



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 5

#### VESTING ETC.

##### *Vesting*

#### **86 Further provision as regards vesting of estate**

- (1) Diligence in respect of a debt or obligation mentioned in subsection (2) is not competent against income vesting in the debtor under section 85.
- (2) The debt or obligation is one in respect of which the debtor, if discharged under section 137, 138 or 140, would be discharged under section 145.
- (3) For the purposes of subsection (1), diligence includes the making of a deduction from earnings order under the Child Support Act 1991.
- (4) Subsection (5) applies where any estate, wherever situated—
  - (a) is acquired by the debtor on a relevant date, and
  - (b) would have vested in the trustee in the sequestration if it had been part of the debtor's estate on the date of sequestration.
- (5) The estate vests in the trustee for the benefit of the creditors as at the date of acquisition.
- (6) A person who holds estate vesting in the trustee under subsection (5) is, on production to the person of a copy of the order certified by the sheriff clerk, or as the case may be by AiB, appointing the trustee, to convey or deliver the estate to the trustee.
- (7) But such a person incurs no liability to the trustee except to account for any proceeds of the conveyance which are in the person's hands if the person has, in good faith and without knowledge of the sequestration, conveyed the estate—
  - (a) to the debtor, or
  - (b) to anyone on the instructions of the debtor.
- (8) The trustee is not entitled, by virtue of subsections (4) to (7), to any remedy against an appropriate bank or institution (in this section and in section 87(7) referred to as a

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**Changes to legislation:** Bankruptcy (Scotland) Act 2016, Section 86 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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“bank”) in respect of a banking transaction entered into before the receipt by the bank of a notice under subsection (9) (whether or not the bank is aware of the sequestration).

(9) Where the trustee knows, or becomes aware, of any estate vested in the trustee under section 78 or this section which comprises funds held by a bank, the trustee must serve a notice on the bank—

- (a) informing the bank of the sequestration, and
- (b) specifying reasonable detail in order to allow the bank to identify the debtor and the funds held.

(10) A notice under subsection (9)—

- (a) must be in writing and may be sent—
  - (i) by first class post or by using a registered or recorded delivery postal service to the bank, or
  - (ii) in some other manner (including by electronic means) which the trustee reasonably considers likely to cause it to be delivered to the bank on the same or next day, and
- (b) is deemed to have been received the day after it is sent.

(11) Subsections (4) to (8) are without prejudice to—

- (a) section 85, and
- (b) any right acquired in the estate in good faith and for value.

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**Commencement Information**

**II** S. 86 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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