



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 18

GENERAL

228 Interpretation

(1) In this Act, unless the context otherwise requires—

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002,

“Accountant in Bankruptcy” (or “AiB”) is to be construed in accordance with section 199,

“accounting period” is to be construed in accordance with section 130(2),

“apparent insolvency” and “apparently insolvent” are to be construed in accordance with section 16,

“appropriate bank or institution” means—

- (a) the Bank of England,
- (b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
- (c) an EEA firm of the kind mentioned in paragraph 5(b) of schedule 3 of that Act which has permission under paragraph 15 of that schedule (as a result of qualifying for authorisation under paragraph 12 of that schedule) to accept deposits, or
- (d) a person who is exempt from the general prohibition in respect of accepting deposits as a result of an exemption order made under section 38(1) of that Act,

“associate” is to be construed in accordance with section 229,

“bankruptcy restrictions order” has the meaning given by section 155(1),

“business” means the carrying on of any activity, whether for profit or not,

“centre of main interests” has the same meaning as in the [F1EU] insolvency proceedings regulation,

“commissioner”, except in the expression “examining commissioner”, is to be construed in accordance with section 76,

“common financial tool” has the meaning given by section 89(1),

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“court” means Court of Session or sheriff,

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“DAS register” has the meaning given by section 195(4)(b),

“date of sequestration” has the meaning given by section 22(7),

“debt advice and information package” has the meaning given by section 3(2),

“debtor” includes, without prejudice to the expression's generality, an entity whose estate may be sequestrated by virtue of section 6, a deceased debtor, a deceased debtor's executor or a person entitled to be appointed a deceased debtor's executor,

“debtor application” means an application for sequestration made to AiB under section 2(1)(a), 5(a) or 6(3)(a), (4)(b) or (7)(a),

“debtor contribution order” has the meaning given by section 90(1),

“debtor's contribution” has the meaning given by section 89(1),

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“establishment” has the meaning given by [F4 Article 2(10) of the EU] insolvency proceedings regulation,

[F5 “the EU insolvency proceedings regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings [F6 as it forms part of domestic law on and after exit day].]

“examination” means a private examination under section 118 or a public examination under section 119,

“examining commissioner” is to be construed in accordance with section 120(3),

“interim bankruptcy restrictions order” is to be construed in accordance with section 160,

“interim trustee” is to be construed in accordance with sections 53 and 54,

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“money adviser” has the meaning given by section 4(2),

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“original trustee” is to be construed in accordance with section 49(1)(a),

“postponed debt” has the meaning given by section 129(4),

“preferred debt” has the meaning given by section 129(2),

“prescribed” means prescribed by regulations made by the Scottish Ministers,

“protected trust deed” is to be construed in accordance with section 163,

“qualified creditor” and “qualified creditors” are to be construed in accordance with section 7(1),

“qualified to act as an insolvency practitioner” is to be construed in accordance with section 390 of the Insolvency Act 1986 (persons not qualified to act as insolvency practitioners),

“register of insolvencies” has the meaning given by section 200(1)(c),

“relevant person” has the meaning given by section 118(2),

“replacement trustee” is to be construed in accordance with section 49(1)(b),

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“secured creditor” means a creditor who holds a security for a debt over any part of the debtor's estate,

“security” means any security, heritable or moveable, or any right of lien, retention or preference,

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“sederunt book” means the sederunt book maintained under section 50(1)(e),
“sequestration proceedings” includes a debtor application (and analogous expressions are to be construed accordingly),

“statement of assets and liabilities” means a document (including a copy of a document) in such form as may be prescribed containing—

- (a) a list of the debtor's assets and liabilities,
- (b) a list of the debtor's income and expenditure, and
- (c) such other information as may be prescribed,

“statement of undertakings” means the statement of debtor undertakings sent to the debtor under section 51(14) or 54(4) or, in the case of a debtor application, given by the debtor in making the application,

“statutory meeting” has the meaning given by section 43,

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“trust deed” means—

- (a) a voluntary trust deed granted by or on behalf of a debtor whereby the debtor's estate (other than such of that estate as would not, under any provision of this or any other enactment, vest in the trustee were that estate sequestrated) is conveyed to the trustee for the benefit of the debtor's creditors generally, and
- (b) any other trust deed which would fall within paragraph (a) but for—
 - (i) the exclusion from the estate conveyed to the trustee of the whole or part of the debtor's dwellinghouse, where a secured creditor holds a security over it, and
 - (ii) the fact that the debtor's estate is not conveyed to the trustee for the benefit of creditors generally because the secured creditor has, at the debtor's request, agreed before the trust deed is granted not to claim under the trust deed for any of the debt in respect of which the security is held,

“trustee vote” is to be construed in accordance with section 49(1) and (2), and

“unfair preference” means a preference created as is mentioned in subsection (1) of section 99 by a transaction to which subsection (5) of that section applies.

(2) The expressions in the definition of “appropriate bank or institution” in subsection (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and
- (c) schedule 2 of that Act.

(3) In paragraph (b)(i) of the definition of “trust deed” in subsection (1), “the debtor's dwellinghouse” means a dwellinghouse (including any yard, garden, outbuilding or other pertinents) which, on the day immediately preceding the date the trust deed was granted—

- (a) the debtor (whether alone or in common with any other person)—
 - (i) owned, or
 - (ii) leased under a long lease (“long lease” having the same meaning as in section 9(2) of the Land Registration etc. (Scotland) Act 2012), and
- (b) was the debtor's sole or main residence.

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- (4) For the purposes of subsection (3)(b), a dwellinghouse may be the debtor's sole or main residence irrespective of whether it is used, to any extent, by the debtor for the purposes of any profession, trade or business.
- (5) Any reference in this Act to a debtor being absolutely insolvent is to be construed as a reference to the debtor's liabilities being greater than the debtor's assets; and any reference to a debtor's estate being absolutely insolvent is to be construed accordingly.
- (6) Any reference in this Act to value of the creditors is, in relation to any matter, a reference to the value of their claims as accepted for the purposes of that matter.
- (7) Any reference in this Act to “the creditors” in the context of their giving consent or doing any other thing is, unless the context otherwise requires, to be construed as a reference to the majority in value of such creditors as vote in that context at a meeting of creditors.
- (8) Any reference in this Act to any of the actings mentioned in subsection (9) barring the effect of any enactment or rule of law relating to the limitation of actions is to be construed as a reference to that act having the same effect, for the purposes of that enactment or rule of law, as an effective acknowledgement of the creditor's claim.
- (9) The actings are—
 - (a) the presentation of a petition for sequestration,
 - (b) the concurrence in a debtor application, and
 - (c) the submission of a claim.
- (10) Any reference in this Act to any such enactment as is mentioned in subsection (8) does not include a reference to an enactment which implements or gives effect to any international agreement or obligation.
- (11) Any reference in this Act, however expressed, to the time when a petition for sequestration is presented is to be construed as a reference to the time when the petition is received by the sheriff clerk.
- (12) Any reference in this Act, however expressed, to the time when a debtor application is made is to be construed as a reference to the time when the application is received by AiB.

Textual Amendments

- F1** Word in s. 228(1) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **4(21)(a)** (with reg. 9)
- F2** Words in s. 228(1) omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), regs. 1, **4(16)(a)(i)** (with reg. 9) (as amended by [S.S.I. 2020/337](#), regs. 1, 2); [2020 c. 1, Sch. 5 para. 1\(1\)](#))
- F3** Words in s. 228(1) omitted (26.6.2017) by virtue of [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **4(21)(c)** (with reg. 9)
- F4** Words in s. 228(1) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\)](#), regs. 1, **4(21)(d)** (with reg. 9)

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- F5** Words in s. 228(1) inserted (26.6.2017) by The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210), regs. 1, **4(21)(e)** (with reg. 9)
- F6** Words in s. 228(1) inserted (31.12.2020) by The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(b)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(ii)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(iii)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in s. 228(1) omitted (19.12.2018) by virtue of The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **45** (with art. 3)
- F10** Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(iv)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(v)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in s. 228(1) omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **4(16)(a)(vi)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

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