



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 8

#### ADMINISTRATION OF ESTATE BY TRUSTEE

##### *Rights of spouse or civil partner*

#### **114 Protection of rights of spouse against arrangements intended to defeat them**

- (1) Subsections (2) and (3) apply where a debtor's sequestrated estate includes a matrimonial home in respect of which—
- (a) the debtor, immediately before the date the order was made appointing the trustee, was an entitled spouse, and
  - (b) the other spouse is a non-entitled spouse.
- (2) Where the trustee in the sequestration knows—
- (a) that the debtor is married to the non-entitled spouse, and
  - (b) where the non-entitled spouse is residing,
- the trustee must inform the non-entitled spouse, within 14 days beginning with the date mentioned in subsection (1)(a), of the fact that sequestration of the debtor's estate has been awarded, of the right of petition which exists under section 29 and of the effect of subsection (3).
- (3) On the petition under section 29 of the non-entitled spouse presented either within 40 days beginning with the date mentioned in subsection (1)(a) or within 10 weeks beginning with the date of the award of sequestration the sheriff, if satisfied that the purpose of the petition for sequestration, or as the case may be the debtor application, was wholly or mainly to defeat the occupancy rights of the non-entitled spouse, may—
- (a) under section 30, recall the sequestration, or
  - (b) make such order as the sheriff thinks appropriate to protect the occupancy rights of the non-entitled spouse.
- (4) The reference in subsection (1)(a) to the date the order is made appointing the trustee is, in a case where more than one trustee is appointed in the sequestration, to be construed as a reference to the date the first order is made appointing a trustee.

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*Changes to legislation: Bankruptcy (Scotland) Act 2016, Cross Heading: Rights of spouse or civil partner is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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(5) In this section—

“entitled spouse” and “non-entitled spouse” are to be construed in accordance with section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981,

“matrimonial home” has the meaning given by section 22 of that Act, and

“occupancy rights” has the meaning given by section 1(4) of that Act.

**Commencement Information**

**II** S. 114 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**115 Protection of rights of civil partner against arrangements intended to defeat them**

(1) Subsections (2) and (3) apply where a debtor's sequestrated estate includes a family home in respect of which—

- (a) the debtor, immediately before the date the order was made appointing the trustee, was an entitled partner, and
- (b) the other partner in the civil partnership is a non-entitled partner.

(2) Where the trustee in the sequestration knows—

- (a) that the debtor is in civil partnership with the non-entitled partner, and
- (b) where the non-entitled partner is residing,

the trustee must inform the non-entitled partner, within 14 days beginning with the date mentioned in subsection (1)(a), of the fact that sequestration of the debtor's estate has been awarded, of the right of petition which exists under section 29 and of the effect of subsection (3).

(3) On the petition under section 29 of the non-entitled partner presented either within 40 days beginning with the date mentioned in subsection (1)(a) or within 10 weeks beginning with the date of the award of sequestration the sheriff, if satisfied that the purpose of the petition for sequestration, or as the case may be the debtor application, was wholly or mainly to defeat the occupancy rights of the non-entitled partner, may—

- (a) under section 30, recall the sequestration, or
- (b) make such order as the sheriff thinks appropriate to protect the occupancy rights of the non-entitled partner.

(4) The reference in subsection (1)(a) to the date the order is made appointing the trustee is, in a case where more than one trustee is appointed in the sequestration, to be construed as a reference to the date the first order is made appointing a trustee.

(5) In this section—

“entitled partner” and “non-entitled partner” are to be construed in accordance with section 101 of the Civil Partnership Act 2004,

“family home” has the meaning given by section 135 of that Act, and

“occupancy rights” means the rights conferred by section 101(1) of that Act.

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**Changes to legislation:** Bankruptcy (Scotland) Act 2016, Cross Heading: Rights of spouse or civil partner is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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**Commencement Information**

**I2** [S. 115](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

**Changes to legislation:**

Bankruptcy (Scotland) Act 2016, Cross Heading: Rights of spouse or civil partner is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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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\(2\)\(b\)](#)