



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

[^{F1}Initial stages of sequestration]

Textual Amendments

- F1** Cross-heading preceding s. 18 substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#) (asp 3), ss. 16, 227(3), [Sch. 1 para. 16\(7\)](#) (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))

18 Interim preservation of estate.

- (1) The interim trustee may [^{F2}, in pursuance of the function conferred on him by section 2(6A) of this Act,] give general or particular directions to the debtor relating to the management of the debtor's estate.
- (2) In exercising the [^{F3}function] conferred on him by section [^{F4}2(6A)] of this Act, an interim trustee may—
 - (a) require the debtor to deliver up to him any money or valuables, or any document relating to the debtor's business or financial affairs, belonging to or in the possession of the debtor or under his control;
 - (b) place in safe custody anything mentioned in paragraph (a) above;
 - (c) require the debtor to deliver up to him any perishable goods belonging to the debtor or under his control and may arrange for the sale or disposal of such goods;
 - (d) make or cause to be made an inventory or valuation of any property belonging to the debtor;
 - (e) require the debtor to implement any transaction entered into by the debtor;
 - (f) effect or maintain insurance policies in respect of the business or property of the debtor;
 - (g) ^{F5}

Status: Point in time view as at 04/10/2014.

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[^{F6}(h) carry on any business of the debtor or borrow money in so far as it is necessary for the interim trustee to do so to safeguard the debtor's estate.]

[^{F7}(2A) Section 43 of this Act applies to an interim trustee as it applies to a trustee.]

(3) The [^{F8}sheriff], on the application of the interim trustee, may—

- [^{F9}(a)]
- (b) on cause shown, grant a warrant authorising the interim trustee to enter the house where the debtor resides or his business premises and to search for and take possession of anything mentioned in paragraphs (a) and (c) of subsection (2) above, if need be by opening shut and lock-fast places; or
- (c) make such other order to safeguard the debtor's estate as [^{F10}he] thinks appropriate.

(4) The [^{F11}sheriff], on an application by the debtor on the grounds that a direction under subsection (1) above is unreasonable, may—

- (a) if [^{F12}he] considers the direction to be unreasonable, set aside the direction; and
- (b) in any event, give such directions to the debtor regarding the management of his estate as [^{F12}he] considers appropriate;

but, subject to any interim order of the [^{F11}sheriff], the debtor shall comply with the direction appealed against pending the final determination of the appeal.

(5) The debtor shall be guilty of an offence if—

- (a) he fails without reasonable excuse to comply with—
- (i) a direction under subsection (1) or (4)(b) above; or
- (ii) a requirement under subsection (2)(a), (c) or (e) above; or
- (b) he obstructs the interim trustee where the interim trustee is acting in pursuance of subsection (3)(b) above.

(6) A person convicted of an offence under subsection (5) 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

- F2** Words in s. 18(1) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 16, 227(3), [Sch. 1 para. 16\(2\)](#) (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](#)))
- F3** Word in s. 18(2) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 16, 227(3), [Sch. 1 para. 16\(3\)\(a\)](#) (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](#)))

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- F4** Words in s. 18(2) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 16(3)(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))
- F5** S. 18(2)(g) 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))
- F6** S. 18(2)(h) 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. 6(b)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F7** S. 18(2A) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 16(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))
- F8** Word in s. 18(3) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 16(5)(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))
- F9** S. 18(3)(a) 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**
- F10** Word in s. 18(3)(c) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 16(5)(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))
- F11** Words in s. 18(4) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 16(6)(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))
- F12** Words in s. 18(4) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 16(6)(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))

[19] ^{F13}Statement of assets and liabilities etc.

- (1) Where the [^{F14}debtor has made a debtor application] he shall, not later than 7 days after the appointment of the [^{F15}trustee under section 2 of this Act] (where he is not the Accountant in Bankruptcy), send to the ^{F16}. . . trustee such statement of assets and liabilities as was [^{F17}sent to the Accountant in Bankruptcy in pursuance of section 5(6A)] of this Act.
- (2) Where the petitioner for sequestration is a creditor or a trustee acting under a trust deed, the debtor shall, not later than 7 days after having been notified by the ^{F16}. . . trustee as mentioned in section [^{F18}2(7)(a)] of this Act, send to the ^{F16}. . . trustee a statement of assets and liabilities.
- (3) If the debtor—
- fails to send to the ^{F16}. . . trustee in accordance with subsection (1) or (2) above such statement of assets and liabilities; or
 - fails to disclose any material fact in such statement of assets and liabilities; or
 - makes a material misstatement in such statement of assets and liabilities,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.
- (4) In any proceedings for an offence under subsection (3) above, it shall be a defence for the accused to show that he had a reasonable excuse for—
- failing to send to the ^{F16}. . . trustee in accordance with subsection (1) or (2) above such statement of assets and liabilities; or

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- (b) failing to disclose a material fact; or
- (c) making a material misstatement.]

Textual Amendments

- F13** S. 19 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.7** (with s. 12(6)); S.I. 1993/438, **art.3**
- F14** Words in s. 19(1) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 17(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))
- F15** Words in s. 19(1) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 17(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))
- F16** Words in s. 19 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))
- F17** Words in s. 19(1) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 17(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))
- F18** Words in s. 19(2) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 16, 227(3), **Sch. 1 para. 17(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))

20 Trustee's duties on receipt of list of assets and liabilities.

[^{F19}(1) When the ^{F20} . . . trustee has received the statement of assets and liabilities, he shall, as soon as practicable, prepare a statement of the debtor's affairs so far as within the knowledge of the ^{F20} . . . trustee and shall indicate in the statement of the debtor's affairs whether, in his opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in paragraphs (e) to (h) of section 51(1) of this Act.]

(2) The ^{F20} . . . trustee shall, not later than 4 days before the date fixed for the statutory meeting, [^{F21}or, where the trustee does not intend to hold such a meeting, not later than 60 days after the date on which sequestration is awarded,] send to the Accountant in Bankruptcy—

- (a) [^{F19}the statement] of assets and liabilities [^{F22}(unless the statement has already been received by the Accountant in Bankruptcy by virtue of section 5(6A) of this Act)]; and
- (b) [^{F23}subject to subsection (2A) below,] a copy of the ^{F24} . . . statement of the debtor's affairs; and
- (c) written comments by the ^{F20} . . . trustee indicating what in his opinion are the causes of the insolvency and to what extent the conduct of the debtor may have contributed to the insolvency.

[^{F25}(2A) The trustee need not send a statement of the debtor's affairs to the Accountant in Bankruptcy in accordance with subsection (2)(b) above if the trustee has sent a copy of the inventory and valuation to the Accountant in Bankruptcy in accordance with section 38(1)(c) of this Act.]

(3) The written comments made under subsection (2)(c) above shall be absolutely privileged.

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(4) ^{F26}

(5) ^{F26}

[^{F27}(5A) Subsections (2) and (3) above do not apply in any case where the Accountant in Bankruptcy is the ^{F20} . . . trustee.]

Textual Amendments

- F19** S. 20(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. 8(2)** (with s. 12(6)); S.I. 1993/438, **art.3**
Words in s. 20(2)(a) 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. 8(3)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F20** Words in s. 20 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))
- F21** Words in s. 20(2) inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 18(a)(i)** (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))
- F22** Words in s. 20(2)(a) inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 18(a)(ii)** (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))
- F23** Words in s. 20(2)(b) inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 18(a)(iii)** (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))
- F24** Word “preliminary” in s. 20(2)(b) 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**
- F25** S. 20(2A) inserted (1.4.2008) by **Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)**, ss. 36, 227(3), **Sch. 1 para. 18(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))
- F26** S. 20(4)(5) 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))
- F27** S. 20(5A) 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. 8(4)** (with s. 12(6)); S.I. 1993/438, **art.3**

[20A ^{F28}Statutory meeting.

A meeting of creditors called by the ^{F29} . . . trustee under section ^{F29} . . . 21A of this Act shall, in this Act, be referred to as “the statutory meeting”.]

Textual Amendments

- F28** S. 20A 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.9** (with s. 12(6)); S.I. 1993/438, **art.3**
- F29** Words in s. 20A 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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