



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 2

#### SEQUESTRATION: AWARD AND RECALL

##### *Award of sequestration*

#### **25 Effect of sequestration on diligence: estate of deceased debtor**

- (1) [<sup>F1</sup>Sections 23A(1) and (2) and 24 apply] to the estate of a deceased debtor which—
- (a) has been sequestrated within 12 months after the date of death, or
  - (b) was absolutely insolvent at that date and in respect of which a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 within 12 months after that date,
- but with the modifications mentioned in subsection (2).
- (2) The modifications are that—
- (a) any reference to the date of sequestration is to be construed as a reference to the date of death, and
  - (b) any reference to the debtor is to be construed as a reference to the deceased debtor.
- (3) It is not competent, on or after the date of sequestration, for any creditor <sup>F2</sup>... to be confirmed as executor-creditor on the estate.
- (4) Subsections (5) and (6) apply where, within 12 months after the debtor's death—
- (a) the debtor's estate is sequestrated, or
  - (b) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer the debtor's estate and that estate is absolutely insolvent.
- (5) No confirmation as executor-creditor on that estate at any time after the debtor's death is effectual in a question with the trustee or the judicial factor.
- (6) But the executor-creditor is entitled—
- (a) out of the estate, or

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*Changes to legislation: Bankruptcy (Scotland) Act 2016, Section 25 is up to date with all changes known to be in force on or before 17 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) View outstanding changes*

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(b) out of the proceeds of sale of the estate,  
to the expenses incurred by the executor-creditor in obtaining the confirmation.

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**Textual Amendments**

- F1** Words in s. 25(1) substituted by 2007 asp 3, s. 127A(3)(a) (as inserted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), **sch. 8 para. 24(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)
- F2** Words in s. 25(3) omitted by 2007 asp 3, s. 127A(3)(b) (as inserted (30.11.2016) by virtue of [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), **sch. 8 para. 24(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)
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**Commencement Information**

- I1** S. 25 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\(2\)\(b\)](#)