

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Schedule 1 – Minor and Consequential Amendments of the 1985 Act (Introduced by Section 36)

104. This schedule contains a number of minor amendments of the 1985 Act and amendments of that Act consequential on the provisions in Part 1 of this Act.
105. [Paragraph 4\(3\)\(b\)](#) clarifies that where the debtor meets the criteria in paragraphs (a) and (b) of section 5(2B) of the 1985 Act (which sets out the criteria which must apply before a living debtor can be sequestrated) and is liable to sequestration on the criterion that the debtor has granted a trust deed which has not become a protected trust deed, that the trust deed in question must have failed to become protected in accordance with the regulations under schedule 5, paragraph 5 of the 1985 Act (as inserted into that Act by section 20 of this Act).
106. [Paragraph 8](#) inserts new sections 10 and 10A into the 1985 Act.

New section 10 – Duty to notify existence of concurrent proceedings for sequestration or analogous remedy

107. [Section 10](#) deals with the duty to notify the existence of concurrent proceedings for sequestration or proceedings which are similar to sequestration.
108. Where a debtor or a concurring or petitioning creditor is aware of the existence of another sequestration, of proceedings that may lead to sequestration, or of proceedings that are similar to sequestration in relation to the same debtor, that person must notify the sheriff (or the AiB in the case of a debtor application) of the existence of the other proceedings. Subsections (4) to (6) set out the consequences of failure to notify on the part of any of those persons. A petitioner may be liable for the expenses of presenting the petition, a concurring creditor may be liable for the expenses of a debtor application, and a debtor shall be guilty of an offence and liable on summary conviction to a fine up to the limit at level 5 on the standard scale.

New section 10A – Powers in relation to concurrent proceedings for sequestration or analogous remedy

109. New section 10A of the 1985 Act sets out what may be done when any of the other proceedings listed in section 10(2) are in progress or have been completed.
110. [Paragraph 20](#) changes the time limit for a trustee to give notice of intention to call a statutory meeting in section 21A(2) of the 1985 Act to 60 days from the date on which sequestration is awarded. It was previously 60 days from the date of sequestration

which, in the case of a creditor petition, would be the date on which the sheriff grants warrant to cite the debtor – i.e. before the hearing where sequestration is awarded. Because of the provisions introduced by section 27 of this Act allowing hearings to be continued, it is possible for 60 days to pass from the date of the warrant to cite to the award of sequestration. Hence the change to the start point for the time limit for deciding whether to call the statutory meeting.

111. [Paragraph 35\(4\)\(a\)](#) clarifies that, under section 39 of the 1985 Act, a trustee can shut down a debtor's business instead of carrying on the business (which section 39 already permitted the trustee to do).
112. [Paragraph 42\(a\)](#) has the effect that any creditor's claim submitted to the trustee in sequestration shall not prescribe after 5 years, unless the trustee has rejected the claim in whole. This covers cases where the trustee makes no final decision on the claim within 5 years after the date of the sequestration or has, by that point, only partially rejected the claim (say, because there are insufficient assets from which the expense of such a decision can be recovered). In such cases, the creditor will not have to resubmit the claim during the period of the sequestration in order to bar the effect of prescription, and will therefore be entitled to a dividend (or further dividend) if any estate is realised after 5 or more years has elapsed.
113. [Paragraph 45](#) provides that it is not necessary for a trustee to submit any legal account to the Auditor of Court for taxation if the commissioners, or if there are no commissioners, the AiB has determined that the account can be settled without taxation.
114. [Paragraph 46](#) inserts new section 53A into the 1985 Act which modifies the procedure under section 53 of that Act where the AiB is trustee. These relate to the determination of fees, accounts of intromissions, appeals against such determinations, and the payment of dividends.