



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 10

CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

Distribution

129 Priority in distribution

- (1) The funds of the debtor's estate must be distributed by the trustee in the sequestration to meet the following debts in the order in which they are mentioned—
- (a) the outlays and remuneration of an interim trustee in the administration of the debtor's estate,
 - (b) the outlays and remuneration of the trustee in the sequestration in the administration of the debtor's estate,
 - (c) where the debtor has died—
 - (i) deathbed and funeral expenses reasonably incurred, and
 - (ii) expenses reasonably incurred in administering the deceased's estate,
 - (d) the expenses reasonably incurred by a creditor who is a petitioner for, or concurs in a debtor application for, sequestration,
 - (e) ordinary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
 - (f) secondary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
 - (g) ordinary [^{F1}non-preferential] debts (that is to say, debts which are neither secured debts nor debts mentioned in any other paragraph of this subsection),
 - [^{F2}(g)] secondary non-preferential debts,]
 - [^{F2}(g)] tertiary non-preferential debts,]
 - (h) interest, between the date of sequestration and the date of payment of the debt, at the rate specified in subsection (10) on—
 - (i) the ordinary preferred debts,
 - (ii) the secondary preferred debts, ^{F3}...
 - (iii) the ordinary [^{F4}non-preferential] debts,
 - [^{F5}(iv)] the secondary non-preferential debts, and]

Changes to legislation: Bankruptcy (Scotland) Act 2016, Section 129 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

[^{F5}(v) the tertiary non-preferential debts.]

(i) any postponed debt.

(2) In this Act—

“preferred debt” means a debt listed in Part 1 of schedule 3 of this Act,

“ordinary preferred debt” means a debt within any of paragraphs 1 to 6 of that Part, and

“secondary preferred debt” means a debt within [^{F6}any of paragraphs 7 to 8A] of that Part.

(3) Part 2 of that schedule has effect for the interpretation of Part 1 of that schedule.

[^{F7}(3A) In subsection (1), “secondary non-preferential debts” and “tertiary non-preferential debts” have the meanings given by section 129A.]

(4) In this Act, “postponed debt” means—

(a) a loan made to the debtor, in consideration of a share of the profits in the debtor's business, which is postponed under section 3 of the Partnership Act 1890 to the claims of other creditors,

(b) a loan made to the debtor by the debtor's spouse or civil partner, or

(c) a creditor's right to—

(i) anything vesting in the trustee by virtue of a successful challenge under section 98, or

(ii) the proceeds of sale of anything so vesting.

(5) A debt falling within any of paragraphs (c) to (i) of subsection (1) has the same priority as any other debt falling within the same paragraph and, where the funds of the estate are inadequate to enable the debts mentioned in the paragraph in question to be paid in full, those debts are to abate in equal proportions.

(6) Any surplus remaining after all the debts mentioned in this section have been paid in full must be made over to the debtor or the debtor's successors or assignees.

(7) In subsection (6), “surplus”—

(a) includes any kind of estate, but

(b) does not include any unclaimed dividend.

^{F8}(8)

(9) Nothing in this section affects—

(a) any right of a secured creditor which is preferable to the rights of the trustee,

(b) any preference of the holder of a lien over a title deed, or other document, which has been delivered to the trustee in accordance with a requirement under section 108(5).

(10) The rate of interest referred to in paragraph (h) of subsection (1) is whichever is the greater of—

(a) the prescribed rate at the date of sequestration, and

(b) the rate applicable to that debt apart from the sequestration.

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Textual Amendments

- F1** Word in s. 129(1)(g) inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **43(2)(a)** (with art. 3)
- F2** S. 129(1)(ga)(gb) inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **43(2)(b)** (with art. 3)
- F3** Word in s. 129(1)(h) omitted (19.12.2018) by virtue of [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **43(2)(c)(i)** (with art. 3)
- F4** Word in s. 129(1)(h)(iii) inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **43(2)(c)(ii)** (with art. 3)
- F5** S. 129(1)(h)(iv)(v) inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **43(2)(c)(iii)** (with art. 3)
- F6** Words in s. 129(2) substituted (with application in accordance with s. 98(7) of the amending Act) by [Finance Act 2020 \(c. 14\)](#), **s. 98(3)**
- F7** S. 129(3A) inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **43(3)** (with art. 3)
- F8** S. 129(8) omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), regs. 1, **4(13)** (with reg. 9) (as amended by [S.S.I. 2020/337](#), regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

- C1** S. 129 modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(4), **127** (with reg. 108)

Commencement Information

- I1** S. 129 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

Changes to legislation:

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[View outstanding changes](#)

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