



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

[^{F1}Administration of estate by trustee]

[^{F1}41A Protection of rights of civil partner against arrangements intended to defeat them

(1) If a debtor's sequestrated estate includes a family home of which the debtor, immediately before the date [^{F2}the order is made appointing] the ^{F3} . . . trustee (or, if more than one [^{F4}trustee is appointed] in the sequestration, of the first [^{F5}order making such an appointment]) was an entitled partner and the other partner in the civil partnership is a non-entitled partner—

(a) the ^{F3} . . . trustee shall, where he—

(i) is aware that the entitled partner is in civil partnership with the non-entitled partner; and

(ii) knows where the non-entitled partner is residing,

inform the non-entitled partner, within the period of 14 days beginning with that date, of the fact that sequestration of the entitled partner's estate has been awarded, of the right of petition which exists under section 16 of this Act and of the effect of paragraph (b) below; and

(b) the [^{F6}sheriff] , on the petition under section 16 of this Act of the non-entitled partner presented either within the period of 40 days beginning with that date or within the period of 10 weeks beginning with the date [^{F7}of the award] of sequestration may—

(i) under section 17 of this Act recall the sequestration; or

(ii) make such order as [^{F8}he] thinks appropriate to protect the occupancy rights of the non-entitled partner,

if [^{F8}he] is satisfied that the purpose of the petition for sequestration [^{F9}or, as the case may be, the debtor application] was wholly or mainly to defeat the occupancy rights of the non-entitled partner.

(2) In subsection (1) above—

Status: Point in time view as at 01/04/2008. This version of this provision has been superseded.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Section 41A is up to date with all changes known to be in force on or before 26 May 2024.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)

“entitled partner” and “non-entitled partner” have the same meanings as in section 101 of the Civil Partnership Act 2004;

“family home” has the meaning assigned by section 135 of the 2004 Act; and

“occupancy rights” means the rights conferred by subsection (1) of that section 101.]

Textual Amendments

- F1** S. 41A inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 37](#); [S.S.I. 2005/604](#) {art. 2(c)}
- F2** Words in s. 41A(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 38\(a\)](#) (with s. 223); [S.S.I. 2008/115](#), [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), art. 5))
- F3** Words in s. 41A repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); [S.S.I. 2008/115](#), [art. 3\(2\)\(3\)](#), [Sch. 2](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), art. 5))
- F4** Words in s. 41A(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 38\(b\)](#) (with s. 223); [S.S.I. 2008/115](#), [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), art. 5))
- F5** Words in s. 41A(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 38\(c\)](#) (with s. 223); [S.S.I. 2008/115](#), [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), art. 5))
- F6** Words in s. 41A(b) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 38\(d\)\(i\)](#) (with s. 223)
- F7** Words in s. 41A(1)(b) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 38\(d\)\(ii\)](#) (with s. 223); [S.S.I. 2008/115](#), [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), art. 5))
- F8** Words in s. 41A(1)(b) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 38\(d\)\(iii\)](#) (with s. 223); [S.S.I. 2008/115](#), [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), art. 5))
- F9** Words in s. 41A(1)(b) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 38\(d\)\(iv\)](#) (with s. 223); [S.S.I. 2008/115](#), [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), art. 5))

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