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SCHEDULE 1 **S**

(introduced by section 2(6))

DEBTOR TO WHOM SECTION 2(2) APPLIES: APPLICATION OF ACT

Modification of certain provisions of Act

- 1 (1) Where section 2(2) applies in relation to a debtor, this Act applies subject to the modifications mentioned in sub-paragraphs (2) to (6).
- (2) Section 42 applies as if for subsection (1) there were substituted—
- “ (1) This section applies where AiB receives by virtue of section 8(3)(a) the statement of assets and liabilities in relation to a debtor to whom section 2(2) applies.
- (1A) As soon as practicable, AiB must prepare a statement of the debtor's affairs, so far as within the knowledge of AiB, stating that, because 2(2) applies in relation to the debtor, no claims may be submitted by creditors under section 46 or 122.
- (1B) AiB must send a copy of the statement prepared under subsection (1A) to every known creditor of the debtor.”
- (3) Section 50(1) applies as if paragraphs (e) and (f) were omitted.
- (4) Section 116 applies as if for subsection (2) there were substituted—
- “ (2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.”
- (5) Section 151 applies as if—
- (a) subsections (2) to (6) and (9)(a) were omitted, and
- (b) for subsection (7) there were substituted—
- “ (7) The debtor or any creditor may, within 14 days beginning with the day on which the debtor is discharged under section 140(1), appeal to the sheriff against the discharge of AiB in respect of AiB's acting as trustee.”
- (6) Sections 44, 46, 48, 49, 60, 63 to 65, 122, 131 and 210(3) do not apply.

Commencement Information

II Sch. 1 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Accountant in Bankruptcy's duty to consider whether paragraph 1 should cease to have effect

- 2 (1) This paragraph applies where paragraph 1 applies in relation to a debtor.
- (2) If AiB considers that the circumstances mentioned in any of sub-paragraphs (3) to (6) apply in relation to the debtor, AiB must consider whether paragraph 1 should cease to have effect in relation to the debtor.
- (3) The circumstances are that—

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- (a) AiB becomes aware the debtor application submitted under section 2 contains an error, and
 - (b) the nature of the error is such that the debtor was not at the time of application a debtor to whom section 2(2) applies.
- (4) The circumstances are that—
- (a) AiB becomes aware that the debtor application submitted under section 2 deliberately misrepresents, or fails to state, a fact that was the case at the time of application, and
 - (b) the nature of the misrepresentation or the omission of the fact is such that the debtor was not at that time a debtor to whom section 2(2) applies.
- (5) The circumstances are that, at any time after the date on which the debtor application is made—
- (a) the total value of the debtor's assets (leaving out of account any liabilities and any assets that, under section 88(1), would not vest in a trustee) exceeds £5,000 or such other sum as may be prescribed, or
 - (b) AiB assesses the debtor, under the common financial tool, as being able to make a contribution.
- (6) The circumstances are that, at any time after the date of sequestration—
- (a) AiB is not satisfied that the debtor has co-operated with the trustee, and
 - (b) AiB considers that if paragraph 1 were to cease to have effect it would be—
 - (i) of financial benefit to the estate of the debtor, and
 - (ii) in the interests of the creditors.
- (7) The Scottish Ministers may by regulations modify this paragraph—
- (a) by modifying the circumstances in which paragraph 1 ceases to have effect,
 - (b) in consequence of any modification made under sub-paragraph (7)(a).

Commencement Information

I2 [Sch. 1 para. 2](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Procedure where Accountant in Bankruptcy considers paragraph 1 should cease to have effect

- 3
- (1) If AiB considers under paragraph 2(2) that paragraph 1 should cease to have effect in relation to a debtor, AiB must notify the debtor of that fact and of the matters mentioned in sub-paragraph (2).
 - (2) The matters are—
 - (a) the circumstances mentioned in paragraph 2 which AiB considers apply in relation to the debtor, and
 - (b) that the debtor may make representations to AiB within 14 days beginning with the giving of notification under sub-paragraph (1).
 - (3) On the expiry of the 14 days mentioned in sub-paragraph (2)(b) and after having taken into account any representations made by the debtor under that sub-paragraph, AiB must decide whether paragraph 1 should cease to have effect in relation to the debtor.

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- (4) If AiB decides that paragraph 1 should cease to have effect in relation to the debtor, AiB must, as soon as practicable after reaching that decision, give notice in writing to the debtor—
- (a) of the decision, and
 - (b) of the effect of the decision.

Commencement Information

I3 Sch. 1 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Debtor's right of appeal against decision under paragraph 3

- 4
- (1) This paragraph applies where AiB gives notice to a debtor under paragraph 3(4).
 - (2) The debtor may appeal to the sheriff against the decision.
 - (3) Any such appeal must be lodged within 14 days after the day on which the notice is given.
 - (4) If the sheriff grants the appeal, paragraph 1 continues to have effect in relation to the debtor.
 - (5) If the sheriff refuses the appeal, or if it is abandoned or withdrawn, paragraph 1 ceases to have effect in relation to the debtor.

Commencement Information

I4 Sch. 1 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Decision that paragraph 1 ceases to have effect: modification of certain provisions of Act

- 5
- (1) Where paragraph 1 ceases to have effect in relation to a debtor, this Act applies subject to sub-paragraphs (2) to (4).
 - (2) The debtor must send to the trustee a statement of assets and liabilities—
 - (a) where no appeal is taken under paragraph 4, within 7 days beginning with the expiry of the period during which an appeal may be made under that paragraph, or
 - (b) where an appeal is refused or, as the case may be, abandoned or withdrawn, within 7 days beginning with—
 - (i) the day on which notice is given of the outcome of the appeal, or
 - (ii) as the case may be, its abandonment or withdrawal.
 - (3) Section 44 applies as if, in subsection (3)(a), for the words “sequestration is awarded” there were substituted “ paragraph 1 of schedule 1 ceases to have effect in relation to the debtor ”.
 - (4) Section 116 applies as if for subsection (2) there were substituted—

“(2) The trustee in the sequestration must require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs—

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- (a) within 60 days beginning with the day on which paragraph 1 of schedule 1 ceases to have effect in relation to the debtor,
- (b) on the expiry of 6 months beginning with the day on which the account is given under paragraph (a), and
- (c) on the expiry of each subsequent 6 months.”.

Commencement Information

I5 Sch. 1 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

SCHEDULE 2 S

(introduced by sections 7(4), 46(9) and 125(4))

DETERMINATION OF AMOUNT OF CREDITOR'S CLAIM

Amount which may be claimed generally

- 1 (1) Subject to the provisions of this schedule, the amount in respect of which a creditor is entitled to claim is the accumulated sum of principal and any interest which is due on the debt as at the date of sequestration.
- (2) If a debt does not depend on a contingency but would not be payable but for the sequestration until after the date of the sequestration, the amount of the claim must be calculated as if the debt were payable on that date but subject to the deduction of interest at the rate specified in section 129(10) from that date until the date for payment of the debt.
- (3) In calculating the amount of a creditor's claim, the creditor must deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the debtor or by the usage of trade.

Commencement Information

I6 Sch. 2 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

*Claims for aliment and for periodical allowance
on divorce or on dissolution of civil partnership*

- 2 (1) A person entitled to aliment, however arising, from a living debtor as at the date of sequestration, or from a deceased debtor immediately before the debtor's death, is not entitled to include in the amount of the person's claim—
- (a) any unpaid aliment for any period before the date of sequestration unless the amount of the aliment has been quantified by court decree or by any legally binding obligation which is supported by evidence in writing, and—
 - (i) in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses), or
 - (ii) in the case of civil partners (or, where the aliment is payable to a former civil partner in respect of a child after dissolution of a civil partnership, former civil partners),

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- they were living apart during that period, or
- (b) any aliment for a period after the date of sequestration.
- (2) Sub-paragraph (1) applies to a periodical allowance payable on divorce or on dissolution of a civil partnership—
- (a) by virtue of a court order, or
- (b) under any legally binding obligation which is supported by evidence in writing,
- as it applies to aliment and as if, for sub-paragraphs (i) and (ii) of sub-paragraph (1) (a) and the word “they” which immediately follows sub-paragraph (ii), there were substituted “the payer and payee”.

Commencement Information

I7 Sch. 2 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Debts depending on contingency

- 3 (1) The amount which a creditor is entitled to claim does not include a debt in so far as its existence or amount depend on a contingency.
- (2) But sub-paragraph (1) is subject to sub-paragraph (3).
- (3) On an application by the creditor—
- (a) to the trustee in the sequestration, or
- (b) if there is no trustee, to AiB,
- the trustee, or AiB, must put a value on the debt in so far as it is contingent.
- (4) The amount in respect of which the creditor is then entitled to claim is that value but no more.
- (5) And where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.
- (6) An interested person may apply to AiB for a review of a valuation under sub-paragraph (3) by the trustee.
- (7) Any application under sub-paragraph (6) must be made within 14 days beginning with the day of the valuation.
- (8) If an application under sub-paragraph (6) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm or vary the valuation within 28 days beginning with that day.
- (9) An interested person may appeal to the sheriff against a decision by AiB under sub-paragraph (8)(b) within 14 days beginning with the day of the decision.
- (10) AiB may refer a case to the sheriff for a direction before making a decision under sub-paragraph (8)(b).
- (11) An appeal to the sheriff under sub-paragraph (9) may not be made in relation to a matter on which AiB has applied for a direction under sub-paragraph (10).

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Commencement Information

18 Sch. 2 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Secured debts

- 4 (1) A secured creditor, in calculating the amount of the secured creditor's claim, must deduct the value of any security as estimated by the secured creditor.
- (2) But if the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the debtor's estate, the secured creditor is not required to make a deduction of the value of that security.
- (3) The trustee in the sequestration may, at any time after the expiry of 12 weeks after the date of sequestration, require the secured creditor, at the expense of the debtor's estate, to discharge the security or convey or assign it to the trustee on payment to the creditor of the value specified by the creditor.
- (4) The amount in respect of which the creditor is then entitled to claim is any balance of the creditor's debt remaining after receipt of the payment.
- (5) A creditor whose security has been realised, in calculating the amount of the creditor's claim, must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

Commencement Information

19 Sch. 2 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Valuation of claims against partners for debts of the partnership

- 5 (1) Where a creditor claims, in respect of a debt of a partnership, against the estate of one of its partners, the creditor must estimate the value of—
- (a) the debt to the creditor from the firm's estate where that estate has not been sequestrated, or
- (b) the creditor's claim against that estate where it has been sequestrated,
- and deduct that value from the creditor's claim against the partner's estate.
- (2) The amount in respect of which the creditor is entitled to claim on the partner's estate is the balance remaining after that deduction is made.

Commencement Information

110 Sch. 2 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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SCHEDULE 3 **S**

(introduced by section 129(2) and (3))

PREFERRED DEBTS

PART 1 **S**

LIST OF PREFERRED DEBTS

Contributions to occupational pension schemes etc.

- 1 Any sum which is owed by the debtor and is a sum to which schedule 4 of the Pension Schemes Act 1993 (contributions to occupational pension scheme and state scheme premiums) applies.

Commencement Information

I11 Sch. 3 para. 1 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Remuneration of employees etc.

- 2 (1) So much of any amount which—
- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
 - (b) is payable by way of remuneration in respect of the whole or any part of the 4 months which immediately precedes the relevant date,
- as does not exceed the prescribed amount.
- (2) An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated (whether before, on or after that date).
- (3) So much of any amount owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within sub-paragraph (1) or (2).

Commencement Information

I12 Sch. 3 para. 2 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 3 So much of any amount which—
- (a) is ordered, whether before or after the relevant date, to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985, and
 - (b) is so ordered in respect of a default made by the debtor before that date in the discharge of the debtor's obligations under that Act,
- as does not exceed such amount as may be prescribed.

Commencement Information

I13 Sch. 3 para. 3 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

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Levies on coal and steel production

- 4 Any sums due at the relevant date from the debtor in respect of—
- (a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the Treaty establishing the European Coal and Steel Community, or
 - (b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of that Community.

Commencement Information

I14 Sch. 3 para. 4 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Debts owed to the Financial Services Compensation Scheme

- 5 Any debt owed by the debtor to the scheme manager of the Financial Services Compensation Scheme under section 215(2A) of the Financial Services and Markets Act 2000.

Commencement Information

I15 Sch. 3 para. 5 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Deposits covered by Financial Services Compensation Scheme

- 6 So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.

Commencement Information

I16 Sch. 3 para. 6 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Other deposits

- 7 So much of any amount owed at the relevant date by the debtor to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to that person or those persons.

Commencement Information

I17 Sch. 3 para. 7 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 8 An amount owed at the relevant date by the debtor to one or more eligible persons in respect of a deposit which—
- (a) was made through a [^{F1}non-UK] branch of a credit institution authorised by the competent authority of [^{F2}the United Kingdom], and

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- (b) would have been an eligible deposit if it had been made through [^{F3}a UK] branch of that credit institution.

Textual Amendments

- F1** Word in sch. 3 para. 8(a) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(2)(a)(i)** (with regs. 24-26)
- F2** Words in sch. 3 para. 8(a) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(2)(a)(ii)** (with regs. 24-26)
- F3** Words in sch. 3 para. 8(b) substituted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **8(2)(b)** (with regs. 24-26)

Commencement Information

- I18** Sch. 3 para. 8 in force at 30.11.2016 by S.S.I. 2016/294, **reg. 2**

[^{F4}Certain HMRC debts

Textual Amendments

- F4** Sch. 3 para. 8A and cross-heading inserted (with application in accordance with s. 98(7) of the amending Act) by Finance Act 2020 (c. 14), s. **98(4)**

- 8A (1) Any amount owed at the relevant date by the debtor to the Commissioners in respect of—
- (a) value added tax, or
 - (b) a relevant deduction.
- (2) In sub-paragraph (1), the reference to “any amount” is subject to any regulations under section 99(1) of the Finance Act 2020.
- (3) For the purposes of sub-paragraph (1)(b) a deduction is “relevant” if—
- (a) the debtor is required, by virtue of an enactment, to make the deduction from a payment made to another person and to pay an amount to the Commissioners on account of the deduction,
 - (b) the payment to the Commissioners is credited against any liabilities of the other person, and
 - (c) the deduction is of a kind specified in regulations under section 99(3) of the Finance Act 2020.
- (4) In this paragraph “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.]

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PART 2 **S**

INTERPRETATION OF PART 1

Meaning of “the relevant date”

- 9 In Part 1, “the relevant date” means—
- (a) in relation to a debtor other than a deceased debtor, the date of sequestration, and
 - (b) in relation to a deceased debtor, the date of death.

Commencement Information

119 Sch. 3 para. 9 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Amounts payable by way of remuneration

- 10 (1) For the purposes of paragraph 2, a sum is payable by the debtor to a person by way of remuneration in respect of any period if—
- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or
 - (b) it is an amount falling within sub-paragraph (2) and is payable by the debtor in respect of that period.
- (2) An amount falls within this sub-paragraph if it is—
- (a) a guarantee payment under section 28(1) to (3) of the Employment Rights Act 1996 (entitlement to payment for workless day),
 - (b) a payment for time off under section 53(1) (looking for new employment or making arrangements for training for future employment) or 56(1) (antenatal care) of that Act,
 - (c) remuneration on suspension on medical grounds under section 64 of that Act,
 - (d) a payment for time off under section 169(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (trade union duties), or
 - (e) remuneration under a protective award made by an employment tribunal under section 189 of that Act (redundancy dismissal with compensation).
- (3) For the purposes of paragraph 2(2), holiday remuneration is deemed, in the case of a person (“P”) whose employment has been terminated by or in consequence of the award of sequestration of P's employer's estate, to have accrued to P in respect of a period of employment if, by virtue of P's contract of employment or of any enactment, that remuneration would have accrued in respect of that period if P's employment had continued until P became entitled to be allowed the holiday.
- (4) In sub-paragraph (3), “enactment” includes an order made or direction given under an enactment.
- (5) Without prejudice to the preceding provisions of this paragraph—
- (a) any remuneration payable by the debtor to a person in respect of a period—
 - (i) of holiday, or
 - (ii) of absence from work through sickness or other good cause,

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is deemed to be wages, or as the case may be salary, in respect of services rendered to the debtor in that period, and

- (b) references in this paragraph to remuneration in respect of a period of holiday include references to any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social services as earnings in respect of that period.

Commencement Information

I20 Sch. 3 para. 10 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Meaning of “prescribed”

- 11 In paragraphs 2 and 3, “prescribed” means prescribed by regulations made by the Secretary of State.

Commencement Information

I21 Sch. 3 para. 11 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Meaning of “scheme manager”

- 12 In paragraph 5, “the scheme manager” has the meaning given in section 212(1) of the Financial Services and Markets Act 2000.

Commencement Information

I22 Sch. 3 para. 12 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Meaning of “eligible deposit”

- 13 (1) In paragraphs 6 to 8, “eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.
- (2) For the purposes of those paragraphs and of this paragraph, a “deposit” means rights of the kind described in paragraph 22 of schedule 2 of the Financial Services and Markets Act 2000 (deposits).
- (3) In paragraphs 7 and 8, “eligible person” means—
- (a) an individual, or
- [^{F5}(b) any micro, small or medium-sized enterprise, as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.]
- (4) In paragraph 8—
- (a) “credit institution” has the meaning given in Article 4.1(1) of the capital requirements regulation,
- [^{F6}(b) “UK branch” means a branch, as defined in Article 4(1)(17) of the capital requirements regulation, which is established in the United Kingdom, and

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(c) “non-UK branch” means a branch, as so defined, which is established outside the United Kingdom.]

[^{F7}(5) In sub-paragraph (4)(a) and (b), “the capital requirements regulation” means [Regulation \(EU\) No. 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending [Regulation \(EU\) No. 648/2012](#).]

Textual Amendments

- F5** Sch. 3 para. 13(3)(b) substituted (17.8.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2022 \(S.I. 2022/838\)](#), regs. 1(2), **8(3)(a)** (with regs. 24-26)
- F6** Sch. 3 para. 13(4)(b)(c) substituted (17.8.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2022 \(S.I. 2022/838\)](#), regs. 1(2), **8(3)(b)** (with regs. 24-26)
- F7** Sch. 3 para. 13(5) substituted (17.8.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2022 \(S.I. 2022/838\)](#), regs. 1(2), **8(3)(c)** (with regs. 24-26)

Commencement Information

- I23** Sch. 3 para. 13 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

Transitional provisions

- 14 Regulations under paragraph 2 or 3 may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

Commencement Information

- I24** Sch. 3 para. 14 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

SCHEDULE 4 S *(introduced by section 162)*

VOLUNTARY TRUST DEEDS FOR CREDITORS

Remuneration of trustee

- 1 Whether or not—
- (a) provision is made in the trust deed for auditing the accounts of the trustee in the sequestration and for determining the method of fixing the trustee's remuneration, or
 - (b) the trustee and the creditors have agreed on such auditing and the method of fixing that remuneration,
- the debtor, the trustee or any creditor may, at any time before the final distribution of the debtor's estate among the creditors, have the trustee's accounts audited by, and the trustee's remuneration fixed by, AiB.

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I25 Sch. 4 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Accountant in Bankruptcy's power to carry out audit

- 2 AiB may, at any time, audit the trustee's accounts and fix the trustee's remuneration.

Commencement Information

I26 Sch. 4 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Registration of notice of inhibition

- 3 (1) The trustee, from time to time after the trust deed is delivered to the trustee, may cause a notice in such form as is prescribed by act of sederunt to be recorded in the Register of Inhibitions.
- (2) Such recording has the same effect as the recording in that register of letters of inhibition against the debtor.
- (3) The trustee, after—
- (a) the debtor's estate has been distributed finally among the debtor's creditors,
 - or
 - (b) the trust deed has otherwise ceased to be operative,
- must cause a notice in such form as is so prescribed to be recorded in that register recalling the notice recorded under sub-paragraph (1).

Commencement Information

I27 Sch. 4 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Lodging of claim to bar effect of limitation of actions

- 4 The submission to the trustee, acting under a trust deed, of a claim by a creditor bars the effect of any enactment or rule of law relating to limitation of actions.

Commencement Information

I28 Sch. 4 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Valuation of claims

- 5 (1) Unless the trust deed otherwise provides, schedule 2 applies in relation to a trust deed as it applies to a sequestration but subject to the following modifications.
- (2) In paragraphs 1, 2 and 4, for the word “sequestration”, wherever it occurs, there is substituted “granting of the trust deed”.

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

(3) In paragraph 3(3), for paragraphs (a) and (b) and the words “the trustee or sheriff” which immediately follow paragraph (b) there is substituted “the trustee”.

Commencement Information
I29 Sch. 4 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

SCHEDULE 5 **S**
(introduced by section 210(3))

INFORMATION TO BE INCLUDED IN THE SEDERUNT BOOK

1 A copy of the debtor application made under section 2(1)(a).

Commencement Information
I30 Sch. 5 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

2 A copy of the petition presented under section 2(1)(b).

Commencement Information
I31 Sch. 5 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

3 Where the trustee is AiB, a copy of the statement of assets and liabilities sent to AiB in accordance with section 8(3)(a).

Commencement Information
I32 Sch. 5 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

^{F8}3A.

Textual Amendments
F8 Sch. 5 para. 3A omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), regs. 1, **4(18)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

4 A copy of the award of sequestration under section 22(1) or (5).

Commencement Information
I33 Sch. 5 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

5 A copy of the warrant to cite the debtor granted under section 22(3).

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I34 Sch. 5 para. 5 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 6 Where the trustee is not AiB—
- (a) the audited accounts sent to the trustee by AiB in accordance with section 56(5)(d), and
 - (b) the determination fixing the amount of the outlays and remuneration payable to the interim trustee sent to the trustee by AiB in accordance with that section.

Commencement Information

I35 Sch. 5 para. 6 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 7 Where the trustee is AiB—
- (a) the accounts audited by AiB in accordance with section 56(5)(a), and
 - (b) the determination, issued in accordance with section 56(5)(b), fixing the amount of the outlays and remuneration payable to the interim trustee.

Commencement Information

I36 Sch. 5 para. 7 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 8 Where AiB is appointed interim trustee and the sheriff awards sequestration in accordance with section 58(1)(a)—
- (a) the accounts of AiB's intromissions (if any) with the debtor's estate, and
 - (b) the determination of AiB's fees and outlays calculated in accordance with regulations under section 205.

Commencement Information

I37 Sch. 5 para. 8 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 9 A copy of—
- (a) an order—
 - (i) recalling or refusing to recall an award of sequestration by the sheriff under section 30, and
 - (ii) sent to the trustee under subsection (9)(b)(ii) of that section, or
 - (b) a grant of (or a refusal to grant), under section 34(1), 35(6) or 37, recall of an award of sequestration.

Commencement Information

I38 Sch. 5 para. 9 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 10 A copy of an order under section 114(3)(b) or 115(3)(b) sent to the trustee under section 30(9)(b).

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I39 Sch. 5 para. 10 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 11 Where the trustee is a replacement trustee appointed under section 60—
- (a) a copy of the audited accounts, and determination, sent under section 63(5)(c)(ii),
 - (b) on that appointment, such information as is appropriate to provide a record of the sequestration process before that appointment (except that no entry is to be made in relation to any written comments made by the original trustee under section 42(3)(c)), and
 - (c) an entry recording a certificate of discharge issued to the original trustee under section 65.

Commencement Information

I40 Sch. 5 para. 11 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 12 Where the trustee is not AiB, a copy of a statement of assets and liabilities sent to the trustee under section 41(1) or (2).

Commencement Information

I41 Sch. 5 para. 12 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 13 A copy of a notice given under section 44(3).

Commencement Information

I42 Sch. 5 para. 13 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 14 Where the trustee is not AiB, a copy of a report made under section 45(1).

Commencement Information

I43 Sch. 5 para. 14 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 15 Where the trustee is a replacement trustee appointed under section 60 and AiB was the original trustee, on that appointment, such information as is appropriate to provide a record of the sequestration process before that appointment.

Commencement Information

I44 Sch. 5 para. 15 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 16 A copy of an initial proposal for the debtor's contribution provided by the trustee under section 90(1)(b).

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I45 Sch. 5 para. 16 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

17 A copy of a debtor contribution order applying to the debtor.

Commencement Information

I46 Sch. 5 para. 17 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

18 A copy of a decree issued under section 98 affecting the sequestrated estate.

Commencement Information

I47 Sch. 5 para. 18 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

19 A copy of a decree of recall issued following an application under section 100(2).

Commencement Information

I48 Sch. 5 para. 19 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

20 A copy of a decree under section 99 affecting the sequestrated estate.

Commencement Information

I49 Sch. 5 para. 20 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

21 The inventory and valuation of the estate, made up and maintained in accordance with section 108(1)(b).

Commencement Information

I50 Sch. 5 para. 21 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

22 A copy of an account given by the debtor under section 116(2).

Commencement Information

I51 Sch. 5 para. 22 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

23 The debtor's deposition at an examination subscribed under section 121(6).

Commencement Information

I52 Sch. 5 para. 23 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

24 A copy of the record of an examination sent to AiB under section 121(7).

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I53 Sch. 5 para. 24 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

25 An appropriate entry in relation to the production of any document to the trustee in accordance with section 125(2), stating the date when it was produced to the trustee.

Commencement Information

I54 Sch. 5 para. 25 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

26 Where the trustee accepts or rejects a claim under section 126, the decision on the claim, specifying—

- (a) the amount of the claim accepted by the trustee,
- (b) the category of debt, and the value of any security, as decided by the trustee, and
- (c) if the claim is rejected, the reason.

Commencement Information

I55 Sch. 5 para. 26 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

27 A copy of a decision of AiB under subsection (4)(b) of section 127 and of the sheriff under subsection (5) of that section.

Commencement Information

I56 Sch. 5 para. 27 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

28 An agreement or determination in respect of the accounting period under section 130(3)(b)(i) or (ii).

Commencement Information

I57 Sch. 5 para. 28 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

29 Where the trustee is not AiB, the audited accounts, the scheme of division and the final determination in relation to the trustee's outlays and remuneration as mentioned in section 136.

Commencement Information

I58 Sch. 5 para. 29 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

30 A copy of the certificate of discharge given to the debtor under section 137(2), 138(2) or 143(5).

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I59 Sch. 5 para. 30 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 31 A copy of the certificate deferring discharge where the debtor cannot be traced issued under section 141(4)(b) or (6)(b).

Commencement Information

I60 Sch. 5 para. 31 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 32 Where AiB has acted as trustee, after making the final division of the debtor's estate—
- (a) AiB's final accounts of AiB's intromissions (if any) with the debtor's estate,
 - (b) the scheme of division (if any), and
 - (c) a determination of AiB's fees and outlays calculated in accordance with regulations under section 205.

Commencement Information

I61 Sch. 5 para. 32 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 33 Where AiB has acted as trustee and is discharged from all liability as mentioned in section 151(10), an appropriate entry in relation to such discharge.

Commencement Information

I62 Sch. 5 para. 33 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 34 A decision of the court under section 211 and of AiB under section 212.

Commencement Information

I63 Sch. 5 para. 34 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 35 A copy of a decree arbitral or, as the case may be, an appropriate entry recording the compromise referred to in section 216(1)(b).

Commencement Information

I64 Sch. 5 para. 35 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 36 The minutes of the meeting referred to in paragraphs 8 to 10 of schedule 6.

Commencement Information

I65 Sch. 5 para. 36 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 37 A copy of the minutes of a meeting sent to AiB in accordance with paragraph 25 of that schedule.

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I66 Sch. 5 para. 37 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

- 38 Where a meeting of commissioners is called in accordance with paragraph 26 of that schedule—
- (a) a record of the deliberations of the commissioners at the meeting,
 - (b) where the trustee is not clerk in accordance with paragraph 30 of that schedule, a record of the deliberations of the commissioners transmitted by the commissioner acting as clerk (such commissioner to authenticate the insertion when made), and
 - (c) in relation to any matter agreed without a meeting, the minute recording that agreement signed in accordance with paragraph 32(b) of that schedule.

Commencement Information

I67 Sch. 5 para. 38 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

- 39 A copy of any decision (including any determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation) relating to the sequestration which is—
- (a) issued by AiB, and
 - (b) not otherwise mentioned in this schedule.

Commencement Information

I68 Sch. 5 para. 39 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

- 40 A copy of any decree, interlocutory decree, direction or order relating to the sequestration which is—
- (a) granted by the court, and
 - (b) not otherwise mentioned in this schedule.

Commencement Information

I69 Sch. 5 para. 40 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

SCHEDULE 6 **S**

(introduced by section 217)

MEETINGS OF CREDITORS AND COMMISSIONERS

PART 1 **S**

MEETINGS OF CREDITORS OTHER THAN THE STATUTORY MEETING

Calling of meeting

- 1 The trustee in the sequestration must call a meeting of creditors if required to do so—
- by order of the sheriff,
 - by 1/10 in number or 1/3 in value of the creditors,
 - by a commissioner, or
 - by AiB.

Commencement Information

I70 Sch. 6 para. 1 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 2 Any such meeting must be held not later than 28 days after—
- the issuing of the order under paragraph 1(a), or
 - the receipt by the trustee of the requirement under paragraph 1(b), (c) or (d).

Commencement Information

I71 Sch. 6 para. 2 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 3 The trustee, or a commissioner who has given notice to the trustee, may at any time call a meeting of creditors.

Commencement Information

I72 Sch. 6 para. 3 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 4 The trustee, calling a meeting under paragraph 1 or 3, or a commissioner, calling a meeting under paragraph 3, is no fewer than 7 days before the date fixed for the meeting to notify—
- every creditor known to the trustee or, as the case may be, to the commissioner, and
 - AiB,
- of the date, time and place fixed for the holding of the meeting and of the meeting's purpose.

Commencement Information

I73 Sch. 6 para. 4 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

- 5 Where—
- (a) a requirement has been made under paragraph 1, but
- (b) no meeting has been called by the trustee,
- AiB may, of AiB's own accord or on the application of any creditor, call a meeting of creditors.

Commencement Information

I74 Sch. 6 para. 5 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 6 AiB, calling a meeting under paragraph 5, is no fewer than 7 days before the date fixed for the meeting to take reasonable steps to notify the creditors of the date, time and place fixed for the holding of the meeting and of the meeting's purpose.

Commencement Information

I75 Sch. 6 para. 6 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 7 It is not necessary to notify under paragraph 4 or 6 any creditor whose accepted claim is less than £50 or such sum as may be prescribed, unless the creditor has in writing requested such notification.

Commencement Information

I76 Sch. 6 para. 7 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Role of trustee at meeting

- 8 At the commencement of a meeting the trustee is to be the person chairing the meeting and as such is, after carrying out the trustee's duties under section 126(1)—
- (a) to invite the creditors to elect one of their number to chair the meeting in the trustee's place, and
- (b) to preside over the election.

Commencement Information

I77 Sch. 6 para. 8 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 9 If no person is elected in pursuance of paragraph 8, the trustee must chair the meeting throughout.

Commencement Information

I78 Sch. 6 para. 9 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

- 10 The trustee is to arrange for a record to be made of the proceedings at the meeting.

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I79 Sch. 6 para. 10 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Appeals

- 11 The trustee, a creditor or any other person having an interest may, within 14 days after the date of a meeting called under paragraph 4 or 6, appeal to the sheriff against a resolution of the creditors at the meeting.

Commencement Information

I80 Sch. 6 para. 11 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

PART 2 S

ALL MEETINGS OF CREDITORS

Validity of proceedings

- 12 No proceedings at a meeting are invalidated by reason only that a notice or other document relating to the calling of the meeting, being a notice required to be sent or given under a provision of this Act, has not been received by, or come to the attention of, any creditor before the meeting.

Commencement Information

I81 Sch. 6 para. 12 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

[^{F9}Holding of meeting]

Textual Amendments

F9 [Sch. 6 paras. 13, 13A](#) and cross-heading substituted for sch. 6 para. 13 and cross-heading (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), [ss. 21\(2\)\(a\)](#), 59(1)

- [^{F9}13 Every meeting must be held either—
- (a) in such place (whether or not in the sheriffdom) as is, in the opinion of the person calling the meeting, the most convenient for the majority of the creditors, or
 - (b) by such electronic means as would, in the opinion of the person calling the meeting, be most convenient to allow the majority of the creditors to participate in the meeting without being together in the same place.]

Commencement Information

I82 Sch. 6 para. 13 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

- [^{F9}13A Where a meeting is to be held in pursuance of paragraph 13(b), the references in paragraphs 4 and 6 to the place fixed for the holding of the meeting are to be read as references to the electronic means by which attendees are to be able to attend the meeting without being together in the same place.]

Mandatories

- 14 A creditor may authorise in writing a person to represent the creditor at a meeting.

Commencement Information

I83 Sch. 6 para. 14 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 15 A creditor must lodge with the trustee, before the commencement of the meeting, any authorisation given under paragraph 14.

Commencement Information

I84 Sch. 6 para. 15 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 16 Any reference in paragraph 8, or in the following provisions of this Part, to a creditor includes a reference to a person authorised under paragraph 14 by a creditor.

Commencement Information

I85 Sch. 6 para. 16 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Quorum

- 17 The quorum at any meeting is one creditor.

Commencement Information

I86 Sch. 6 para. 17 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Voting at meeting

- 18 Any question at a meeting is to be determined by a majority in value of the creditors who vote on that question.

Commencement Information

I87 Sch. 6 para. 18 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Objections by creditors

- 19 At any meeting the person chairing it may allow or disallow any objection by a creditor, other than (if the person chairing the meeting is not the trustee) an objection relating to a creditor's claim.

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I88 Sch. 6 para. 19 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 20 A person aggrieved by the determination of the person chairing the meeting in respect of an objection may appeal to the sheriff against the determination.

Commencement Information

I89 Sch. 6 para. 20 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 21 If the person chairing the meeting is in doubt as to whether to allow or disallow an objection, the meeting must proceed as if no objection had been made, except that for the purposes of appeal the objection is to be deemed to have been disallowed.

Commencement Information

I90 Sch. 6 para. 21 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Adjournment of meeting

- 22 If no creditor has appeared at a meeting by half an hour after the time appointed for its commencement, the person chairing the meeting may adjourn it to such other day as that person may appoint, being a day no fewer than 7, nor more than 21, days after that on which the meeting is adjourned.

Commencement Information

I91 Sch. 6 para. 22 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 23 The person chairing the meeting may, with the consent of a majority in value of the creditors who vote on a resolution to adjourn a meeting, adjourn the meeting.

Commencement Information

I92 Sch. 6 para. 23 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 24 Any adjourned meeting must be held at the same time [^{F10}, and at the same place or by the same electronic means,] as the original meeting, unless [^{F11}the resolution specifies otherwise].

Textual Amendments

F10 Words in [sch. 6 para. 24](#) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), [ss. 21\(2\)\(b\)\(i\)](#), 59(1)

F11 Words in [sch. 6 para. 24](#) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), [ss. 21\(2\)\(b\)\(ii\)](#), 59(1)

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Commencement Information

I93 Sch. 6 para. 24 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Minutes of meeting

- 25 The minutes of every meeting must be signed by the person who chaired the meeting and within 14 days after the meeting must be sent to AiB.

Commencement Information

I94 Sch. 6 para. 25 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

PART 3 S

MEETINGS OF COMMISSIONERS

- 26 The trustee—
- (a) may call a meeting of commissioners at any time, and
 - (b) must call such a meeting—
 - (i) on being required to do so by order of the sheriff, or
 - (ii) on being requested to do so by AiB or by any commissioner.

Commencement Information

I95 Sch. 6 para. 26 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 27 If the trustee fails to call a meeting of commissioners within 14 days after being required or requested to do so under paragraph 26, a commissioner may call a meeting of commissioners.

Commencement Information

I96 Sch. 6 para. 27 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 28 The trustee must give the commissioners at least 7 days' notice of a meeting called by the trustee unless the commissioners decide that they do not require such notice.

Commencement Information

I97 Sch. 6 para. 28 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 29 The trustee is to act as clerk at a meeting of commissioners.

Commencement Information

I98 Sch. 6 para. 29 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

- 30 If the commissioners are considering the performance of the functions of the trustee under any provision of this Act, the trustee must withdraw from the meeting if requested to do so by the commissioners and in such a case a commissioner must—
- (a) act as clerk, and
 - (b) transmit a record of the deliberations of the commissioners to the trustee.

Commencement Information

I99 Sch. 6 para. 30 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 31 The quorum at a meeting of commissioners is one commissioner and the commissioners may act by a majority of the commissioners present at the meeting.

Commencement Information

I100 Sch. 6 para. 31 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

- 32 Any matter may be agreed by the commissioners without a meeting if such agreement—
- (a) is unanimous, and
 - (b) is subsequently recorded in a minute signed by the commissioners.

Commencement Information

I101 Sch. 6 para. 32 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

SCHEDULE 7 **S**
(introduced by section 233)

RE-ENACTMENT OF SECTIONS 10 AND 189
OF THE BANKRUPTCY (SCOTLAND) ACT 1913

Arrestments and attachments

- 1 (1) Subject to sub-paragraph (2), all arrestments and attachments which have been executed within 60 days prior to the constitution of the apparent insolvency of the debtor, or within 4 months after its constitution, rank *pari passu* as if they had all been executed on the same date.
- (2) Any such arrestment which is executed on the dependence of an action must be followed up without undue delay.
- (3) A creditor judicially producing, in a process relative to the subject of such arrestment or attachment, liquid grounds of debt or decree of payment within the 60 days or 4 months referred to in sub-paragraph (1) is entitled to rank as if the creditor had executed an arrestment or an attachment.
- (4) If, in the meantime—
- (a) the first or any subsequent arrester obtains a decree of furthcoming and recovers payment, that arrester, or

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- (b) an attaching creditor carries through an auction or receives payment in respect of an attached article upon its redemption, that attaching creditor, is accountable for the sum recovered to those who, by virtue of this Act, may eventually be found to have a ranking *pari passu* on the sum; and is liable in an action at their instance for payment to them proportionately, after allowing out of the fund the expense of such recovery.
- (5) Arrestments executed for attaching the same effects of the debtor after the 4 months subsequent to the constitution of the debtor's apparent insolvency do not compete with those within the 60 days or 4 months referred to in sub-paragraph (1) but may rank with each other on any reversion of the fund attached in accordance with any enactment or rule of law relating to such ranking.
- (6) Any reference in sub-paragraphs (1) to (5) to a debtor is to be construed as including a reference to an entity whose apparent insolvency may, by virtue of subsection (6) of section 16 of this Act, be constituted under subsection (1) of that section.
- (7) This paragraph applies in respect of arrestments and attachments executed whether before or after the coming into force of this Act.
- (8) Nothing in this paragraph applies to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.

Commencement Information

I102 Sch. 7 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Exemptions from stamp or other duties for conveyances, deeds etc. relating to sequestrated estates

2

Any—

- (a) conveyance, assignation, instrument, discharge, writing or deed relating solely to the estate of a debtor which has been or may be sequestrated, under either this or any former Act, being estate which after the execution of the document in question is and remains the property of the debtor, for the benefit of the debtor's creditors, or of the trustee in the sequestration,
- (b) discharge to the debtor,
- (c) deed, assignation, instrument, or writing for reinvesting the debtor in the estate,
- (d) article of roup or sale, or submission,
- (e) other instrument or writing whatsoever relating solely to the estate of the debtor, and
- (f) other deed or writing forming part of the proceedings ordered under such sequestration,

is exempt from all stamp duties or other Government duty.

Commencement Information

I103 Sch. 7 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

SCHEDULE 8 **S**

(introduced by section 234(1))

MODIFICATION OF ENACTMENTS

Judicial Factors (Scotland) Act 1889

- 1 In section 11A(2) of the Judicial Factors (Scotland) Act 1889 (application for judicial factor on estate of person deceased), for the words “73(2) of the Bankruptcy (Scotland) Act 1985, section 51” there is substituted “ 228(5) of the Bankruptcy (Scotland) Act 2016, section 129 ”.

Commencement Information

I104 Sch. 8 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Sheriff Courts (Scotland) Act 1907

- 2 In section 34 of the Sheriff Courts (Scotland) Act 1907 (removings), for the words “1856” there is substituted “ 1985 or 2016 ”.

Commencement Information

I105 Sch. 8 para. 2 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Conveyancing (Scotland) Act 1924

- 3 In section 44(4)(c) (limitation of effect of entries in the Register of Inhibitions)—
- (a) after the words “1985”, where they first occur, there is inserted “ or the Bankruptcy (Scotland) Act 2016 ”, and
 - (b) in paragraph (b)—
 - (i) after the words “1985” there is inserted “ or (1)(a) of section 26 of the Bankruptcy (Scotland) Act 2016 ”, and
 - (ii) for the words “that section” there is substituted “ the said section 14 or (4) of the said section 26 ”.

Commencement Information

I106 Sch. 8 para. 3 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Administration of Justice Act 1956

- 4 In section 47G of the Administration of Justice Act 1956 (ranking of arresting creditor of demise charterer in sequestration or winding up of owner), for subsection (3) there is substituted—

“(3) Subsections (6) to (8) of section 24 of the Bankruptcy (Scotland) Act 2016 (further provision as regards the effect of sequestration on diligence) and, in so far as applying and modifying those subsections, section 185(1)(a) and (2) of the Insolvency Act 1986 (application of sequestration provisions relating

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to diligence on winding up) shall apply to such an arrestment as they apply to any other arrestment.”.

Commencement Information

I107 Sch. 8 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Conveyancing and Feudal Reform (Scotland) Act 1970

- 5 In section 19(3) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (calling up of standard security), for the words “1913” there is substituted “ 2016 ”.

Commencement Information

I108 Sch. 8 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Prescription and Limitation (Scotland) Act 1973

- 6 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) In section 9(1) (definition of “relevant claim” for purposes of sections 6, 7 and 8 of the Act)—
- (a) in paragraph (b), for the words “22 or 48 of the Bankruptcy (Scotland) Act 1985” there is substituted “ 46 or 122 of the Bankruptcy (Scotland) Act 2016 ”, and
 - (b) in paragraph (c), for the words “5(2)(c) of the Bankruptcy (Scotland) Act 1985” there is substituted “ 228(1) of the Bankruptcy (Scotland) Act 2016 ”.
- (3) In section 22A(3) (10 years' prescription of obligations), in paragraph (b) of the definition of “relevant claim”, for the words “22 or 48 of the Bankruptcy (Scotland) Act 1985” there is substituted “ 46 or 122 of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I109 Sch. 8 para. 6 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Local Government (Scotland) Act 1973

- 7 In section 31 of the Local Government (Scotland) Act 1973 (disqualification for nomination, election and holding office as member of local authority)—
- (a) in subsection (2)(b), for the words “1985” there is substituted “ 2016 ”, and
 - (b) in subsection (3B)(a), for the words “56A of the Bankruptcy (Scotland) Act 1985” there is substituted “ 155 of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I110 Sch. 8 para. 7 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Education (Scotland) Act 1980

- 8 In section 73B(12) of the Education (Scotland) Act 1980 (regulations relating to student loans), for the words “54, 54A or 54C of the Bankruptcy (Scotland) Act 1985 or on an order being made under paragraph 11 of Schedule 4 to that Act” there is substituted “ 137, 138 or 140 of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I111 Sch. 8 para. 8 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Family Law (Scotland) Act 1985

- 9 (1) The Family Law (Scotland) Act 1985 is amended as follows.
- (2) In section 14(5)(b) (incidental orders), for the words “41 of the Bankruptcy (Scotland) Act 1985” there is substituted “ 114 of the Bankruptcy (Scotland) Act 2016 ”.
- (3) In section 16(3)(b) (agreements on financial provision), for the words “10(5) of the Bankruptcy (Scotland) Act 1985” there is substituted “ 17(7) of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I112 Sch. 8 para. 9 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Legal Aid (Scotland) Act 1986

- 10 In Part 2 of schedule 2 of the Legal Aid (Scotland) Act 1986 (civil legal aid: excepted proceedings), in paragraph 3(d), for the words “5(2)(a) of the Bankruptcy (Scotland) Act 1985” there is substituted “ 2(1)(a) of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I113 Sch. 8 para. 10 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Debtors (Scotland) Act 1987

- 11 (1) The Debtors (Scotland) Act 1987 is amended as follows.
- (2) In section 9(10)(b) (effect of time to pay order on diligence), for the words “7 of the Bankruptcy (Scotland) Act 1985” there is substituted “ 16 of the Bankruptcy (Scotland) Act 2016 ”.
- (3) In section 13(2) (saving of creditor's rights and remedies), for the words “24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985” there is substituted “ 1 of schedule 7 of the Bankruptcy (Scotland) Act 2016 ”.
- (4) In section 66 (recall and variation of conjoined arrestment order)—

Status: Point in time view as at 01/07/2024.

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- (a) in subsection (2)(e), for the words “13 of the Bankruptcy (Scotland) Act 1985 or the permanent” there is substituted “ 55 of the Bankruptcy (Scotland) Act 2016 or the ”, and
 - (b) in subsection (7), the words “the permanent” are omitted.
- (5) In section 67 (equalisation of diligences not to apply), for the words “24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985” there is substituted “ 1 of schedule 7 of the Bankruptcy (Scotland) Act 2016 ”.
- (6) In section 72(5) (effect of sequestration on diligence against earnings), for the words “12(4) of the Bankruptcy (Scotland) Act 1985” there is substituted “ 22(7) of the Bankruptcy (Scotland) Act 2016 ”.
- (7) In section 93(4) (recovery from debtor of expenses of certain diligences)—
- (a) in paragraph (b), for the words “1985” there is substituted “ 2016 ”, and
 - (b) in paragraph (f), for the words “Schedule 5 to the Bankruptcy (Scotland) Act 1985” there is substituted “ schedule 4 of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I114 Sch. 8 para. 11 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Agricultural Holdings (Scotland) Act 1991

- 12 (1) The Agricultural Holdings (Scotland) Act 1991 is amended as follows.
- (2) In section 21(6) (notice to quit and notice of intention to quit), after the words “under the” there is inserted “ Bankruptcy (Scotland) Act 2016, the ”.
 - (3) In section 22(2)(f) (restrictions on operation of notices to quit), for the words “7 of the Bankruptcy (Scotland) Act 1985” there is substituted “ 16 of the Bankruptcy (Scotland) Act 2016 ”.
 - (4) In section 41(3)(b) (direction by Land Court that holding be treated as market garden), for the words “7 of the Bankruptcy (Scotland) Act 1985” there is substituted “ 16 of the Bankruptcy (Scotland) Act 2016 ”.
 - (5) In section 85(1) (interpretation), in the definition of—
 - (a) “landlord”, for the words from “, tutor” to the end there is substituted “ or tutor of a landlord or the trustee or interim trustee in the sequestration of a landlord's estate; ”, and
 - (b) “tenant”, for the words from “, curator” to the end there is substituted “ or curator bonis of a tenant or the trustee or interim trustee in the sequestration of a tenant's estate; ”.

Commencement Information

I115 Sch. 8 para. 12 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Status: Point in time view as at 01/07/2024.

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Crofters (Scotland) Act 1993

- 13 In paragraph 10 of schedule 2 of the Crofters (Scotland) Act 1993 (the statutory conditions), for the words “1985” there is substituted “ 2016 ”.

Commencement Information

I116 Sch. 8 para. 13 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Proceeds of Crime (Scotland) Act 1995

- 14 In paragraph 2(1)(j) of schedule 1 of the Proceeds of Crime (Scotland) Act 1995 (administrators), for the words “74 of the Bankruptcy (Scotland) Act 1985” there is substituted “ 229 of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I117 Sch. 8 para. 14 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Education (Scotland) Act 1996

- 15 In paragraph 4 of schedule 1 of the Education (Scotland) Act 1996 (the Scottish Qualifications Authority), in sub-paragraph (2)(b), for the words “1985” there is substituted “ 2016 ”.

Commencement Information

I118 Sch. 8 para. 15 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Adults with Incapacity (Scotland) Act 2000

- 16 In section 87(4) of the Adults with Incapacity (Scotland) Act 2000 (interpretation), for the words “5 to the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “ 4 of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I119 Sch. 8 para. 16 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

International Criminal Court (Scotland) Act 2001

- 17 (1) Schedule 6 of the International Criminal Court (Scotland) Act 2001 (freezing orders in respect of property liable to forfeiture) is amended as follows.
- (2) In paragraph 8 (sequestration)—
- (a) in sub-paragraph (1)(a), for the words “12(4) of the 1985” there is substituted “ 22(7) of the 2016 ”,
 - (b) in sub-paragraph (2), for the words “22 of that Act or the permanent trustee in accordance with section 48” there is substituted “ 46 of that Act or the trustee in the sequestration in accordance with section 122 ”,

Status: Point in time view as at 01/07/2024.

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- (c) in sub-paragraph (2)(a), for the words “31(8) of the 1985” there is substituted “ 79(1) of the 2016 ”,
 - (d) in sub-paragraph (2)(b), for the words “32A” there is substituted “ 90 ”,
 - (e) in sub-paragraph (2)(c), for the words “31(10) or 32(6) of that Act vests in the permanent trustee” there is substituted “ 79(4) or 86(5) of that Act vests in the trustee in the sequestration ”,
 - (f) in sub-paragraph (3), for the words “1985” there is substituted “ 2016 ”,
 - (g) in sub-paragraph (4), for the words “2(5) of the 1985” there is substituted “ 54(1) of the 2016 ”, and
 - (h) sub-paragraph (5) is omitted.
- (3) In paragraph 12 (interpretation)—
- (a) the definition of “the 1985 Act” is omitted, and
 - (b) after the definition of “the 1986 Act” there is inserted—

““the 2016 Act” means the Bankruptcy (Scotland) Act 2016;”.

Commencement Information

I120 Sch. 8 para. 17 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Debt Arrangement and Attachment (Scotland) Act 2002

- 18 (1) The Debt Arrangement and Attachment (Scotland) Act 2002 is amended as follows.
- (2) In section 9Q(3) (recovery of expenses of interim attachment)—
- (a) in paragraph (b), for the words “1985 (c.66)” there is substituted “ 2016 ”, and
 - (b) in paragraph (f), for the words “5 to the 1985” there is substituted “ 4 of the 2016 ”.
- (3) In section 31(1) (disposal of proceeds of auction), for the words “37 (effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “ 24 (further provision as regards the effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 2016 ”.
- (4) In section 40(3) (recovery from debtor of expenses of attachment)—
- (a) in paragraph (b), for the words “1985 (c.66)” there is substituted “ 2016 ”, and
 - (b) in paragraph (f), for the words “5 to the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “ 4 of the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I121 Sch. 8 para. 18 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Agricultural Holdings (Scotland) Act 2003

- 19 In section 93 of the Agricultural Holdings (Scotland) Act 2003 (interpretation), in the definition of—
- (a) “landlord”—

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- (i) after the word “guardian” there is inserted “ or ”, and
 - (ii) for the words from “or permanent” to the end there is substituted “ of a landlord or the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of a landlord's estate; ”.
- (b) “tenant”—
- (i) after the word “guardian” there is inserted “ or ”, and
 - (ii) for the words from “or permanent” to the end there is substituted “ of a tenant or the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of a tenant's estate; ”.

Commencement Information

I122 Sch. 8 para. 19 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Fire (Scotland) Act 2005

- 20 In schedule 1A of the Fire (Scotland) Act 2005 (the Scottish Fire and Rescue Service), in paragraph 5(2)(c), after the words “(c.66)” there is inserted “ , the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I123 Sch. 8 para. 20 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Further and Higher Education (Scotland) Act 2005

- 21 In schedule 2B of the Further and Higher Education (Scotland) Act 2005 (regional boards)—
- (a) in paragraph 6(2)(c), after the words “1985” there is inserted “ , the Bankruptcy (Scotland) Act 2016 ”, and
 - (b) in paragraph 6(2)(d), for the words “under either of those Acts” there is substituted “ by virtue of paragraph 7 of schedule 4A of that Act of 1986 ”.

Commencement Information

I124 Sch. 8 para. 21 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Charities and Trustee Investment (Scotland) Act 2005

- 22 In section 70(3)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (disqualification: supplementary)—
- (a) in sub-paragraph (i), for the words “54, 54A, 54C or 75(4) of the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “ 137, 138 or 140 of the Bankruptcy (Scotland) Act 2016 ”, and
 - (b) sub-paragraph (ii) is omitted.

Status: Point in time view as at 01/07/2024.

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Commencement Information

I125 Sch. 8 para. 22 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Licensing (Scotland) Act 2005

- 23 In section 28(8) of the Licensing (Scotland) Act 2005 (period of effect of premises licence), for the words “1985 (c.66)” there is substituted “ 2016 ”.

Commencement Information

I126 Sch. 8 para. 23 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Bankruptcy and Diligence etc. (Scotland) Act 2007

- 24 (1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.
 (2) After section 127 there is inserted—

“127A Amendment of Bankruptcy (Scotland) Act 2016

- (1) The Bankruptcy (Scotland) Act 2016 is amended as follows.
 (2) After section 23 there is inserted—

“23A Effect of sequestration on land attachment

- (1) No land attachment of the heritable property of a debtor, created within the 6 months before the date of sequestration (whether or not subsisting at that date), is effectual to create a preference for the creditor.
- (2) A creditor who creates a land attachment within the 6 months mentioned in subsection (1) is entitled to payment, out of the attached land or out of the proceeds of sale of it, of the expenses incurred—
- (a) in obtaining the extract of the decree, or other document, containing the warrant for land attachment, and
 - (b) in serving the charge for payment, registering the notice of land attachment, serving a copy of that notice, and registering certificate of service of that copy.
- (3) A notice of land attachment—
- (a) registered on or after the date of sequestration against land forming part of the debtor's heritable estate (including any estate vesting under section 86(5) in the trustee in the sequestration) is of no effect,
 - (b) registered before that date and in relation to which, by that date, no land attachment is created is of no effect.
- (4) It is not competent for a creditor to insist in a land attachment—

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- (a) created over the debtor's heritable estate before the beginning of the 6 months mentioned in subsection (1), and
 - (b) which subsists on the date of sequestration.
- (5) But subsection (4) is subject to subsections (6) to (9).
- (6) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—
- (a) the trustee must concur in and ratify the deed implementing that contract, and
 - (b) the appointed person must account for and pay to the trustee in the sequestration any balance of the proceeds of sale (being the balance which would, but for the sequestration, be due to the debtor) after disbursing those proceeds in accordance with section 116 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (disbursement of proceeds of sale of attached land).
- (7) Subsection (6) does not apply where the deed implementing the contract is not registered within 28 days beginning with the day on which—
- (a) the certified copy of the order of the sheriff granting warrant is recorded, under subsection (1)(a) of section 26, in the Register of Inhibitions, or
 - (b) the certified copy of the determination of AiB awarding sequestration is recorded, under subsection (2) of that section, in that register.
- (8) Where a decree of foreclosure has been granted but an extract of it has not been registered, the creditor may proceed to complete title to the land by registering that extract provided that the creditor does so before the expiry of the days mentioned in subsection (7).
- (9) The Scottish Ministers may, as they think fit, prescribe a period in substitution for the days mentioned in subsection (7); and a different period may be prescribed for the purposes of subsection (8) than is prescribed for the purposes of subsection (7).
- (10) Expressions used in this section which also occur in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 have the same meanings in this section as they have in that Chapter.”.
- (3) In section 25 (effect of sequestration on diligence: estate of deceased debtor)
-
- (a) in subsection (1), for the words “Section 24 applies” there is substituted “ Sections 23A(1) and (2) and 24 apply ” and
 - (b) in subsection (3), the words “to raise or insist in an adjudication against the estate of a debtor (including any estate vesting under section 86(5) or” are omitted.”.
- (3) In section 195(4) (recovery from debtor of expenses of money attachment)—
- (a) in paragraph (a), for the words “1985 Act” there is substituted “ Bankruptcy (Scotland) Act 2016 ”, and

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- (b) in paragraph (e), for the words “the 1985 Act” there is substituted “ that Act of 2016 ”.

Commencement Information

I127 Sch. 8 para. 24 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Criminal Proceedings etc. (Reform) (Scotland) Act 2007

- 25 In section 73(2)(b) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (disqualification where sequestration or bankruptcy), for the words “1985 (c.66)” there is substituted “ 2016 ”.

Commencement Information

I128 Sch. 8 para. 25 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Legal Services (Scotland) Act 2010

- 26 (1) The Legal Services (Scotland) Act 2010 is amended as follows.
- (2) In section 58(3)(a) (conditions for disqualification)—
- (a) the words “or undertaking” are omitted, and
 - (b) after the words “1985,” there is inserted “ the Bankruptcy (Scotland) Act 2016, ”.
- (3) In section 64(3)(b) (factors as to fitness)—
- (a) the words “or undertaking” are omitted, and
 - (b) after the words “1985,” there is inserted “ the Bankruptcy (Scotland) Act 2016, ”.

Commencement Information

I129 Sch. 8 para. 26 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Housing (Scotland) Act 2010

- 27 (1) The Housing (Scotland) Act 2010 is amended as follows.
- (2) In section 60(3) (power to remove officers), for the words “has the meaning given by the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “ is to be construed in accordance with section 16 of the Bankruptcy (Scotland) Act 2016 ”.
- (3) In section 165 (interpretation), in paragraph (c)(i) of the definition of “undischarged bankrupt”, after the words “1985 (c.66)” there is inserted “ , the Bankruptcy (Scotland) Act 2016 ”.

Commencement Information

I130 Sch. 8 para. 27 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

Food (Scotland) Act 2015

- 28 In section 58(1) of the Food (Scotland) Act 2015 (general interpretation), in the definition of “undischarged bankrupt”—
- (a) in paragraph (c), after the words “1985” there is inserted “, the Bankruptcy (Scotland) Act 2016”, and
 - (b) in paragraph (d), for the words “either of those Acts” there is substituted “that Act of 1985 or that Act of 1986”.

Commencement Information

I131 Sch. 8 para. 28 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

SCHEDULE 9 **S**

(introduced by section 234(2))

REPEALS AND REVOCATIONS

PART 1 **S**

REPEALS

Commencement Information

I132 Sch. 9 Pt. 1 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

<i>Enactment</i>	<i>Extent of repeal</i>
Courts of Law Fees (Scotland) Act 1895	Section 4.
Bankruptcy (Scotland) Act 1985	The whole Act.
Debtors (Scotland) Act 1987	In schedule 6, paragraphs 27 and 28.
Bankruptcy (Scotland) Act 1993	The whole Act.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995	In schedule 3, paragraph 15(4). In schedule 4, paragraph 58.
Housing (Scotland) Act 2001	In schedule 10, paragraph 10.
Water Industry (Scotland) Act 2002	In schedule 7, paragraph 16.
Debt Arrangement and Attachment (Scotland) Act 2002	In schedule 3, paragraph 15.
Bankruptcy and Diligence etc. (Scotland) Act 2007	Sections 1 and 2. Sections 5 to 32. Sections 35 and 36. Schedule 1.

Status: Point in time view as at 01/07/2024.

Changes to legislation: Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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)

	In schedule 5, paragraph 13.
Home Owner and Debtor Protection (Scotland) Act 2010	Part 2.
Bankruptcy and Debt Advice (Scotland) Act 2014	The whole Act.

PART 2 S

REVOCATIONS

Commencement Information

I133 Sch. 9 Pt. 2 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

<i>Enactment</i>	<i>Extent of revocation</i>
Debt Arrangement Scheme (Scotland) Regulations 2004 (S.S.I. 2004/468)	In schedule 3, paragraphs 1 and 2.
Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 (S.S.I. 2008/81)	Regulation 4.
Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82)	Regulation 8.
Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141)	In schedule 2, paragraphs 1 and 2.
Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013 No. 318)	The whole instrument.
Common Financial Tool etc. (Scotland) Regulations 2014 (S.S.I. 2014/290)	Regulations 6 to 10.
Common Financial Tool etc. (Scotland) Amendment Regulations (S.S.I. 2015/149)	In regulation 4, paragraphs (5) to (7).

Status:

Point in time view as at 01/07/2024.

Changes to legislation:

Bankruptcy (Scotland) Act 2016 is up to date with all changes known to be in force on or before 09 October 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.