



# Bankruptcy (Scotland) Act 1985 (repealed)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 <sup>F1</sup> . . . 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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#### Textual Amendments

- F1** Word in s. 60(2) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

#### 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](#))
- C2** S. 60 applied (with modifications) (14.11.2011) by [The Investment Bank Special Administration \(Scotland\) Rules 2011 \(S. I. 2011/2262\)](#), [rule 127](#)

### [<sup>F2</sup>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

- F2** Ss. 60A, 60B inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 17](#)

### 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 [<sup>F3</sup>trustee or a] trustee is obliged to give notice to, or provide a copy of a document (including an order of court) to, the [<sup>F4</sup>sheriff] 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

- F2** Ss. 60A, 60B inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 17](#)
- F3** Words in s. 60B(2) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para 54\(a\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F4** Word in s. 60B(2) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 54\(b\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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## 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.
- (2) The [<sup>F5</sup>sheriff] may, on the application of the <sup>F6</sup> . . . 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 [<sup>F5</sup>sheriff] 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 <sup>F6</sup> . . . trustee any sums paid to that person, by virtue of the transaction, by the debtor;
  - (d) provision requiring any person to surrender to the <sup>F6</sup> . . . 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 <sup>F6</sup> . . . trustee in accordance with an order under this section shall vest in the <sup>F6</sup> . . . trustee.
- (6) <sup>F7</sup> . . . 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.

### Textual Amendments

- F5** Words in s. 61 substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 55](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F6** Words in s. 61 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F7** Words in s. 61(6) repealed (6.4.2007) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. 70, 71, [Sch. 4](#) (with [Sch. 3 para. 15\(5\)](#)); S.I. 2007/123, [art. 3\(2\)](#), Sch. 2 (as amended by S.I. 2007/387, [art. 2\(3\)\(e\)\(iii\)](#))

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

- C3** 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)

## 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 [<sup>F8</sup>the Scottish Ministers may by regulations] —
    - (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.
- [<sup>F9</sup>(2A) The trustee must insert in the sederunt book the information listed in Schedule 3A to this Act.
- (2B) The Scottish Ministers may by regulations modify Schedule 3A.]
- (3) Any entry in the sederunt book shall be sufficient evidence of the facts stated therein, except where it is founded on by the <sup>F10</sup>. . . trustee in his own interest.
  - (4) Notwithstanding any provision of this Act, the <sup>F10</sup>. . . trustee shall not be bound to insert in the sederunt book any document of a confidential nature.
  - (5) The <sup>F10</sup>. . . 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.

#### Textual Amendments

- F8** Words in s. 62(2) substituted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), **ss. 23(3)(a)**, 57(2); S.S.I. 2014/172, art. 2, sch.; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F9** S. 62(2A)(2B) inserted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), **ss. 23(3)(b)**, 57(2); S.S.I. 2014/172, art. 2, sch.; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F10** Words in s. 62 repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

## 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

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- 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 <sup>F11</sup> . . . 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.
- (4) The <sup>F11</sup> . . . trustee shall record in the sederunt book the decision of the sheriff or the Court of Session under this section.

#### Textual Amendments

**F11** Words in s. 63 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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

**C4** S. 63 applied with modifications by [S.I. 1986/1915](#), [Rule 7.32](#).

## 64 [<sup>F12</sup>Debtor to co-operate with trustee]

- (1) The debtor shall take every practicable step, and in particular shall execute any document, which may be necessary to enable the <sup>F13</sup> . . . trustee to perform the functions conferred on him by this Act.
- (2) If the sheriff, on the application of the <sup>F13</sup> . . . 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.

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- (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.

#### Textual Amendments

- F12** S. 64 heading substituted (1.4.2008) by virtue of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 56](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F13** Words in s. 64 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

## 65 Arbitration and compromise.

- (1) The <sup>F14</sup>. . . trustee may (but if there are commissioners only with the consent of the commissioners, the creditors or the [<sup>F15</sup>sheriff])—
- (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.
- (3) The <sup>F14</sup>. . . trustee shall insert a copy of the decree arbitral, or record the compromise, in the sederunt book.

#### Textual Amendments

- F14** Words in s. 65 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F15** Word in s. 65(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 57](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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## 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 <sup>F16</sup>, disposes of] 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 <sup>F17</sup> . . . 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 <sup>F18</sup> . . . 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) <sup>F19</sup> . . . . .
- (9) If a debtor, either alone or jointly with another person, obtains credit
  - <sup>F20</sup>(a) to the extent of £500 (or such other sum as may be prescribed) or more; or
  - (b) of any amount, where, at the time of obtaining credit, the debtor has debts amounting to £1,000 (or such other sum as may be prescribed) or more,]

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without giving the person from whom he obtained it the relevant information about his status he shall be guilty of an offence.

[<sup>F21</sup>(9A) For the purposes of calculating an amount of—

- (a) credit mentioned in subsection (9) above; or
- (b) debts mentioned in paragraph (b) of that subsection,

no account shall be taken of any credit obtained or, as the case may be, any liability for charges in respect of—

- (i) any of the supplies mentioned in section 70(4) of this Act; and
- (ii) any council tax within the meaning of section 99(1) of the Local Government Finance Act 1992 (c. 14).]

(10) For the purposes of subsection (9) above—

- (a) “debtor” means—
  - (i) a debtor whose estate has been sequestered; <sup>F22</sup> . . .
  - (ii) a person who has been adjudged bankrupt in England and Wales or Northern Ireland<sup>F23</sup>; or
  - (iii) a person subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England or Wales,]
 and who, in [<sup>F24</sup>the case mentioned in sub-paragraph (i) or (ii) above], 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

[<sup>F25</sup>(c) the relevant information about the status of the debtor is the information that—

- (i) his estate has been sequestered and that he has not been discharged;
- (ii) he is an undischarged bankrupt in England and Wales or Northern Ireland; or
- (iii) he is subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England or Wales,

as the case may be.]

(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.

[<sup>F26</sup>(11A) A person shall be guilty of an offence under subsection (1), (2), (4), (5), (6) or (7) above if that person does or, as the case may be, fails to do, in any place in England and Wales or Northern Ireland, anything which would, if done or, as the case may be, not done in Scotland, be an offence under the subsection in question.]

(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,



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- 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.

### Textual Amendments

- F16** Words in s. 67(2) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(2), 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))
- F17** Word in s. 67(4) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 226, 227(3), Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F18** Words in s. 67(5)(b) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 226, 227(3), Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F19** S. 67(8) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(3), 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))
- F20** S. 67(9)(a)(b) substituted (1.4.2008) for words in s. 67(9) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(4), 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))
- F21** S. 67(9A) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(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))
- F22** Word following s. 67(10)(a)(i) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(6)(a), 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))
- F23** S. 67(10)(a)(iii) and word inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(6)(b), 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))
- F24** Words in s. 67(10)(a) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(6)(c), 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))
- F25** S. 67(10)(c) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(7), 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))
- F26** S. 67(11A) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss 24(8), 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))

## 68 Summary proceedings.

- (1) [<sup>F27</sup>Subject to subsection (1A) below,]summary proceedings for an offence under this Act may be commenced at any time within the period of [<sup>F28</sup>12] months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge.

*Status: Point in time view as at 04/10/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Miscellaneous and supplementary is up to date with all changes known to be in force on or before 27 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. (See end of Document for details)*

<sup>F27</sup>[(1A) No such proceedings shall be commenced by virtue of this section more than three years after the commission of the offence.]

(2) Subsection (3) of [<sup>F29</sup>section 136 of the Criminal Procedure (Scotland) Act 1995] (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.

#### Textual Amendments

- F27** Words at the beginning of s. 68(1) 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. 27(2)(a)** (with s. 12(6)); S.I. 1993/438, **art. 3**  
S. 68(1A) 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. 27(3)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F28** Words in s. 68(1) 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. 27(2)(b)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F29** Words in s. 68(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 58(5)**

#### 69 [<sup>F30</sup>Outlays of insolvency practitioner in actings as interim trustee or 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 <sup>F31</sup> . . . trustee.

#### Textual Amendments

- F30** S. 69 heading substituted (1.4.2008) by virtue of Bankruptcy and Diligence etc. (Scotland) Act 2007, ss. 36, 227(3), {Sch. 1 para. 58} (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F31** Word in s. 69 repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

#### [69A <sup>F32</sup>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; [<sup>F33</sup>or the Insolvency Act 1986]
- (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.

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### Textual Amendments

**F32** S. 69A inserted (18.2.1993) by 1993 c. 6, s. 8

**F33** Words in s. 69A(a) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 82(3)** (with art. 5)

## 70 Supplies by utilities.

- (1) This section applies where on any day (“the relevant day”)—
- (a) sequestration is awarded in a case where [<sup>F34</sup>a debtor application was made],
  - (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
  - (c) the debtor grants a trust deed,
- <sup>F35</sup>and in this section “the office holder” means the interim trustee, the . . . 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 [<sup>F36</sup>a [<sup>F37</sup>gas supplier] within the meaning of Part I of the Gas Act 1986];
  - (b) a supply of electricity by [<sup>F38</sup>a [<sup>F39</sup>electricity supplier] within the meaning of Part I of the Electricity Act 1989];
  - (c) a supply of water by [<sup>F40</sup>Scottish Water];
  - [<sup>F41</sup>(d) a supply of communications services by a provider of a public electronic communications service.]
- [<sup>F42</sup>(5) In subsection (4), “communications services” do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).]

### Textual Amendments

**F34** Words in s. 70(1)(a) substituted (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007* (asp 3), ss. 36, 227(3), **Sch. 1 para. 59** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

**F35** Word in s. 70 repealed (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007* (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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- F36** Words substituted by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), ss. 3, 67(1)(3), Sch. 7 para. 32, **Sch. 8 para. 33**
- F37** Words in s. 70(4)(a) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 13**; S.I. 1996/218, **art. 2**
- F38** 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)**
- F39** Words in s. 70(4)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. III para. 46**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in arts. 3-20)
- F40** Words in s. 70(4)(c) substituted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp. 3\)](#), s. 71, Sch. 7 para. 16; S.I. 2002/118, **art. 2(3)**
- F41** S. 70(4)(d) substituted (25.7.2003 for specified purposes and 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411(2)(3), **Sch. 17 para. 78(2)**; S.I. 2003/1900, arts. 2(1), 3(1), **Sch. 1**, (with transitional provisions in arts. 3-6 (as amended by S.I. 2003/3142, **art. 1(3)**)); S.I. 2003/3142, **art. 3(2)**, (with art. 11)
- F42** S. 70(5) substituted (25.7.2003 for specified purposes and 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411(2)(3), **Sch. 17 para. 78(2)**; S.I. 2003/1900, arts. 2(1), 3(1), **Sch. 1**, (with transitional provisions in arts. 3-6 (as amended by S.I. 2003/3142, **art. 1(3)**)); S.I. 2003/3142, **art. 3(2)**, (with art. 11)

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

- C5** S. 70(1)(b) applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, **19(2)(b)(iv)** (with reg. 24)

**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.

**[<sup>F43</sup>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**

- F43** 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

**[<sup>F44</sup>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

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- (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.
- (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

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- (b) shall not be made unless a draft has been laid before and approved by a resolution of the Scottish Parliament.]

#### Textual Amendments

**F44** 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**))

#### [<sup>F45</sup>71C Regulations: applications to Accountant in Bankruptcy etc.

- (1) The Scottish Ministers may, by regulations, make provision in relation to the procedure to be followed in relation to—
- (a) an application to the Accountant in Bankruptcy under this Act,
  - (b) an application to the Accountant in Bankruptcy for a review under this Act,
  - (c) any other decision made by the Accountant in Bankruptcy under this Act.
- (2) In this section “decision” includes any appointment, determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation made by the Accountant in Bankruptcy.
- (3) Regulations under subsection (1) may in particular make provision for or in connection with—
- (a) the procedure to be followed by the person making an application,
  - (b) the form of any report or other document that may be required for the purposes of an application or a decision,
  - (c) the form of a statement of undertakings that must be given by the debtor when making a debtor application,
  - (d) time limits applying in relation to the procedure,
  - (e) the procedure to be followed in connection with the production and recovery of documents relating to an application or a decision,
  - (f) the procedure to be followed (including provision about those entitled to participate) in determining an application or making a decision, and
  - (g) the procedure to be followed after an application is determined or a decision is made.
- (4) Regulations under subsection (1) may—
- (a) include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate,
  - (b) modify any enactment (including this Act).]

#### Textual Amendments

**F45** S. 71C inserted (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 36, 57(2)**; [S.S.I. 2014/172](#), **art. 2**, sch.

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## 72 Regulations.

[<sup>F46</sup>(1)] [<sup>F47</sup>Subject to subsection (2) below,] 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, <sup>F48</sup> ...

[<sup>F49</sup>(1A) Regulations under this Act may make different provision for different cases or classes of case.]

[<sup>F50</sup>(2) No regulations such as are mentioned in subsection (3) below may be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

(3) The regulations are—

(a) regulations made under—

(i) subsection (2B)(a) and (4) of section 5;

[ section 5(2ZC),

<sup>F51</sup>(ia)

(ib) section 5(2ZD),]

(ii) section 5A;

[ section 5B(5);] and

<sup>F52</sup>(iia)

[ section 5C(2)(b),

<sup>F53</sup>(iib)

(iic) section 5D(1),

(iic) section 32E(7),]

(iii) section 39A(4),

[ section 71C(1) which contain provisions which add to, replace or omit

<sup>F54</sup>(iv) any part of the text of an Act or an Act of the Scottish Parliament,

(v) paragraph 2(7) of Schedule A1,]

of this Act; and

(b) <sup>F55</sup> . . . regulations under paragraph 5 of Schedule 5 to this Act<sup>F55</sup> . . . .]

### Textual Amendments

**F46** S. 72 renumbered (19.2.2008) as s. 72(1) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 35(a)**, 227(3) (with s. 223); S.S.I. 2008/45, **art. 2**

**F47** Words in s. 72(1) inserted (19.2.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 35(b)**, 227(3) (with s. 223); ); S.S.I. 2008/45, **art. 2**

**F48** Words in s. 72(1) repealed (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), **sch. 4**; S.S.I. 2014/172, art. 2, sch.

**F49** S. 72(1A) inserted (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), **sch. 3 para. 34(a)**; S.S.I. 2014/172, art. 2, sch.

**F50** S. 72(2)(3) inserted (19.2.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 35(c)**, 227(3) (with s. 223); ); S.S.I. 2008/45, **art. 2** (with art. 3)

**F51** S. 72(3)(a)(ia)(ib) inserted (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), **sch. 3 para. 34(b)(i)**; S.S.I. 2014/172, art. 2, sch.

**F52** S. 72(3)(a)(iia) inserted (7.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), **ss. 13(1)(a)**, 17(3)(4) (with s. 14); S.S.I. 2010/314, art. 5 (subject to transitional provisions and savings in S.S.I. 2010/316, arts 4-7)



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- F53** S. 72(3)(a)(iib)-(iid) inserted (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), [sch. 3 para. 34\(b\)\(ii\)](#); S.S.I. 2014/172, art. 2, sch.
- F54** S. 72(3)(a)(iv)(v) inserted (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), [sch. 3 para. 34\(b\)\(iii\)](#); S.S.I. 2014/172, art. 2, sch.
- F55** Words in s. 72(3)(b) repealed (7.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), [ss. 13\(1\)\(b\)](#), 17(3)(4) (with s. 14); S.S.I. 2010/314, art. 5 (subject to transitional provisions and savings in S.S.I. 2010/316, arts 4-7)

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

- C6** S. 72 modified (18.2.1993) by [1993 c. 6, s. 9\(1\)\(2\)\(5\)](#)

**[<sup>F56</sup>72ZAModification 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**

- F56** S. 72ZA inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 18](#)

**[<sup>F56</sup>72A <sup>F57</sup>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**

- F56** S. 72ZA inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 18](#)
- F57** 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 [<sup>F58</sup>52(2)] of this Act;

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

[<sup>F59</sup>“appropriate bank or institution” means—

- (a) the Bank of England,



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- (b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
- (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits, or
- (d) a person who is exempt from the general prohibition in respect of accepting deposits as a result of an exemption order made under section 38(1) of that Act,

and the expressions in this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and 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;

[<sup>F60</sup>“bankruptcy restrictions order” has the meaning given by section 56A(1) of this Act;

“bankruptcy restrictions undertaking” has the meaning given by section 56G(1) of this Act;]

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

[<sup>F61</sup>“centre of main interests” has the same meaning as in the EC Regulation;]

“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;

[<sup>F62</sup>“creditor” includes a member State liquidator deemed to be a creditor under section 60A of this Act;]

“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;

[<sup>F63</sup>“debtor application” means an application for sequestration made to the Accountant in Bankruptcy under sections 5(2)(a) or 6(3)(a), (4)(a) or (6)(a) of this Act;]

[<sup>F64</sup>“the EC Regulation” means Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings<sup>MI</sup>;]

[<sup>F65</sup>“enactment” includes an Act of the Scottish Parliament and any enactment comprised in subordinate legislation under such an Act;]

[<sup>F66</sup>“establishment” has the meaning given by Article 2(h) of the EC Regulation;]

“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 [<sup>F67</sup>2(5)] of this Act;

*Status: Point in time view as at 04/10/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Miscellaneous and supplementary is up to date with all changes known to be in force on or before 27 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. (See end of Document for details)*

“” F68 . . .

[<sup>F69</sup>“main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation and–

- (a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;]

[<sup>F70</sup>“member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom;]

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

[<sup>F71</sup>“original trustee” shall be construed in accordance with section 24(1) (a) of this Act;]

F72 . . . . .

“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;

[<sup>F73</sup>“protected trust deed” means a trust deed which has been granted protected status in accordance with regulations made under paragraph 5 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 <sup>M2</sup>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 [<sup>F74</sup>1A(1) (b)] of this Act;

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

[<sup>F75</sup>“replacement trustee” shall be construed in accordance with section 24(1)(b) of this Act;]

[<sup>F76</sup>“secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and–

- (a) in relation to England and Wales and Scotland, set out in Annex B to the EC Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;]

“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;

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

<sup>F77</sup> . . .

[<sup>F78</sup>“sequestration proceedings” includes a debtor application and analogous expressions shall be construed accordingly;]

[<sup>F79</sup>“statement of assets and liabilities” means a document (including a copy of a document) in such form as may be prescribed containing—

- (i) a list of the debtor’s assets and liabilities;
- (ii) a list of his income and expenditure; and
- (iii) such other information as may be prescribed;]

[<sup>F80</sup>“statement of undertakings” means the statement of debtor undertakings sent to the debtor under section 2(8) or, in the case of a debtor application, given by the debtor when making the application,]

“statutory meeting” has the meaning assigned by section [<sup>F81</sup>section 20A] of this Act;

<sup>F77</sup> . . .

[<sup>F82</sup>“temporary administrator” means a temporary administrator referred to by Article 38 of the EC Regulation; and]

[<sup>F83</sup>“territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and—

- (a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.]

[<sup>F84</sup>“trust deed” has the meaning assigned by section 5(4A) of this Act;]

[<sup>F85</sup>“trustee” means trustee in the sequestration;

“trustee vote” shall be construed in accordance with section 24(1) of this Act;]

“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 [<sup>F86</sup>a debtor application] ; and
  - (c) the submission of a claim,

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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.

<sup>F87</sup> [ Any reference in this Act, howsoever expressed, to the time when a petition for (6) sequestration is presented shall be construed as a reference to the time when the petition is received by the [<sup>F88</sup>sheriff clerk].]

<sup>F89</sup> [ Any reference in this Act, howsoever expressed, to the time when a debtor application (6A) is made shall be construed as a reference to the time when the application is received by the Accountant in Bankruptcy.]]

### Textual Amendments

- F58** Words in definition of accounting period in s. 73(1) 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. 29(2)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F59** S. 73(1): definition of appropriate bank or institution substituted (1.12.2001) by S.I. 2001/3649, **art. 225**
- F60** S. 73(1): definitions of "bankruptcy restrictions order" and "bankruptcy restrictions undertaking" inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 60(2)(a)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F61** Definition of "centre of main interests" in s. 73(1) inserted (8.9.2003) by **The Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109)**, **reg. 19**
- F62** Definition of "creditor" in s. 73(1) inserted (8.9.2003) by **The Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109)**, **reg. 19**
- F63** S. 73(1): definition of "debtor application" inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 60(2)(b)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F64** Definition of "the EC Regulation" in s. 73(1) inserted (8.9.2003) by **The Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109)**, **reg. 19**
- F65** S. 73(1): definition of "enactment" inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 60(2)(c)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F66** Definition of "establishment" in s. 73(1) inserted (8.9.2003) by **The Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109)**, **reg. 19**
- F67** S. 73(1): Words in definition of "interim trustee" substituted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 60(2)(d)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F68** Definition of list of interim trustees in s. 73(1) repealed (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(4), **Sch. 2** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F69** Definition of "main proceedings" in s. 73(1) inserted (8.9.2003) by **The Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109)**, **reg. 19**
- F70** Definition of "member state liquidator" in s. 73(1) inserted (8.9.2003) by **The Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109)**, **reg. 19**
- F71** S. 73(1): definition of "original trustee" inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 60(2)(e)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F72** S. 73(1): definition of "permanent trustee" repealed (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, **Sch. 2** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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- F73** S. 73(1): definition of "protected trust deed" substituted (19.2.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 20(2)**, 227(3) (with s. 223); S.S.I. 2008/45, **art. 2** (with art. 3)
- F74** Words in definition of "register of insolvencies" in s. 73(1) 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. 29(3)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F75** S. 73(1): definition of "replacement trustee" inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 60(2)(f)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F76** Definition of "secondary proceedings" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 19**
- F77** Definitions of standard scale and statutory maximum in s. 73(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV** Group 2
- F78** S. 73(1): definition of "sequestration proceedings" inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 60(2)(g)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F79** Definition of statement of assets and liabilities in s. 73(1) 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. 29(5)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F80** Words in s. 73(1) inserted (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), **sch. 3 para. 35(h)**; S.S.I. 2014/172, art. 2, sch.
- F81** Words in definition of statutory meeting in s. 73(1) 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. 29(4)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F82** Definition of "temporary administrator" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 19**
- F83** Definition of "territorial proceedings" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 19**
- F84** Definition of "trust deed" in s. 73(1) 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. 29(6)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F85** S. 73(1): definitions of "trustee" and "trustee vote" inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 60(2)(h)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F86** Words in s. 73(5)(b) substituted (S.) (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 60(3)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F87** S. 73(6) added (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. 29(7)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F88** Words in s. 73(6) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 60(4)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F89** S. 73(6A) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 60(5)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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

- C7** 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.
- C8** S. 73(1) amended (1.1.1993) by S.I. 1992/3218, reg. 82(1), **Sch. 10 Pt. I para. 18**.
- C9** S. 73(1) amendment to transitional provisions in earlier commencing S.S.I. 2008/115, arts. 5, 6 (4.10.2014) by [The Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(Commencement No. 9 and Savings Amendment\) Order 2014 \(S.S.I. 2014/173\)](#), arts. 1(2), 3

#### Marginal Citations

- M1** Council Regulation (EC) 1346/2000, O.J. No. L 160, 30.06.00, p.1.

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M2 1985 c. 65.

#### 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).
  - (2) A person is an associate of an individual if that person is the individual’s [<sup>F90</sup>husband, wife or civil partner] , or is a relative, or the [<sup>F90</sup>husband, wife or civil partner] of a relative, of the individual or of the individual’s [<sup>F90</sup>husband, wife or civil partner] .
  - (3) A person is an associate of any person with whom he is in partnership, [<sup>F91</sup>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 [<sup>F92</sup>husband, wife or civil partner] include a former [<sup>F92</sup>husband, wife or civil partner] and a reputed [<sup>F92</sup>husband, wife or civil partner] .
  - (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.
- [<sup>F93</sup>(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.]



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- (6) [<sup>F94</sup>In subsections (5), (5A), (5B), and (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 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

- F90** Words in s. 74(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(2), 263, **Sch. 28 para. 40**; S.S.I. 2005/604, **art. 2(c)**
- F91** Words in s. 74(3) substituted (1.4.2008) by Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82), **reg. 8(2)**
- F92** Words in s. 74(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(2), 263, **Sch. 28 para. 40**; S.S.I. 2005/604, **art. 2(c)**
- F93** S. 74(5A)-(5C) inserted (1.4.2008) by Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82), **reg. 8(3)**
- F94** Words in s. 74(6) substituted (1.4.2008) by virtue of Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82), **reg. 8(4)**

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

- C10** 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**)
- C11** 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)**
- C12** 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**
- C13** S. 74 modified (30.12.2005) by The Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378), **reg. 10(2)**

## 75 Amendments, repeals and transitional provisions.

- (1) Subject to subsection (3) below—

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- (a) 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;
  - (b) Part II of that Schedule, which re-enacts certain provisions of the <sup>M3</sup>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.
- (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<sup>F95</sup> . . . .

- (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) <sup>F96</sup> . . . . .
  - (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 <sup>M4</sup>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



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- to the <sup>F97</sup> . . . 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.
- (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 <sup>F98</sup> . . . 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 <sup>M5</sup>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.

#### Textual Amendments

- F95** Words in s. 75(4) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F96** S. 75(5)(b) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F97** Word in s. 75(7) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F98** Words in s. 75(11) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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#### **Marginal Citations**

- M3** 1913 c. 20.
- M4** 1913 c. 20.
- M5** 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.

### **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.

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**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:**

Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Miscellaneous and supplementary is up to date with all changes known to be in force on or before 27 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.