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# Bankruptcy (Scotland) Act 1985 (repealed)

## 1985 CHAPTER 66

### *Vesting of estate in permanent trustee*

#### **31 Vesting of estate at date of sequestration. S**

- (1) Subject to section 33 of this Act, the whole estate of the debtor shall vest as at the date of sequestration in the permanent trustee for the benefit of the creditors; and—
  - (a) the estate shall so vest by virtue of the act and warrant issued on confirmation of the permanent trustee's appointment; and
  - (b) the act and warrant shall, in respect of the heritable estate in Scotland of the debtor, have the same effect as if a decree of adjudication in implement of sale, as well as a decree of adjudication for payment and in security of debt, subject to no legal reversion, had been pronounced in favour of the permanent trustee.
- (2) The exercise by the permanent trustee of any power conferred on him by this Act in respect of any heritable estate vested in him by virtue of the act and warrant shall not be challengeable on the ground of any prior inhibition (reserving any effect of such inhibition on ranking).
- (3) Where the debtor has an uncompleted title to any heritable estate in Scotland, the permanent trustee may complete title thereto either in his own name or in the name of the debtor, but completion of title in the name of the debtor shall not validate by accretion any unperfected right in favour of any person other than the permanent trustee.
- (4) Any moveable property, in respect of which but for this subsection—
  - (a) delivery or possession; or
  - (b) intimation of its assignation,would be required in order to complete title to it, shall vest in the permanent trustee by virtue of the act and warrant as if at the date of sequestration the permanent trustee had taken delivery or possession of the property or had made intimation of its assignation to him, as the case may be.

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- (5) Any non-vested contingent interest which the debtor has shall vest in the permanent trustee as if an assignation of that interest had been executed by the debtor and intimation thereof made at the date of sequestration.
- (6) Any person claiming a right to any estate claimed by the permanent trustee may apply to the court for the estate to be excluded from such vesting, a copy of the application being served on the permanent trustee; and the court shall grant the application if it is satisfied that the estate should not be so vested.
- (7) Where any successor of a deceased debtor whose estate has been sequestrated has made up title to, or is in possession of, any part of that estate, the court may, on the application of the permanent trustee, order the successor to convey such estate to him.
- (8) In subsection (1) above the “whole estate of the debtor” means <sup>F1</sup>, subject to subsection (9) below <sup>F2</sup> and to section 89(2) of the Social Security Administration Act 1992<sup>]</sup>, his whole estate at the date of sequestration, wherever situated, including—
- (a) any income or estate vesting in the debtor on that date; and
  - (b) the capacity to exercise and to take proceedings for exercising, all such powers in, over, or in respect of any property as might have been exercised by the debtor for his own benefit as at, or on, the date of sequestration or might be exercised on a relevant date (within the meaning of section 32(10) of this Act).
- <sup>F3</sup>(9) Subject to subsection (10) below, the “whole estate of the debtor” does not include any interest of the debtor as tenant under any of the following tenancies—
- (a) a tenancy which is an assured tenancy within the meaning of Part II of the <sup>M1</sup> Housing (Scotland) Act 1988, or
  - (b) a protected tenancy within the meaning of the <sup>M2</sup> Rent (Scotland) Act 1984 in respect of which, by virtue of any provision of Part VIII of that Act, no premium can lawfully be required as a condition of the assignation, or
  - (c) a secure tenancy within the meaning of Part III of the <sup>M3</sup> Housing (Scotland) Act 1987.
- (10) On the date on which the permanent trustee serves notice to that effect on the debtor, the interest of the debtor as tenant under any of the tenancies referred to in subsection (9) above shall form part of his estate and vest in the permanent trustee as if it had vested in him under section 32(6) of this Act.]

#### Textual Amendments

- F1** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), **s. 118(1)**
- F2** Words in s. 31(8) substituted (1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), ss. 4, 7(2), **Sch. 2 para.69**.
- F3** S. 31(9)(10) added by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), **s. 118(2)**

#### Modifications etc. (not altering text)

- C1** S. 31(8) excluded by [Social Security Act 1989 \(c.24, SIF 113:1\)](#), s. 22, **Sch. 4 Pt. II para. 8(2)**
- C2** S. 31(8) restricted (1.7.1992) by [Social Security Administration Act 1992 \(c. 5\)](#), **s. 89(2)** (with s. 93(1)).

#### Marginal Citations

- M1** 1988 c.43
- M2** 1984 c.58

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M3 1987 c.26

VALID FROM 24/03/2003

#### [<sup>F4</sup>31A Property subject to restraint order **S**

- (1) This section applies where—
  - (a) property is excluded from the debtor's estate by virtue of section 420(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
  - (b) an order under section 50, 52, 128, 198 or 200 of that Act has not been made in respect of the property, and
  - (c) the restraint order is discharged.
- (2) On the discharge of the restraint order the property vests in the permanent trustee as part of the debtor's estate.
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).]

#### Textual Amendments

- F4** Ss. 31A-31C inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [Ss. 456, 458\(1\)\(3\)](#), [Sch. 11 para. 15\(4\)](#); [S.I. 2003/333, art. 2\(1\)](#) Sch. (subject to transitional provisions in arts. 3-14) (as amended by [S.I. 2003/531](#)); [S.S.I. 2003/210, art. 2\(1\)\(b\)](#), Sch. (subject to transitional provisions in arts. 3-7)

VALID FROM 24/03/2003

#### [<sup>F4</sup>31B Property in respect of which receivership or administration order is made **S**

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

#### Textual Amendments

- F4** Ss. 31A-31C inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [Ss. 456, 458\(1\)\(3\)](#), [Sch. 11 para. 15\(4\)](#); [S.I. 2003/333, art. 2\(1\)](#) Sch. (subject to transitional provisions in arts. 3-14) (as amended by [S.I. 2003/531](#)); [S.S.I. 2003/210, art. 2\(1\)\(b\)](#), Sch. (subject to transitional provisions in arts. 3-7)

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VALID FROM 24/03/2003

**[<sup>F4</sup>31C Property subject to certain orders where confiscation order discharged or quashed **S****

- (1) This section applies where—
  - (a) property is excluded from the debtor’s estate by virtue of section 420(2) (a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act, and
  - (c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.
- (2) Any property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act vests in the permanent trustee as part of the debtor’s estate.
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver’s remuneration and expenses).]

**Textual Amendments**

- F4** Ss. 31A-31C inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [Ss. 456, 458\(1\)\(3\)](#), [Sch. 11 para. 15\(4\)](#); [S.I. 2003/333](#), [art. 2\(1\)](#) Sch. (subject to transitional provisions in arts. 3-14) (as amended by [S.I. 2003/531](#)); [S.S.I. 2003/210](#), [art. 2\(1\)\(b\)](#), [Sch.](#) (subject to transitional provisions in arts. 3-7)

**32 Vesting of estate, and dealings of debtor, after sequestration. **S****

- (1) Subject to subsection (2) below, any income of whatever nature received by the debtor on a relevant date, other than income arising from the estate which is vested in the permanent trustee, shall vest in the debtor.
- (2) The sheriff, on the application of the permanent trustee, may, after having regard to all the circumstances, determine a suitable amount to allow for—
  - (a) aliment for the debtor; and
  - (b) the debtor’s relevant obligations;
 and if the debtor’s income is in excess of the total amount so allowed the sheriff shall fix the amount of the excess and order it to be paid to the permanent trustee.
- (3) The debtor’s relevant obligations referred to in paragraph (b) of subsection (2) above are—
  - (a) any obligation of aliment owed by him (“obligation of aliment” having the same meaning as in the <sup>M4</sup>Family Law (Scotland) Act 1985);
  - (b) any obligation of his to make a periodical allowance to a former spouse;
 but any amount allowed under that subsection for the relevant obligations need not be sufficient for compliance with a subsisting order or agreement as regards such aliment or periodical allowance.

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- (4) In the event of any change in the debtor's circumstances, the sheriff, on the application of the permanent trustee, the debtor or any other interested person, may vary or recall any order under subsection (2) above.
- (5) Diligence in respect of a debt or obligation of which the debtor would be discharged under section 55 of this Act were he discharged under section 54 thereof shall not be competent against income vesting in him under subsection (1) above.
- (6) Without prejudice to subsection (1) above, any estate, wherever situated, which—
- (a) is acquired by the debtor on a relevant date; and
  - (b) would have vested in the permanent trustee if it had been part of the debtor's estate on the date of sequestration,

shall vest in the permanent trustee for the benefit of the creditors as at the date of acquisition; and any person who holds any such estate shall, on production to him of a copy of the act and warrant certified by the sheriff clerk confirming the permanent trustee's appointment, convey or deliver the estate to the permanent trustee:

Provided that—

- (i) if such a person has in good faith and without knowledge of the sequestration conveyed the estate to the debtor or to anyone on the instructions of the debtor, he shall incur no liability to the permanent trustee except to account for any proceeds of the conveyance which are in his hands; and
  - (ii) this subsection shall be without prejudice to any right or interest acquired in the estate in good faith and for value.
- (7) The debtor shall immediately notify the permanent trustee of any assets acquired by him on a relevant date or of any other substantial change in his financial circumstances; and, if the debtor fails to comply with this subsection, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.
- (8) Subject to subsection (9) below, any dealing of or with the debtor relating to his estate vested in the permanent trustee under section 31 of this Act shall be of no effect in a question with the permanent trustee.
- (9) Subsection (8) above shall not apply where the person seeking to uphold the dealing establishes—
- (a) that the permanent trustee—
    - (i) has abandoned to the debtor the property to which the dealing relates;
    - (ii) has expressly or impliedly authorised the dealing; or
    - (iii) is otherwise personally barred from challenging the dealing, or
  - (b) that the dealing is—
    - (i) the performance of an obligation undertaken before the date of sequestration by a person obliged to the debtor in the obligation;
    - (ii) the purchase from the debtor of goods for which the purchaser has given value to the debtor or is willing to give value to the permanent trustee; or
    - (iii) a banking transaction in the ordinary course of business between the banker and the debtor,

and that the person dealing with the debtor was, at the time when the dealing occurred, unaware of the sequestration and had at that time no reason to

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believe that the debtor's estate had been sequestrated or was the subject of sequestration proceedings.

- (10) In this section “a relevant date” means a date after the date of sequestration and before the date on which the debtor's discharge becomes effective.

**Modifications etc. (not altering text)**

- C3** S. 32(2) amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), **Sch. 2 para. 6(a)**  
**C4** S. 32(6) amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), **Sch. 2 para. 6(b)**  
**C5** S. 32(8) excluded (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), **ss. 154, 155, 164(3), 175(4); S.I. 1991/878, art. 2, Sch.**

**Marginal Citations**

- M4** 1985 c. 37.

**33 Limitations on vesting. S**

- (1) The following property of the debtor shall not vest in the permanent trustee—
- (a) property exempted from pouncing for the purpose of protecting the debtor and his family;
  - (b) property held on trust by the debtor for any other person.
- (2) The vesting of a debtor's estate in a permanent trustee shall not affect the right of hypothec of a landlord.
- (3) Sections 31 and 32 of this Act are without prejudice to the right of any secured creditor which is preferable to the rights of the permanent trustee.

**Modifications etc. (not altering text)**

- C6** S. 33(1)(a) continued (31.12.2002 or such earlier date as the Scottish Ministers may appoint) by 2001 asp 1, ss. 2(1)(a), 4(1) (with s. 2) (which amending Act was repealed (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), s. 61, **Sch. 3 Pt. 1 para. 27** (with s. 63))

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