



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

[^{F1}Vesting of estate in trustee]

Textual Amendments

- F1** Cross-heading preceding s. 31 substituted (1.4.2008) by virtue of [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 30\(6\)](#) (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))

31 Vesting of estate at date of sequestration.

(1) Subject to section 33 of this Act [^{F2}and section 91(3) of the Pensions Act 1995], the whole estate of the debtor shall [^{F3}, by virtue of the trustee's appointment,] vest [^{F4}in the trustee] as at the date of sequestration ^{F5} . . . for the benefit of the creditors ^{F6} . . .

- (a) ^{F6}
- (b) ^{F6}

[^{F7}(1A) It shall not be competent for—

- (a) the trustee; or
- (b) any person deriving title from the trustee,

to complete title to any heritable estate in Scotland vested in the trustee by virtue of his appointment before the expiry of the period mentioned in subsection (1B) below.

(1B) That period is the period of 28 days (or such other period as may be prescribed) beginning with the day on which—

- (a) the certified copy of the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 14 of this Act; or
- (b) the certified copy of the determination of the Accountant in Bankruptcy awarding sequestration is recorded under subsection (1A) of that section,

in the register of inhibitions.]

Status: Point in time view as at 31/12/2014.

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- (2) The exercise by the ^{F8} . . . trustee of any power conferred on him by this Act in respect of any heritable estate vested in him by virtue of [^{F9}his appointment] shall not be challengeable on the ground of any prior inhibition^{F10}
- (3) Where the debtor has an uncompleted title to any heritable estate in Scotland, the ^{F8} . . . trustee may complete title thereto either in his own name or in the name of the debtor, but completion of title in the name of the debtor shall not validate by accretion any unperfected right in favour of any person other than the ^{F8} . . . trustee.
- (4) Any moveable property, in respect of which but for this subsection—
- (a) delivery or possession; or
 - (b) intimation of its assignation,
- would be required in order to complete title to it, shall vest in the ^{F8} . . . trustee by virtue of [^{F11}his appointment] as if at the date of sequestration the ^{F8} . . . trustee had taken delivery or possession of the property or had made intimation of its assignation to him, as the case may be.
- (5) Any non-vested contingent interest which the debtor has shall vest in the ^{F8} . . . trustee as if an assignation of that interest had been executed by the debtor and intimation thereof made at the date of sequestration.
- [^{F12}(5A) Any non-vested contingent interest vested in the trustee by virtue of subsection (5) above shall, where it remains so vested in the trustee on the date on which the debtor's discharge becomes effective, be reinvested in the debtor as if an assignation of that interest had been executed by the trustee and intimation thereof made at that date.]
- (6) Any person claiming a right to any estate claimed by the ^{F8} . . . trustee may apply to the [^{F13}sheriff] for the estate to be excluded from such vesting, a copy of the application being served on the ^{F8} . . . trustee; and the [^{F13}sheriff] shall grant the application if [^{F14}he] is satisfied that the estate should not be so vested.
- (7) Where any successor of a deceased debtor whose estate has been sequestrated has made up title to, or is in possession of, any part of that estate, the [^{F15}sheriff] may, on the application of the ^{F8} . . . trustee, order the successor to convey such estate to him.
- (8) In subsection (1) above [^{F16}, subject to section 31A of this Act,] the “whole estate of the debtor” means [^{F17}, subject to subsection (9) below [^{F18}[^{F19} and to [^{F20}sections 71(10B), 78(3B) and 89(2)] of the Social Security Administration Act 1992]],] his whole estate at the date of sequestration, wherever situated, including—
- (a) any income or estate vesting in the debtor on that date;
 - [^{F21}(aa) any property of the debtor, title to which has not been completed by another person deriving right from the debtor;] and
 - (b) the capacity to exercise and to take proceedings for exercising, all such powers in, over, or in respect of any property as might have been exercised by the debtor for his own benefit as at, or on, the date of sequestration or might be exercised on a relevant date (within the meaning of section 32(10) of this Act).
- [^{F22}(9) Subject to subsection (10) below, the “whole estate of the debtor” does not include any interest of the debtor as tenant under any of the following tenancies—
- (a) a tenancy which is an assured tenancy within the meaning of Part II of the ^{M1} Housing (Scotland) Act 1988, or

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- (b) a protected tenancy within the meaning of the ^{M2} Rent (Scotland) Act 1984 in respect of which, by virtue of any provision of Part VIII of that Act, no premium can lawfully be required as a condition of the assignment, or
- [a Scottish secure tenancy within the meaning of the Housing (Scotland) Act ^{F23}(c) 2001 (asp 10).]
- (10) On the date on which the ^{F8} . . . trustee serves notice to that effect on the debtor, the interest of the debtor as tenant under any of the tenancies referred to in subsection (9) above shall form part of his estate and vest in the ^{F8} . . . trustee as if it had vested in him under section 32(6) of this Act.]

Textual Amendments

- F2** Words in s. 31(1) inserted (6.4.1997) by 1995 c. 26, s. 122, **Sch. 3 para. 13**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**
- F3** Words in s. 31(1) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 5 para. 13(2)(a)** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 1 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F4** Words in s. 31(1) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 5 para. 13(2)(b)** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 1 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F5** Words in s. 31(1) 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. 31(1)(a)(b) and preceding word 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** S. 31(1A)(1B) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), {ss. 17(1)(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))
- F8** Words in s. 31(2)-(7)(10) 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))
- F9** Words in s. 31(2) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 30(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))
- F10** Words in s. 31(2) repealed (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2009/67, art. 3(2)(3), Sch. 2
- F11** Words in s. 31(4) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 30(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))
- F12** S. 31(5A) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 29, 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))
- F13** Words in s. 31(6) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 30(4)(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))
- F14** Word in s. 31(6) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 30(4)(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))
- F15** Word in s. 31(7) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 30(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))

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- F16** Words in s. 31(8) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 11](#)
- F17** Words inserted by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), [s. 118\(1\)](#)
- F18** S. 31(8): by [1997 c. 27, s. 33\(2\)](#), [Sch. 4](#) (with [ss. 1, 2, 28](#)); [S.I. 1997/2085, art. 2\(2\)](#) it is provided (6.10.1997) that the words “and to section 89(2) of the Social Security Administration Act 1992” are repealed
- F19** Words in s. 31(8) substituted (1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), [ss. 4, 7\(2\)](#), [Sch. 2 para.69](#).
- F20** Words in s. 31(8) substituted (7.10.1996) by 1995, c. 18, s. 41(4), Sch. 2 para. 8; [S.I. 1996/2208, art. 2\(b\)](#)
- F21** S. 31(8)(aa) inserted (1.4.2008.) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), {[ss. 17 \(1\)\(b\)](#)}, [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](#)))
- F22** S. 31(9)(10) added by [Housing Act 1988 \(c. 50, SIF 75:1\)](#), [s. 118\(2\)](#)
- F23** S. 31(9)(c) substituted (30.9.2002) by [2001 asp 10, s. 112, Sch. 10 para. 10](#); [S.S.I. 2002/321, art. 2, Sch.](#) (subject to [arts. 3-5](#))

Modifications etc. (not altering text)

- C1** S. 31(8) excluded by [Social Security Act 1989 \(c.24, SIF 113:1\)](#), [s. 22, Sch. 4 Pt. II para. 8\(2\)](#)
- C2** S. 31(8) restricted (1.7.1992) by [Social Security Administration Act 1992 \(c. 5\)](#), [s. 89\(2\)](#) (with [s. 93\(1\)](#)).

Marginal Citations

- M1** [1988 c.43](#)
- M2** [1984 c.58](#)

^{F25}^{F24} **31ZA Proceedings under EC Regulation: modified definition of “estate”**

In the application of this Act to insolvency proceedings under the EC Regulation, a reference to “estate” is a reference to estate which may be dealt with in those proceedings.]

Textual Amendments

- F24** S. 31A inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 12](#)
- F25** S. 31A renumbered (1.4.2008) as s. 31ZA by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 36, 227\(3\)](#), [Sch. 1 para. 31](#) (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} **31A Property subject to restraint order**

- (1) This section applies where—
- (a) property is excluded from the debtor’s estate by virtue of section 420(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
 - (b) an order under section 50, ^{F27} . . . 128 [^{F28}or 198] of that Act has not been made in respect of the property, and
 - (c) the restraint order is discharged.
- (2) On the discharge of the restraint order the property vests in the ^{F29} . . . trustee as part of the debtor’s estate.

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- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

Textual Amendments

- F26** Ss. 31A-31C inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [Ss. 456, 458\(1\)\(3\)](#), [Sch. 11 para. 15\(4\)](#); [S.I. 2003/333](#), [art. 2\(1\)](#) Sch. (subject to transitional provisions in arts. 3-14) (as amended by [S.I. 2003/531](#)); [S.S.I. 2003/210](#), [art. 2\(1\)\(b\)](#), Sch. (subject to transitional provisions in arts. 3-7)
- F27** Word in s. 31A(1)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 74\(2\), 92, 94](#), [Sch. 8 para. 150\(a\)](#), [Sch. 14](#); [S.I. 2008/755](#), [art. 2\(1\)\(b\)\(v\)](#) (subject to arts 3-14)
- F28** Words in s. 31A(1)(b) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 74\(2\), 94](#), [Sch. 8 para. 150\(b\)](#); [S.I. 2008/755](#), [art. 2\(1\)\(a\)](#) (subject to arts 3-14)
- F29** Word in s. 31A(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 by [S.S.I.2009/67](#), [art. 7](#) and [S.S.I. 2011/31](#), [art. 5](#)))

31B Property in respect of which receivership or administration order is made

- (1) This section applies where—
- property is excluded from the debtor's estate by virtue of section 420(2)(b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),^{F30} . . .
 - a confiscation order is made under section 6, 92 or 156 of that Act,
 - the amount payable under the confiscation order is fully paid, and
 - any of the property remains in the hands of the receiver or administrator (as the case may be).
- (2) The property vests in the^{F31} . . . trustee as part of the debtor's estate.

Textual Amendments

- F26** Ss. 31A-31C inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [Ss. 456, 458\(1\)\(3\)](#), [Sch. 11 para. 15\(4\)](#); [S.I. 2003/333](#), [art. 2\(1\)](#) Sch. (subject to transitional provisions in arts. 3-14) (as amended by [S.I. 2003/531](#)); [S.S.I. 2003/210](#), [art. 2\(1\)\(b\)](#), Sch. (subject to transitional provisions in arts. 3-7)
- F30** Word in s. 31B(1)(a) 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](#)))
- F31** Word in s. 31B(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](#)))

31C Property subject to certain orders where confiscation order discharged or quashed

- (1) This section applies where—
- property is excluded from the debtor's estate by virtue of section 420(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which

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- a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),
- (b) a confiscation order is made under section 6, 92 or 156 of that Act, and
 - (c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.
- (2) Any property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act vests in the ^{F32} . . . trustee as part of the debtor's estate.
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).]

Textual Amendments

- F26** Ss. 31A-31C inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [Ss. 456, 458\(1\)\(3\)](#), [Sch. 11 para. 15\(4\)](#); [S.I. 2003/333](#), [art. 2\(1\)](#) Sch. (subject to transitional provisions in arts. 3-14) (as amended by [S.I. 2003/531](#)); [S.S.I. 2003/210](#), [art. 2\(1\)\(b\)](#), Sch. (subject to transitional provisions in arts. 3-7)
- F32** Word in s. 31C 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))

32 Vesting of estate, and dealings of debtor, after sequestration.

- (1) Subject to [^{F33}subsections (2) and (4B)] below, any income of whatever nature received by the debtor on a relevant date, other than income arising from the estate which is vested in the ^{F34} . . . trustee, shall vest in the debtor.
- (2) [^{F35}Notwithstanding anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999,] the sheriff, on the application of the ^{F34} . . . trustee, may, after having regard to all the circumstances, determine a suitable amount to allow for—
- (a) aliment for the debtor; and
 - (b) the debtor's relevant obligations;
- and if the debtor's income is in excess of the total amount so allowed the sheriff shall fix the amount of the excess and order it to be paid to the ^{F34} . . . trustee.
- [^{F36}(2WA) Subject to subsection (4L) below, no application may be made under subsection (2) above after the date on which the debtor's discharge becomes effective.
- (2XA) An order made by the sheriff under subsection (2) above shall specify the period during which it has effect and that period—
- (a) may end after the date on which the debtor's discharge becomes effective; and
 - (b) shall end no later than 3 years after the date on which the order is made.
- (2YA) An order made by the sheriff under subsection (2) above may provide that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.
- (2ZA) If the debtor fails to comply with an order made under subsection (2) above, 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.]

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- [^{F37}(2A) The amount allowed for the purposes specified in paragraphs (a) and (b) of subsection (2) above shall not be less than the total amount of any income received by the debtor—
- (a) by way of guaranteed minimum pension; ^{F38} . . .
 - (b) ^{F38}
- “guaranteed minimum pension” [^{F39}having the same meaning] as in the Pension Schemes Act 1993.]
- (3) The debtor’s relevant obligations referred to in paragraph (b) of subsection (2) above are—
- (a) any obligation of aliment owed by him (“obligation of aliment” having the same meaning as in the ^{M3}Family Law (Scotland) Act 1985);
 - (b) any obligation of his to make a periodical allowance to a former spouse [^{F40}or former civil partner] ;
 - ^{F41}[(c) any obligation of his to pay child support maintenance under the Child Support Act 1991,]
- but any amount allowed under that subsection for the relevant obligations [^{F42}referred to in paragraphs (a) and (b) above] need not be sufficient for compliance with a subsisting order or agreement as regards such aliment or periodical allowance.
- (4) In the event of any change in the debtor’s circumstances, the sheriff, on the application of the ^{F34} . . . trustee, the debtor or any other interested person, may vary or recall any order under subsection (2) above.
- [^{F43}(4A) The sheriff clerk shall send a copy of any order made under subsection (2) above (and a copy of any variation or recall of such an order) to the Accountant in Bankruptcy.
- (4B) Where no order has been made under subsection (2) above, a debtor may enter into an agreement in writing with the trustee which provides—
- (a) that the debtor is to pay to the trustee an amount equal to a specified part or proportion of his income; or
 - (b) that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.
- (4C) No agreement under subsection (4B) above may be entered into after the date on which the debtor's discharge becomes effective.
- (4D) Subsection (2XA) above applies to agreements entered into under subsection (4B) above as it applies to orders made under subsection (2) above.
- (4E) An agreement entered into under subsection (4B) above may, if subsection (4K) below has been complied with, be enforced, subject to subsection (4F) below, as if it were an order made under subsection (2) above.
- (4F) Subsection (2ZA) above does not apply to an agreement entered into under subsection (4B) above.
- (4G) An agreement entered into under subsection (4B) above may be varied—
- (a) by written agreement between the parties; or
 - (b) by the sheriff, on an application made by the trustee, the debtor or any other interested person.
- (4H) The sheriff—

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- (a) may not vary an agreement entered into under subsection (4B) above so as to include provision of a kind which could not be included in an order made under subsection (2) above; and
 - (b) shall grant an application to vary such an agreement if and to the extent that the sheriff thinks variation is necessary to determine a suitable amount to allow for the purposes specified in paragraphs (a) and (b) of subsection (2) above, being an amount which shall not be included in the amount to be paid to the trustee.
- (4J) Where a third person pays a sum of money to the trustee under subsection (2YA) or (4B)(b) above, that person shall be discharged of any liability to the debtor to the extent of the sum of money so paid.
- (4K) The trustee shall (unless he is the Accountant in Bankruptcy) send a copy of any agreement entered into under subsection (4B) above (and a copy of any variation of such an agreement) to the Accountant in Bankruptcy.
- (4L) If the debtor fails to comply with an agreement entered into under subsection (4B) above, the sheriff, on the application of the trustee, may make an order under subsection (2) above—
- (a) ending on the date on which the agreement would, had the debtor continued to comply with it, have ended; and
 - (b) on the same terms as the agreement.]
- (5) Diligence [^{F44}(which, for the purposes of this section, includes the making of a deduction from earnings order under the Child Support Act 1991)] in respect of a debt or obligation of which the debtor would be discharged under section 55 of this Act were he discharged under section 54 thereof shall not be competent against income vesting in him under subsection (1) above.
- (6) Without prejudice to subsection (1) above, any estate, wherever situated, which—
- (a) is acquired by the debtor on a relevant date; and
 - (b) would have vested in the ^{F34} . . . trustee if it had been part of the debtor's estate on the date of sequestration,
- shall vest in the ^{F34} . . . trustee for the benefit of the creditors as at the date of acquisition; and any person who holds any such estate shall, on production to him of a copy of the [^{F45}order] certified by the sheriff clerk [^{F46}or, as the case may be, by the Accountant in Bankruptcy appointing the trustee], convey or deliver the estate to the ^{F47} . . . trustee:
- Provided that—
- (i) if such a person has in good faith and without knowledge of the sequestration conveyed the estate to the debtor or to anyone on the instructions of the debtor, he shall incur no liability to the ^{F34} . . . trustee except to account for any proceeds of the conveyance which are in his hands; and
 - (ii) this subsection shall be without prejudice to any right or interest acquired in the estate in good faith and for value.
- (7) The debtor shall immediately notify the ^{F34} . . . trustee of any assets acquired by him on a relevant date or of any other substantial change in his financial circumstances; and, if the debtor fails to comply with this subsection, 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.

Status: Point in time view as at 31/12/2014.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Vesting of estate in trustee is up to date with all changes known to be in force on or before 14 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)

- (8) Subject to subsection (9) below, any dealing of or with the debtor relating to his estate vested in the ^{F34} . . . trustee under [^{F48} this section or] section 31 of this Act shall be of no effect in a question with the ^{F34} . . . trustee.
- (9) Subsection (8) above shall not apply where the person seeking to uphold the dealing establishes—
- (a) that the ^{F34} . . . trustee—
 - (i) has abandoned to the debtor the property to which the dealing relates;
 - (ii) has expressly or impliedly authorised the dealing; or
 - (iii) is otherwise personally barred from challenging the dealing, or
 - (b) that the dealing is—
 - (i) the performance of an obligation undertaken before the date of sequestration by a person obliged to the debtor in the obligation;
 - (ii) the purchase from the debtor of goods for which the purchaser has given value to the debtor or is willing to give value to the ^{F34} . . . trustee; or
 - (iii) a banking transaction in the ordinary course of business between the banker and the debtor [^{F49}; or
 - (iv) one which satisfies the conditions mentioned in subsection (9ZA) below,]

and that the person dealing with the debtor was, at the time when the dealing occurred, unaware of the sequestration and had at that time no reason to believe that the debtor's estate had been sequestrated or was the subject of sequestration proceedings.

[^{F50}(9ZA) The conditions are that —

- (a) the dealing constitutes—
 - (i) the transfer of incorporeal moveable property; or
 - (ii) the creation, transfer, variation or extinguishing of a real right in heritable property,for which the person dealing with the debtor has given adequate consideration to the debtor, or is willing to give adequate consideration to the trustee;
- (b) the dealing requires the delivery of a deed; and
- (c) the delivery occurs during the period beginning with the date of sequestration and ending on the day which falls 7 days after the day on which—
 - (i) the certified copy of the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 14 of this Act; or
 - (ii) the certified copy of the determination of the Accountant in Bankruptcy awarding sequestration is recorded under subsection (1A) of that section,in the register of inhibitions.]

[^{F51}(9A) Where the trustee has abandoned to the debtor any heritable property, notice in such form as may be prescribed given to the debtor by the trustee shall be sufficient evidence that the property is vested in the debtor.

(9B) Where the trustee gives notice under subsection (9A) above, he shall, as soon as reasonably practicable after giving the notice, record a certified copy of it in the register of inhibitions.]

Status: Point in time view as at 31/12/2014.

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- (10) In this section “a relevant date” means a date after the date of sequestration and before the date on which the debtor’s discharge becomes effective.

Textual Amendments

- F33** Words in s. 32(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 18\(2\), 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))
- F34** Words in s. 32 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))
- F35** Words in s. 32(2) inserted (29.5.2000) by 1999 c. 30, s. 18, [Sch. 2 para. 1](#); S.I. 2000/1382, [art. 2\(c\)\(e\)](#)
- F36** S. 32(2WA)-(2ZA) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss 18\(3\), 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))
- F37** S. 32(2A) inserted (6.4.1997) by 1995 c. 26, s. 122, [Sch. 3 para. 14](#); S.I. 1997/664, art. 2(3), [Sch. Pt. II](#)
- F38** S. 32(2A)(b) and preceding word omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) \(No.2\) Order 2011 \(S.I. 2011/1730\)](#), arts. 1(2)(b), [2\(a\)](#)
- F39** Words in s. 32(2A) substituted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) \(No.2\) Order 2011 \(S.I. 2011/1730\)](#), arts. 1(2)(b), [2\(b\)](#)
- F40** Words in s. 32(3)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 34](#); S.S.I. 2005/604, [art. 2\(c\)](#)
- F41** S. 32(3)(c) inserted (4.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), [Sch. 5 para. 6\(2\)\(a\)\(i\)](#) (with s. 9(2)); S.I. 1992/2644, [art. 2](#).
- F42** Words in s. 32(3) inserted (4.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), [Sch. 5 para. 6\(2\)\(a\)\(ii\)](#) (with s. 9(2)); S.I. 1992/2644, [art. 2](#).
- F43** S. 32(4A)-(4L) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss 18\(4\), 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))
- F44** Words in s. 32(5) inserted (4.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(13), [Sch. 5 para. 6\(2\)\(b\)](#) (with s. 9(2)); S.I. 1992/2644, [art. 2](#).
- F45** Words in s. 32(6) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 36, 227\(3\), Sch. 1 para. 32\(a\)](#) (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))
- F46** Words in s. 32(6) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 36, 227\(3\), Sch. 1 para. 32\(b\)](#) (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))
- F47** Words in s. 32 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\(1\)\(h\)\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F48** Words in s. 32(8) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss 17\(2\)\(a\), 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))
- F49** S. 32(9)(b)(iv) and preceding word inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss 17\(2\)\(b\), 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))
- F50** S. 32(9ZA) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss 17\(2\)\(c\), 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))

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F51 S. 32(9A)(9B) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 19(1), 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))

Modifications etc. (not altering text)

- C3** S. 32(2) amended by [Education \(Student Loans\) Act 1990 \(c. 6, SIF 41:1, 2\)](#), s. 1(5), **Sch. 2 para. 6(a)**
S. 32(2) restricted (12.8.1998) by 1998/2003, art. 13(2)(a)
S. 32(2) restricted (7.7.2000) by [S.S.I. 2000/200](#), **art. 16**
- C4** S. 32(6) amended by [Education \(Student Loans\) Act 1990 \(c. 6, SIF 41:1, 2\)](#), s. 1(5), **Sch. 2 para. 6(b)**
- C5** S. 32(8) excluded (*25.4.1991*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 154, 155, 164(3), 175(4)**;
[S.I. 1991/878](#), art. 2, **Sch.**
- C6** S. 32(8) excluded (11.12.1999) by [S.I. 1999/2979](#), **reg. 16(3)**
S. 32(8) excluded (11.12.1999) by [S.I. 1999/2979](#), **reg. 19(3)**

Marginal Citations

M3 [1985 c. 37](#).

[^{F52}32A Debtor contribution order

- (1) The Accountant in Bankruptcy must make an order fixing the debtor's contribution (a "debtor contribution order")—
 - (a) in the case of a debtor application, at the same time as awarding sequestration of the debtor's estate,
 - (b) in the case of an award of sequestration following a petition under section 5(2)(b), after considering initial proposals for the debtor's contribution provided by the trustee.
- (2) In a case referred to in subsection (1)(b), the trustee must send initial proposals for the debtor's contribution before the end of the period of 6 weeks beginning with the date of award of sequestration.
- (3) In making a debtor contribution order, the Accountant in Bankruptcy must use the common financial tool to assess the debtor's contribution.
- (4) A debtor contribution order may fix the amount of the debtor's contribution as zero.
- (5) A debtor contribution order may be made irrespective of sections 11 and 12 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).
- (6) A debtor contribution order may provide that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.
- (7) Where a third person pays a sum of money to the trustee in accordance with subsection (6), the third person is discharged from any liability to the debtor to the extent of the sum so paid.
- (8) The Accountant in Bankruptcy must, immediately following the making of a debtor contribution order, give written notice of the order to—
 - (a) the debtor,
 - (b) the trustee, and
 - (c) any third person mentioned in the order.
- (9) A debtor contribution order must not take effect on a date before the expiry of the period of 14 days beginning with the day of notification of the order.

Status: Point in time view as at 31/12/2014.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Vesting of estate in trustee is up to date with all changes known to be in force on or before 14 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)

Textual Amendments

F52 Ss. 32A-32H 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. 4, 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](#))

32B Debtor contribution order: payment period and intervals

- (1) A debtor contribution order must contain provision requiring the debtor to pay the debtor's contribution (if not zero)—
 - (a) during the payment period, and
 - (b) at regular intervals determined by the person making or varying the order.
- (2) In subsection (1)(a), “payment period” means—
 - (a) the period of 48 months beginning with the date of the first payment,
 - (b) such shorter period as is determined by the person making or varying the order, or
 - (c) such longer period as is—
 - (i) determined by the trustee where there is a period during which the debtor did not pay an amount required under the debtor contribution order, or
 - (ii) agreed by the debtor and the trustee.
- (3) The person making or varying the order may determine a shorter period under subsection (2)(b) only if, in the opinion of that person, the value of—
 - (a) the debtor's contribution during the shorter period, and
 - (b) any other estate of the debtor taken possession of by the trustee,
 would be sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 51.
- (4) The Accountant in Bankruptcy must, when making an order under section 32A—
 - (a) determine the date of the first payment, or
 - (b) in a case where the debtor's contribution is fixed as zero, determine the date which is to be deemed as the date of the first payment under the order.

Textual Amendments

F52 Ss. 32A-32H 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. 4, 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](#))

32C Debtor contribution order: review and appeal

- (1) The debtor, the trustee or any other interested person may apply to the Accountant in Bankruptcy for a review of a debtor contribution order made by the Accountant in Bankruptcy under section 32A.
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the debtor contribution order is made.

Status: Point in time view as at 31/12/2014.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Vesting of estate in trustee is up to date with all changes known to be in force on or before 14 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)

- (3) If an application under subsection (1) is made, the debtor contribution order is suspended until the determination of that review by the Accountant in Bankruptcy.
- (4) If an application for a review under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the debtor contribution order before the expiry of the period of 28 days beginning with the day on which the application is made.
- (5) The trustee or the debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (4)(b) before the expiry of the period of 14 days beginning with the date of the decision.

Textual Amendments

F52 Ss. 32A-32H 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. 4, 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)

32D Effect of debtor contribution order

- (1) The debtor must pay to the trustee any debtor's contribution which is not zero as—
 - (a) fixed by the Accountant in Bankruptcy in making the debtor contribution order, or
 - (b) varied in accordance with section 32F.
- (2) The requirement to pay the debtor's contribution applies irrespective of the debtor's discharge.
- (3) If the value of the debtor's estate and income when taken possession of by the trustee is sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 51, any debtor contribution order ceases to have effect.

Textual Amendments

F52 Ss. 32A-32H 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. 4, 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)

32E Deductions from debtor's earnings and other income

- (1) Subsections (2) to (6) apply where under a debtor contribution order—
 - (a) the debtor is required to pay to the trustee an amount from the debtor's earnings or other income, or
 - (b) in accordance with section 32A(6), a third person is required to pay to the trustee money otherwise due to the debtor by way of income.
- (2) The debtor must give the person mentioned in subsection (3) an instruction to make—

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- (a) deductions of specified amounts from the debtor's earnings or other income, and
 - (b) payments to the trustee of the amounts so deducted.
- (3) The person mentioned is—
- (a) in the case of an amount to be paid from the debtor's earnings from employment, the person by whom the debtor is employed,
 - (b) in the case of an amount to be paid from other earnings or income of the debtor, a third person who is required to pay the earnings or income to the debtor, and
 - (c) in the case mentioned in subsection (1)(b), the third person who is required to pay the income to the trustee.
- (4) The trustee may give the person mentioned in subsection (3) an instruction of the type mentioned in subsection (2) if—
- (a) the debtor fails to comply with the requirements imposed by that subsection, and
 - (b) the debtor fails to pay the debtor's contribution in respect of 2 payment intervals applying by virtue of the debtor contribution order.
- (5) A person mentioned in subsection (3) must comply with an instruction provided in accordance with subsection (2) or (4).
- (6) Where the person by whom the debtor is employed or another third person pays a sum of money to the trustee in accordance with this section, that person is discharged from any liability to the debtor to the extent of the sum so paid.
- (7) The Scottish Ministers may by regulations make provision about instructions to be provided under this section, including in particular—
- (a) the form in which an instruction must be made,
 - (b) the manner in which an instruction provided in accordance with subsection (2) or (4) affects the recipient of that instruction, and
 - (c) the consequence of any failure of a recipient of an instruction provided in accordance with subsection (2) or (4) to comply with the duty imposed by subsection (5).

Textual Amendments

F52 Ss. 32A-32H 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. 4, 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)

32F Variation and removal of debtor contribution order by trustee

- (1) The trustee may vary or quash a debtor contribution order—
- (a) on the application of the debtor, following any change in the debtor's circumstances,
 - (b) if the trustee considers it to be appropriate, following any change in the debtor's circumstances, or
 - (c) if the trustee considers it to be appropriate when—
 - (i) sending a report to the Accountant in Bankruptcy under section 54(4),
 - or

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- (ii) granting a discharge under section 54A(2).
- (2) In deciding whether to vary or quash a debtor contribution order, the trustee must use the common financial tool to assess the debtor's contribution.
- (3) A decision by the trustee under subsection (1)(b) must not take effect on a day before the end of the period of 14 days beginning with the day on which the decision is made.
- (4) The trustee must notify in writing the persons mentioned in subsection (5) immediately following—
 - (a) any variation or quashing of a debtor contribution order,
 - (b) any refusal of an application.
- (5) The persons are—
 - (a) the debtor,
 - (b) the Accountant in Bankruptcy (if the trustee is not the Accountant in Bankruptcy),
 - (c) any third person required to make a payment under the debtor contribution order or under section 32E(5), and
 - (d) any other interested person.

Textual Amendments

F52 Ss. 32A-32H 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. 4, 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)

32G Payment break

- (1) The trustee may, on the application of the debtor, extend the payment period of a debtor contribution order by granting a payment break.
- (2) A “payment break” is a period not exceeding 6 months during which payments under the debtor contribution order are deferred.
- (3) A debtor may apply for a payment break if—
 - (a) there has been a reduction of at least 50% in the debtor's disposable income (as determined using the common financial tool) as a result of any of the circumstances mentioned in subsection (4) arising in relation to the debtor, and
 - (b) the debtor has not previously applied for a payment break in relation to a debtor contribution order applying after the sequestration of the debtor's estate.
- (4) The circumstances are—
 - (a) a period of unemployment or change in employment,
 - (b) a period of leave from employment because of the birth or adoption of a child or the need to care for a dependant,
 - (c) a period of illness of the debtor,
 - (d) a divorce or dissolution of civil partnership,
 - (e) a separation from a person to whom the debtor is married or is the civil partner,
 - (f) the death of a person who, along with the debtor, cared for a dependant of the debtor.

Status: Point in time view as at 31/12/2014.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Vesting of estate in trustee is up to date with all changes known to be in force on or before 14 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)

- (5) An application for a payment break must specify the period during which the debtor wishes payments to be deferred.
- (6) If, in the opinion of the trustee, a payment break is fair and reasonable, the trustee may grant a payment break on such conditions and for such period as the trustee thinks fit.
- (7) The trustee must notify in writing the grant of a payment break to—
 - (a) the debtor,
 - (b) the Accountant in Bankruptcy (if the trustee is not the Accountant in Bankruptcy), and
 - (c) any third person required to make a payment under the debtor contribution order.
- (8) If the trustee decides not to grant a payment break, the trustee must notify the debtor of that decision and of the reasons.
- (9) The payment period in a debtor contribution order is deemed to be varied by the addition to the period of any payment break granted under this section.

Textual Amendments

F52 Ss. 32A-32H 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. 4, 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)

32H Sections 32F and 32G: review and appeal

- (1) The debtor or any other interested person may apply to the Accountant in Bankruptcy for a review of a decision by the trustee under section 32F or 32G.
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the decision is made.
- (3) If an application under subsection (1) relates to a decision by the trustee under section 32F(1)(b), the decision is suspended until the determination of that review by the Accountant in Bankruptcy.
- (4) If an application for a review under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (5) The trustee or the debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (4)(b) before the expiry of the period of 14 days beginning with the date of the decision.]

Status: Point in time view as at 31/12/2014.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Vesting of estate in trustee is up to date with all changes known to be in force on or before 14 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)

Textual Amendments

F52 Ss. 32A-32H 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. 4, 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**)

33 Limitations on vesting.

- (1) The following property of the debtor shall not vest in the ^{F53} . . . trustee—
 - [^{F54}(a) any property kept outwith a dwellinghouse in respect of which attachment is, by virtue of section 11(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), incompetent;
 - (aa) any property kept in a dwellinghouse which is not a non-essential asset for the purposes of Part 3 of that Act;]
 - (b) property held on trust by the debtor for any other person.
- (2) The vesting of a debtor's estate in a ^{F53} . . . trustee shall not affect the right of hypothec of a landlord.
- (3) Sections 31 and 32 of this Act are without prejudice to the right of any secured creditor which is preferable to the rights of the ^{F53} . . . trustee.

Textual Amendments

F53 Words in s. 33 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**))

F54 S. 33(1)(a)(aa) substituted (30.12.2002) for s. 33(1)(a) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), **ss. 61, 64(2), Sch. 3 Pt. 1 para. 15(3)**

Modifications etc. (not altering text)

C7 S. 33(1)(a) continued (31.12.2002 or such earlier date as the Scottish Ministers may appoint) by [2001 asp 1](#), **ss. 2(1)(a), 4(1)** (with s. 2) (which amending Act was repealed (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 61, **Sch. 3 Pt. 1 para. 27** (with s. 63))

Status:

Point in time view as at 31/12/2014.

Changes to legislation:

Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Vesting of estate in trustee is up to date with all changes known to be in force on or before 14 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.