



Bankruptcy (Scotland) Act 1985

1985 CHAPTER 66

Award of sequestration and appointment and resignation of interim trustee

12 When sequestration is awarded

- (1) Where a petition for sequestration of his estate is presented by the debtor, the court shall award sequestration forthwith if the court is satisfied that the petition has been presented in accordance with the provisions of this Act unless cause is shown why sequestration cannot competently be awarded.
- (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.
- (3) If, on a petition for sequestration presented by a creditor or a trustee acting under a trust deed, the court is satisfied that, if the debtor has not appeared, proper citation has been made of the debtor, that the petition has been presented in accordance with the provisions of this Act and that, in the case of a petition by a creditor, the requirements of this Act relating to apparent insolvency have been fulfilled, it shall award sequestration forthwith unless—
 - (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 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.
- (4) In this Act " the date of sequestration" means if the petition for sequestration is presented by—
 - (a) the debtor, the date on which sequestration is awarded ;
 - (b) a creditor or a trustee acting under a trust deed, the date on which the court grants warrant under subsection (2) above.

13 Appointment and resignation of interim trustee

- (1) An interim trustee shall be appointed by the court from the list of interim trustees on sequestration being awarded or as soon as may be thereafter:

Provided that, where the petition for sequestration is presented by a creditor or a trustee acting under a trust deed, an interim trustee may be so appointed before sequestration is awarded if—

- (a) the debtor consents, or
- (b) the Accountant in Bankruptcy, the trustee acting under the trust deed or any creditor shows cause.

- (2) The court may, on an application by an interim trustee, authorise the interim trustee to resign office and, if he does so, shall appoint another person from the list of interim trustees to act in his place; and an interim trustee shall not otherwise resign office.

- (3) Without prejudice to section 1(3) of this Act or to subsection (4) below, 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 had his name removed from the list of interim trustees; or
- (c) has so conducted himself that he should no longer continue to act in the sequestration,

the court, on the application of the debtor, a creditor, the Accountant in Bankruptcy or, in respect of paragraph (a) above, the interim trustee, shall appoint another interim trustee from that list to act in his place.

- (4) Where under section 1(3) of this Act the court removes an interim trustee from office, the court, on the application of the Accountant in Bankruptcy, shall appoint another interim trustee from the list of interim trustees to act in his place.

- (5) Subject to subsection (6) below, no one 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)(a) above.

- (6) No person appointed as interim trustee under this section shall be entitled to decline to accept his appointment.

- (7) Notwithstanding the provisions of paragraph (a) of section 18(3) of this Act, the court may, if requested to do so in the petition for sequestration, empower the interim trustee to act as is mentioned in that paragraph.

- (8) An order of the court making an appointment under this section shall be appealable only by the debtor, a creditor, the Accountant in Bankruptcy or the appointee and only on the ground that the person appointed is unable to act as mentioned in subsection (3) (a) above, or is not on the list of interim trustees:

Provided that such an order under subsection (3) above may also be appealed against by the displaced interim trustee on the ground that the court should not have been satisfied as is mentioned in that subsection.

- (9) An interim trustee, as soon as may be after his appointment, shall notify the debtor and the Accountant in Bankruptcy of the appointment.

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.
- (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 of 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, shall 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.

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—

Status: This is the original version (as it was originally enacted).

- (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 ;
 - (b) forthwith send a copy of an order awarding or refusing to award sequestration to the Accountant in Bankruptcy.
- (6) The interim trustee, as soon as an award of sequestration has been granted, shall publish a notice in the prescribed form in the Edinburgh Gazette and the London Gazette stating that sequestration has been awarded and inviting the submission of claims to him.
- (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.

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 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 section 41(1)(b) of this Act, a petition under this section may be presented—
- (a) within 10 weeks after the date 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.

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 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.

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- (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 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) of this Act, to—
 - (i) the Accountant in Bankruptcy ; and
 - (ii) the permanent trustee (if any) who shall insert it in the sederunt book.