



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 1

APPLICATION OR PETITION FOR SEQUESTRATION

Meaning of “apparent insolvency”

16 **Meaning of “apparent insolvency”**

- (1) The apparent insolvency of a debtor is constituted, or where the debtor is already apparently insolvent again constituted, whenever—
- (a) the debtor's estate is sequestrated,
 - (b) the debtor is adjudged bankrupt in England and Wales or in Northern Ireland,
 - (c) the debtor gives written notice to the debtor's creditors that the debtor has ceased to pay the debtor's debts in the ordinary course of business (but the debtor must not, at the time notice is so given, be a person whose property—
 - (i) is affected by a restraint order,
 - (ii) is detained under or by virtue of a relevant detention power, or
 - (iii) is subject to a confiscation or charging order),
 - (d) the debtor becomes subject to main proceedings in a member State other than the United Kingdom,
 - (e) the debtor grants a trust deed,
 - (f) following the service on the debtor of a duly executed charge for payment of a debt, the days of charge expire without payment (unless the circumstances are shown to be such as are mentioned in subsection (2)),
 - (g) a decree of adjudication of any part of the debtor's estate is granted, either for payment or in security (unless the circumstances are shown to be such as are mentioned in subsection (2)),
 - (h) a debt constituted by a decree or document of debt, as defined in section 10 of the 2002 Act, is being paid by the debtor under a debt payment programme under Part 1 of that Act and the programme is revoked (unless the circumstances are shown to be such as are mentioned in subsection (2)), or
 - (i) a creditor of the debtor, in respect of a liquid debt which amounts to (or liquid debts which in aggregate amount to) not less than £1,500 or such sum as may

Status: Point in time view as at 30/11/2016. This version of this provision has been superseded.

Changes to legislation: Bankruptcy (Scotland) Act 2016, Section 16 is up to date with all changes known to be in force on or before 14 July 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)

be prescribed, serves on the debtor, by personal service by an officer of court, a demand in the prescribed form requiring the debtor either to pay the debt (or debts) or to find security for its (or their) payment and the condition set out in subsection (3) is met.

- (2) The circumstances are—
- (a) that at the time of the occurrence, the debtor was able and willing to pay the debtor's debts as they became due, or
 - (b) that, but for the debtor's property being affected by a restraint order or being subject to a confiscation order or charging order, the debtor would at that time have been able to pay those debts as they became due.
- (3) The condition is that the debtor does not, within 3 weeks after the date of service—
- (a) comply with the demand, or
 - (b) intimate to the creditor, by recorded delivery, that the debtor—
 - (i) denies that there is a debt, or
 - (ii) denies that the sum claimed by the creditor as the debt is immediately payable.
- (4) The apparent insolvency of a partnership is constituted (or as the case may be again constituted) either—
- (a) in accordance with subsection (1), or
 - (b) if any of the partners is apparently insolvent for a debt of the partnership.
- (5) The apparent insolvency of an unincorporated body is constituted (or as the case may be again constituted) either—
- (a) if a person representing the body is apparently insolvent for a debt of the body, or
 - (b) if a person holding property for the body in a fiduciary capacity is apparently insolvent for such a debt.
- (6) Notwithstanding subsection (2) of section 6, the apparent insolvency of an entity such as is mentioned in that subsection may be constituted (or as the case may be again constituted) under subsection (1); and any reference to the debtor in subsections (1) to (3) and (7) is, except where the context otherwise requires, to be construed as including a reference to such an entity.
- (7) The debtor's apparent insolvency continues—
- (a) if constituted under paragraph (a) or (b) of subsection (1), until the debtor's discharge,
 - (b) if constituted under paragraph (c), (e), (f), (g), (h) or (i) of that subsection, until the debtor becomes able to pay the debtor's debts and pays them as they become due, or
 - (c) if constituted under paragraph (d) of that subsection, until the main proceedings end.
- (8) In this section—
- “charging order” means an order made under section 78 of the Criminal Justice Act 1988 or under section 27 of the Drug Trafficking Act 1994,
- “confiscation order” means a confiscation order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002,
- “liquid debt” does not include a sum payable under a confiscation order,

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“relevant detention power” means section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P of the Proceeds of Crime Act 2002, and

“restraint order” means a restraint order made under Part 2, 3 or 4 of that Act of 2002.

Commencement Information

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

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