



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 8 **S**

ADMINISTRATION OF ESTATE BY TRUSTEE

Debtor's home

112 Debtor's family home **S**

- (1) This section applies where a debtor's sequestrated estate includes any right or interest in the debtor's family home.
- (2) At the end of 3 years beginning with the date of sequestration, the right or interest—
 - (a) ceases to form part of the debtor's sequestrated estate, and
 - (b) is reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (3) Subsection (2) does not apply if—
 - (a) during the 3 years mentioned in subsection (2), the trustee in the sequestration—
 - (i) disposes of or otherwise realises the right or interest,
 - (ii) concludes missives for sale of the right or interest,
 - (iii) sends a memorandum to the Keeper of the Register of Inhibitions under section 26(6),
 - (iv) completes title in the Land Register of Scotland, or as the case may be in the Register of Sasines, in relation to the right or interest,
 - (v) commences proceedings to obtain the authority of the sheriff under section 113(1)(b) to sell or dispose of the right or interest,
 - (vi) commences proceedings in an action for division and sale of the family home,
 - (vii) commences proceedings in an action for the purpose of obtaining vacant possession of the family home,
 - (viii) enters with the debtor into an agreement such as is mentioned in subsection (4), or

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- (ix) commences an action under section 98 in respect of the right or interest, or
- (b) the trustee in the sequestration—
 - (i) does not, at any time during the 3 years mentioned in subsection (2), know about the facts giving rise to a right of action under section 98, but
 - (ii) commences an action under that section reasonably soon after becoming aware of those facts.
- (4) The agreement referred to in subsection (3)(a)(viii) is an agreement that the debtor is to incur a specified liability to the debtor's estate (with or without interest from the date of the agreement) in consideration of which the right or interest is to—
 - (a) cease to form part of the debtor's sequestrated estate, and
 - (b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (5) If the debtor does not inform the trustee or AiB of the right or interest within 3 months beginning with the date of sequestration then the 3 years mentioned in subsection (2) is to be taken—
 - (a) not to begin with the date of sequestration, but
 - (b) to begin instead with the date on which the trustee becomes aware of the right or interest.
- (6) The sheriff may, on the trustee's application, substitute for the 3 years mentioned in subsection (2) a longer period—
 - (a) in prescribed circumstances, and
 - (b) in such other circumstances as the sheriff thinks appropriate.
- (7) The Scottish Ministers may, by regulations—
 - (a) make provision for this section to have effect with the substitution, in such circumstances as may be specified in the regulations, of a shorter period for the 3 years mentioned in subsection (2),
 - (b) prescribe circumstances in which this section does not apply,
 - (c) prescribe circumstances in which a sheriff may disapply this section,
 - (d) make provision requiring the trustee to give notice that this section applies or does not apply,
 - (e) make provision about compensation,
 - (f) make such provision as they consider necessary or expedient in consequence of regulations made under paragraphs (a) to (e), or
 - (g) modify sub-paragraphs (i) to (viii) of subsection (3)(a) so as to—
 - (i) add or remove a matter, or
 - (ii) vary a matter,
 referred to in that subsection.
- (8) In this section, “family home” has the same meaning as in section 113.

Commencement Information

II S. 112 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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113 Power of trustee in relation to debtor's family home **S**

- (1) Before the trustee in the sequestration (in this section referred to as “T”), or the trustee acting under the trust deed (in this section referred to as “TU”), sells or disposes of any right or interest in the debtor's family home, T or TU must—
 - (a) obtain the relevant consent, or
 - (b) where unable to obtain that consent, obtain the authority of the sheriff in accordance with subsection (2) or as the case may be (3).
- (2) Where T or TU requires to obtain the authority of the sheriff in terms of subsection (1) (b), the sheriff, after having regard to all the circumstances of the case including—
 - (a) the needs and financial resources of the debtor's spouse or former spouse,
 - (b) the needs and financial resources of the debtor's civil partner or former civil partner,
 - (c) the needs and financial resources of any child of the family,
 - (d) the interests of the creditors, and
 - (e) the length of the period during which (whether before or after the relevant date) the family home was used as a residence by any of the persons referred to in paragraphs (a) to (c),may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 3 years) as the sheriff may consider reasonable in the circumstances or may grant the application subject to such conditions as the sheriff may prescribe.
- (3) Subsection (2) applies to an action brought by T or TU—
 - (a) for division and sale of, or
 - (b) for the purpose of obtaining vacant possession of,the debtor's family home as that subsection applies to an application under subsection (1)(b).
- (4) Before commencing proceedings to obtain the authority of the sheriff under subsection (2) or (3), T or TU must give notice of the proceedings to the local authority in whose area the home is situated.
- (5) Notice under subsection (4) must be given in such form and manner as may be prescribed.
- (6) For the purposes of subsection (3), any reference in subsection (2) to the granting of the application is to be construed as a reference to the granting of decree in the action.
- (7) In this section—

“family home” means any property in which, at the relevant date, the debtor had a right or interest (whether alone or in common with another person), being property which was occupied at that date as a residence—

 - (a) by—
 - (i) the debtor and the debtor's spouse or civil partner,
 - (ii) the debtor's spouse or civil partner,
 - (iii) the debtor's former spouse or former civil partner,in any of those cases, whether with or without a child of the family, or
 - (b) by the debtor with a child of the family,“child of the family” includes—

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- (a) any child or grandchild of either—
 - (i) the debtor, or
 - (ii) the debtor's spouse or civil partner (or former spouse or civil partner), and
- (b) any person who has been brought up or accepted by either—
 - (i) the debtor, or
 - (ii) the debtor's spouse or civil partner (or former spouse or civil partner),

as if a child of the debtor, spouse, civil partner or former spouse or civil partner,

(whatever age the child, grandchild or person may be),

“relevant consent” means, in relation to the sale or disposal of any right or interest in a family home—

- (a) in a case where the family home is occupied by the debtor's spouse or civil partner (or former spouse or civil partner), the consent of the spouse or civil partner (or as the case may be former spouse or civil partner) whether or not the family home is also occupied by the debtor,
- (b) where paragraph (a) does not apply, in a case where the family home is occupied by the debtor with a child of the family, the consent of the debtor, and

“relevant date” means the day immediately preceding the date of sequestration or, as the case may be, the day immediately preceding the date the trust deed was granted.

Commencement Information

12 S. 113 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)