 8, or in the following provisions...
- 17 Quorum
- 18 Voting at meeting
- 19 Objections by creditors
- 20 A person aggrieved by the determination of the person chairing...
- 21 If the person chairing the meeting is in doubt as...
- 22 Adjournment of meeting
- 23 The person chairing the meeting may, with the consent of...
- 24 Any adjourned meeting must be held at the same time...
- 25 Minutes of meeting
 - PART 3 MEETINGS OF COMMISSIONERS
- 26 The trustee— (a) may call a meeting of commissioners at...
- 27 If the trustee fails to call a meeting of commissioners...
- 28 The trustee must give the commissioners at least 7 days'...
- 29 The trustee is to act as clerk at a meeting...
- 30 If the commissioners are considering the performance of the functions...
- 31 The quorum at a meeting of commissioners is one commissioner...
- 32 Any matter may be agreed by the commissioners without a...

SCHEDULE 7 — RE-ENACTMENT OF SECTIONS 10 AND 189 OF THE BANKRUPTCY (SCOTLAND) ACT 1913

- 1 Arrestments and attachments
- 2 Exemptions from stamp or other duties for conveyances, deeds etc. relating to sequestrated estates

SCHEDULE 8 — MODIFICATION OF ENACTMENTS

- 1 Judicial Factors (Scotland) Act 1889
- 2 Sheriff Courts (Scotland) Act 1907
- 3 Conveyancing (Scotland) Act 1924
- 4 Administration of Justice Act 1956
- 5 Conveyancing and Feudal Reform (Scotland) Act 1970
- 6 Prescription and Limitation (Scotland) Act 1973
- 7 Local Government (Scotland) Act 1973
- 8 Education (Scotland) Act 1980
- 9 Family Law (Scotland) Act 1985

- 10 Legal Aid (Scotland) Act 1986
- 11 Debtors (Scotland) Act 1987
- 12 Agricultural Holdings (Scotland) Act 1991
- 13 Crofters (Scotland) Act 1993
- 14 Proceeds of Crime (Scotland) Act 1995
- 15 Education (Scotland) Act 1996
- 16 Adults with Incapacity (Scotland) Act 2000
- 17 International Criminal Court (Scotland) Act 2001
- 18 Debt Arrangement and Attachment (Scotland) Act 2002
- 19 Agricultural Holdings (Scotland) Act 2003
- 20 Fire (Scotland) Act 2005
- 21 Further and Higher Education (Scotland) Act 2005
- 22 Charities and Trustee Investment (Scotland) Act 2005
- 23 Licensing (Scotland) Act 2005
- 24 Bankruptcy and Diligence etc. (Scotland) Act 2007
- 25 Criminal Proceedings etc. (Reform) (Scotland) Act 2007
- 26 Legal Services (Scotland) Act 2010
- 27 Housing (Scotland) Act 2010
- 28 Food (Scotland) Act 2015

SCHEDULE 9 — REPEALS AND REVOCATIONS

- PART 1 REPEALS
- PART 2 REVOCATIONS