



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### 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

II 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—
- (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,
    - (ii) a temporary administrator,
    - (iii) a member State <sup>[F1:insolvency practitioner]</sup> appointed in main proceedings, or
    - (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

*Status: Point in time view as at 23/07/2019.*

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- (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 £17,000 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.
- (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,
  - (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

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- (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).

#### Textual Amendments

- F1** Words in s. 2(1)(b)(iii) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **4(2)** (with reg. 9)

#### 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**

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#### 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,
- (b) on the petition of a qualified creditor, or qualified creditors, of the deceased debtor,
- (c) on the petition of a temporary administrator,
- (d) on the petition of a member State [<sup>F2</sup>insolvency practitioner] appointed in main proceedings, or
- (e) on the petition of a trustee acting under a trust deed.

#### Textual Amendments

**F2** Words in s. 5(d) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\), regs. 1, 4\(3\) \(with reg. 9\)](#)

#### 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.

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- (2) But it is not competent to sequester 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—
    - (i) a temporary administrator,
    - (ii) a member State [<sup>F3</sup>insolvency practitioner] appointed in main proceedings, or
    - (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—
    - (i) a temporary administrator,
    - (ii) a member State liquidator appointed in main proceedings,
    - (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—
    - (i) a temporary administrator,
    - (ii) a member State liquidator appointed in main proceedings, or
    - (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.

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- (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

- F3** Words in s. 6(3)(b)(ii) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **4(4)** (with reg. 9)

#### Modifications etc. (not altering text)

- C1** 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—

“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 £3,000 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 £3,000 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.

#### 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—

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- (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,
- 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

**18** 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

**19** S. 9 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

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## 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.
- (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 another member State, and
  - (b) whether or not the debtor possesses an establishment in the United Kingdom or in another member State.
- (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 another member State, and
  - (b) whether or not the debtor possessed an establishment in the United Kingdom or in another member State.
- (3) If, to the debtor's knowledge, there is a member State [<sup>F4</sup>insolvency practitioner] appointed in main proceedings in relation to the debtor, the debtor is, as soon as reasonably practicable, to send a copy of the debtor application to that member State [<sup>F4</sup>insolvency practitioner] .



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#### Textual Amendments

- F4** Words in s. 11(3) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **4(5)** (with reg. 9)

#### 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—
- whether or not the debtor's centre of main interests is situated in the United Kingdom or in another member State, and
  - whether or not the debtor possesses an establishment in the United Kingdom or in another member State.
- (2) If, to the petitioner's knowledge, there is a member State [<sup>F5</sup>insolvency practitioner] appointed in main proceedings in relation to the debtor, the petitioner is, as soon as reasonably practicable, to send a copy of the petition to that member State [<sup>F5</sup>insolvency practitioner] .

#### Textual Amendments

- F5** Words in s. 12(2) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **4(6)** (with reg. 9)

#### 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—
- 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
  - at any time by—
    - a trustee acting under a trust deed,
    - a temporary administrator, or
    - a member State [<sup>F6</sup>insolvency practitioner] appointed in main proceedings.
- (3) A petition for the sequestration of the estate of a limited partnership may be presented—

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- (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
  - (b) at any time by—
    - (i) a trustee acting under a trust deed,
    - (ii) a temporary administrator, or
    - (iii) a member State [<sup>F7</sup>insolvency practitioner] appointed in main proceedings.
- (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,
    - (ii) a trustee acting under a trust deed,
    - (iii) a temporary administrator, or
    - (iv) a member State [<sup>F8</sup>insolvency practitioner] appointed in main proceedings.
- (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

- F6** Words in s. 13(2)(b)(iii) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, 4(7) (with reg. 9)
- F7** Words in s. 13(3)(b)(iii) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, 4(7) (with reg. 9)
- F8** Words in s. 13(4)(b)(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(7) (with reg. 9)

#### 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).

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- (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](#)

### **[<sup>F9</sup>14A Main proceedings in Scotland: undertaking by trustee in respect of assets in another EU member State**

- (1) This section applies where a trustee in sequestration or acting under a protected trust deed in main proceedings proposes to give an undertaking under Article 36 of the EU insolvency proceedings regulation in respect of assets located in another member State.
- (2) In addition to the requirements as to form and content set out in Article 36 the proposed undertaking must contain—
  - (a) the heading “Proposed Undertaking under Article 36 of the EU Insolvency Regulation (2015/848)”,
  - (b) identification details for the main proceedings,
  - (c) identification and contact details for the trustee, and
  - (d) a description of the effect of the undertaking if approved.
- (3) The proposed undertaking must be delivered to all local creditors in the member State concerned of whose address the trustee is aware.
- (4) Where the undertaking is rejected the trustee must inform every creditor known to the trustee of the rejection of the undertaking as soon as reasonably practicable.

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- (5) Where the undertaking is approved the trustee must as soon as reasonably practicable send a copy of the undertaking to every creditor known to the trustee with a notice—
  - (a) informing them of the approval of the undertaking, and
  - (b) describing its effect (so far as they have not already been given this information under subsection (2)(d)).
- (6) The trustee may advertise details of the undertaking in the other member State in such manner as the trustee thinks fit.

#### Textual Amendments

**F9** Ss. 14A, 14B inserted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017](#) (S.S.I. 2017/210), regs. 1, **4(8)** (with reg. 9)

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

- (1) This section applies where a member State insolvency practitioner proposes an undertaking under Article 36 of the EU insolvency proceedings regulation and the secondary proceedings which the undertaking is intended to avoid would be sequestration or a protected trust deed.
- (2) A decision on approval of the undertaking by local creditors shall be taken as if it were a decision taken by a company's creditors to approve a proposed company voluntary arrangement under section 4A of the Insolvency Act 1986.
- (3) Without prejudice to the generality of subsection (2), [<sup>F10</sup>rules 2.24, 2.29, 2.33, 2.34, 5.2 to 5.4, 5.6, 5.7, 5.14, 5.20, 5.22, 5.25 to 5.28, 5.30 to 5.35, 5.40 to 5.42, 6.4 and 6.5 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018] apply to that decision.
- (4) The member State insolvency practitioner must publish a notice in the Edinburgh Gazette of the undertaking containing—
  - (a) the fact that the undertaking was approved,
  - (b) the date the undertaking was approved, and
  - (c) a description of the effect of the undertaking.]

#### Textual Amendments

**F9** Ss. 14A, 14B inserted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017](#) (S.S.I. 2017/210), regs. 1, **4(8)** (with reg. 9)

**F10** Words in s. 14B(3) substituted (23.7.2019) by [The Insolvency \(Scotland\) Rules 2018](#) (Miscellaneous Amendments) Rules 2019 (S.I. 2019/1059), **rules 1, 6**

### *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—

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- (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.
- (9) This section is subject to Article 3 of the <sup>F11</sup>EU] insolvency proceedings regulation.

#### Textual Amendments

- F11** Word in s. 15(9) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **4(9)** (with reg. 9)

#### Modifications etc. (not altering text)

- C2** S. 15 modified (30.11.2016) by [The Bankruptcy \(Scotland\) Regulations 2016 \(S.S.I. 2016/397\)](#), regs. 1, **31(3)**

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### 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),
  - (d) the debtor becomes subject to main proceedings in a member State other than the United Kingdom,
  - (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
  - (b) intimate to the creditor, by recorded delivery, that the debtor—
    - (i) denies that there is a debt, or

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- (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
  - (c) if constituted under paragraph (d) of that subsection, until the main proceedings end.
- (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.

**Commencement Information**

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

*Status: Point in time view as at 23/07/2019.*

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### *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
    - (iii) a remedy having the like effect to any of those mentioned in subparagraphs (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).



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### 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,
  - (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).

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

*Status: Point in time view as at 23/07/2019.*

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- (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

**Status:**

Point in time view as at 23/07/2019.

**Changes to legislation:**

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