



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 5 **S**

#### VESTING ETC.

##### *Vesting*

#### **78 Vesting of estate at date of sequestration **S****

- (1) The whole estate of the debtor vests for the benefit of the creditors in the trustee in the sequestration, by virtue of the trustee's appointment, as at the date of sequestration.
- (2) But subsection (1) is subject to section 88.
- (3) It is not competent for—
  - (a) the trustee, or
  - (b) any person deriving title from the trustee,to complete title, before the expiry of the period mentioned in subsection (4), to any heritable property in Scotland vested in the trustee by virtue of the trustee's appointment.
- (4) The period is 28 days (or such other period as may be prescribed) beginning with the day on which the certified copy of—
  - (a) the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 26 in the Register of Inhibitions, or
  - (b) the determination of AiB awarding sequestration is recorded under subsection (2) of that section in that register.
- (5) The exercise by the trustee of any power conferred on the trustee by this Act, in respect of any heritable estate vested in the trustee by virtue of that person's appointment, is not challengeable on the ground of a prior inhibition.
- (6) Where the debtor has an uncompleted title to any heritable estate in Scotland, the trustee may complete title to that estate either in the trustee's own name or in the name of the debtor.

*Status: Point in time view as at 31/12/2020.*

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- (7) But completion of title in the name of the debtor does not validate by accretion any unperfected right in favour of a person other than the trustee.
- (8) Moveable property in respect of which, but for this subsection—
- (a) delivery or possession, or
  - (b) intimation of assignation,
- would be required in order to complete title vests in the trustee, by virtue of the trustee's appointment, as if at the date of sequestration (as the case may be) the trustee had taken delivery or possession of the property or had made intimation of its assignation to the trustee.
- (9) Any non-vested contingent interest which the debtor has vests in the trustee as if an assignation of that interest had been executed by the debtor (and intimation of assignation made) at the date of sequestration.
- (10) Any non-vested contingent interest vested in the trustee by virtue of subsection (9) is, where it remains so vested as at the date which is 4 years after the date of sequestration, re-invested in the debtor as if an assignation of that interest had been executed by the trustee (and intimation of assignation made) at that date.
- (11) A person claiming a right to any estate claimed by the trustee may apply to the sheriff for the estate to be excluded from such vesting, a copy of the application being served on the trustee.
- (12) The sheriff must grant the application if satisfied that the estate should not be so vested.
- (13) Where any successor of a deceased debtor whose estate has been sequestrated has made up title to, or is in possession of, any part of that estate, the sheriff may on the application of the trustee order the successor to convey such estate to the trustee.

#### Commencement Information

**II** [S. 78](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

## 79 Provision supplementary to section 78 and interpretation of Part 5 **S**

- (1) In subsection (1) of section 78, the “whole estate of the debtor” means the debtor's whole estate at the date of sequestration (wherever situated) including—
- (a) any income or estate vesting in the debtor on the date of sequestration,
  - (b) any property of the debtor title to which has not been completed by another person deriving right from the debtor, and
  - (c) the capacity to exercise and to take proceedings for exercising all such powers in, over or in respect of any property as—
    - (i) might have been exercised by the debtor for the debtor's own benefit as at, or on, the date of sequestration, or
    - (ii) might be exercised on a relevant date.
- (2) But subsection (1) is subject to subsection (3) <sup>F1</sup>....
- (3) The “whole estate of the debtor” does not include any interest of the debtor as tenant under—

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- (a) a tenancy which is an assured tenancy within the meaning of Part 2 of the Housing (Scotland) Act 1988,
  - (b) a protected tenancy within the meaning of the Rent (Scotland) Act 1984 in respect of which, by virtue of Part 8 of that Act, no premium can lawfully be required as a condition of assignment,<sup>F2</sup> ...
  - (c) a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001<sup>F3</sup>, or
  - (d) a private residential tenancy within the meaning of the Private Housing (Tenancies) (Scotland) Act 2016].
- (4) On the date on which the trustee serves notice to that effect on the debtor, the interest of the debtor as tenant under any of the tenancies referred to in subsection (3) forms part of the debtor's estate and vests in the trustee as if it had vested in the trustee under section 86(5).
- (5) In this Part “relevant date” means a date after the date of sequestration and before the date which is 4 years after the date of sequestration.

#### Textual Amendments

- F1** Words in s. 79(2) omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), regs. 1, **4(11)** (with reg. 9) (as amended by [S.S.I. 2020/337](#), regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in s. 79(3)(b) omitted (1.12.2017) by virtue of [The Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(Consequential Provisions\) Regulations 2017 \(S.S.I. 2017/405\)](#), regs. 1, **4(2)(a)**
- F3** S. 79(3)(d) and word inserted (1.12.2017) by [The Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(Consequential Provisions\) Regulations 2017 \(S.S.I. 2017/405\)](#), regs. 1, **4(2)(b)**

#### Commencement Information

- I2** S. 79 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

## 80 Property subject to restraint order **S**

- (1) Subsection (2) applies where—
- (a) property is excluded from the debtor's estate by virtue of section 420(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
  - (b) an order under section 50, 67A, 128, 131A, 198 or 215A of that Act has not been made in respect of the property,
  - (c) the restraint order is discharged, and
  - (d) immediately after the discharge of the restraint order the property is not detained under or by virtue of section 44A, 47J, 122A, 127J, 193A or 195J of that Act.
- (2) The property vests in the trustee in the sequestration as part of the debtor's estate.
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's outlays and remuneration).

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#### Commencement Information

**I3** S. 80 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 81 Property released from detention **S**

- (1) Subsection (2) applies where—
- (a) property is excluded from the debtor's estate by virtue of section 420(2)(b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),
  - (b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and
  - (c) the property is released.
- (2) The property vests in the trustee in the sequestration as part of the debtor's estate.

#### Commencement Information

**I4** S. 81 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 82 Property in respect of which receivership or administration order is made **S**

- (1) Subsection (2) applies where—
- (a) property is excluded from the debtor's estate by virtue of section 420(2)(c) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the receiver or administrator (as the case may be).
- (2) The property vests in the trustee in the sequestration as part of the debtor's estate.

#### Commencement Information

**I5** S. 82 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 83 Property in respect of which realisation order is made **S**

- (1) Subsection (2) applies where—
- (a) property is excluded from the debtor's estate by virtue of section 420(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the appropriate officer.
- (2) The property vests in the trustee in the sequestration as part of the debtor's estate.

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#### Commencement Information

16 S. 83 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 84 Property subject to certain orders where confiscation order discharged or quashed **S**

- (1) Subsection (2) applies where—
- property is excluded from the debtor's estate by virtue of section 420(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property excluded from debtor's estate),
  - a confiscation order is made under section 6, 92 or 156 of that Act, and
  - the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.
- (2) Any such property vests in the trustee in the sequestration as part of the debtor's estate if it is in the hands of—
- a receiver appointed under Part 2 or 4 of that Act,
  - an administrator appointed under Part 3 of that Act, or
  - an appropriate officer (within the meaning of section 41A, 120A or 190A of that Act).
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's outlays and remuneration).

#### Commencement Information

17 S. 84 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 85 Vesting of income received by debtor after sequestration **S**

- (1) Any income, of whatever nature, received by the debtor on a relevant date, other than income arising from the estate which is vested in the trustee in the sequestration, is to vest in the debtor.
- (2) But subsection (1) is subject to sections 90 to 97.

#### Commencement Information

18 S. 85 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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

- (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.

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- (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 “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.

#### Commencement Information

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

## 87 Dealings and circumstances of debtor after sequestration **S**

- (1) The debtor must immediately notify the trustee in the sequestration—

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- (a) of any assets acquired by the debtor on a relevant date, or
  - (b) of any other substantial change in the debtor's financial circumstances.
- (2) A debtor who fails to comply with subsection (1) commits an offence.
- (3) A debtor who commits an offence under subsection (2) is liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale,
  - (b) to imprisonment for a term not exceeding 3 months, or
  - (c) both to such fine and to such imprisonment.
- (4) Any dealing of, or with, the debtor and relating to the debtor's estate vested in the trustee under section 78 or 86 is of no effect in a question with the trustee.
- (5) But subsection (4) does not apply where the person seeking to uphold the dealing establishes that the trustee—
  - (a) has abandoned to the debtor the property to which the dealing relates,
  - (b) has expressly or impliedly authorised the dealing, or
  - (c) is otherwise personally barred from challenging the dealing.
- (6) Nor does subsection (4) apply where the person seeking to uphold the dealing establishes both—
  - (a) that the dealing is—
    - (i) the performance of an obligation undertaken before the date of sequestration by a person obliged to the debtor in the obligation,
    - (ii) the purchase from the debtor of goods for which the purchaser has given value to the debtor or is willing to give value to the trustee, or
    - (iii) one which satisfies the conditions mentioned in subsection (10), and
  - (b) that the person dealing with the debtor was, at the time when the dealing occurred, unaware of the sequestration and had at that time no reason to believe that the debtor's estate had been sequestrated or was the subject of sequestration proceedings.
- (7) Nor does subsection (4) apply where the dealing is a banking transaction entered into before the receipt by the bank of a notice under section 86(9) (whether or not the bank is aware of the sequestration).
- (8) Where the trustee has abandoned heritable property to the debtor, notice (in such form as may be prescribed) given to the debtor by the trustee is sufficient evidence that the property is vested in the debtor.
- (9) Where notice is given under subsection (8), the trustee is as soon as reasonably practicable after giving it to record a certified copy of it in the Register of Inhibitions.
- (10) The conditions are that—
  - (a) the dealing constitutes—
    - (i) the transfer of incorporeal moveable property, or
    - (ii) the creation, transfer, variation or extinguishing of a real right in heritable property,for which the person dealing with the debtor has given adequate consideration to the debtor or is willing to give adequate consideration to the trustee,
  - (b) the dealing requires the delivery of a deed, and

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- (c) the delivery occurs during the period beginning with the date of sequestration and ending 7 days after the day on which—
  - (i) the certified copy of the order of the sheriff granting warrant is recorded in the Register of Inhibitions under section 26(1)(a), or
  - (ii) the certified copy of the determination of AiB awarding sequestration is recorded in that register under section 26(2).

#### Commencement Information

**I10** S. 87 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### *Limitation on vesting*

## **88**      **Limitation on vesting** **S**

- (1) The following property of the debtor does not vest in the trustee in the sequestration—
  - (a) any property—
    - (i) kept outside a dwellinghouse, and
    - (ii) in respect of which attachment is, by virtue of section 11(1) of the 2002 Act, incompetent,
  - (b) any property—
    - (i) kept inside a dwellinghouse, and
    - (ii) not a non-essential asset for the purposes of Part 3 of that Act, and
  - (c) property held on trust by the debtor for any other person.
- (2) The vesting of the debtor's estate in the trustee in the sequestration does not affect the right of hypothec of a landlord.
- (3) Sections 78, 85 and 86 are without prejudice to the right of any secured creditor which is preferable to the rights of the trustee.

#### Commencement Information

**I11** S. 88 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2



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