



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Award of sequestration and appointment and resignation of interim trustee

17 Recall of sequestration.

- (1) The Court of Session may recall an award of sequestration if it is satisfied that in all the circumstances of the case (including those arising after the date of the award of sequestration) it is appropriate to do so and, without prejudice to the foregoing generality, may recall the award if it is satisfied that—
 - (a) the debtor has paid his debts in full or has given sufficient security for their payment;
 - (b) a majority in value of the creditors reside in a country other than Scotland and that it is more appropriate for the debtor's estate to be administered in that other country; or
 - (c) one or more other awards of sequestration of the estate or analogous remedies (as defined in section 10(5) of this Act) have been granted.
- (2) Where one or more awards of sequestration of the debtor's estate have been granted, the Court may, after such intimation as it considers necessary, recall an award whether or not the one in respect of which the petition for recall was presented.
- (3) On recalling an award of sequestration, the Court—
 - (a) shall make provision for the payment of the outlays and remuneration of the interim trustee and permanent trustee by directing that such payment shall be made out of the debtor's estate or by requiring any person who was a party to the petition for sequestration to pay the whole or any part of the said outlays and remuneration;
 - (b) without prejudice to subsection (7) below, may direct that payment of the expenses of a creditor who was a petitioner, or concurred in the petition, for sequestration shall be made out of the debtor's estate;
 - (c) may make any further order that it considers necessary or reasonable in all the circumstances of the case.

Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Section 17 is up to date with all changes known to be in force on or before 10 September 2024.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)

- (4) Subject to subsection (5) below, the effect of the recall of an award of sequestration shall be, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position he would have been in if the sequestration had not been awarded.
- (5) A recall of an award of sequestration shall not—
 - (a) affect the interruption of prescription caused by the presentation of the petition for sequestration or the submission of a claim under section 22 or 48 of this Act;
 - (b) invalidate any transaction entered into before such recall by the interim trustee or permanent trustee with a person acting in good faith.
- (6) Where the Court considers that it is inappropriate to recall or to refuse to recall an award of sequestration forthwith, it may order that the proceedings in the sequestration shall continue but shall be subject to such conditions as it may think fit.
- (7) The Court may make such order in relation to the expenses in a petition for recall as it thinks fit.
- (8) The clerk of the court shall send—
 - (a) a certified copy of any order recalling an award of sequestration to the keeper of the register of inhibitions and adjudications for recording in that register; and
 - (b) a copy of any order recalling or refusing to recall an award of sequestration, or of any order under section 41(1)(b)(ii) of this Act, to—
 - (i) the Accountant in Bankruptcy; and
 - (ii) the permanent trustee (if any) who shall insert it in the sederunt book.

Status:

Point in time view as at 01/02/1991. This version of this provision has been superseded.

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