



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 1

APPLICATION OR PETITION FOR SEQUESTRATION

Applications and petitions

2 Sequestration of estate of living debtor

- (1) The sequestration of the estate of a living debtor is—
- (a) by debtor application made by the debtor, if subsection (2) or (8) applies to the debtor, or
 - (b) on the petition of—
 - (i) a qualified creditor, or qualified creditors, if the debtor is apparently insolvent,
 - ^{F1}(ii)
 - ^{F1}(iii)
 - (iv) a trustee acting under a trust deed if a condition mentioned in subsection (7) is satisfied.
- (2) This subsection applies to the debtor where—
- (a) the debtor—
 - (i) has been assessed by the common financial tool as requiring to make no debtor's contribution, or
 - (ii) has been in receipt of payments, of a kind prescribed, for a period of at least 6 months ending with the day on which the debtor application is made,
 - (b) the total amount of the debtor's debts (including interest) at the date the debtor application is made is—
 - (i) not less than [^{F2}such] amount as may be prescribed, and
 - (ii) not more than [^{F3}£25,000] or such other amount as may be prescribed,
 - (c) the total value of the debtor's assets (leaving out of account any liabilities) on the date the debtor application is made does not exceed £2,000 or such other amount as may be prescribed,

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- (d) no single asset of the debtor has a value which exceeds £1,000 or such other amount as may be prescribed,
- (e) the debtor does not own land,
- (f) the debtor has been granted, within the prescribed period and in accordance with section 9, a certificate for sequestration of the debtor's estate,
- (g) in the 10 years ending on the day before the day on which the debtor application is made or such other period as may be prescribed, no award of sequestration has been made against the debtor in pursuance of an application made by the debtor by virtue of this subsection, and
- (h) in the 5 years ending on the day before the day on which the debtor application is made, no award of sequestration has been made against the debtor in pursuance of—
 - (i) an application made by the debtor other than by virtue of this subsection, or
 - (ii) a petition.

[^{F4}(2A) For the purposes of subsection (2)(b), the amount of a loan made to the debtor is not to be regarded as a debt where the loan was made by virtue of regulations to which section 73B (regulations relating to student loans) of the Education (Scotland) Act 1980 applies.]

- (3) For the purposes of subsection (2)(c) and (d)—
 - (a) any property of the debtor is not to be regarded as an asset if, under any provision of this or any other enactment, it would be excluded from vesting in AiB as trustee,
 - (b) if the debtor reasonably requires the use of a vehicle, any vehicle owned by the debtor the value of which does not exceed £3,000 or such other amount as may be prescribed is not to be regarded as an asset, and
 - (c) any other property of the debtor that is of a prescribed type is not to be regarded as an asset.
- (4) For the purposes of subsection (2)(c) and (d), the Scottish Ministers may by regulations make provision about how the value of the debtor's assets is to be determined.
- (5) The Scottish Ministers may by regulations modify subsection (2).
- (6) Schedule 1 makes further provision about the application of certain provisions of this Act in relation to a debtor to whom subsection (2) applies.
- (7) The conditions mentioned in subsection (1)(b)(iv) are—
 - (a) that the debtor has failed to comply—
 - (i) with an obligation imposed on the debtor under the trust deed, being an obligation with which the debtor reasonably could have complied, or
 - (ii) with an instruction reasonably given to, or requirement reasonably made of, the debtor by the trustee for the purposes of the trust deed, or
 - (b) that the trustee avers in the trustee's petition that it would be in the best interests of the creditors that an award of sequestration be made.
- (8) This subsection applies to the debtor where—
 - (a) the total amount of the debtor's debts (including interest) at the date the debtor application is made is not less than £3,000 or such sum as may be prescribed,

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- (b) an award of sequestration has not been made against the debtor in the 5 years ending on the day before the date the debtor application is made,
 - (c) the debtor has obtained the advice of a money adviser in accordance with section 4(1),
 - (d) the debtor has given a statement of undertakings (including an undertaking to pay to the trustee, after the award of sequestration of the debtor's estate, an amount determined using the common financial tool), and
 - (e) the debtor—
 - (i) is apparently insolvent,
 - (ii) has been granted, within the prescribed period and in accordance with section 9, a certificate for sequestration of the debtor's estate, or
 - (iii) has granted a trust deed which, by reason of creditors objecting, or not agreeing, to it is not a protected trust deed.
- (9) For the purposes of subsection (8)(e)(i), the debtor is not apparently insolvent by reason only of granting a trust deed or of giving notice to creditors as mentioned in section 16(1)(c).
- (10) In subsection (8)(e)(ii), “the prescribed period” means such period, ending immediately before the date the debtor application is made, as may be prescribed under section 9(4)(b).

Textual Amendments

- F1** S. 2(1)(b)(ii)(iii) omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), regs. 1, **4(2)** (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. 2(2)(b)(i) substituted (6.2.2023) by [The Bankruptcy and Debt Arrangement Scheme \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/9\)](#), regs. 1, **2**
- F3** Sum in s. 2(2)(b)(ii) substituted (29.3.2021) by [The Bankruptcy \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/148\)](#), regs. 1, **4(2)** (with regs. 3(a), 4(4))
- F4** S. 2(2A) inserted (29.3.2021) by [The Bankruptcy \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/148\)](#), regs. 1, **4(3)** (with regs. 3(a), 4(4))

Commencement Information

- I1** S. 2 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)