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*Status: Point in time view as at 05/12/2005. This version of this cross heading contains provisions that are not valid for this point in time.*

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# Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

*Award of sequestration and appointment and resignation of interim trustee*

## 12 When sequestration is awarded.

[<sup>F1</sup>(1) Where a petition for the sequestration of his estate is presented by the debtor, unless cause is shown why sequestration cannot competently be awarded, the court shall award sequestration forthwith if it is satisfied—

- (a) that the petition has been presented in accordance with the provisions of this Act;
- (b) that either subsection (2A) or (2B) of section 5 of this Act applies to the debtor; and
- (c) that the provisions of subsections (6) and (6A) of that section have been complied with.]

[<sup>F2</sup>(1A) Where a petition is presented as mentioned in subsection (1) above, the Accountant in Bankruptcy may, not later than 7 days after the date on which sequestration is awarded, apply to the court for the grant of a certificate for the summary administration of the sequestration of the debtor's estate.]

(2) Where a petition for sequestration of a debtor's estate is presented by a creditor or a trustee acting under a trust deed, the court to which the petition is presented shall grant warrant to cite the debtor to appear before it on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation, to show cause why sequestration should not be awarded.

[<sup>F3</sup>(3) Where, on a petition for sequestration presented by a creditor or a trustee acting under a trust deed, the court is satisfied—

- (a) that, if the debtor has not appeared, proper citation has been made of the debtor;
- (b) that the petition has been presented in accordance with the provisions of this Act;

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- (c) that the provisions of subsection (6) of section 5 of this Act have been complied with;
  - (d) that, in the case of a petition by a creditor, the requirements of this Act relating to apparent insolvency have been fulfilled; and
  - (e) that, in the case of a petition by a trustee, the averments in his petition as to any of the conditions in subsection (2C) of the said section 5 are true,
- it shall, subject to subsection (3A) below, award sequestration forthwith.

- (3A) Sequestration shall not be awarded in pursuance of subsection (3) above if—
- (a) cause is shown why sequestration cannot competently be awarded; or
  - (b) the debtor forthwith pays or satisfies, or produces written evidence of the payment or satisfaction of, or gives or shows that there is sufficient security for the payment of—
    - (i) the debt in respect of which he became apparently insolvent; and
    - (ii) any other debt due by him to the petitioner and any creditor concurring in the petition.]

[<sup>F1</sup>(4) In this Act “the date of sequestration” means—

- (a) where the petition for sequestration is presented by the debtor, the date on which sequestration is awarded;
- (b) where the petition for sequestration is presented by a creditor or a trustee acting under a trust deed—
  - (i) the date on which the court grants warrant under subsection (2) above to cite the debtor; or
  - (ii) where more than one such warrant is granted, the date on which the first such warrant is granted.]

#### Textual Amendments

- F1** S. 12(1) substituted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 4(2) (with s. 12(6)); S.I. 1993/438, art.3
- S. 12(4) substituted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 4(5) (with s. 12(6)); S.I. 1993/438, art.3
- F2** S. 12(1A) inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 4(3) (with s. 12(6)); S.I. 1993/438, art.3
- F3** S. 12(3)(3A) substituted for s. 12(3) (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 4(4) (with s. 12(6)); S.I. 1993/438, art.3

#### [13] <sup>F4</sup>Resignation, removal etc. of interim trustee.

- (1) Where, under section 1A(2) of this Act, the court removes from office an interim trustee, the court shall, on the application of the Accountant in Bankruptcy, appoint a new interim trustee.
- (2) Without prejudice to section 1A(2) of this Act or to subsection (1) above, where the court is satisfied that an interim trustee—
  - (a) is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever); or
  - (b) has so conducted himself that he should no longer continue to act in the sequestration,

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the court, on the application of the debtor, a creditor or the Accountant in Bankruptcy, shall remove from office the interim trustee and appoint a new interim trustee.

- (3) An interim trustee (not being the Accountant in Bankruptcy) may apply to the court for authority to resign office; and if the court is satisfied that the grounds mentioned in paragraph (a) or (b) of subsection (2) above apply in relation to the interim trustee, it shall grant the application.
- (4) Where, following an application under subsection (3) above, the interim trustee resigns office, the court shall appoint a new interim trustee.
- (5) Where the interim trustee has died, the court, on the application of the debtor, a creditor or the Accountant in Bankruptcy, shall appoint a new interim trustee.
- (6) No one (other than the Accountant in Bankruptcy) shall act as interim trustee in a sequestration if he would, by virtue of section 24(2) of this Act, be disqualified from acting as permanent trustee in that sequestration; but where an interim trustee is, by virtue of this subsection, prohibited from so acting, he shall forthwith make an application under subsection (3) above.
- (7) Subsections (1) and (2) of section 2 of this Act shall apply as regards the appointment of an interim trustee under this section as if for any reference to—
  - (a) the court awarding sequestration of the debtor's estate, there was substituted a reference to the court appointing a new interim trustee; and
  - (b) the petition for sequestration there was substituted a reference to the application under this section for the appointment of a new interim trustee.]

#### Textual Amendments

- F4** S. 13 substituted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), **Sch. 1 para.2** (with s. 12(6)); S.I. 1993/438, **art.3**

VALID FROM 01/04/2008

#### **[<sup>F5</sup>13A Termination of interim trustee's functions where not appointed as trustee**

- (1) This section applies where an interim trustee (not being the Accountant in Bankruptcy) is appointed under section 2(5) of this Act and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under subsection (2A) or (2C) of section 2 of this Act; or
  - (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee, the interim trustee shall hand over to the trustee everything in his possession which relates to the sequestration and shall thereupon cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of the interim trustee as may be appropriate.
- (4) Within 3 months of the sheriff awarding or, as the case may be, refusing to award sequestration, the interim trustee shall—
  - (a) submit to the Accountant in Bankruptcy—

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- (i) his accounts of his intromissions (if any) with the debtor's estate; and
    - (ii) a claim for outlays reasonably incurred, and for remuneration for work reasonably undertaken, by him; and
  - (b) send a copy of his accounts and the claim to—
    - (i) the debtor;
    - (ii) the petitioner; and
    - (iii) in a case where sequestration is awarded, the trustee and all creditors known to the interim trustee.
- (5) On a submission being made to him under subsection (4)(a) above, the Accountant in Bankruptcy shall—
- (a) audit the accounts;
  - (b) issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee;
  - (c) send a copy of the determination to—
    - (i) the interim trustee; and
    - (ii) the persons mentioned in subsection (4)(b) above; and
  - (d) where a trustee (not being the Accountant in Bankruptcy) has been appointed in the sequestration, send a copy of the audited accounts and of the determination to the trustee, who shall insert them in the sederunt book.
- (6) Where the Accountant in Bankruptcy has been appointed as the trustee in the sequestration, the Accountant in Bankruptcy shall insert a copy of the audited accounts and the determination in the sederunt book.
- (7) The interim trustee or any person mentioned in subsection (4)(b) above may, within 14 days after the issuing of the determination under subsection (5)(b) above, appeal to the sheriff against the determination.
- (8) On receiving a copy of the Accountant in Bankruptcy's determination sent under subsection (5)(c)(i) above the interim trustee may apply to him for a certificate of discharge.
- (9) The interim trustee shall send notice of an application under subsection (8) above to the persons mentioned in subsection (4)(b) above and shall inform them—
- (a) that they may make written representations relating to the application to the Accountant in Bankruptcy within the period of 14 days after such notification; and
  - (b) of the effect mentioned in subsection (16) below.
- (10) On the expiry of the period mentioned in subsection (9)(a) above the Accountant in Bankruptcy, after considering any representations duly made to him, shall—
- (a) grant or refuse to grant the certificate of discharge; and
  - (b) notify the persons mentioned in subsection (4)(b) above accordingly.
- (11) The interim trustee or any person mentioned in subsection (4)(b) above may, within 14 days after the issuing of the determination under subsection (10) above, appeal therefrom to the sheriff.
- (12) If, following an appeal under subsection (11) above, the sheriff determines that a certificate of discharge which has been refused should be granted he shall order the Accountant in Bankruptcy to grant it.

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- (13) If, following an appeal under subsection (11) above, the sheriff determines that a certificate of discharge which has been granted should have been refused he shall revoke the certificate.
- (14) The sheriff clerk shall send a copy of the decree of the sheriff following an appeal under subsection (11) above to the Accountant in Bankruptcy.
- (15) The decision of the sheriff in an appeal under subsection (7) or (11) above shall be final.
- (16) The grant of a certificate of discharge under this section by the Accountant in Bankruptcy shall have the effect of discharging the interim trustee from all liability (other than any liability arising from fraud) to the debtor, to the petitioner or to the creditors in respect of any act or omission of the interim trustee in exercising the functions conferred on him by this Act.

#### Textual Amendments

- F5** Ss. 13A, 13B inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 10, 227(3)** (with [s. 223](#)); [S.S.I. 2008/115](#), **art. 3(1)(a)** (with [arts. 4-6, 10](#) (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), [art. 5](#)))

VALID FROM 01/04/2008

### **13B Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee**

- (1) This section applies where the Accountant in Bankruptcy is appointed as interim trustee under section 2(5) of this Act and the sheriff —
  - (a) awards sequestration and appoints another person as trustee under section 2(2A) of this Act; or
  - (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee, the Accountant in Bankruptcy shall hand over to the trustee everything in his possession which relates to the sequestration and shall thereupon cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of the Accountant in Bankruptcy as may be appropriate.
- (4) Within 3 months of the sheriff awarding or, as the case may be, refusing to award sequestration, the Accountant in Bankruptcy shall—
  - (a) send to the debtor and the petitioner—
    - (i) his accounts of his intromissions (if any) with the debtor's estate;
    - (ii) a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act; and
    - (iii) the notice mentioned in subsection (5) below; and
  - (b) in a case where sequestration is awarded, send a copy of his accounts, the claim and the notice to all creditors known to him.

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- (5) The notice referred to in subsection (4)(a)(iii) above is a notice in writing stating—
- (a) that the Accountant in Bankruptcy has commenced procedure under this Act leading to discharge in respect of his actings as interim trustee;
  - (b) that an appeal may be made to the sheriff under subsection (7) below; and
  - (c) the effect mentioned in subsection (9) below.
- (6) The Accountant in Bankruptcy shall, unless the sheriff refuses to award sequestration, insert a copy of the accounts and the determination in the sederunt book.
- (7) The debtor, the petitioner and any creditor may, within 14 days after the sending of the notice under subsection (4)(a)(iii) or, as the case may be, subsection (4)(b) above, appeal to the sheriff against—
- (a) the determination of the Accountant in Bankruptcy mentioned in subsection (4)(a)(ii) above;
  - (b) the discharge of the Accountant in Bankruptcy in respect of his actings as interim trustee;
  - (c) both such determination and discharge,
- and the sheriff clerk shall send a copy of the decree of the sheriff to the Accountant in Bankruptcy.
- (8) The decision of the sheriff in an appeal under subsection (7) above shall be final.
- (9) Where—
- (a) the requirements of this section have been complied with; and
  - (b) no appeal is made to the sheriff under subsection (7) above or such an appeal is made but is refused as regards the discharge of the Accountant in Bankruptcy,
- the Accountant in Bankruptcy shall be discharged from all liability (other than any liability arising from fraud) to the debtor, to the petitioner or to the creditors in respect of any act or omission of the Accountant in Bankruptcy in exercising the functions of interim trustee conferred on him by this Act.]

#### Textual Amendments

- F5** Ss. 13A, 13B inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 10, 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(a) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

## 14 Registration of court order.

- (1) The clerk of the court shall forthwith after the date of sequestration send—
- (a) a certified copy of the relevant court order to the keeper of the register of inhibitions and adjudications for recording in that register; and
  - (b) a copy of the order to the Accountant in Bankruptcy
- [<sup>F6</sup>(c) a copy of the order to the DAS administrator (as defined in regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2004), where the debtor is taking part in a debt payment programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002.]

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- (2) Recording under subsection (1)(a) above shall have the effect as from the date of sequestration of an inhibition and of a citation in an adjudication of the debtor's heritable estate at the instance of the creditors who subsequently have claims in the sequestration accepted under section 49 of this Act.
- (3) The effect mentioned in subsection (2) above shall expire—
  - (a) on the recording under section 15(5)(a) or 17(8)(a) of, or by virtue of paragraph 11 of Schedule 4 to, this Act or a certified copy of an order; or
  - (b) subject to subsection (4) below, if the effect has not expired by virtue of paragraph (a) above, at the end of the period of 3 years beginning with the date of sequestration.
- (4) The permanent trustee, if not discharged, [<sup>F7</sup>may] before the end of the period of 3 years mentioned in subsection (3)(b) above send a memorandum in a form prescribed by the Court of Session by act of sederunt to the keeper of the register of inhibitions and adjudications for recording in that register, and such recording shall renew the effect mentioned in subsection (2) above; and thereafter the said effect shall continue to be preserved only if such a memorandum is so recorded before the expiry of every subsequent period of 3 years.
- (5) In this section “relevant court order” means, if the petition for sequestration is presented by—
  - (a) the debtor, the order of the court awarding sequestration; or
  - (b) a creditor or the trustee acting under a trust deed, the order of the court granting warrant under section 12(2) of this Act.

#### Textual Amendments

- F6** S. 14(1)(c) inserted (30.11.2004) by [The Debt Arrangement Scheme \(Scotland\) Regulations 2004 \(S.S.I. 2004/468\)](#), regs. 1, 5, **Sch. 3 para. 1** (as amended by [S.S.I. 2004/470](#), reg. 3)
- F7** Words in s. 14(4) substituted (1.4.1993, subject to savings in arts. 4, 5 of [S.I. 1993/438](#)) by [1993 c. 6, s. 11\(3\)](#), **Sch. 1 para.3** (with s. 12(6)); [S.I. 1993/438](#), **art.3**

## 15 Further provisions relating to award of sequestration.

- (1) Where sequestration has been awarded by the Court of Session, it shall remit the sequestration to such sheriff as in all the circumstances of the case it considers appropriate.
- (2) The Court of Session may at any time after sequestration has been awarded, on application being made to it, transfer the sequestration from the sheriff before whom it is depending or to whom it has been remitted to any other sheriff.
- (3) Where the court makes an order refusing to award sequestration, the petitioner or a creditor concurring in the petition for sequestration may appeal against the order within 14 days of the date of making of the order.
- (4) Without prejudice to any right to bring an action of reduction of an award of sequestration, such an award shall not be subject to review otherwise than by recall under sections 16 and 17 of this Act.
- (5) Where a petition for sequestration is presented by a creditor or a trustee acting under a trust deed, the clerk of the court shall—

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- (a) on the final determination or abandonment of any appeal under subsection (3) above in relation to the petition, or if there is no such appeal on the expiry of the 14 days mentioned in that subsection, send a certified copy of an order refusing to award sequestration to the keeper of the register of inhibitions and adjudications for recording in that register;
- [<sup>F8</sup>(b) forthwith send a copy of the order refusing or awarding sequestration to—
  - (i) the Accountant in Bankruptcy;
  - (ii) the DAS administrator (as defined in regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2004), where the debtor is taking part in a debt payment programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002].
- [<sup>F9</sup>(6) The interim trustee shall, as soon as an award of sequestration has been granted, publish in the Edinburgh Gazette a notice—
  - (a) stating that sequestration of the debtor’s estate has been awarded;
  - (b) inviting the submission of claims to him; and
  - (c) giving such other information as may be prescribed.]
- (7) Where sequestration has been awarded, the process of sequestration shall not fall asleep.
- (8) Where a debtor learns, whether before or after the date of sequestration, that he may derive benefit from another estate, he shall as soon as practicable after that date inform—
  - (a) the permanent trustee or, if the permanent trustee has not yet been elected or appointed, the interim trustee of that fact; and
  - (b) the person who is administering that other estate of the sequestration.
- (9) If the debtor fails to comply with subsection (8) above, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### Textual Amendments

- F8** S. 15(5)(b) substituted (30.11.2004) by [The Debt Arrangement Scheme \(Scotland\) Regulations 2004 \(S.S.I. 2004/468\)](#), [regs. 1, 5](#), {Sch. 3 para. 2.} (as amended by [S.S.I. 2004/470](#), [reg. 3](#))
- F9** S. 15(6) substituted (1.4.1993, subject to savings in arts. 4, 5 of [S.I. 1993/438](#)) by [1993 c. 6, s. 11\(3\)](#), [Sch. 1 para.4](#) (with [s. 12\(6\)](#)); [S.I. 1993/438](#), [art.3](#)

## 16 Petitions for recall of sequestration.

- (1) A petition for recall of an award of sequestration may be presented to the Court of Session by—
  - (a) the debtor, any creditor or any other person having an interest (notwithstanding that he was a petitioner, or concurred in the petition, for the sequestration);
  - (b) the interim trustee, the permanent trustee, or the Accountant in Bankruptcy.
- (2) The petitioner shall serve upon the debtor, any person who was a petitioner, or concurred in the petition, for the sequestration, the interim trustee or permanent trustee and the Accountant in Bankruptcy, a copy of the petition along with a notice stating



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that the recipient of the notice may lodge answers to the petition within 14 days of the service of the notice.

- (3) At the same time as service is made under subsection (2) above, the petitioner shall publish a notice in the Edinburgh Gazette stating that a petition has been presented under this section and that any person having an interest may lodge answers to the petition within 14 days of the publication of the notice.
- (4) Subject to [F10 sections 41(1)(b) and 41A(1)(b)] of this Act, a petition under this section may be presented—
  - (a) within 10 weeks after the date of [F11 the award of]sequestration; but
  - (b) at any time if the petition is presented on any of the grounds mentioned in paragraphs (a) to (c) of section 17(1) of this Act.
- (5) Notwithstanding that a petition has been presented under this section, the proceedings in the sequestration shall continue (subject to section 17(6) of this Act) as if that petition had not been presented until the recall is granted.
- (6) Where—
  - (a) a petitioner under this section; or
  - (b) a person who has lodged answers to the petition,withdraws or dies, any person entitled to present or, as the case may be, lodge answers to a petition under this section may be sisted in his place.

#### Textual Amendments

**F10** Words in s. 16(4) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 31](#); [S.S.I. 2005/604](#), [art. 2\(c\)](#)

**F11** Words in s. 16(4)(a) inserted (1.4.1993, subject to savings in arts. 4, 5 of [S.I. 1993/438](#)) by [1993 c. 6](#), s. 11(3), [Sch. 1 para.5](#) (with s. 12(6)); [S.I. 1993/438](#), [art.3](#)

## 17 Recall of sequestration.

- (1) The Court of Session may recall an award of sequestration if it is satisfied that in all the circumstances of the case (including those arising after the date of the award of sequestration) it is appropriate to do so and, without prejudice to the foregoing generality, may recall the award if it is satisfied that—
  - (a) the debtor has paid his debts in full or has given sufficient security for their payment;
  - (b) a majority in value of the creditors reside in a country other than Scotland and that it is more appropriate for the debtor's estate to be administered in that other country; or
  - (c) one or more other awards of sequestration of the estate or analogous remedies (as defined in section 10(5) of this Act) have been granted.
- (2) Where one or more awards of sequestration of the debtor's estate have been granted, the Court may, after such intimation as it considers necessary, recall an award whether or not the one in respect of which the petition for recall was presented.
- (3) On recalling an award of sequestration, the Court—
  - (a) shall make provision for the payment of the outlays and remuneration of the interim trustee and permanent trustee by directing that such payment shall be

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- made out of the debtor's estate or by requiring any person who was a party to the petition for sequestration to pay the whole or any part of the said outlays and remuneration;
- (b) without prejudice to subsection (7) below, may direct that payment of the expenses of a creditor who was a petitioner, or concurred in the petition, for sequestration shall be made out of the debtor's estate;
- (c) may make any further order that it considers necessary or reasonable in all the circumstances of the case.
- (4) Subject to subsection (5) below, the effect of the recall of an award of sequestration shall be, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position he would have been in if the sequestration had not been awarded.
- (5) A recall of an award of sequestration shall not—
- (a) affect the interruption of prescription caused by the presentation of the petition for sequestration or the submission of a claim under section 22 or 48 of this Act;
- (b) invalidate any transaction entered into before such recall by the interim trustee or permanent trustee with a person acting in good faith.
- (6) Where the Court considers that it is inappropriate to recall or to refuse to recall an award of sequestration forthwith, it may order that the proceedings in the sequestration shall continue but shall be subject to such conditions as it may think fit.
- (7) The Court may make such order in relation to the expenses in a petition for recall as it thinks fit.
- (8) The clerk of the court shall send—
- (a) a certified copy of any order recalling an award of sequestration to the keeper of the register of inhibitions and adjudications for recording in that register; and
- (b) a copy of any order recalling or refusing to recall an award of sequestration, or of any order under section 41(1)(b)(ii) <sup>F12</sup> or 41A(1)(b)(ii) of this Act, to—
- (i) the Accountant in Bankruptcy; and
- (ii) the permanent trustee (if any) who shall insert it in the sederunt book.

#### Textual Amendments

**F12** Words in s. 17(8)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 32](#); [S.S.I. 2005/604](#), [art. 2\(c\)](#)

**Status:**

Point in time view as at 05/12/2005. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Award of sequestration and appointment and resignation of interim trustee is up to date with all changes known to be in force on or before 03 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.