



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.

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 liquidator 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
 - (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

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- (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
 - (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,

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- (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).

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.

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.

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,

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- (c) on the petition of a temporary administrator,
- (d) on the petition of a member State liquidator appointed in main proceedings, or
- (e) on the petition of a trustee acting under a trust deed.

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 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 liquidator 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.
- (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.

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.

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.

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- (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.

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).

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.

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 liquidator 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 liquidator.

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 another member State, and
 - (b) 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 liquidator 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 liquidator.

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

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- (b) at any time by—
 - (i) a trustee acting under a trust deed,
 - (ii) a temporary administrator, or
 - (iii) a member State liquidator appointed in main proceedings.
- (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
 - (b) at any time by—
 - (i) a trustee acting under a trust deed,
 - (ii) a temporary administrator, or
 - (iii) a member State liquidator 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 liquidator 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.

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.