



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 2

#### SEQUESTRATION: AWARD AND RECALL

##### *Award of sequestration*

#### **[<sup>F1</sup>23A Effect of sequestration on land attachment**

- (1) No land attachment of the heritable property of a debtor, created within the 6 months before the date of sequestration (whether or not subsisting at that date), is effectual to create a preference for the creditor.
- (2) A creditor who creates a land attachment within the 6 months mentioned in subsection (1) is entitled to payment, out of the attached land or out of the proceeds of sale of it, of the expenses incurred—
  - (a) in obtaining the extract of the decree, or other document, containing the warrant for land attachment, and
  - (b) in serving the charge for payment, registering the notice of land attachment, serving a copy of that notice, and registering certificate of service of that copy.
- (3) A notice of land attachment—
  - (a) registered on or after the date of sequestration against land forming part of the debtor's heritable estate (including any estate vesting under section 86(5) in the trustee in the sequestration) is of no effect,
  - (b) registered before that date and in relation to which, by that date, no land attachment is created is of no effect.
- (4) It is not competent for a creditor to insist in a land attachment—
  - (a) created over the debtor's heritable estate before the beginning of the 6 months mentioned in subsection (1), and
  - (b) which subsists on the date of sequestration.
- (5) But subsection (4) is subject to subsections (6) to (9).
- (6) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—

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**Changes to legislation:** *Bankruptcy (Scotland) Act 2016, Section 23A is up to date with all changes known to be in force on or before 09 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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- (a) the trustee must concur in and ratify the deed implementing that contract, and
  - (b) the appointed person must account for and pay to the trustee in the sequestration any balance of the proceeds of sale (being the balance which would, but for the sequestration, be due to the debtor) after disbursing those proceeds in accordance with section 116 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (disbursement of proceeds of sale of attached land).
- (7) Subsection (6) does not apply where the deed implementing the contract is not registered within 28 days beginning with the day on which—
- (a) the certified copy of the order of the sheriff granting warrant is recorded, under subsection (1)(a) of section 26, in the Register of Inhibitions, or
  - (b) the certified copy of the determination of AiB awarding sequestration is recorded, under subsection (2) of that section, in that register.
- (8) Where a decree of foreclosure has been granted but an extract of it has not been registered, the creditor may proceed to complete title to the land by registering that extract provided that the creditor does so before the expiry of the days mentioned in subsection (7).
- (9) The Scottish Ministers may, as they think fit, prescribe a period in substitution for the days mentioned in subsection (7); and a different period may be prescribed for the purposes of subsection (8) than is prescribed for the purposes of subsection (7).
- (10) Expressions used in this section which also occur in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 have the same meanings in this section as they have in that Chapter.]

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**Textual Amendments**

**F1** S. 23(A) inserted by 2007 asp 3, s. 127A(2) (as inserted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), sch. 8 para. 24(2) (with ss. 232, 234(3), 235, 236); [S.S.I. 2016/294](#), reg. 2)

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**Modifications etc. (not altering text)**

**C1** S. 23(A)(3)-(10) applied by [1986 c. 45, s. 185\(1\)](#) (as substituted (30.11.2016) by [S.I. 2016/1034, Sch. 1 para. 4\(3\)\(a\)](#))

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