



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Miscellaneous and supplementary

60 Liabilities and rights of co-obligants.

- (1) Where a creditor has an obligant (in this section referred to as the “co-obligant”) bound to him along with the debtor for the whole or part of the debt, the co-obligant shall not be freed or discharged from his liability for the debt by reason of the discharge of the debtor or by virtue of the creditor’s voting or drawing a dividend or assenting to, or not opposing—
 - (a) the discharge of the debtor; or
 - (b) any composition.
- (2) Where—
 - (a) a creditor has had a claim accepted in whole or in part; and
 - (b) a co-obligant holds a security over any part of the debtor’s estate,the co-obligant shall account to the permanent trustee so as to put the estate in the same position as if the co-obligant had paid the debt to the creditor and thereafter had had his claim accepted in whole or in part in the sequestration after deduction of the value of the security.
- (3) Without prejudice to any right under any rule of law of a co-obligant who has paid the debt, the co-obligant may require and obtain at his own expense from the creditor an assignation of the debt on payment of the amount thereof, and thereafter may in respect of that debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.
- (4) In this section a “co-obligant” includes a cautioner.

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Modifications etc. (not altering text)

- C1** S. 60 applied with modifications by [S.I. 1986/1915](#), [Rules 4.16\(1\)\(e\)](#), [7.9\(4\)](#) and by [Rule 2.41\(2\)](#) (as substituted (15.9.2003) by [S.I. 2003/2111](#), [Rule 3](#), [Sch. 1 Pt. 1](#))

VALID FROM 08/09/2003

[^{F1}60A Member State liquidator deemed creditor

For the purposes of this Act, and without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights) a member State liquidator appointed in relation to the debtor is deemed to be a creditor in the sum due to creditors in proceedings in relation to which he holds office.]

Textual Amendments

- F1** Ss. 60A, 60B inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 17](#)

VALID FROM 08/09/2003

[^{F1}60B Trustee's duties concerning notices and copies of documents

- (1) This section applies where a member State liquidator has been appointed in relation to the debtor.
- (2) Where an interim or a permanent trustee is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the Accountant in Bankruptcy, the trustee shall give notice or provide copies, as appropriate, to the member State liquidator.
- (3) Subsection (2) above is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).]

Textual Amendments

- F1** Ss. 60A, 60B inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 17](#)

61 Extortionate credit transactions.

- (1) This section applies where the debtor is or has been a party to a transaction for, or involving, the provision to him of credit and his estate is sequestered.

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- (2) The court may, on the application of the permanent trustee, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than three years before the date of sequestration.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
 - (b) it otherwise grossly contravened ordinary principles of fair dealing; and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is, or as the case may be was, extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit—
- (a) provision setting aside the whole or part of any obligation created by the transaction;
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
 - (c) provision requiring any person who is a party to the transaction to pay to the permanent trustee any sums paid to that person, by virtue of the transaction, by the debtor;
 - (d) provision requiring any person to surrender to the permanent trustee any property held by him as security for the purposes of the transaction;
 - (e) provision directing accounts to be taken between any persons.
- (5) Any sums or property required to be paid or surrendered to the permanent trustee in accordance with an order under this section shall vest in the permanent trustee.
- (6) Neither—
- (a) the permanent trustee; nor
 - (b) a debtor who has not been discharged,
- shall be entitled to make an application under section 139(1)(a) of the ^{M1}Consumer Credit Act 1974 (re-opening of extortionate credit arrangements) for any agreement by which credit is or has been provided to the debtor to be re-opened; but the powers conferred by this section shall be exercisable in relation to any transaction concurrently with any powers exercisable under this Act in relation to that transaction as a gratuitous alienation or unfair preference.
- (7) In this section “credit” has the same meaning as in the said Act of 1974.

Modifications etc. (not altering text)

C2 S. 61 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2(1), **Sch. 1 Article 23 paras. 1-3** (subject to paras. 6, 9)

Marginal Citations

M1 1974 c. 39.

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62 Sederunt book and other documents.

- (1) Subject to subsection (2) below, whoever by virtue of this Act for the time being holds the sederunt book shall make it available for inspection at all reasonable hours by any interested person.
- (2) As regards any case in which the person on whom a duty is imposed by subsection (1) above is the Accountant in Bankruptcy, the Court of Session may by act of sederunt—
 - (a) limit the period for which the duty is so imposed; and
 - (b) prescribe conditions in accordance with which the duty shall be carried out.
- (3) Any entry in the sederunt book shall be sufficient evidence of the facts stated therein, except where it is founded on by the permanent trustee in his own interest.
- (4) Notwithstanding any provision of this Act, the permanent trustee shall not be bound to insert in the sederunt book any document of a confidential nature.
- (5) The permanent trustee shall not be bound to exhibit to any person other than a commissioner or the Accountant in Bankruptcy any document in his possession of a confidential nature.
- (6) An extract from the register of insolvencies bearing to be signed by the Accountant in Bankruptcy shall be sufficient evidence of the facts stated therein.

63 Power to cure defects in procedure.

- (1) The sheriff may, on the application of any person having an interest—
 - (a) if there has been a failure to comply with any requirement of this Act or any regulations made under it, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position he would have been in but for the failure;
 - (b) if for any reason anything required or authorised to be done in, or in connection with, the sequestration process cannot be done, make such order as may be necessary to enable that thing to be done.
- (2) The sheriff, in an order under subsection (1) above, may impose such conditions, including conditions as to expenses, as he thinks fit and may—
 - (a) authorise or dispense with the performance of any act in the sequestration process;
 - (b) appoint as permanent trustee on the debtor's estate a person who would be eligible to be elected under section 24 of this Act, whether or not in place of an existing trustee;
 - (c) extend or waive any time limit specified in or under this Act.
- (3) An application under subsection (1) above—
 - (a) may at any time be remitted by the sheriff to the Court of Session, of his own accord or on an application by any person having an interest;
 - (b) shall be so remitted, if the Court of Session so directs on an application by any such person,

if the sheriff or the Court of Session, as the case may be, considers that the remit is desirable because of the importance or complexity of the matters raised by the application.

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- (4) The permanent trustee shall record in the sederunt book the decision of the sheriff or the Court of Session under this section.

Modifications etc. (not altering text)

C3 S. 63 applied with modifications by [S.I. 1986/1915](#), [Rule 7.32](#).

64 Debtor to co-operate with permanent trustee.

- (1) The debtor shall take every practicable step, and in particular shall execute any document, which may be necessary to enable the permanent trustee to perform the functions conferred on him by this Act.
- (2) If the sheriff, on the application of the permanent trustee, is satisfied that the debtor has failed—
- (a) to execute any document in compliance with subsection (1) above, he may authorise the sheriff clerk to do so; and the execution of a document by the sheriff clerk under this paragraph shall have the like force and effect in all respects as if the document had been executed by the debtor;
 - (b) to comply in any other respect with subsection (1) above, he may order the debtor to do so.
- (3) If the debtor fails to comply with an order of the sheriff under subsection (2) above, he shall be guilty of an offence.
- (4) In this section “debtor” includes a debtor discharged under this Act.
- (5) A person convicted of an offence under subsection (3) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or—
 - (i) to imprisonment for a term not exceeding 3 months; or
 - (ii) if he has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding 6 months,or (in the case of either sub-paragraph) to both such fine and such imprisonment; or
 - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 2 years or to both.

65 Arbitration and compromise.

- (1) The permanent trustee may (but if there are commissioners only with the consent of the commissioners, the creditors or the court)—
- (a) refer to arbitration any claim or question of whatever nature which may arise in the course of the sequestration; or
 - (b) make a compromise with regard to any claim of whatever nature made against or on behalf of the sequestrated estate;
- and the decree arbitral or compromise shall be binding on the creditors and the debtor.
- (2) Where any claim or question is referred to arbitration under this section, the Accountant in Bankruptcy may vary any time limit in respect of which any procedure under this Act has to be carried out.

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- (3) The permanent trustee shall insert a copy of the decree arbitral, or record the compromise, in the sederunt book.

66 Meetings of creditors and commissioners.

Part I of Schedule 6 to this Act shall have effect in relation to meetings of creditors other than the statutory meeting; Part II of that Schedule shall have effect in relation to all meetings of creditors under this Act; and Part III of that Schedule shall have effect in relation to meetings of commissioners.

67 General offences by debtor etc.

- (1) A debtor who during the relevant period makes a false statement in relation to his assets or his business or financial affairs to any creditor or to any person concerned in the administration of his estate shall be guilty of an offence, unless he shows that he neither knew nor had reason to believe that his statement was false.
- (2) A debtor, or other person acting in his interest whether with or without his authority, who during the relevant period destroys, damages, conceals or removes from Scotland any part of the debtor's estate or any document relating to his assets or his business or financial affairs shall be guilty of an offence, unless the debtor or other person shows that he did not do so with intent to prejudice the creditors.
- (3) A debtor who is absent from Scotland and who after the date of sequestration of his estate fails, when required by the court, to come to Scotland for any purpose connected with the administration of his estate, shall be guilty of an offence.
- (4) A debtor, or other person acting in his interest whether with or without his authority, who during the relevant period falsifies any document relating to the debtor's assets or his business or financial affairs, shall be guilty of an offence, unless the debtor or other person shows that he had no intention to mislead the permanent trustee, a commissioner or any creditor.
- (5) If a debtor whose estate is sequestrated—
- (a) knows that a person has falsified any document relating to the debtor's assets or his business or financial affairs; and
 - (b) fails, within one month of the date of acquiring such knowledge, to report his knowledge to the interim or permanent trustee,
- he shall be guilty of an offence.
- (6) A person who is absolutely insolvent and who during the relevant period transfers anything to another person for an inadequate consideration or grants any unfair preference to any of his creditors shall be guilty of an offence, unless the transferor or grantor shows that he did not do so with intent to prejudice the creditors.
- (7) A debtor who is engaged in trade or business shall be guilty of an offence if at any time in the period of one year ending with the date of sequestration of his estate, he pledges or disposes of, otherwise than in the ordinary course of his trade or business, any property which he has obtained on credit and has not paid for unless he shows that he did not intend to prejudice his creditors.
- (8) A debtor who is engaged in trade or business shall be guilty of an offence if at any time in the period of 2 years ending with the date of sequestration, he has failed to keep or preserve such records as are necessary to give a fair view of the state of his

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assets or his business and financial affairs and to explain his transactions, unless he shows that such failure was neither reckless nor dishonest:

Provided that a debtor shall not be guilty of an offence under this subsection if, at the date of sequestration, his unsecured liabilities did not exceed the prescribed amount; but, for the purposes of this proviso, if at any time the amount of a debt (or part of a debt) over which a security is held exceeds the value of the security, that debt (or part) shall be deemed at that time to be unsecured to the extent of the excess.

- (9) If a debtor, either alone or jointly with another person, obtains credit to the extent of £100 (or such other sum as may be prescribed) or more without giving the person from whom he obtained it the relevant information about his status he shall be guilty of an offence.
- (10) For the purposes of subsection (9) above—
- (a) “debtor” means—
 - (i) a debtor whose estate has been sequestrated; or
 - (ii) a person who has been adjudged bankrupt in England and Wales or Northern Ireland,and who, in either case, has not been discharged;
 - (b) the reference to the debtor obtaining credit includes a reference to a case where goods are hired to him under a hire-purchase agreement or agreed to be sold to him under a conditional sale agreement; and
 - (c) the relevant information about the status of the debtor is the information that his estate has been sequestrated and that he has not received his discharge or, as the case may be, that he is an undischarged bankrupt in England and Wales or Northern Ireland.
- (11) In this section—
- (a) “the relevant period” means the period commencing one year immediately before the date of sequestration of the debtor’s estate and ending with his discharge;
 - (b) references to intent to prejudice creditors shall include references to intent to prejudice an individual creditor.
- (12) A person convicted of any offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or—
 - (i) to imprisonment for a term not exceeding 3 months; or
 - (ii) if he has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding 6 months,or (in the case of either sub-paragraph) to both such fine and such imprisonment; or
 - (b) on conviction on indictment to a fine or—
 - (i) in the case of an offence under subsection (1), (2), (4) or (7) above to imprisonment for a term not exceeding 5 years,
 - (ii) in any other case to imprisonment for a term not exceeding 2 years.or (in the case of either sub-paragraph) to both such fine and such imprisonment.

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68 Summary proceedings.

- (1) Summary proceedings for an offence under this Act may be commenced at any time within the period of 6 months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge.
- (2) Subsection (3) of section 331 of the ^{M2}Criminal Procedure (Scotland) Act 1975 (date of commencement of summary proceedings) shall have effect for the purposes of subsection (1) above as it has effect for the purposes of that section.
- (3) For the purposes of subsection (1) above, a certificate of the Lord Advocate as to the date on which the evidence in question came to his knowledge is conclusive evidence of the date on which it did so.

Marginal Citations

M2 1975 c. 21.

69 Outlays of interim and permanent trustee.

The Secretary of State may, by regulations, provide for the premium (or a proportionate part thereof) of any bond of caution or other security required, for the time being, to be given by an insolvency practitioner to be taken into account as part of the outlays of the insolvency practitioner in his actings as an interim trustee or permanent trustee.

VALID FROM 18/02/1993

[69A ^{F2}Fees for the Accountant in Bankruptcy.

The Secretary of State may prescribe—

- (a) the fees and outlays to be payable to the Accountant in Bankruptcy in respect of the exercise of any of his functions under this Act;
- (b) the time and manner in which such fees and outlays are to be paid; and
- (c) the circumstances, if any, in which the Accountant in Bankruptcy may allow exemption from payment or the remission or modification of payment of any fees or outlays payable or paid to him.]

Textual Amendments

F2 S. 69A inserted (18.2.1993) by 1993 c. 6, s.8

70 Supplies by utilities.

- (1) This section applies where on any day (“the relevant day”)—
 - (a) sequestration is awarded in a case where the petition was presented by the debtor,
 - (b) a warrant is granted under section 12(2) of this Act in a case where the petition was presented by a creditor or a trustee acting under a trust deed; or

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- (c) the debtor grants a trust deed,
and in this section “the office holder” means the interim trustee, the permanent trustee or the trustee acting under a trust deed, as the case may be.
- (2) If a request falling within subsection (3) below is made for the giving after the relevant day of any of the supplies mentioned in subsection (4) below, the supplier—
- (a) may make it a condition of the giving of the supply that the office holder personally guarantees the payment of any charges in respect of the supply; and
 - (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the debtor before the relevant day are paid.
- (3) A request falls within this subsection if it is made—
- (a) by or with the concurrence of the office holder; and
 - (b) for the purposes of any business which is or has been carried on by or on behalf of the debtor.
- (4) The supplies referred to in subsection (2) above are—
- (a) a supply of gas by [^{F3}a public gas supplier within the meaning of Part I of the Gas Act 1986];
 - (b) a supply of electricity by [^{F4}a public electricity supplier within the meaning of Part I of the Electricity Act 1989];
 - (c) a supply of water by a water authority (within the meaning of the ^{M3}Water (Scotland) Act 1980);
 - (d) a supply of telecommunication services (within the meaning of the ^{M4}Telecommunications Act 1984) by a public telecommunications operator (within the meaning of that Act).
- (5) In subsection (4) above the reference to telecommunication services does not include a reference to [^{F5}local delivery services within the meaning of Part II of the Broadcasting Act 1990].

Textual Amendments

- F3** Words substituted by Gas Act 1986 (c. 44, SIF 44:2), ss. 3, 67(1)(3), Sch. 7 para. 32, **Sch. 8 para. 33**
- F4** Words substituted by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 32, Sch. 17 paras. 33, **35(1)**
- F5** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 41**
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Marginal Citations

- M3** 1980 c. 45.
- M4** 1984 c. 12.

71 Edinburgh Gazette.

The keeper of the Edinburgh Gazette shall, on each day of its publication, send a free copy of it to—

- (a) the Accountant in Bankruptcy; and
- (b) the petition department of the Court of Session.

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VALID FROM 01/07/2005

[^{F6}71A Further duty of Accountant in Bankruptcy

The Accountant in Bankruptcy shall, on receiving any notice under section 109(1) of the Insolvency Act 1986 in relation to a community interest company, forward a copy of that notice to the Regulator of Community Interest Companies.]

Textual Amendments

F6 S. 71A inserted (S.) (1.7.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 59(2)**, 65, 66; [S.I. 2004/3322](#) {art. 2(3)}, Sch. 3

VALID FROM 01/04/2008

[^{F7}71B Disqualification provisions: power to make orders

- (1) The Scottish Ministers may make an order under this section in relation to a disqualification provision.
- (2) A “disqualification provision” is a provision made by or under any enactment which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a relevant debtor or a class of relevant debtors from—
 - (a) being elected or appointed to an office or position;
 - (b) holding an office or position; or
 - (c) becoming or remaining a member of a body or group.
- (3) In subsection (2) above, the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.
- (4) An order under subsection (1) above may repeal or revoke the disqualification provision.
- (5) An order under subsection (1) above may amend, or modify the effect of, the disqualification provision—
 - (a) so as to reduce the class of relevant debtors to whom the disqualification provision applies;
 - (b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions order;
 - (c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions order;
 - (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.
- (6) An order by virtue of subsection (5)(d) above may provide for a discretion to be subject to—
 - (a) the approval of a specified person or body;
 - (b) appeal to a specified person, body, court or tribunal.

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- (7) The Scottish Ministers may be specified for the purposes of subsection (5)(d) or (6) (a) or (b) above.
- (8) In this section—
- “bankruptcy restrictions order” includes—
- (a) a bankruptcy restrictions undertaking;
 - (b) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to the Insolvency Act 1986 (c. 45); and
 - (c) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule;
- “relevant debtor” means a debtor—
- (a) whose estate has been sequestrated;
 - (b) who has granted (or on whose behalf there has been granted) a trust deed;
 - (c) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland; or
 - (d) who, in England and Wales or in Northern Ireland, has made an agreement with his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs or for some other kind of settlement or arrangement.
- (9) An order under this section—
- (a) may make provision generally or for a specified purpose only;
 - (b) may make different provision for different purposes; and
 - (c) may make transitional, consequential or incidental provision.
- (10) An order under this section—
- (a) shall be made by statutory instrument; and
 - (b) shall not be made unless a draft has been laid before and approved by a resolution of the Scottish Parliament.]

Textual Amendments

- F7** S. 71B inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 5**, 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))

72 Regulations.

Any power to make regulations under this Act shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and the regulations may make different provision for different cases or classes of case.

Modifications etc. (not altering text)

- C4** S. 72 modified (18.2.1993) by [1993 c. 6](#), **s. 9(1)(2)(5)**

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VALID FROM 08/09/2003

[^{F8}72ZA Modification of regulation making powers

Any power in any provision of this Act to make regulations may, insofar as that provision relates to a matter to which the EC Regulation applies, be exercised for the purpose of making provision in consequence of the EC Regulation.]

Textual Amendments

F8 S. 72ZA inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 18**

VALID FROM 01/04/1993

[^{F8}72A ^{F9}Variation of references to time, money etc.

For any reference in this Act to—

- (a) a period of time;
- (b) an amount of money; or
- (c) a fraction,

there shall be substituted a reference to such other period or, as the case may be, amount or fraction as may be prescribed.]

Textual Amendments

F8 S. 72ZA inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 18**

F9 S. 72A 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.28** (with s. 12(6)); S.I. 1993/438, **art.3**

73 Interpretation.

(1) In this Act, unless the context otherwise requires—

“Accountant in Bankruptcy” shall be construed in accordance with section 1 of this Act;

“accounting period” shall be construed in accordance with section 52(1) and (6) of this Act;

“apparent insolvency” and “apparently insolvent” shall be construed in accordance with section 7 of this Act;

[^{F10} “appropriate bank or institution” means the Bank of England, an institution authorised under the Banking Act 1987 or a person for the time being specified in Schedule 2 to that Act;]

“act and warrant” means an act and warrant issued under section 25(2) of, or paragraph 2(2) of Schedule 2 to, this Act;

“associate” shall be construed in accordance with section 74 of this Act;

“business” means the carrying on of any activity, whether for profit or not;

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“commissioner”, except in the expression “examining commissioner”, shall be construed in accordance with section 30(1) of this Act;

“court” means Court of Session or sheriff;

“date of sequestration” has the meaning assigned by section 12(4) of this Act;

“debtor” includes, without prejudice to the expression’s generality, an entity whose estate may be sequestrated by virtue of section 6 of this Act, a deceased debtor or his executor or a person entitled to be appointed as executor to a deceased debtor;

“examination” means a public examination under section 45 of this Act or a private examination under section 44 of this Act;

“examining commissioner” shall be construed in accordance with section 46(2) of this Act;

“interim trustee” shall be construed in accordance with section 2 of this Act;

“list of interim trustees” has the meaning assigned by section 1(1)(b) of this Act;

“ordinary debt” shall be construed in accordance with section 51(1)(f) of this Act;

“permanent trustee” shall be construed in accordance with section 3 of this Act;

“postponed debt” has the meaning assigned by section 51(3) of this Act;

“preferred debt” has the meaning assigned by section 51(2) of this Act;

“prescribed” means prescribed by regulations made by the Secretary of State;

“protected trust deed” shall be construed in accordance with paragraph 8 of Schedule 5 to this Act;

“qualified creditor” and “qualified creditors” shall be construed in accordance with section 5(4) of this Act;

“qualified to act as an insolvency practitioner” means being, in accordance with section 2 of the ^{M5}Insolvency Act 1985 (qualifications of insolvency practitioners), so qualified:

Provided that, until the coming into force of that section the expression shall instead mean satisfying such requirements (which, without prejudice to the generality of this definition, may include requirements as to the finding of caution) as may be prescribed for the purposes of this Act;

“register of insolvencies” has the meaning assigned by section 1(1)(c) of this Act;

“relevant person” has the meaning assigned by section 44(1)(b) of this Act;

“secured creditor” means a creditor who holds a security for his debt over any part of the debtor’s estate;

“security” means any security, heritable or moveable, or any right of lien, retention or preference;

“sederunt book” means the sederunt book maintained under section 3(1) (e) of this Act;

“standard scale” means the standard scale as defined in section 75(b) of the ^{M6}Criminal Justice Act 1982;

“statutory meeting” has the meaning assigned by section 21(1) of this Act;

“statutory maximum” has the meaning assigned by section 74(2) of the Criminal Justice Act 1982;

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“trust deed” has the meaning assigned by section 5(2)(c) of this Act; and
“unfair preference” means a preference created as is mentioned in subsection (1) of section 36 of this Act by a transaction to which subsection (4) of that section applies.

- (2) Any reference in this Act to a debtor being absolutely insolvent shall be construed as a reference to his liabilities being greater than his assets, and any reference to a debtor’s estate being absolutely insolvent shall be construed accordingly.
- (3) Any reference in this Act to value of the creditors is, in relation to any matter, a reference to the value of their claims as accepted for the purposes of that matter.
- (4) Any reference in this Act to “the creditors” in the context of their giving consent or doing any other thing shall, unless the context otherwise requires, be construed as a reference to the majority in value of such creditors as vote in that context at a meeting of creditors.
- (5) Any reference in this Act to any of the following acts by a creditor barring the effect of any enactment or rule of law relating to the limitation of actions in any part of the United Kingdom, namely—
 - (a) the presentation of a petition for sequestration;
 - (b) the concurrence in such a petition; and
 - (c) the submission of a claim,

shall be construed as a reference to that act having the same effect, for the purposes of any such enactment or rule of law, as an effective acknowledgment of the creditor’s claim; and any reference in this Act to any such enactment shall not include a reference to an enactment which implements or gives effect to any international agreement or obligation.

Textual Amendments

F10 Definition substituted by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), **Sch. 6 para. 20**

Modifications etc. (not altering text)

C5 [S. 73\(1\)](#) modified ([25.4.1991](#)) by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 182(4), **Sch. 22 para. 6(3)**; [S.I. 1991/878](#), **art. 2**.Sch.

C6 [S. 73\(1\)](#) amended (1.1.1993) by [S.I. 1992/3218](#), reg. 82(1), **Sch. 10 Pt. I para.18**.

Marginal Citations

M5 [1985 c. 65](#).

M6 [1982 c. 48](#).

74 Meaning of “associate”.

- (1) Subject to subsection (7) below, for the purposes of this Act any question whether a person is an associate of another person shall be determined in accordance with the following provisions of this section (any reference, whether in those provisions or in regulations under the said subsection (7), to a person being an associate of another person being taken to be a reference to their being associates of each other).

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- (2) A person is an associate of an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.
- (3) A person is an associate of any person with whom he is in partnership, [^{F11}and of any person who is an associate of any person with whom he is in partnership;] and a firm is an associate of any person who is a member of the firm.
- (4) For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant treating—
 - (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child; and
 - (b) an illegitimate child as the legitimate child of his mother and reputed father, and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife.
- (5) A person is an associate of any person whom he employs or by whom he is employed; and for the purposes of this subsection any director or other officer of a company shall be treated as employed by that company.

[^{F12}(5A) A company is an associate of another company—

- (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other; or
- (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(5B) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.

(5C) For the purposes of this section a person shall be taken to have control of a company if—

- (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it;

and where two or more persons together satisfy either of the above conditions, they shall be taken to have control of the company.]

(6) [^{F13}In subsections (5), (5A), (5B), (5C) above,]“company” includes any body corporate (whether incorporated in Great Britain or elsewhere).

(7) The Secretary of State may by regulations—

- (a) amend the foregoing provisions of this section so as to provide further categories of persons who, for the purposes of this Act, are to be associates of other persons; and
- (b) provide that any or all of subsections (2) to (6) above (or any subsection added by virtue of paragraph (a) above) shall cease to apply, whether in whole or

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in part, or shall apply subject to such modifications as he may specify in the regulations;

and he may in the regulations make such incidental or transitional provision as he considers appropriate.

Textual Amendments

- F11** Words in s. 74(3) substituted (1.4.1986) by S.I. 1985/1925, regs. 1, 11(2) (which S.I. is revoked (1.4.2008) by S.I. 2008/82, reg. 21)
- F12** S. 74(5A)-(5C) inserted by S.I. 1985/1925, reg. 11(3); (which S.I. is revoked (1.4.2008) by S.I. 2008/82, reg. 21)
- F13** Words in s. 74(6) substituted by virtue of S.I. 1985/1925, reg. 11(4); (which S.I. is revoked (1.4.2008) by S.I. 2008/82, reg. 21)

Modifications etc. (not altering text)

- C7** S. 74 applied by Social Security Pensions Act 1975 (c. 60, SIF 113:1), s. 57C(4) (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, Sch. 4 Pt. I para. 1)
- C8** S. 74 applied by Social Security Pensions Act 1975 (c. 60, SIF 113:1), s. 57A(4) (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, Sch. 4 Pt. I para. 3)
S. 74 applied (7.2.1994) by 1993 c. 48, ss. 112(4), 119(4) S.I. 1994/86, art. 2 (with s. 6(8))
S. 74 applied (6.4.2005) by Pensions Act 2004 (c. 35), {ss. 38(10(c)), 322 (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
S. 74 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. 51(3)(c), 322 (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
S. 74 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. 53(6)(c), 322 (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
S. 74 power to apply (with modifications) conferred (10.2.2005) by Pensions Act 2004 (c. 35), ss. 57(2)(c), 322 (with s. 313); S.I. 2005/275, art. 2(3)(a), Sch. Pt. 3
- C9** S. 74 applied (1.4.1996) by 1995 c. 43, ss. 34, 50(2), Sch. 1 para. 2(1)(j)
S. 74 applied (with modifications) (6.4.1997) by S.I. 1996/3127, art. 3(2)
S. 74 applied (6.4.1997) by 1995 c. 26, s. 123(2) (with s. 121(5)); S.I. 1997/664, art. 2(3), Sch. Pt. II
S.74 applied (1.10.2000) by S.I. 2000/1403, art. 1(5)

75 Amendments, repeals and transitional provisions.

- (1) Subject to subsection (3) below—
- the enactments mentioned in Part I of Schedule 7 to this Act shall have effect subject to the amendments respectively specified in that Schedule, being amendments consequential on the provisions of this Act;
 - Part II of that Schedule, which re-enacts certain provisions of the ^{M7}Bankruptcy (Scotland) Act 1913 repealed by this Act, shall have effect.
- (2) The enactments set out in columns 1 and 2 of Schedule 8 to this Act are, subject to subsection (3) below, hereby repealed to the extent specified in the third column of that Schedule.
- (3) Subject to subsections (4) and (5) below, nothing in this Act shall affect any of the enactments repealed or amended by this Act in their operation in relation to a sequestration as regards which the award was made before the coming into force of this section.

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- (4) Where a debtor's estate has been sequestrated before the coming into force of this section but he has not been discharged, the debtor shall be discharged on the expiry of—
- (a) 2 years after such coming into force; or
 - (b) 3 years after the date of sequestration,
- whichever expires later:

Provided that, not later than 3 months before the date on which the debtor is due to be discharged under this subsection, the trustee in the sequestration or any creditor may apply to the sheriff for a deferment of that discharge; and subsections (4) to (8) of section 54 of this Act shall apply in relation to that application by the trustee as they apply in relation to an application under subsection (3) of that section by the permanent trustee.

- (5) Section 63 of this Act shall apply in a case where before the coming into force of this section sequestration of a debtor's estate has been awarded under the Bankruptcy (Scotland) Act 1913 but the debtor has not yet been discharged, subject to the following modifications—
- (a) in subsections (1)(a) and (2)(c) for the words “this Act” there shall be substituted the words “the Bankruptcy (Scotland) Act 1913”;
 - (b) in subsections (2)(b) and (4) the word “permanent” shall be omitted; and
 - (c) in subsection (2)(b) for the words “24 of this Act” there shall be substituted the words “64 of the Bankruptcy (Scotland) Act 1913”.
- (6) The apparent insolvency of a debtor may be constituted for the purposes of this Act notwithstanding that the circumstance founded upon to constitute the apparent insolvency occurred on a date before the coming into force of section 7 of this Act; and, for those purposes, the apparent insolvency shall be deemed to have been constituted on that date:

Provided that apparent insolvency shall be constituted by virtue of this subsection only on grounds which would have constituted notour bankruptcy under the ^{M8}Bankruptcy (Scotland) Act 1913.

- (7) Where a debtor whose estate is sequestrated after the commencement of this subsection is liable, by virtue of a transaction entered into before that date, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the sequestrated estate, section 102 of the Bankruptcy (Scotland) Act 1913 (trustee's powers in relation to copyright) shall apply in relation to the permanent trustee as it applied before its repeal in relation to a trustee in bankruptcy under the said Act of 1913.
- (8) Where sequestration of a debtor's estate is awarded under this Act a person shall not be guilty of an offence under any provision of this Act in respect of anything done before the date of commencement of that provision but, notwithstanding the repeal by this Act of the Bankruptcy (Scotland) Act 1913, he shall be guilty of an offence under that Act in respect of anything done before that date which would have been an offence under that Act if the award of sequestration had been made under that Act.
- (9) Unless the context otherwise requires, any reference in any enactment or document to notour bankruptcy, or to a person being notour bankruptcy, shall be construed as a reference to apparent insolvency, or to a person being apparently insolvent, within the meaning of section 7 of this Act.

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- (10) Unless the context otherwise requires, any reference in any enactment or document to a person's estate being sequestrated under the Bankruptcy (Scotland) Act 1913 shall be construed as, or as including, a reference to its being sequestrated under this Act; and analogous references shall be construed accordingly.
- (11) Unless the context otherwise requires, any reference in any enactment or document to a trustee in sequestration or to a trustee in bankruptcy shall be construed as a reference to a permanent trustee, or in a case where no permanent trustee has been elected or appointed an interim trustee, within the meaning of this Act; and analogous expressions shall be construed accordingly.
- (12) Unless the context otherwise requires, any reference in any enactment or document—
- (a) to a “gratuitous alienation” shall be construed as including a reference to an alienation challengeable under section 34(1) of this Act or under section 615A(1) of the ^{M9}Companies Act 1985;
 - (b) to a “fraudulent preference” or to an “unfair preference” shall be construed as including a reference to—
 - (i) an unfair preference within the meaning of this Act;
 - (ii) a preference created as is mentioned in subsection (1) of section 36 of this Act (as applied by section 615B of the said Act of 1985), by a transaction to which subsection (4) of the said section 36 (as so applied) applies.

Marginal Citations

- M7 1913 c. 20.
M8 1913 c. 20.
M9 1985 c. 6.

76 Receipts and expenses.

- (1) Any—
- (a) payments received by the Secretary of State under section 58(3) of this Act; or
 - (b) amounts handed over to him in accordance with section 53 of this Act by virtue of the insertion provided for in paragraph 9 of Schedule 2 to this Act,
- shall be paid by him into the Consolidated Fund.
- (2) There shall be paid out of moneys provided by Parliament—
- (a) any amount of outlays and remuneration payable in accordance with section 53 of this Act by virtue of the insertion mentioned in subsection (1) (b) above;
 - (b) any administrative expenses incurred by the Secretary of State under this Act; and
 - (c) any increase attributable to this Act in the sums so payable under any other Act.

77 Crown application.

The application of this Act to the Crown is to the Crown as creditor only.

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78 Short title, commencement and extent.

- (1) This Act may be cited as the Bankruptcy (Scotland) Act 1985.
- (2) This Act, except this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different purposes and for different provisions.
- (3) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with the provisions brought into force (whether wholly or partly) by the order.
- (4) Without prejudice to section 75(3) to (5) of this Act, this Act applies to sequestrations as regards which the petition—
 - (a) is presented on or after the date of coming into force of section 5 of this Act; or
 - (b) was presented before, but in respect of which no award of sequestration has been made by, that date.
- (5) This Act, except the provisions mentioned in subsection (6) below, extends to Scotland only.
- (6) The provisions referred to in subsection (5) above are sections 8(5), 22(8) (including that subsection as applied by section 48(7)), 46, 55 and 73(5), paragraph 16(b) of Schedule 4 and paragraph 3 of Schedule 5.

Subordinate Legislation Made

- P1** S. 78(2): power of appointment conferred by s. 78(2) fully exercised: [S.I. 1985/1924](#), 1986/78, 1913: whole Act in force on or before 29.12.1986

Status:

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Changes to legislation:

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