



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 2

#### SEQUESTRATION: AWARD AND RECALL

##### *Recall of sequestration*

#### **29 Petitions for recall of sequestration**

- (1) A petition for recall of an award of sequestration may be presented to the sheriff by—
  - (a) the debtor,
  - (b) any creditor,
  - (c) any other person having an interest (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),
  - (d) the trustee in the sequestration, or
  - (e) AiB.
- (2) Such a petition may not be presented to the sheriff if the only ground is that the debtor has paid, or is able to pay, the debtor's debts in full.
- (3) Subsection (2) does not apply where—
  - (a) sequestration was awarded following a petition of a qualified creditor or qualified creditors, and
  - (b) a petition for recall of the award of sequestration includes the ground that the debtor was not apparently insolvent.
- (4) A copy of the petition, along with a notice stating that the recipient of the notice may lodge answers to the petition within 14 days after service of the notice, must be served by the petitioner on—
  - (a) the debtor,
  - (b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration,
  - (c) the trustee, and
  - (d) AiB.

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- (5) On service, under subsection (4), of a copy of the petition AIB must enter particulars of the petition in the register of insolvencies.
- (6) A petition under this section may be presented at any time.
- (7) But subsection (6) is subject to sections 114(3) and 115(3).
- (8) Notwithstanding that a petition has been presented under this section, the proceedings in the sequestration are to continue as if the petition had not been presented until the recall is granted.
- (9) But subsection (8) is subject to section 30(7).
- (10) Subsection (11) applies where a petitioner under this section, or a person who has lodged answers to the petition, withdraws or dies.
- (11) Any person—
  - (a) entitled to present, or
  - (b) entitled to lodge answers to,
 a petition under this section may be sisted in place of the person who has withdrawn or died.

### **30 Recall of sequestration by sheriff**

- (1) The sheriff may recall the award of sequestration if satisfied that in all the circumstances of the case (including those arising after the date of the award) it is appropriate to do so.
- (2) In particular, the sheriff may recall the award if satisfied—
  - (a) that the debtor has paid the debtor’s debts in full,
  - (b) that a majority in value of the creditors reside in a country other than Scotland and that it is more appropriate for the debtor’s estate to be administered in that other country, or
  - (c) that another award of sequestration of the estate, or of an analogous remedy, as defined in section 17(8), has (or other such awards have) been granted.
- (3) Where another award of sequestration of the debtor’s estate has been granted, the sheriff may, after such intimation as the sheriff considers necessary, recall an award (whether or not the award in respect of which the petition for recall was presented).
- (4) Where the sheriff intends to recall an award of sequestration on the ground that the debtor has paid the debtor’s debts in full, the order recalling the award may not—
  - (a) be made before the payment in full of the outlays and remuneration of the trustee and of the interim trustee, or
  - (b) be subject to any conditions which are to be fulfilled before the order takes effect.
- (5) On or before recalling an award of sequestration, the sheriff—
  - (a) must make provision for the payment of the outlays and remuneration of the trustee in the sequestration (see section 50(1)) and of any interim trustee (see section 53(1))—
    - (i) by directing that such payment must be made out of the debtor’s estate, or

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- (ii) by requiring that a person who was a party to the petition for sequestration, or as the case may be to the debtor application, must pay the whole or any part of those outlays and remuneration,
  - (b) may direct that payment of the expenses of a creditor who was a petitioner for sequestration, or concurred in the debtor's application for sequestration, must be made out of the debtor's estate, and
  - (c) may make any further order the sheriff considers necessary or reasonable in all the circumstances of the case.
- (6) Subsection (5)(b) is without prejudice to subsection (8).
- (7) Where the sheriff considers that it is inappropriate to recall, or to refuse to recall, an award of sequestration forthwith, the sheriff may order that the proceedings in the sequestration are to continue but are to be subject to such conditions as the sheriff may think fit.
- (8) The sheriff may make such order in relation to the expenses in a petition for recall as the sheriff thinks fit.
- (9) The sheriff clerk must send—
- (a) a certified copy of any order recalling an award of sequestration to the Keeper of the Register of Inhibitions for recording in that register, and
  - (b) a copy of any interim or final order recalling, or refusing to recall, an award of sequestration or a copy of any order under section 114(3)(b) or 115(3)(b)—
    - (i) to AiB, and
    - (ii) if AiB is not the trustee in the sequestration, to the trustee in the sequestration.

### **31 Application to Accountant in Bankruptcy for recall of sequestration**

- (1) An application for recall of an award of sequestration may be made to AiB on the ground that the debtor has paid or is able to pay the debtor's debts in full.
- (2) An application may be made by—
- (a) the debtor,
  - (b) any creditor (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),
  - (c) the trustee (where AiB is not the trustee), or
  - (d) any other person having an interest (whether or not a person who was a petitioner for the sequestration).
- (3) The person making an application must, at the same time as applying to AiB, give to the persons mentioned in subsection (4)—
- (a) a copy of the application, and
  - (b) a notice informing the recipient that the person has a right to make representations to AiB in relation to the application within 21 days beginning with the day on which the notice is given.
- (4) The persons are—
- (a) the debtor (where the debtor is not the applicant),
  - (b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration, and

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(c) the trustee.

- (5) Despite an application being made, the proceedings in the sequestration are to continue as if the application had not been made until a recall of an award of sequestration is granted under section 34(1) (subject to any conditions imposed under section 34(3)).
- (6) Where the applicant withdraws the application or dies, AiB may continue the application by substituting any person mentioned in subsection (2) for the applicant.

## **32 Application under section 31: further procedure**

- (1) This section applies where an application is made under section 31.
- (2) The trustee must prepare a statement on the debtor's affairs so far as within the knowledge of the trustee.
- (3) The trustee must submit the statement to AiB—
- (a) at the same time as the trustee makes the application under section 31, or
  - (b) where that application is made by another person, within 21 days beginning with the day on which notice is given under section 31(3)(b).
- (4) The statement must—
- (a) indicate whether the debtor has agreed to—
    - (i) the interim trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the interim trustee (including any outlays and remuneration which are yet to be incurred), and
    - (ii) the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred),
  - (b) state whether or not the debtor's debts have been paid in full (including the payment of the outlays and remuneration of the interim trustee and of the trustee),
  - (c) where the debtor's debts have not been so paid—
    - (i) provide details of any debt which has not been paid, and
    - (ii) indicate whether, in the opinion of the trustee, the debtor's assets are likely to be sufficient to pay the debts in full (including the payment of the outlays and remuneration of the interim trustee and of the trustee) within 8 weeks beginning with the day on which the statement is submitted, and
  - (d) provide details of any distribution of the debtor's estate.
- (5) The trustee must notify every creditor known to the trustee that the application has been made—
- (a) where it is made by the trustee, within 7 days beginning with the day on which it is made, and
  - (b) where it is made by a person other than the trustee, within 7 days beginning with the day on which notice is given under section 31(3)(b).
- (6) If a creditor has not previously submitted a claim under section 46 or 122, the creditor must, in order to be included in the statement made by the trustee, submit a claim.
- (7) That claim must be submitted—

- (a) in accordance with section 46(2) to (4), and
  - (b) within 14 days beginning with the day on which notice is given under subsection (5).
- (8) If any creditor submits a claim in accordance with subsection (7), the trustee must update and re-submit the statement within 7 days after the days mentioned in paragraph (b) of that subsection have expired.
- (9) The trustee must update and re-submit the statement if—
- (a) the statement previously submitted did not state in accordance with subsection (4)(b) that the debtor's debts have been paid in full, and
  - (b) before the day on which the application is determined by AiB, the trustee is able to make that statement.

### **33 Determination where amount of outlays and remuneration not agreed**

- (1) This section applies where—
- (a) AiB receives an application under section 31, and
  - (b) the statement submitted by the trustee under section 32 indicates that the amount of the outlays and remuneration of the trustee is not agreed.
- (2) The trustee must—
- (a) at the same time as submitting the statement under section 32, provide AiB with—
    - (i) the trustee's accounts of the trustee's intromissions with the debtor's estate for audit, and
    - (ii) details of the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred), and
  - (b) provide AiB with such other information in relation to that claim as may reasonably be requested by AiB.
- (3) AiB must, within 28 days after the days mentioned in section 32(7)(b) have expired, issue a determination fixing the amount of the outlays and of the remuneration payable to the trustee.
- (4) AiB may, within the 28 days mentioned in subsection (3), determine the expenses reasonably incurred by a creditor who was a petitioner for, or as the case may be concurred in a debtor application for, sequestration.
- (5) Subsections (2) to (4) of section 133 apply to AiB for the purpose of issuing a determination in accordance with subsection (3) as they apply to the commissioners or to AiB for the purpose of fixing an amount under that section.

### **34 Recall of sequestration by Accountant in Bankruptcy**

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

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- (2) AiB may not recall an award of sequestration after—
  - (a) where no appeal is made under section 37(5)(a), the day which is 8 weeks after the day on which the statement was first submitted under section 32(3), or
  - (b) where such an appeal is made, such later day which is 14 days after the day on which the appeal is finally determined or abandoned.
- (3) If AiB does not under subsection (1) recall an award of sequestration, the sequestration must continue but is to be subject to such conditions as AiB thinks fit.
- (4) Without delay after granting recall under subsection (1), AiB must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

### **35 Recall where Accountant in Bankruptcy trustee**

- (1) This section applies where AiB—
  - (a) is the trustee, and
  - (b) considers recall of an award of sequestration should be granted on the ground that the debtor has paid, or is able to pay, the debtor's debts in full (including the outlays and remuneration of the interim trustee and the trustee).
- (2) AiB must notify the debtor and every creditor known to AiB that AiB considers subsection (1) applies.
- (3) If a creditor has not previously submitted a claim under section 46 or 122, the creditor must, in order for the creditor's claim to a dividend out of the debtor's estate to be considered, submit a claim.
- (4) The claim must be submitted—
  - (a) in accordance with section 46(2) to (4), and
  - (b) within 14 days beginning with the day on which notice is given under subsection (2).
- (5) Before recalling an award of sequestration AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which notice is given under subsection (2), and
  - (b) make a determination of AiB's fees and outlays calculated in accordance with regulations under section 205.
- (6) AiB may recall an award of sequestration if satisfied that—
  - (a) the debtor has paid the debtor's debts in full (including the outlays and remuneration of the interim trustee and the trustee),
  - (b) those debts were paid in full within 8 weeks after the days mentioned in subsection (5)(a) have expired, and
  - (c) in all the circumstances it is appropriate to recall it.
- (7) Without delay after recalling an award of sequestration under subsection (6), AiB must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

### **36 Application for recall: remit to sheriff**

- (1) AiB may, at any time before deciding under section 34(1) whether to recall an award of sequestration, remit to the sheriff an application made under section 31.
- (2) AiB may, at any time before deciding under section 35(6) whether to recall an award of sequestration, remit the case to the sheriff.
- (3) If an application is remitted under subsection (1) or (2), the sheriff may dispose of the application or the case in accordance with section 30 as if it were a petition presented by AiB under section 29.

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

- (1) A person mentioned in subsection (2) may apply to AiB for a review of—
  - (a) a decision of AiB under section 34(1) or 35(6) to recall, or refuse to recall, an award of sequestration, or
  - (b) a determination of AiB under section 33(4).
- (2) The persons are—
  - (a) the debtor,
  - (b) any creditor,
  - (c) the trustee, and
  - (d) any other person having an interest.
- (3) Any application under subsection (1) must be made within 14 days beginning with the day on which the decision or, as the case may be, the determination or requirement is made.
- (4) If an application under subsection (1) is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the decision, determination or requirement within 28 days beginning with that date.
- (5) A person mentioned in subsection (2) may, within 14 days beginning with the day on which the decision, determination or requirement is made, appeal to the sheriff against—
  - (a) a determination of AiB under section 33(3) or 35(5)(b), or
  - (b) a decision of AiB under subsection (4)(b).
- (6) Any decision of the sheriff on an appeal relating to a determination of AiB under section 33(3) or 35(5)(b) is final.

### **38 Effect of recall of sequestration**

- (1) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor, or, as the case may be, the other person, would have been in if the sequestration had not been awarded.
- (2) But subsection (1) is subject to subsection (3).
- (3) A recall of an award of sequestration is not to—

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- (a) affect the interruption of prescription caused by—
  - (i) the presentation of the petition for sequestration,
  - (ii) the making of the debtor application, or
  - (iii) the submission of a claim under section 46 or 122,
- (b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee in the sequestration, with a person acting in good faith, or
- (c) affect a bankruptcy restrictions order which has not been revoked under section 161(1)(a).