



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 2

SEQUESTRATION: AWARD AND RECALL

Award of sequestration

24 Effect of sequestration on diligence generally

- (1) The order of the sheriff, or as the case may be the determination of the debtor application by AiB, awarding sequestration has, as from the date of sequestration, in relation to diligence done (whether before or after that date) in respect of any part of the estate of the debtor, the effect mentioned in subsection (2).
- (2) The effect is of—
 - (a) a decree of adjudication of the heritable estate of the debtor for payment of debts duly recorded in the Register of Inhibitions on the date of sequestration,
 - (b) an arrestment in execution and decree of furthcoming,
 - (c) an arrestment in execution and warrant for sale, and
 - (d) an attachment,in favour of the creditors according to their respective entitlements.
- (3) Where an inhibition on the estate of the debtor takes effect within the 60 days before the date of sequestration, any relevant right of challenge vests, at the date of sequestration, in the trustee in the sequestration as does any right of the inhibitor to receive payment for the discharge of the inhibition.
- (4) But subsection (3) neither entitles the trustee to receive any payment made to the inhibitor before the date of sequestration nor affects the validity of anything done before that date in consideration of such payment.
- (5) In subsection (3), “any relevant right of challenge” means any right to challenge a deed voluntarily granted by the debtor if it is a right which vested in the inhibitor by virtue of the inhibition.
- (6) No arrestment, money attachment, interim attachment or attachment of the debtor’s estate (including any estate vesting in the trustee under section 86(5)) executed—

Status: This is the original version (as it was originally enacted).

- (a) within the 60 days before the date of sequestration and whether or not subsisting at that date, or
 - (b) on or after that date,is effectual to create a preference for the arrester or attacher.
- (7) The estate so arrested or attached is, or any funds released under section 73J(2) of the Debtors (Scotland) Act 1987 (automatic release of funds) or the proceeds of sale of such estate are, to be handed over to the trustee.
- (8) An arrester or attacher whose arrestment, money attachment, interim attachment or attachment is executed within the period mentioned in subsection (6)(a) is entitled to payment, out of the arrested or attached estate or out of the proceeds of the sale of such estate, of the expenses incurred—
 - (a) in obtaining—
 - (i) warrant for interim attachment, or
 - (ii) the extract of the decree or other document on which the arrestment, money attachment or attachment proceeded,
 - (b) in executing the arrestment, money attachment, interim attachment or attachment, and
 - (c) in taking any further action in respect of the diligence.
- (9) Nothing in subsections (6) to (8) applies to an earnings arrestment, a current maintenance arrangement, a conjoined arrestment order or a deduction from earnings order under the Child Support Act 1991.