



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 7

SAFEGUARDING INTERESTS OF CREDITORS

Gratuitous alienations and unfair preferences

99 Unfair preferences

- (1) Subsection (5) applies to a transaction entered into (whether before or after the coming into force of this Act) by a debtor which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors, being a preference created not earlier than 6 months before—
- (a) the date of sequestration of the debtor's estate (if, in the case of an individual, a date within the debtor's lifetime),
 - (b) the granting by the debtor of a trust deed which has become a protected trust deed,
 - (c) the debtor's death where, within 12 months after the date of death—
 - (i) the debtor's estate is sequestrated,
 - (ii) a judicial factor is appointed under section 11A of the 1889 Act to administer the debtor's estate and that estate was absolutely insolvent at the date of death.
- (2) But subsection (5) does not apply to—
- (a) a transaction in the ordinary course of trade or business,
 - (b) a payment in cash for a debt which when it was paid had become payable,
 - (c) a transaction by which the parties undertake reciprocal obligations (whether the performance by the parties of their respective obligations is to occur at the same time or at different times),
 - (d) the granting of a mandate by a debtor authorising an arrestee to pay over the arrested funds, or part of the arrested funds, to the arrester where—
 - (i) there has been a decree for payment or a warrant for summary diligence, and
 - (ii) the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution.

Changes to legislation: Bankruptcy (Scotland) Act 2016, Section 99 is up to date with all changes known to be in force on or before 19 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

- (3) Paragraphs (b) and (c) of subsection (2) are to be disregarded if the transaction in question was collusive with the purpose of prejudicing the general body of creditors.
- (4) For the purposes of subsection (1), the day on which a preference is created is the day on which it becomes completely effectual.
- (5) The transaction is challengeable by—
 - (a) any creditor who is a creditor by virtue of a debt incurred on or before (as the case may be) the date of sequestration, the granting of the protected trust deed or the debtor's death, or
 - (b) (as the case may be) the trustee in the sequestration, the trustee acting under the protected trust deed or the judicial factor.
- (6) On a challenge being brought under subsection (5) the court, if satisfied that the transaction challenged is a transaction to which that subsection applies, must grant decree—
 - (a) of reduction, or
 - (b) for such restoration of property to the debtor's estate, or such other redress, as may be appropriate.
- (7) Subsection (6) is without prejudice to any right acquired, in good faith and for value, from or through the creditor in whose favour the preference was created.
- (8) A trustee in a sequestration, a trustee acting under a protected trust deed or a judicial factor appointed under section 11A of the 1889 Act has the same right as a creditor has under any rule of law to challenge a preference created by a debtor.

Commencement Information

II S. 99 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\(2\)\(b\)](#)