



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 8

#### ADMINISTRATION OF ESTATE BY TRUSTEE

##### *Debtor's home*

#### **113 Power of trustee in relation to debtor's family home**

- (1) Before the trustee in the sequestration (in this section referred to as “T”), or the trustee acting under the trust deed (in this section referred to as “TU”), sells or disposes of any right or interest in the debtor's family home, T or TU must—
  - (a) obtain the relevant consent, or
  - (b) where unable to obtain that consent, obtain the authority of the sheriff in accordance with subsection (2) or as the case may be (3).
- (2) Where T or TU requires to obtain the authority of the sheriff in terms of subsection (1) (b), the sheriff, after having regard to all the circumstances of the case including—
  - (a) the needs and financial resources of the debtor's spouse or former spouse,
  - (b) the needs and financial resources of the debtor's civil partner or former civil partner,
  - (c) the needs and financial resources of any child of the family,
  - (d) the interests of the creditors, and
  - (e) the length of the period during which (whether before or after the relevant date) the family home was used as a residence by any of the persons referred to in paragraphs (a) to (c),may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 3 years) as the sheriff may consider reasonable in the circumstances or may grant the application subject to such conditions as the sheriff may prescribe.
- (3) Subsection (2) applies to an action brought by T or TU—
  - (a) for division and sale of, or
  - (b) for the purpose of obtaining vacant possession of,

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**Changes to legislation:** *Bankruptcy (Scotland) Act 2016, Section 113 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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the debtor's family home as that subsection applies to an application under subsection (1)(b).

- (4) Before commencing proceedings to obtain the authority of the sheriff under subsection (2) or (3), T or TU must give notice of the proceedings to the local authority in whose area the home is situated.
- (5) Notice under subsection (4) must be given in such form and manner as may be prescribed.
- (6) For the purposes of subsection (3), any reference in subsection (2) to the granting of the application is to be construed as a reference to the granting of decree in the action.
- (7) In this section—

“family home” means any property in which, at the relevant date, the debtor had a right or interest (whether alone or in common with another person), being property which was occupied at that date as a residence—

(a) by—

- (i) the debtor and the debtor's spouse or civil partner,
- (ii) the debtor's spouse or civil partner,
- (iii) the debtor's former spouse or former civil partner,

in any of those cases, whether with or without a child of the family, or

(b) by the debtor with a child of the family,

“child of the family” includes—

(a) any child or grandchild of either—

- (i) the debtor, or
- (ii) the debtor's spouse or civil partner (or former spouse or civil partner), and

(b) any person who has been brought up or accepted by either—

- (i) the debtor, or
- (ii) the debtor's spouse or civil partner (or former spouse or civil partner),

as if a child of the debtor, spouse, civil partner or former spouse or civil partner,

(whatever age the child, grandchild or person may be),

“relevant consent” means, in relation to the sale or disposal of any right or interest in a family home—

- (a) in a case where the family home is occupied by the debtor's spouse or civil partner (or former spouse or civil partner), the consent of the spouse or civil partner (or as the case may be former spouse or civil partner) whether or not the family home is also occupied by the debtor,
- (b) where paragraph (a) does not apply, in a case where the family home is occupied by the debtor with a child of the family, the consent of the debtor, and

“relevant date” means the day immediately preceding the date of sequestration or, as the case may be, the day immediately preceding the date the trust deed was granted.

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#### Commencement Information

**II** [S. 113](#) 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\(2\)\(b\)](#)