



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Miscellaneous and supplementary

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 [F¹52(2)] of this Act;
 - “apparent insolvency” and “apparently insolvent” shall be construed in accordance with section 7 of this Act;

[F²“appropriate bank or institution” means—

- (a) the Bank of England,
- (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;

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

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[^{F3}“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;

[^{F4}“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;

[^{F5}“the EC Regulation” means Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings ^{M1};]

[^{F6}“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 2 of this Act;

“” ^{F7}

[^{F8}“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;]

[^{F9}“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;

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

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

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

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

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

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

“qualified to act as an insolvency practitioner” means being, in accordance with section 2 of the ^{M2}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

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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 [F10 1A(1)(b)] of this Act;

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

[F11 “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;

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

F12 . . .

[F13 “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;]

“statutory meeting” has the meaning assigned by section [F14 section 20A] of this Act;

F12 . . .

[F15 “temporary administrator” means a temporary administrator referred to by Article 38 of the EC Regulation; and]

[F16 “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.]

[F17 “trust deed” has the meaning assigned by section 5(4A) 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

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reference to the majority in value of such creditors as vote in that context at a meeting of creditors.

(5) Any reference in this Act to any of the following acts by a creditor barring the effect of any enactment or rule of law relating to the limitation of actions in any part of the United Kingdom, namely—

- (a) the presentation of a petition for sequestration;
- (b) the concurrence in such a petition; and
- (c) the submission of a claim,

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

[^{F18}(6) Any reference in this Act, howsoever expressed, to the time when a petition for sequestration is presented shall be construed as a reference to the time when the petition is received by the clerk of the court.]

Textual Amendments

- F1 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**
- F2 S. 73(1): definition of appropriate bank or institution substituted (1.12.2001) by S.I. 2001/3649, **art. 225**
- F3 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**
- F4 Definition of "creditor" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 19**
- F5 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**
- F6 Definition of "establishment" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 19**
- F7 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**
- F8 Definition of "main proceedings" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 19**
- F9 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**
- F10 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**
- F11 Definition of "secondary proceedings" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 19**
- F12 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**
- F13 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**
- F14 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**
- F15 Definition of "temporary administrator" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), **reg. 19**

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- F16** Definition of "territorial proceedings" in s. 73(1) inserted (8.9.2003) by [The Insolvency \(Scotland\) Regulations 2003 \(S.I. 2003/2109\)](#), [reg. 19](#)
- F17** 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](#)
- F18** 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](#)

Modifications etc. (not altering text)

- C1** 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.
- C2** S. 73(1) amended (1.1.1993) by [S.I. 1992/3218](#), reg. 82(1), [Sch. 10 Pt. 1 para. 18](#).

Marginal Citations

- M1** Council Regulation (EC) 1346/2000, O.J. No. L 160, 30.06.00, p.1.
- M2** [1985 c. 65](#).

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