



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 8

#### ADMINISTRATION OF ESTATE BY TRUSTEE

##### *Debtor's home*

#### **112 Debtor's family home**

- (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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**Changes to legislation:** *Bankruptcy (Scotland) Act 2016, Section 112 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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- (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.

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**Commencement Information**

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

**Changes to legislation:**

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