

Status: Point in time view as at 01/04/2015.

Changes to legislation: There are currently no known outstanding effects for the Bankruptcy and Debt Advice (Scotland) Act 2014 (repealed), SCHEDULE 3. (See end of Document for details)

SCHEDULE 3

(introduced by section 56(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

Sheriff Courts (Scotland) Act 1971 (c.58)

- 1 In section 32(1)(m) of the Sheriff Courts (Scotland) Act 1971 (appearance before a sheriff under the 1985 Act), after “sequestration” insert “ or section 54B(6) of that Act (appeal following review of discharge decision) ”.

Commencement Information

- 11** Sch. 3 para. 1 in force at 30.6.2014 by S.S.I. 2014/172, art. 2, Sch.

Bankruptcy (Scotland) Act 1985 (c.66)

- 2 The Bankruptcy (Scotland) Act 1985 Act is amended as follows.

Commencement Information

- 12** Sch. 3 para. 2 in force at 30.6.2014 for specified purposes by S.S.I. 2014/172, art. 2, Sch.
13 Sch. 3 para. 2 in force at 1.4.2015 in so far as not already in force by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 3 In section 1A(1)(b) (register of insolvencies)—
(a) before sub-paragraph (i) insert—
“ (ai) persons who are the subject of notices under section 4A(1) and 4B(1), ”, and
(b) in sub-paragraph (iia), for the words from “interim” to the end substitute “ and interim bankruptcy restrictions orders ”.

Commencement Information

- 14** Sch. 3 para. 3 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 4 In section 5 (sequestration of the estate of living or deceased debtor)—
(a) in subsection (2B)(c), after sub-paragraph (ib), insert “ or ”, and
(b) in subsection (4A)(a), for “section 33(1) of this Act” substitute “ any provision of this or any other enactment ”.

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- 15** Sch. 3 para. 4 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 5 In section 5B (certificate for sequestration), in each of subsections (1), (3) and (5) (b), for “an authorised person”, wherever it occurs, substitute “ a money adviser ”.

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I6 Sch. 3 para. 5 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 6 In section 6 (sequestration of other estates)—
- (a) in subsection (2), after paragraph (a) insert—
 - “(aa) a limited liability partnership,”
 - (b) before paragraph (a) of subsection (4) insert—
 - “(za) by debtor application made by the partnership where the partnership is apparently insolvent,”
 - (c) after subsection (4) insert—
 - “(4A) For the purposes of an application under subsection (4)(za), section 7(3)(a) is to be read as if—
 - (a) the word “either” were omitted, and
 - (b) the words “or if any of the partners is apparently insolvent for a debt of the partnership” were omitted.”
 - (d) in subsection (8), after “(8A)” insert “ (but not (9) or (10)) ”.

Commencement Information

I7 Sch. 3 para. 6 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 7 In section 7 (meaning of “apparent insolvency”)—
- (a) in subsection (1), for paragraph (c), substitute—
 - “(c) the debtor grants a trust deed,
 - (ca) following the service on the debtor of a duly executed charge for payment of a debt, the days of charge expire without payment (unless the circumstances are shown to be such as are mentioned in subsection (1A)),
 - (cb) a decree of adjudication of any part of the debtor's estate is granted, either for payment or in security (unless the circumstances are shown to be such as are mentioned in subsection (1A)),
 - (cc) a debt constituted by a decree or document of debt (as defined in section 10 of the Debt Arrangement and Attachment (Scotland) Act 2002) is being paid by the debtor under a debt payment programme under Part 1 of that Act and the programme is revoked (unless the circumstances are shown to be such as are mentioned in subsection (1A)),”
 - (b) after subsection (1), insert—
 - “(1A) The circumstances are—
 - (a) that, at the time of the occurrence, the debtor was able and willing to pay the debtor's debts as they became due, or
 - (b) that, but for the debtor's property being affected by a restraint order or being subject to a confiscation order or

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charging order, the debtor would at that time have been able to pay those debts as they became due.”, and

- (c) in subsection (3), in each of paragraphs (a) and (b), after “constituted” insert “ (or, as the case may be, again constituted) ”.

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I8 Sch. 3 para. 7 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 8 In section 9(1A) (jurisdiction), after “living” insert “ or deceased ”.

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I9 Sch. 3 para. 8 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 9 In section 12 (when sequestration is awarded)—
(a) in subsection (1), after “made” insert “ and sections 11A and 11B do not apply ”, and
(b) in subsection (4)(b), after “deed” insert “ and sequestration is awarded ”.

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I10 Sch. 3 para. 9 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 10 In section 13B (termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee)—
(a) in subsection (4)(b), for “claim” substitute “ determination ”, and
(b) in subsection (5), for paragraph (c) substitute—
“(c) that, in the circumstances mentioned in subsection (9), the Accountant in Bankruptcy is discharged from any liability incurred while acting as interim trustee.”.

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I11 Sch. 3 para. 10 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 11 In section 14(1) (registration of warrant or determination of debtor application: duties of sheriff clerk)—
(a) for “date of sequestration” substitute “ sheriff grants warrant under section 12(2) ”, and
(b) for “section 12(2) of this Act” substitute “ that section ”.

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I12 Sch. 3 para. 11 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 12 In section 14(3) (expiry of effect of inhibition), after paragraph (a) insert—
 “(ab) on the recording under section 10A(3D), 17D(6) or 17E(8) of a certified copy of a decision,”.

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I13 Sch. 3 para. 12 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 13 In section 15(4), for “16 and 17” substitute “ 10A(3A), 16, 17, 17D and 17E ”.

Commencement Information

I14 Sch. 3 para. 13 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 14 In section 17 (recall of sequestration)—
 (a) in subsection (2), after “more” insert “ other ”,
 (b) in subsection (3), in paragraph (a), for “the”, where it third occurs, substitute “ any ”, and
 (c) in subsection (8)(b), in sub-paragraph (ii), for “the trustee (if any)” substitute “ if the Accountant in Bankruptcy is not the trustee in the sequestration, the trustee in the sequestration ”.

Commencement Information

I15 Sch. 3 para. 14 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 15 In section 20(1) (trustee's duties on receipt of list of assets and liabilities)—
 (a) for the words from “shall”, where it second occurs, to “whether” substitute “ if”, and
 (b) at the end add “ the trustee is so to indicate in the statement of the debtor's affairs ”.

Commencement Information

I16 Sch. 3 para. 15 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 16 In section 23(3) (proceedings at statutory meeting before trustee vote), for paragraph (c) substitute—
 “(c) after considering any such representations as are mentioned in paragraph (b), shall, if in the interim trustee's opinion the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever

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in respect of the debts mentioned in paragraphs (e) to (h) of section 51(1), so indicate.”.

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I17 Sch. 3 para. 16 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 17 In section 26(1) (provisions relating to termination of original trustee's functions), for the words “prepared under section 23(3)(d)” substitute “ of the debtor's affairs prepared under section 20(1) (as revised under section 23(3)(d) if so revised) ”.

Commencement Information

I18 Sch. 3 para. 17 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 18 In section 27(4) (discharge of original trustee: appeal etc.) for “under”, where it first occurs, substitute “ by virtue of ”.

Commencement Information

I19 Sch. 3 para. 18 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 19 In section 29(8) (removal of trustee and trustee not acting: application of certain provisions of section 28), for “(7)” substitute “ (8) ”.

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I20 Sch. 3 para. 19 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 20 In section 32 (vesting of estate of debtor after sequestration)—
(a) in subsection (1), for “subsections (2) and (4B)” substitute “ sections 32A to 32H ”, and
(b) in subsection (5), after “54” insert “ , 54A or 54C ”.

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I21 Sch. 3 para. 20 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 21 In section 39A(3) (debtor's home ceasing to form part of sequestrated estate: exceptions), in paragraph (d), for the words from “registers” to “title” substitute “ completes title in the Land Register of Scotland or, as the case may be, the Register of Sasines ”.

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I22 Sch. 3 para. 21 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

22 In section 43A(1) (debtor's requirement to give account of affairs), for paragraph (b) substitute—

“(b) is subject to a debtor contribution order.”.

Commencement Information

I23 Sch. 3 para. 22 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

23 In section 47 of the 1985 Act (conduct of examination), for subsection (6) substitute—

“(6) The trustee must send a copy of the record of the examination to the Accountant in Bankruptcy.”.

Commencement Information

I24 Sch. 3 para. 23 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

24 In section 48 of the 1985 Act (submission of claims to trustee), for subsection (7) (b) substitute—

“(b) in subsection (7) the words “and keep a record of it stating the date when it was produced to him” were repealed.”.

Commencement Information

I25 Sch. 3 para. 24 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

25 In section 50(1) (entitlement to vote and draw a dividend), for the words “on appeal under subsection (6) of” substitute “ on review or appeal ”.

Commencement Information

I26 Sch. 3 para. 25 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

26 In section 52(7) (set aside of certain estate where appeal)—

- (a) for the words “an appeal is taken under section 49(6)(b)” substitute “ a review or appeal is made under section 49 ”, and
- (b) for “appeal”, where it appears in both subsequent places, substitute “ review or appeal ”.

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I27 Sch. 3 para. 26 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 27 In section 53 (procedure after end of accounting period)—
- (a) in subsection (6), for “such an appeal” substitute “ an appeal against a determination under paragraph (a) or, as the case may be, an appeal under paragraph (b) ”, and
 - (b) in subsection (6A), for “(6)” substitute “ (6)(a) or (b) ”.

Commencement Information

I28 Sch. 3 para. 27 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 28 The title of section 55 becomes “ Effect of discharge under section 54, 54A or 54C ”.

Commencement Information

I29 Sch. 3 para. 28 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 29 In section 55—
- (a) in subsection (1), after “54” insert “ , 54A or 54C ”,
 - (b) in subsection (2)—
 - (i) in paragraph (aa), for “district court” substitute “ justice of the peace court (or a district court) ”, and
 - (ii) in paragraph (b), for “section 1(3) of the Bail etc. (Scotland) Act 1980” substitute “ section 24(6) of the Criminal Procedure (Scotland) Act 1995 (c.46) ”, and
 - (c) in subsection (3), after “54” insert “ , 54A or 54C ”.

Commencement Information

I30 Sch. 3 para. 29 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 30 In section 56J (effect of recall of sequestration)—
- (a) in subsection (1)—
 - (i) in paragraph (a), for the words from “interim” to “undertaking” substitute “ or interim bankruptcy restrictions order ”, and
 - (ii) after paragraph (a), insert “ and ”, and
 - (b) in subsection (2), for the words from “interim” to “undertaking” substitute “ or interim bankruptcy restrictions order ”.

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I31 Sch. 3 para. 30 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 31 In section 58 (unclaimed dividends), for “57(1)(a)”, in both places where it occurs, substitute “ 57(1B) ”.

Commencement Information

I32 Sch. 3 para. 31 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 32 In section 58A(4) (documents sent on discharge of Accountant in Bankruptcy), in paragraph (a) for “the determination mentioned in subsection (2)(c) above” substitute “ a determination of the Accountant in Bankruptcy's fees and outlays calculated in accordance with regulations made under section 69A ”.

Commencement Information

I33 Sch. 3 para. 32 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 33 In section 60B(2) (trustee's duty to give notice etc. to member State liquidator), after “shall” insert “ also ”.

Commencement Information

I34 Sch. 3 para. 33 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 34 In section 72 (regulations)—
- (a) after subsection (1), insert—
 - “(1A) Regulations under this Act may make different provision for different cases or classes of case.”, and
 - (b) in subsection (3)(a)—
 - (i) after sub-paragraph (i) insert—
 - “(ia) section 5(2ZC),
 - (ib) section 5(2ZD),”
 - (ii) after sub-paragraph (iia) insert—
 - “(iib) section 5C(2)(b),
 - (iic) section 5D(1),
 - (iid) section 32E(7),” and
 - (iii) after sub-paragraph (iii), insert—
 - “(iv) section 71C(1) which contain provisions which add to, replace or omit any part of the text of an Act or an Act of the Scottish Parliament,

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(v) paragraph 2(7) of Schedule A1,”.

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I35 Sch. 3 para. 34 in force at 30.6.2014 by S.S.I. 2014/172, art. 2, Sch.

- 35 In section 73(1) (interpretation)—
- (a) in the definition of “commissioner”, for “30(1)” substitute “ 4 ”,
 - (b) after the definition of “commissioner”, insert—

““common financial tool” has the meaning given by section 5D(1),”
 - (c) after the definition of “creditor” insert—

““DAS register” has the meaning given by section 4A(4)(b),”
 - (d) in the definition of “debtor application”, after “5(2)(a)” insert “ or (3)(a) ”,
 - (e) after the definition of “debtor application” insert—

““debtor contribution order” has the meaning given by section 32A(1),”
 - (f) after the definition of “debtor's contribution” has the meaning given by section 5D(1),”
 - (g) after the definition of “member State liquidator” insert—

““money adviser” has the meaning given by section 5C(2),”
 - (g) for the definition of “qualified to act as an insolvency practitioner” (and the proviso to that definition) substitute—

““qualified to act as an insolvency practitioner” is to be construed in accordance with section 390 of the Insolvency Act 1986,” and
 - (h) after the definition of “statement of assets and liabilities” insert—

““statement of undertakings” means the statement of debtor undertakings sent to the debtor under section 2(8) or, in the case of a debtor application, given by the debtor when making the application,”.

Commencement Information

I36 Sch. 3 para. 35(a)-(g) in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

I37 Sch. 3 para. 35(h) in force at 30.6.2014 by S.S.I. 2014/172, art. 2, Sch.

- 36 In Schedule 1 (determination of amount of creditor's claim), in paragraph 2(2), after “case” insert “ , where they first occur ”.

Commencement Information

I38 Sch. 3 para. 36 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

- 37 In Part 2 of Schedule 7 (re-enactment of certain provisions of Bankruptcy (Scotland) Act 1913), in paragraph 24(3), for the words from “the”, where it third

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occurs, to “meantime” substitute “ in the meantime the first or any subsequent arrester obtains ”.

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I39 Sch. 3 para. 37 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)

38 In section 62 of the Debt Arrangement and Attachment (Scotland) Act 2002 (regulations and orders)—

- (a) in subsection (3), for “the first regulations made under section 7 above” substitute “ any regulations containing provision of the kind mentioned in section 7(2)(bd), any regulations containing provision of the kind mentioned in section 7(2)(ub) ”, and
- (b) in subsection (4), for “the first regulations made under section 7 above” substitute “ any regulations containing provision of the kind mentioned in section 7(2)(bd), any regulations containing provision of the kind mentioned in section 7(2)(ub) ”.

Commencement Information

I40 Sch. 3 para. 38 in force at 30.6.2014 by S.S.I. 2014/172, art. 2, Sch. (with art. 3)

Fire (Scotland) Act 2005 (asp 5)

39 In paragraph 5(2)(d) of schedule 1A to the Fire (Scotland) Act 2005, for “either of those Acts” substitute “ paragraph 7 of Schedule 4A to the Insolvency Act 1986 ”.

Commencement Information

I41 Sch. 3 para. 39 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)

40 In schedule 6 (repeals), in the entry relating to section 37(8) of the 1985 Act, for “second” substitute “ third ”.

Commencement Information

I42 Sch. 3 para. 40 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

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Housing (Scotland) Act 2010 (asp 17)

- 41 In section 165 (interpretation), in the definition of “undischarged bankrupt”, in paragraph (c)(ii), for “either of those Acts” substitute “ paragraph 7 of Schedule 4A to the Insolvency Act 1986 ”.

Commencement Information

I43 Sch. 3 para. 41 in force at 1.4.2015 by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

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