



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 2

SEQUESTRATION: AWARD AND RECALL

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—
 - (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.

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- (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).

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
 - (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.

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.
- (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.

25 Effect of sequestration on diligence: estate of deceased debtor

- (1) Section 24 applies to the estate of a deceased debtor which—
- (a) has been sequestrated within 12 months after the date of death, or

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- (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).
- (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 to raise or insist in an adjudication against the estate of a debtor (including any estate vesting under section 86(5)) or 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.

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.
- (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).

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.
- (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.

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- (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.

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
 - (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.