

Status: Point in time view as at 01/02/1991.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), SCHEDULE 1 is up to date with all changes known to be in force on or before 14 June 2024.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)

SCHEDULES

SCHEDULE 1

Sections 5(5) and 22(9).

DETERMINATION OF AMOUNT OF CREDITOR'S CLAIM

Modifications etc. (not altering text)

- C1** Sch. 1 applied with modifications by S.I. 1986/1915, **Rules 4.16(1)(f)**, 7.9(5) and by Rule 2.41(2) (as substituted (15.9.2003) by **The Insolvency (Scotland) Amendment Rules 2003 (S.I. 2003/2111)**, **Rule 3**, {Sch. 1, Pt. 1}) (as amended (20.12.2008) by S.S.I. 2008/393 art. 3)
- C2** Sch. 1 applied in part (with modifications) (14.11.2011) by **The Investment Bank Special Administration (Scotland) Rules 2011 (S. I. 2011/2262)**, **rule 127**

Amount which may be claimed generally

- 1 (1) Subject to the provisions of this Schedule, the amount in respect of which a creditor shall be entitled to claim shall be 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 sequestration, the amount of the claim shall be calculated as if the debt were payable on the date of sequestration but subject to the deduction of interest at the rate specified in section 51(7) of this Act from the said date until the date for payment of the debt.
- (3) In calculating the amount of his claim, a creditor shall 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.

Claims for aliment and periodical allowance on divorce

- 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 his death, shall not be entitled to include in the amount of his 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, in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses) they were living apart during that period;
- (b) any aliment for any period after the date of sequestration.
- (2) Sub-paragraph (1) above shall apply to a periodical allowance payable on divorce—
- (a) by virtue of a court order; or
- (b) under any legally binding obligation which is supported by evidence in writing,

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as it applies to aliment and as if for the words from “in the case” to “they” there were substituted the words “the payer and payee”.

Debts depending on contingency

- 3 (1) Subject to sub-paragraph (2) below, the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.
- (2) On an application by the creditor—
- (a) to the permanent trustee; or
 - (b) if there is no permanent trustee, to the sheriff,
- the permanent trustee or sheriff shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more; and, where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.
- (3) Any interested person may appeal to the sheriff against a valuation under sub-paragraph (2) above by the permanent trustee, and the sheriff may affirm or vary that valuation.

Debts due under composition contracts

- 4 Where in the course of a sequestration the debtor is discharged following approval by the sheriff of a composition offered by the debtor but the sequestration is subsequently revived, the amount in respect of which a creditor shall be entitled to claim shall be the same amount as if the composition had not been so approved less any payment already made to him under the composition contract.

Secured debts

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

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Valuation of claims against partners for debts of the partnership

- 6 Where a creditor claims in respect of a debt of a partnership, against the estate of one of its partners, the creditor shall estimate the value of—
- (a) the debt to the creditor from the firm's estate where that estate has not been sequestered; or
 - (b) the creditor's claim against that estate where it has been sequestered, and deduct that value from his claim against the partner's estate; and the amount in respect of which he shall be entitled to claim on the partner's estate shall be the balance remaining after that deduction has been made.

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