

SCHEDULE 1

(introduced by section 36)

MINOR AND CONSEQUENTIAL AMENDMENTS OF THE 1985 ACT

- 1 The 1985 Act is amended as follows.
- 2 In section 1A (supervisory functions of the Accountant in Bankruptcy)—
- (a) in subsection (1)(a)(ii), for “permanent trustees” substitute “trustees (not being the Accountant in Bankruptcy)”; and
 - (b) in subsection (2), for “court which” substitute “sheriff who”.
- 3 (1) Section 2 (appointment and functions of interim trustee) is amended as follows.
- (2) For the word “court”, in each place where it occurs, substitute “sheriff”.
 - (3) In subsection (1), for the word “interim”, where it first and third occurs, substitute “the”.
 - (4) In subsection (2)—
 - (a) for “it” substitute “he”; and
 - (b) for the word “interim”, where it first and third occurs, substitute “the”.
 - (5) In subsection (3)(c), for sub-paragraphs (i) and (ii) substitute “as the trustee”.
 - (6) In subsection (7), for the words from “the”, where it first occurs, to “trustee”, where it second occurs, substitute—
 - “(a) a trustee is appointed in a sequestration where the petition was presented by a creditor or the trustee acting under a trust deed; or
 - (b) an interim trustee is appointed in pursuance of subsection (5) above,he”.
- 4 (1) Section 5 (sequestration of the estate of living or deceased debtor) is amended as follows.
- (2) In subsection (2A), for “petition” substitute “application”.
 - (3) In subsection (2B)—
 - (a) in both paragraphs (a) and (b), for “of presentation of the petition” substitute “the debtor application is made”; and
 - (b) in sub-paragraph (ii) of paragraph (c), for the words from “and” to the end of the sub-paragraph substitute “which is not a protected trust deed by reason of the creditors objecting, or not agreeing, in accordance with regulations under paragraph 5 of Schedule 5 to this Act, to the trust deed,”.
 - (4) In subsection (2C), for “(2)(c)” substitute “(2)(b)(iv)”.
 - (5) In subsection (4), after “petition” insert “or, as the case may be, the date the debtor application is made”.
 - (6) In subsection (5), after “petition” insert “or, as the case may be, the date the debtor application is made”.
 - (7) For subsection (6A) substitute—
 - “(6A) In the case of a debtor application, the debtor shall send a statement of assets and liabilities to the Accountant in Bankruptcy along with the application.”.

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- (8) After subsection (7), insert—
- “(7A) Where, after a debtor application is made but before the sequestration is awarded, the debtor dies, then the application shall fall.”
- (9) After subsection (8), insert—
- “(8A) Where, after a debtor application is made but before the sequestration is awarded, a creditor who concurs in the application withdraws or dies, any other creditor who was a qualified creditor at the date the debtor application was made and who remains so qualified may notify the Accountant in Bankruptcy that he concurs in the application in place of the creditor who has withdrawn or died.”
- (10) In subsection (9)(a), for “(6A)(b)” substitute “(6A)”.
- (11) In subsection (10)(a), for “(6A)(b)” substitute “(6A)”.
- 5 In section 6(5) (combination of certain petitions for sequestration), for “subsection (4)(aa) to (b)” substitute “subsection (4)(b)”.
- 6 In section 7(2)(c) (end of apparent insolvency), for “when” substitute “until”.
- 7 In section 9(5) (jurisdiction), after “petition” insert “, the date the debtor application is made”.
- 8 For section 10 (concurrent proceedings for sequestration or analogous remedy) substitute—

“10 Duty to notify existence of concurrent proceedings for sequestration or analogous remedy

- (1) If, in the course of sequestration proceedings (referred to in this section and in section 10A of this Act as the “instant proceedings”)—
- (a) a petitioner for sequestration;
 - (b) the debtor; or
 - (c) a creditor concurring in a debtor application,
- is, or becomes, aware of any of the circumstances mentioned in subsection (2) below, he shall as soon as possible take the action mentioned in subsection (3) below.
- (2) Those circumstances are that, notwithstanding the instant proceedings—
- (a) a petition for sequestration of the debtor’s estate is before a sheriff or such sequestration has been awarded;
 - (b) a debtor application has been made in relation to the debtor’s estate or sequestration has been awarded by virtue of such an application;
 - (c) a petition for the appointment of a judicial factor on the debtor’s estate is before a court or such a judicial factor has been appointed;
 - (d) a petition is before a court for the winding up of the debtor under Part IV or V of the Insolvency Act 1986 (c. 45) or section 372 of the Financial Services and Markets Act 2000 (c. 8); or
 - (e) an application for an analogous remedy in respect of the debtor’s estate is proceeding or such an analogous remedy is in force.
- (3) The action referred to in subsection (1) above is—

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- (a) in a case where the instant proceedings are by petition for sequestration, to notify the sheriff to whom that petition was presented; and
 - (b) in a case where the instant proceedings are by debtor application, to notify the Accountant in Bankruptcy,
- of the circumstance referred to in subsection (2) above.
- (4) If a petitioner fails to comply with subsection (1) above, he may be made liable for the expenses of presenting the petition for sequestration.
 - (5) If a creditor concurring in a debtor application fails to comply with subsection (1) above, he may be made liable for the expenses of making the debtor application.
 - (6) If a debtor fails to comply with subsection (1) above, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
 - (7) In this section and in section 10A of this Act “analogous remedy” means a bankruptcy order under the Bankruptcy Act 1914 (c. 59) or an individual voluntary arrangement or bankruptcy order under the Insolvency Act 1986 (c. 45) or an administration order under section 112 of the County Courts Act 1984 (c. 28) in England and Wales or under any enactment having the like effect in Northern Ireland or a remedy analogous to any of the aforesaid remedies, or to sequestration, in any other country (including England, Wales and Northern Ireland).

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

- (1) Where, in the course of instant proceedings which are by petition, any of the circumstances mentioned in paragraphs (a) to (d) of section 10(2) of this Act exists, the sheriff to whom the petition in the instant proceedings was presented may, on his own motion or at the instance of the debtor or any creditor or other person having an interest, allow that petition to proceed or may sist or dismiss it.
- (2) Without prejudice to subsection (1) above, where, in the course of instant proceedings which are by petition, any of the circumstances mentioned in paragraphs (a), (c) or (d) of section 10(2) of this Act exists, the Court of Session may, on its own motion or on the application of the debtor or any creditor or other person having an interest, direct the sheriff before whom the petition in the instant proceedings is pending, or the sheriff before whom the other petition is pending, to sist or dismiss the petition in the instant proceedings or, as the case may be, the other petition, or may order the petitions to be heard together.
- (3) Without prejudice to subsection (1) above, where, in the course of instant proceedings which are by petition, the circumstance mentioned in paragraph (b) of section 10(2) of this Act exists, the sheriff to whom the petition in the instant proceedings was presented may, on his own motion or at the instance of the debtor or any creditor or other person having an interest, direct the Accountant in Bankruptcy to dismiss the debtor application.

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- (4) Where, in the course of instant proceedings which are by debtor application, any of the circumstances mentioned in paragraphs (a) to (d) of section 10(2) of this Act exists, the Accountant in Bankruptcy may dismiss the debtor application in the instant proceedings.
- (5) Where, in respect of the same estate—
- (a) a petition for sequestration is pending before a sheriff; and
 - (b) an application for an analogous remedy is proceeding or an analogous remedy is in force,
- the sheriff, on his own motion or at the instance of the debtor or any creditor or other person having an interest, may allow the petition for sequestration to proceed or may sist or dismiss it.
- (6) Where, in respect of the same estate—
- (a) a debtor application has been made and has not been determined; and
 - (b) an application for an analogous remedy is proceeding or an analogous remedy is in force,
- the Accountant in Bankruptcy may proceed to determine the application or may dismiss it.”.
- 9 In section 11 (creditor’s oath)—
- (a) in subsection (1), for “petition by a debtor” substitute “debtor application”; and
 - (b) in subsection (4)—
 - (i) for “court to which” substitute “sheriff to whom”; and
 - (ii) after “presented” insert “or, in the case of a creditor concurring in a debtor application, the Accountant in Bankruptcy”.
- 10 In section 12 (when sequestration is awarded)—
- (a) in subsection (1)(c), for “subsections (6) and” substitute “subsection”;
 - (b) in subsection (2)—
 - (i) for “court to which” substitute “sheriff to whom”; and
 - (ii) for “it” substitute “him”;
 - (c) in subsection (3)—
 - (i) for “court” substitute “sheriff”; and
 - (ii) for “it” substitute “he”; and
 - (d) in subsection (4)—
 - (i) in paragraph (a), for “the petition for sequestration is presented by the debtor” substitute “a debtor application is made”; and
 - (ii) in paragraph (b)(i), for “court” substitute “sheriff”.
- 11 (1) Section 13 (resignation, removal etc. of interim trustee) is amended as follows.
- (2) Before subsection (1), insert—
- “(A1) This section applies where an interim trustee is appointed under section 2(5) of this Act and the petition for sequestration has not been determined.”.
- (3) For the word “court”, in each place where it occurs, substitute “sheriff”.
- (4) In subsection (3), for “it” substitute “the sheriff”.

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- (5) In subsection (6), for “disqualified from acting as permanent” substitute “ineligible to be elected as replacement”.
- 12 (1) Section 14 (registration of court order) is amended as follows.
- (2) In subsection (1)—
- (a) for “clerk of the court” substitute “sheriff clerk”; and
 - (b) in paragraph (a), for “relevant court order” substitute “order of the sheriff granting warrant under section 12(2) of this Act”.
- (3) After subsection (1), insert—
- “(1A) Where the Accountant in Bankruptcy awards sequestration on a debtor application he shall forthwith after the date of sequestration send a certified copy of his determination of the application to the keeper of the register of inhibitions for recording in that register.”.
- (4) In subsection (2), after “subsection (1)(a)” insert “or (1A)”.
- (5) In subsection (3)—
- (a) after paragraph (a), insert—
 - “(aa) on the recording under paragraph 11(4)(a) of Schedule 4 to this Act of a certified copy of a certificate;”;
 - (b) in paragraph (b), for “paragraph (a)” substitute “paragraphs (a) and (aa)”.
- (6) The heading to that section becomes “Registration of warrant or determination of debtor application”.
- 13 In section 15 (further provision relating to award of sequestration), after subsection (3), insert—
- “(3A) Where the Accountant in Bankruptcy, on determining a debtor application, refuses to award sequestration, the debtor or a creditor concurring in the application may appeal against such a determination within 14 days of it being made to the sheriff.”.
- 14 In section 16 (petition for recall of sequestration)—
- (a) in subsection (1)(a), for “petition” substitute “debtor application”; and
 - (b) in subsection (2), for “petition”, where it first occurs, substitute “debtor application”.
- 15 In section 17 (recall of sequestration)—
- (a) in subsection (1)(c), for “section 10(5)” substitute “section 10(7)”;
 - (b) in subsection (3)(a)—
 - (i) after “sequestration” insert “or, as the case may be, the debtor application”; and
 - (ii) for “permanent” substitute “the”;
 - (c) in subsection (3)(b), for “petition” substitute “debtor application”; and
 - (d) in subsection (5)—
 - (i) in paragraph (a), after “sequestration” insert “, the making of the debtor application”;
 - (ii) in paragraph (b), for “permanent” substitute “the”; and
 - (iii) after paragraph (b) insert—

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- “(c) affect a bankruptcy restrictions order which has not been annulled under section 56J(1)(a) of this Act.”.
- 16 (1) Section 18 (interim preservation of estate) is amended as follows.
- (2) In subsection (1), after “may” insert “, in pursuance of the function conferred on him by section 2(6A) of this Act,”.
- (3) In subsection (2)—
- (a) for “functions” substitute “function”; and
- (b) for “2(4)(a)” substitute “2(6A)”.
- (4) After subsection (2) insert—
- “(2A) Section 43 of this Act applies to an interim trustee as it applies to a trustee.”.
- (5) In subsection (3)—
- (a) for “court” substitute “sheriff”; and
- (b) in paragraph (c), for “it” substitute “he”.
- (6) In subsection (4)—
- (a) for “court”, in both places where it occurs, substitute “sheriff”; and
- (b) for “it”, in both places where it occurs, substitute “he”.
- (7) The italic cross-heading preceding that section becomes “Initial stages of sequestration”.
- 17 (1) Section 19 (statement of assets and liabilities) is amended as follows.
- (2) In subsection (1)—
- (a) for “petitioner for sequestration is the debtor” substitute “debtor has made a debtor application”;
- (b) for “interim trustee”, where it first occurs, substitute “trustee under section 2 of this Act”; and
- (c) for “lodged in court in pursuance of section 5(6A)(a)” substitute “sent to the Accountant in Bankruptcy in pursuance of section 5(6A)”.
- (3) In subsection (2), for “2(7)” substitute “2(7)(a)”.
- 18 In section 20 (trustee’s duty to send information to Accountant in Bankruptcy before statutory meeting)—
- (a) in subsection (2)—
- (i) after “meeting” insert “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,”;
- (ii) in paragraph (a), after “liabilities” insert “(unless the statement has already been received by the Accountant in Bankruptcy by virtue of section 5(6A) of this Act)”; and
- (iii) in paragraph (b), at the beginning insert “subject to subsection (2A) below,” and
- (b) after that subsection insert—
- “(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

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- to the Accountant in Bankruptcy in accordance with section 38(1)(c) of this Act.”.
- 19 The italic cross-heading preceding section 21 becomes “Statutory meeting of creditors and trustee vote”.
- 20 In section 21A(2) (time limit for giving notice of intention to call statutory meeting), for “of the sequestration” substitute “on which sequestration is awarded”.
- 21 In section 21B (report where no statutory meeting called)—
- (a) in subsection (1)(a), for “sheriff” substitute “Accountant in Bankruptcy”;
 - and
 - (b) after subsection (1), insert—
- “(1A) This section does not apply in any case where the Accountant in Bankruptcy is the trustee.”.
- 22 In section 22(3)(a) (trustee’s duty to inform creditors outside Scotland), for “21(2)” substitute “21A(2)”.
- 23 (1) Section 24 (election of permanent trustee) is amended as follows.
- (2) In subsection (2), for the word “permanent”, where it first and second occurs, substitute “replacement”.
 - (3) In subsection (3), for the words “election of the permanent trustee” substitute “trustee vote”.
 - (4) In subsection (3A)—
 - (a) for the word “interim” substitute “original”;
 - (b) in paragraph (a), for the words “election of the permanent trustee” substitute “trustee vote”;
 - (c) in paragraph (b), for the word “permanent” substitute “replacement”; and
 - (d) for the words “section 25A of this Act shall apply” substitute “shall continue to act as the trustee”.
 - (5) In subsection (4)—
 - (a) for the word “interim”, where it first and second occurs, substitute “original”;
 - (b) for the words “election of the permanent trustee” substitute “trustee vote”;
 - (c) for the word “permanent”, where it second occurs, substitute “replacement”;
 - and
 - (d) after paragraph (b), insert—

“and he shall continue to act as the trustee.”.
- 24 (1) Section 25 (confirmation of permanent trustee) is amended as follows.
- (2) In subsection (1)—
 - (a) for the word “permanent”, in both places where it occurs, substitute “replacement”; and
 - (b) for the word “interim”, in both places where it occurs, substitute “original”.
 - (3) In subsection (2)—
 - (a) for “permanent trustee” substitute “trustee in the sequestration”; and
 - (b) for the words from “confirm” to “Bankruptcy” substitute “make an order appointing him as such”.

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- (4) In subsection (4), in paragraph (b)—
 - (a) for “interim” substitute “original”; and
 - (b) for “for the election of a permanent trustee” substitute “at which a new trustee vote shall be held”.
- (5) In subsection (5), for “confirmation” substitute “appointment”.
- (6) In subsection (6)—
 - (a) for the word “permanent”, where it first occurs, substitute “replacement”; and
 - (b) in paragraph (b), for “confirmed in office” substitute “appointed”.
- 25 (1) Section 26 (provisions relating to termination of interim trustee’s functions) is amended as follows.
 - (2) Before subsection (1), insert—

“(A1) This section applies where a replacement trustee is appointed under section 25 of this Act.”.
 - (3) In subsection (1), for the words from “Where” to “office” substitute “The original trustee, shall, on the appointment of the replacement trustee”.
 - (4) In subsection (2)—
 - (a) for the words from “confirmation” to “interim”, where it first occurs, substitute “appointment of the replacement trustee, the original”; and
 - (b) in paragraph (b), for “permanent”, where it first occurs, substitute “replacement”.
 - (5) After subsection (2), insert—

“(2A) Where the original trustee was appointed under section 2(5) of this Act as the interim trustee in the sequestration, his accounts and the claim referred to in subsection (2)(a) above shall include accounts and a claim for the period of his appointment as interim trustee.”.
 - (6) In subsection (3)—
 - (a) in paragraph (a)(ii), for “interim” substitute “original”;
 - (b) in paragraph (b)(i), for “interim”, where it first occurs, substitute “original”; and
 - (c) in paragraph (b)(ii)—
 - (i) for “interim” substitute “original”; and
 - (ii) for “permanent” substitute “replacement”.
 - (7) In subsection (4)—
 - (a) for “interim” substitute “original”; and
 - (b) for “permanent” substitute “replacement”.
 - (8) In subsection (5)—
 - (a) for “permanent” substitute “replacement”;
 - (b) for “confirmed in office” substitute “appointed”;
 - (c) for “confirmation” substitute “appointment”; and
 - (d) for “interim” substitute “original”.

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- (9) In subsection (5A), for “interim” substitute “original”.
- (10) The heading to that section becomes “Provisions relating to termination of original trustee’s functions”.
- 26 (1) Section 26A (Accountant in Bankruptcy to account for intromissions) is amended as follows.
- (2) In subsection (1)—
- (a) for “interim” substitute “original”; and
 - (b) for “becomes the permanent trustee” substitute “is appointed as replacement trustee under section 25 of this Act”.
- (3) In subsection (2)—
- (a) for “confirmation of the permanent trustee in office” substitute “the appointment of the replacement trustee”;
 - (b) for the word “permanent”, where it second occurs, substitute “replacement”; and
 - (c) for the word “interim”, where it first occurs, substitute “original”.
- (4) In subsection (3)—
- (a) for “confirmation in office of the permanent” substitute “appointment of the replacement”;
 - (b) for the word “permanent”, where it second occurs, substitute “replacement”; and
 - (c) in paragraph (a), for “interim” substitute “original”.
- (5) In subsection (5), for “permanent” substitute “replacement”.
- (6) In subsection (8)—
- (a) for “permanent” substitute “replacement”;
 - (b) for “confirmed in office” substitute “appointed”; and
 - (c) for “confirmation” substitute “appointment”.
- 27 (1) In section 27 (discharge of interim trustee)—
- (a) in subsection (2), after “debtor”, where it first occurs, insert “, to all creditors known to the original trustee”;
 - (b) for the word “interim”, in each place where it occurs, substitute “original”; and
 - (c) for the word “permanent”, in each place where it occurs, substitute “replacement”.
- (2) The heading to that section becomes “Discharge of original trustee”.
- 28 (1) Section 28 (resignation and death of permanent trustee) is amended as follows.
- (2) In subsections (1), (1A) and (2), for “sheriff”, in each place where it occurs, substitute “Accountant in Bankruptcy”.
- (3) In subsection (4)—
- (a) for “and confirmation in office of the”, substitute “of a replacement trustee and the appointment of that”;
 - (b) for “confirmation in office”, where it second occurs, substitute “appointment”.

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- (4) In subsection (5), for “, the provisions of section 25A of this Act shall apply” substitute—
- “(a) the Accountant in Bankruptcy; or
 - (b) such person as may be nominated by the Accountant in Bankruptcy (being a person who is not ineligible for election as replacement trustee under section 24(2) of this Act) if that person consents to the nomination,
- may apply to the sheriff for appointment as trustee in the sequestration; and, on such application, the sheriff shall make an order so appointing the Accountant in Bankruptcy or, as the case may be, the person nominated by him.”.
- (5) The heading to that section becomes “Resignation and death of trustee”.
- (6) The italic cross-heading preceding that section becomes “Replacement of trustee”.
- 29 (1) Section 29 (removal of permanent trustee and trustee not acting) is amended as follows.
- (2) In subsection (7)—
- (a) for “and confirmation in office of the”, substitute “of a replacement trustee and the appointment of that”; and
 - (b) for “confirmation in office”, where it second occurs, substitute “appointment”.
- (3) After subsection (9), insert—
- “(10) This section does not apply in any case where the Accountant in Bankruptcy is the trustee.”.
- (4) The heading to that section becomes “Removal of trustee and trustee not acting”.
- 30 (1) Section 31 (vesting of estate at date of sequestration) is amended as follows.
- (2) In subsection (2), for “the act and warrant” substitute “his appointment”.
- (3) In subsection (4), for “the act and warrant” substitute “his appointment”.
- (4) In subsection (6)—
- (a) for “court”, in both places where it occurs, substitute “sheriff”; and
 - (b) for “it” substitute “he”.
- (5) In subsection (7), for “court” substitute “sheriff”.
- (6) The italic cross-heading preceding that section becomes “Vesting of estate in trustee”.
- 31 Section 31A (proceedings under EC regulation: modified definition of “estate”) as inserted by regulation 12 of the Insolvency (Scotland) Regulations 2003 ([S.I. 2003 No. 2109](#)) is renumbered as section 31ZA.
- 32 In section 32 (vesting of estate and dealings of debtor after sequestration), in subsection (6)—
- (a) for “act and warrant” substitute “order”; and
 - (b) for “confirming the permanent trustee’s appointment” substitute “or, as the case may be, by the Accountant in Bankruptcy appointing the trustee”.

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- 33 In section 37(1) (effect of sequestration on diligence), for “court” substitute “sheriff or, as the case may be, the determination of the debtor application by the Accountant in Bankruptcy”.
- 34 (1) In section 38(1)(a) (taking possession of estate by permanent trustee), for “confirmation in office” substitute “appointment”.
- (2) The heading to that section becomes “Taking possession of estate by trustee”
- (3) The italic cross-heading preceding that section becomes “Administration of estate by trustee”.
- 35 (1) Section 39 (management and realisation of estate) is amended as follows.
- (2) In subsection (1)—
- (a) for “confirmation in office” substitute “appointment”;
- (b) for “subsection (6)” substitute “subsections (1A), (6) and (9)”; and
- (c) in paragraph (b), for “court” substitute “sheriff”.
- (3) After subsection (1), insert—
- “(1A) Subsection (1) above does not apply in any case where the Accountant in Bankruptcy is the trustee.”.
- (4) In subsection (2)—
- (a) in paragraph (a), after “on” insert “or close down”; and
- (b) after paragraph (d), insert—
- “(e) borrow money in so far as it is necessary for the trustee to do so to safeguard the debtor’s estate;
- (f) effect or maintain insurance policies in respect of the business or property of the debtor.”.
- (5) In subsection (4)(c), for “court” substitute “sheriff”.
- 36 In section 40 (power in relation to family home)—
- (a) in subsection (1), for “court” substitute “sheriff”;
- (b) in subsection (2)—
- (i) for “court”, in both places where it occurs, substitute “sheriff”; and
- (ii) for “it”, in both places where it occurs, substitute “he”; and
- (c) the heading to that section becomes “Power of trustee in relation to the debtor’s family home”.
- 37 In section 41(1) (protection of occupancy rights of non-entitled spouse)—
- (a) for “of issue of the act and warrant of” substitute “the order is made appointing”;
- (b) for “such act and warrant is issued” substitute “trustee is appointed”;
- (c) for “such issue” substitute “order making such an appointment”; and
- (d) in paragraph (b)—
- (i) for “Court of Session” substitute “sheriff”;
- (ii) after “date”, where it second occurs, insert “of the award”;
- (iii) for “it”, in both places where it occurs, substitute “he”; and
- (iv) after “sequestration”, where it third occurs, insert “or, as the case may be, the debtor application”.

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- 38 In section 41A(1) (protection of occupancy rights of civil partner)—
- (a) for “of issue of the act and warrant of” substitute “the order is made appointing”;
 - (b) for “such act and warrant is issued” substitute “trustee is appointed”;
 - (c) for “such issue” substitute “order making such an appointment”; and
 - (d) in paragraph (b)—
 - (i) for “Court of Session” substitute “sheriff”;
 - (ii) after “date”, where it second occurs, insert “of the award”;
 - (iii) for “it”, in both places where it occurs, substitute “he”; and
 - (iv) after “sequestration”, where it third occurs, insert “or, as the case may be, the debtor application”.
- 39 In section 42 (contractual powers of permanent trustee)—
- (a) in subsection (2), for “court” substitute “sheriff”; and
 - (b) the heading to that section becomes “Contractual powers of trustee”.
- 40 The heading to section 43 becomes “Money received by trustee”.
- 41 In section 46(1) (warrant to apprehend)—
- (a) in paragraph (a), for “messenger-at-arms or sheriff officer” substitute “judicial officer”; and
 - (b) in the proviso, for “court” substitute “sheriff”.
- 42 In section 48 (submission of claims to permanent trustee)—
- (a) in subsection (2), in paragraph (b), for the words from “and” to the end of that paragraph, substitute “which has not been rejected in whole”;
 - (b) in subsection (3), for the words from “for”, where it second occurs, to “trustee”, where it second occurs, substitute “after the word “trustee” there were inserted the words “”; and
 - (c) the heading to that section becomes “Submission of claims to trustee”.
- 43 In section 51(1)(d) (order of priority in distribution), for “the petition” substitute “a debtor application”.
- 44 (1) Section 52 (estate to be distributed in respect of accounting periods) is amended as follows.
- (2) In subsection (2)—
 - (a) for “6”, in both places where it occurs, substitute “12”; and
 - (b) in paragraph (a)—
 - (i) at the beginning insert “subject to subsection (2ZA) below,”; and
 - (ii) for “of sequestration” substitute “on which sequestration is awarded”.
 - (3) After subsection (2), insert—

“(2ZA) Where the trustee was appointed under section 2(5) of this Act as interim trustee in the sequestration, the first accounting period shall be the period beginning with the date of his appointment as interim trustee and ending on the date 12 months after the date on which sequestration is awarded.”.
- 45 In section 53 (procedure after end of accounting period)—

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- (a) in subsection (2A)(c), for “have not determined that the account should” substitute “or, if there are no commissioners, the Accountant in Bankruptcy, have determined that the account need not”; and
- (b) after subsection (6A) (as inserted by section 30(2)(b) of this Act) insert—

“(6B) Before—

- (a) a debtor; or
- (b) a creditor,

appeals under subsection (6) above, he must give notice to the trustee of his intention to appeal.”.

46 After section 53, insert—

“53A Modification of procedure under section 53 where Accountant in Bankruptcy is trustee

- (1) In any case where the Accountant in Bankruptcy is the trustee, section 53 of this Act shall have effect subject to the following modifications.
- (2) For subsections (1) to (7) of that section, there shall be substituted—
 - “(1) At the end of each accounting period, the Accountant in Bankruptcy shall prepare accounts of his intromissions with the debtor’s estate and he shall make a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act.
 - (2) Such accounts and determination shall be available for inspection by the debtor and the creditors not later than 6 weeks after the end of the accounting period to which they relate.
 - (3) In making a determination as mentioned in subsection (1) above, the Accountant in Bankruptcy may take into account any adjustment which he may wish to make in the amount of his remuneration fixed in respect of any earlier accounting period.
 - (4) Not later than 8 weeks after the end of an accounting period, the debtor (subject to subsection (5) below) or any creditor may appeal to the sheriff against the determination of the Accountant in Bankruptcy; and the decision of the sheriff on such an appeal shall be final.
 - (5) A debtor may appeal under subsection (4) above if, and only if, he satisfies the sheriff that he has, or is likely to have, a pecuniary interest in the outcome of the appeal.
 - (6) Before—
 - (a) a debtor; or
 - (b) any creditor,appeals under subsection (4) above, he must give notice to the Accountant in Bankruptcy of his intention to appeal.
 - (7) On the expiry of the period within which an appeal may be made under subsection (4) above, the Accountant in Bankruptcy shall pay to the creditors their dividends in accordance with the scheme of division.”.

Status: This is the original version (as it was originally enacted).

- (3) In subsection (10) for the words “the audited” there shall be substituted the word “his”.
- 47 In section 55, subsection (3) (references to a fine or penalty to include a confiscation order), as inserted by paragraph 15(5) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29), is renumbered as subsection (2A).
- 48 The italic cross-heading preceding section 57 becomes “Discharge of trustee”.
- 49 The heading to section 57 becomes “Discharge of trustee”.
- 50 In section 58A(7) (discharge of Accountant in Bankruptcy), after “sequestration” insert “including, where the Accountant in Bankruptcy was the interim trustee, the functions of the interim trustee”.
- 51 In section 59A(1) (petition for conversion into sequestration), for “court”, where it first occurs, substitute “sheriff”.
- 52 In section 59B(1)(c) (contents of affidavit), for “court”, in both places where it occurs, substitute “sheriff”.
- 53 In section 59C (power of court)—
- (a) for “court”, in each place where it occurs, substitute “sheriff”;
 - (b) in subsection (1), for “it” substitute “he”; and
 - (c) the heading to that section becomes “Power of sheriff”.
- 54 In section 60B(2) (trustee to give notice or provide copies of documents to member State liquidator)—
- (a) for “or a permanent” substitute “trustee or a”; and
 - (b) for “court”, where it second occurs, substitute “sheriff”.
- 55 In section 61 (extortionate credit transactions), for “court”, in both places where it occurs, substitute “sheriff”.
- 56 The heading to section 64 becomes “Debtor to co-operate with trustee”.
- 57 In section 65(1) (arbitration and compromise), for “court” substitute “sheriff”.
- 58 The heading to section 69 becomes “Outlays of insolvency practitioner in acting as interim trustee or trustee”.
- 59 In section 70(1)(a) (supplies by utilities), for “the petition was presented by the debtor” substitute “a debtor application was made”.
- 60 (1) Section 73 (interpretation) is amended as follows.
- (2) In subsection (1)—
- (a) after the definition of “associate”, insert—
 - ““bankruptcy restrictions order” has the meaning given by section 56A(1) of this Act;
 - ““bankruptcy restrictions undertaking” has the meaning given by section 56G(1) of this Act;”;
 - (b) after the definition of “debtor”, insert—
 - ““debtor application” means an application for sequestration made to the Accountant in Bankruptcy under sections 5(2)(a) or 6(3)(a), (4)(a) or (6)(a) of this Act;”;
 - (c) after the definition of “the EC regulation”, insert—

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- “enactment” includes an Act of the Scottish Parliament and any enactment comprised in subordinate legislation under such an Act;”;
- (d) in the definition of “interim trustee”, for “2” substitute “2(5)”;
(e) after the definition of “ordinary debt”, insert—
- “original trustee” shall be construed in accordance with section 24(1)(a) of this Act;”;
- (f) after the definition of “relevant person”, insert—
- “replacement trustee” shall be construed in accordance with section 24(1)(b) of this Act;”;
- (g) after the definition of “sederunt book”, insert—
- “sequestration proceedings” includes a debtor application and analogous expressions shall be construed accordingly;” and
- (h) after the definition of “trust deed”, insert—
- “trustee” means trustee in the sequestration;
“trustee vote” shall be construed in accordance with section 24(1) of this Act;”.
- (3) In subsection (5)(b), for “such a petition” substitute “a debtor application”.
- (4) In subsection (6), for “clerk of the court” substitute “sheriff clerk”.
- (5) After subsection (6), insert—
- “(6A) Any reference in this Act, howsoever expressed, to the time when a debtor application is made shall be construed as a reference to the time when the application is received by the Accountant in Bankruptcy.”.
- 61 In Schedule 6 (meetings of creditors and commissioners)—
- (a) for “court”, in each place where it occurs, substitute “sheriff”; and
(b) in paragraph 15(1), for “shall”, in both places where it occurs, substitute “may”.
- 62 In Part II of Schedule 7 (re-enactment of certain provisions of the Bankruptcy (Scotland) Act 1913), in paragraph 24(5), for “(5)” substitute “(4)”.

SCHEDULE 2

(introduced by section 50(7))

THE SCOTTISH CIVIL ENFORCEMENT COMMISSION

Status

- 1 (1) The Commission—
- (a) is not a servant or agent of the Crown; and
(b) does not enjoy any status, immunity or privilege of the Crown.
- (2) The Commission’s property is not property of, or property held on behalf of, the Crown.

Status: This is the original version (as it was originally enacted).

Membership

- 2 The Commission is to consist of—
- (a) the following persons appointed by the Scottish Ministers—
 - (i) a Senator of the College of Justice nominated by the Lord President of the Court of Session;
 - (ii) a sheriff principal or a sheriff, so nominated;
 - (iii) a person who is an advocate or solicitor;
 - (iv) a judicial officer nominated by the professional association; and
 - (v) 3 other persons, not being persons holding an office or, as the case may be, possessing a qualification referred to in paragraphs (i) to (iv) above;
 - (b) the Lord Lyon King of Arms; and
 - (c) the Keeper of the Registers of Scotland.
- 3 No person may be appointed as a member of the Commission if that person is, or has at any time during the previous year been, a member of—
- (a) the House of Commons;
 - (b) the Scottish Parliament; or
 - (c) the European Parliament.

Tenure of office

- 4 Subject to paragraphs 5 to 14 below, a member appointed by the Scottish Ministers holds and vacates office on terms and conditions determined by the Scottish Ministers.
- 5 Subject to paragraphs 6 to 10 below, members are appointed for a period of not more than 5 years and are eligible for reappointment.
- 6 A member who is—
- (a) a Senator of the College of Justice; or
 - (b) a sheriff principal or a sheriff,
- holds office only so long as that member retains the office of Senator of the College of Justice or, as the case may be, sheriff principal or sheriff.
- 7 A member who is—
- (a) a solicitor or advocate; or
 - (b) a judicial officer,
- holds office only so long as that member retains the qualification of solicitor or advocate or, as the case may be, officer.
- 8 A member who becomes a member of—
- (a) the House of Commons;
 - (b) the Scottish Parliament; or
 - (c) the European Parliament,
- ceases to be a member of the Commission.
- 9 A member may at any time resign by notice in writing to the Scottish Ministers.
- 10 The Scottish Ministers may remove a member from office if they consider—
- (a) that the member is unable or unfit to discharge the functions of a member; or

Status: This is the original version (as it was originally enacted).

(b) that the member has not complied with the terms and conditions of the office as determined under paragraph 4 above.

11 Where—

(a) a person makes a complaint to the Commission about the conduct of a member; or

(b) a member is charged with an offence,
the Commission may suspend the member from office.

12 The Commission may revoke or extend a suspension made under paragraph 11 above.

Filling vacancies

13 (1) This paragraph applies where a person ceases to be a member (whether by resignation or otherwise) prior to the expiry of that member's period of appointment.

(2) The Scottish Ministers must appoint a person to fill the vacancy.

(3) A person so appointed—

(a) must hold the same office or, as the case may be, possess the same qualification as the member that person succeeds; and

(b) holds and vacates office as a member on terms and conditions determined by the Scottish Ministers.

14 Paragraphs 5 to 13 above apply in relation to a member appointed under paragraph 13(2) above as they apply to a member appointed under paragraph 4 above.

Chairperson

15 The Commission must select one member as chairperson of the Commission for a period determined by the Commission.

Disciplinary Committee

16 The Commission must appoint a disciplinary committee (which may include persons who are not members of the Commission) for the purposes of carrying out disciplinary proceedings under section 71 and making decisions under sections 68(2) and 72 of this Act.

Remuneration

17 The Commission must pay to its members (and to members of its committees and sub-committees who are not members of the Commission) any—

(a) remuneration; and

(b) allowances in respect of expenses properly incurred in the performance of their functions,

as the Scottish Ministers may determine.

General powers

18 The Commission may do anything which it considers is necessary or expedient for the purpose of exercising or in connection with its functions.

Status: This is the original version (as it was originally enacted).

- 19 The power in paragraph 18 above includes, in particular, power to—
- (a) appoint committees and sub-committees (including committees and sub-committees which include persons who are not members of the Commission);
 - (b) delegate any of its functions to—
 - (i) its committees or sub-committees; or
 - (ii) its chief executive officer appointed under paragraph 24 below;
 - (c) with the approval of the Scottish Ministers, borrow and lend money;
 - (d) acquire and dispose of land and other property;
 - (e) enter into contracts;
 - (f) specify its own procedures, so far as not provided for by this Act or by regulations or rules made under this Act; and
 - (g) levy a charge for services it may provide in accordance with its functions.
- 20 Where the Commission levies charges under paragraph 19(g) above, it must—
- (a) publish a list of; and
 - (b) annually review,
- those charges.

Quorum

- 21 Subject to any regulations as may be made under paragraph 22 below, the quorum of the Commission, the disciplinary committee and any committee or sub-committee appointed under paragraph 19(a) above is such as the Commission may determine.

Structure and procedures

- 22 The Scottish Ministers may, by regulations, make further provision about the structure and procedures of the Commission as they consider appropriate.

Chief executive officer and other staff

- 23 Subject to paragraph 24 below, the Commission may appoint as employees any persons (other than its members) it considers necessary for the performance of its functions.
- 24 The Commission must appoint, as a member of staff, a chief executive officer who is responsible to the Commission for the general exercise of its functions.
- 25 The Commission may determine the remuneration and conditions of service of a chief executive officer appointed under paragraph 24 above.
- 26 The Commission may—
- (a) pay, or make arrangements for the payment of;
 - (b) make payments towards the provision of; and
 - (c) provide and maintain schemes (whether contributory or not) for the payment of,
- pensions, allowances and gratuities to or in respect of such of its employees, or former employees, as it considers appropriate.

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- 27 The reference in paragraph 26 above to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.
- 28 Anything done by virtue of paragraphs 24 to 27 above must be approved by the Scottish Ministers.

Location of office

- 29 The Commission—
- (a) must not determine where its office premises are to be located without that location being approved by the Scottish Ministers; and
 - (b) must comply with any direction as to the location of those premises given by the Scottish Ministers.

Financing by the Scottish Ministers

- 30 The Scottish Ministers may—
- (a) pay grants;
 - (b) make loans,
- to the Commission of amounts that they determine.
- 31 Any—
- (a) grant paid in pursuance of paragraph 30(a) above;
 - (b) loan made in pursuance of paragraph 30(b) above,
- may be paid or, as the case may be, made on such terms and subject to such conditions (including, in the case of a loan, conditions as to repayment) as the Scottish Ministers consider appropriate.
- 32 The Scottish Ministers may, from time to time after any grant is paid or loan made, vary the terms and conditions on which it was paid or, as the case may be, made.

Accounts and audit

- 33 The Commission must—
- (a) keep proper accounts and accounting records;
 - (b) prepare for each financial year a statement of accounts giving a true and fair view of the state of its financial affairs; and
 - (c) send the statement of accounts, by the time directed by the Scottish Ministers, to the Auditor General for Scotland for auditing.
- 34 Every statement of accounts prepared by the Commission in accordance with paragraph 33 above must comply with any direction given by the Scottish Ministers relating to—
- (a) the information to be contained in the statement of accounts;
 - (b) the manner in which that information is to be presented; or
 - (c) the methods and principles according to which the statement of accounts is to be prepared.
- 35 The financial year of the Commission is—
- (a) the period beginning with the date on which the Commission is established and ending with 31 March next following that date; and

Status: This is the original version (as it was originally enacted).

- (b) each successive period of 12 months ending with 31 March.

SCHEDULE 3

(introduced by section 196(1))

EXPENSES OF MONEY ATTACHMENT

Expenses chargeable against the debtor

- 1 There is to be chargeable against the debtor any expenses incurred—
- (a) subject to section 90(7) of the 1987 Act, in serving a charge;
 - (b) in executing a money attachment;
 - (c) in relation to a valuation arranged under section 180(1) of this Act (including the fees and outlays of the person who carried out the valuation);
 - (d) in making a report under section 182(1) of this Act but not in applying for an extension of time for the making of such a report;
 - (e) in applying for a payment order under section 183(2) of this Act;
 - (f) in granting a receipt and making a report to the sheriff under section 188(4) of this Act;
 - (g) in giving a statement under section 189(1) of this Act;
 - (h) in removing money from the place at which it was found;
 - (i) in opening shut and lockfast places for that purpose;
 - (j) by a solicitor in instructing a judicial officer to take any of the steps specified in this paragraph.
- 2 Expenses chargeable against the debtor by virtue of paragraph 1(e) above must be calculated, whether or not the application is opposed by the debtor, as if it were unopposed.

Circumstances where no expenses are due to or by either party

- 3 Subject to paragraph 4 below, the debtor shall not be liable to the creditor nor the creditor to the debtor for any expenses incurred by the other party in connection with—
- (a) an application under section 181(1), 185(1) or 186 of this Act;
 - (b) any objections to such an application;
 - (c) an opposition, under section 183(6) of this Act, to an application for a payment order;
 - (d) a hearing held by virtue of section 183(8), 186(6) or 190(7) of this Act.
- 4 If—
- (a) an application mentioned in paragraph 3(a) above is frivolous;
 - (b) such an application is opposed on frivolous grounds;
 - (c) an application for a payment order is opposed on frivolous grounds; or
 - (d) a party requires, on frivolous grounds, a hearing mentioned in paragraph 3(d) above to be held,

the sheriff may award a sum of expenses, not exceeding such amount as may be prescribed by the Scottish Ministers by regulations, against the party acting frivolously in favour of the other party.

- 5 Paragraphs 3 and 4 above do not apply to expenses incurred in connection with an appeal under section 194(1).

SCHEDULE 4

(introduced by section 213)

MODIFICATIONS OF ENACTMENTS RELATING TO ADMIRALTY ACTIONS AND THE ARRESTMENT OF SHIPS

Definition of “maritime lien”

- 1 In section 48 of the Administration of Justice Act 1956 (c. 46) (in this Act, the “1956 Act”)—
- (a) the existing words become subsection (1);
 - (b) paragraph (d) is repealed; and
 - (c) at the end insert—

“(2) In this Act and in any other enactment (including an Act of the Scottish Parliament and any enactment comprised in subordinate legislation under such an Act), “maritime lien” means a hypothec over a ship, cargo or other maritime property.”
- 2 In sections 45(5) and 47(3)(b), (4)(b) and (5) of the 1956 Act, before the word “lien” in each place where it occurs, insert the word “maritime”.
- 3 In section 47(2)(r) of the 1956 Act, for “or hypothecation of” substitute “, hypothecation of or existence of any other charge on”.

The term “admiralty action”

- 4 In section 47 of the 1956 Act—
- (a) in subsection (2)(h), after “bond” insert “or contract of respondentia”;
 - (b) after subsection (2), insert—

“(2A) An action having a conclusion appropriate for the enforcement of a claim to which subsection (2) above applies shall be known as an “admiralty action”.”;
 - (c) in subsection (3), for “the last preceding subsection” substitute “subsection (2) above”.
- 5 (1) In paragraph 7 of schedule 5 to the Civil Jurisdiction and Judgements Act 1982 (c. 27), for “Admiralty cause” substitute “admiralty action”.
- (2) In paragraph 6 of schedule 9 to that Act, for “causes” substitute “actions”.

Arrestment in rem granted by the sheriff

- 6 After section 47 of the 1956 Act, insert—

“47A Execution of warrant to arrest in rem and of order for sale

- (1) A warrant for the arrestment in rem of a ship, cargo or other maritime property granted by the sheriff may be executed—

Status: This is the original version (as it was originally enacted).

- (a) within the sheriffdom in which the warrant was granted; or
 - (b) where the ship, cargo or other maritime property was situated within that sheriffdom when the warrant was granted, anywhere in Scotland.
- (2) For the avoidance of doubt, where a warrant for arrestment in rem granted by the sheriff has been executed, an order for the sale of the arrested ship, cargo or other maritime property may be made notwithstanding that it is not situated within the sheriffdom when the order is made.”.

Arrestment on the dependence

- 7 (1) Section 47 of the 1956 Act is amended as follows.
- (2) In subsection (1)—
- (a) after “arrest”, where it second occurs, insert “a ship or other maritime property which is not cargo”;
 - (b) after “unless”, where it second occurs, insert “at the time when the arrestment is executed”;
 - (c) in paragraph (a), after “concerned” insert “and the defender against whom that conclusion is directed owns at least one share in it or is the demise charterer of it”; and
 - (d) in paragraph (b), the words “against whom that conclusion is directed” are repealed.
- (3) After subsection (1), insert—
- “(1A) Where a warrant to arrest on the dependence referred to in subsection (1) above (an “initial arrestment”) has been executed, then, subject to subsection (1B) below, no further warrant may be granted to arrest on the dependence—
- (a) the subjects of the initial arrestment; or
 - (b) while the initial arrestment continues to have effect, any other ship in which the defender owns at least one share,
- in respect of the claim to which the initial arrestment relates.
- (1B) A further warrant to arrest on the dependence may be granted if—
- (a) the further arrestment complies with the requirements of subsection (1) above; and
 - (b) cause is shown for granting the further warrant.”.

(4) In subsection (3)—

 - (a) in paragraph (a), after “ship” insert “or of any share in it”; and
 - (b) after “ship”, where it last occurs, insert “or, as the case may be, any share in a ship other than in the ship.”.

Liability for losses and expenses

- 8 After section 47A of the 1956 Act (as inserted by paragraph 6 above), insert—

Status: This is the original version (as it was originally enacted).

“47B Expenses

- (1) Subject to subsection (3) below, a pursuer shall be entitled to such expenses as are incurred—
 - (a) in obtaining warrant for the arrest of a ship, cargo or other maritime property on the dependence of an action; and
 - (b) in executing the arrestment.
- (2) Subject to subsection (4) below, a defender shall be entitled, where—
 - (a) warrant for the arrest of a ship, cargo or other maritime property on the dependence of an action is granted; and
 - (b) the court is satisfied that the pursuer was acting unreasonably in applying for it,to such expenses as are incurred in opposing that warrant.
- (3) The court may modify or refuse such expenses as are mentioned in subsection (1) above if it is satisfied that—
 - (a) the pursuer was acting unreasonably in applying for the warrant; or
 - (b) such modification or refusal is reasonable in all the circumstances and having regard to the outcome of the action.
- (4) The court may modify or refuse such expenses as are mentioned in subsection (2) above if it is satisfied as to the matter mentioned in subsection (3)(b) above.
- (5) Subject to subsections (1) to (4) above, the court may make such findings as it thinks fit in relation to such expenses as are mentioned in subsections (1) and (2) above.
- (6) Expenses incurred as mentioned in subsections (1)(a) and (2) above shall be expenses of process.
- (7) Subsections (1) to (4) above are without prejudice to any enactment or rule of law as to the recovery of expenses chargeable against a debtor as are incurred in executing an arrestment on the dependence of an action.
- (8) Where warrant is granted for the arrest of a ship in rem in proceedings to which section 47(3)(b) of this Act applies, the court may make such findings as it thinks fit in relation to expenses incurred—
 - (a) in obtaining the warrant and, as the case may be, executing the arrestment;
 - (b) in opposing the application for the warrant.
- (9) For the avoidance of doubt, expenses incurred in applying for and executing the arrest of a ship, cargo or other maritime property in rem in respect of a conclusion appropriate for the making good of a maritime lien shall be expenses of process.”.

Factors affecting arrestments

9 After section 47B of the 1956 Act (as inserted by paragraph 8 above), insert—

“47C Competence of arresting cargo

- (1) It is not competent to execute an arrestment of cargo unless the cargo is on board a ship when the arrestment is executed.
- (2) For the avoidance of doubt, it is competent to execute an arrestment of cargo where it is in the possession of the defender or of a person acting on behalf of the defender.

47D Arrestment of cargo: restriction on movement of ship

Where cargo is arrested, the ship is treated as if arrested until the cargo is unloaded.”.

Cargo on board a ship exempt from attachment

- 10 In section 11 of the 2002 Act (articles exempt from attachment), at the end insert—
- “**(3)** It is not competent to attach cargo which it is competent to arrest by virtue of section 47C of the Administration of Justice Act 1956 (c. 46) (competence of arresting cargo).”.

Location of a ship when arrestment executed

- 11 In section 47 of the 1956 Act—
- (a) after subsection (5), insert—
 - “(5A) Subject to subsection (6) below, it is competent to execute an arrestment of a ship, cargo or other maritime property regardless of whether the ship or other maritime property is in non-tidal or tidal waters or on land.
 - (5B) In subsection (5A) above, “tidal waters” means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides.”; and
 - (b) in subsection (6), for the words from “Nothing” to “of”, where it second occurs, substitute, “It is not competent to execute an arrestment of a ship or cargo on board”.

Demise charters

- 12 After section 47D of the 1956 Act (as inserted by paragraph 9 above) insert—

“Special provision in relation to charters by demise

47E Sale of ship arrested on the dependence of action against demise charterer

- (1) This section applies where—
 - (a) a ship is arrested on the dependence of an admiralty action against the demise charterer of it; and

- (b) the pursuer obtains decree for payment for all or part of a principal sum concluded for in the action.
- (2) Where the owner or demise charterer of the ship—
 - (a) pays the sum due under the decree to—
 - (i) the pursuer; or
 - (ii) any person who has authority to receive payment on behalf of the pursuer; or
 - (b) tenders that sum to any of those persons and the tender is not accepted within a reasonable time,
the arrestment ceases to have effect.
- (3) The court may, on the application of the pursuer, make an order for the sale of the ship.
- (4) Subject to sections 47F and 47G below, the court shall rank any claims made on the proceeds.
- (5) A ship sold under subsection (3) above vests in the purchaser free of any security or other encumbrance.
- (6) The Court of Session may, by Act of Sederunt, make provision relating to proceedings under this section.

47F Ranking of arrestments on sale of ship chartered by demise

In any ranking process relating to the proceeds of sale of a ship (or any share in a ship), an arrestment of the ship (or share) executed before the sale by a creditor of the owner of the ship (or share) shall rank in preference over any arrestment of the ship executed on the dependence of an admiralty action against the demise charterer of the ship.

47G Ranking of arresting creditor of demise charterer in sequestration or winding up of owner

- (1) This section applies where—
 - (a) a ship is arrested on the dependence of an admiralty action against the demise charterer of it; and
 - (b) at any time after the arrestment is executed—
 - (i) the owner of the ship's estate is sequestrated; or
 - (ii) where the owner is a company, it is wound up.
- (2) The creditor who executed the arrestment is entitled to rank on the proceeds of any sale of the ship resulting from the sequestration or, as the case may be, winding up.
- (3) Section 37(4) and (5) of the Bankruptcy (Scotland) Act 1985 (c. 66) (effect of sequestration on arrestment or attachment) and section 185(1)(a) and (2) (in so far as applying and modifying section 37(4) and (5)) of the Insolvency Act 1986 (c. 45) (application of sequestration provisions relating to diligence on winding up) shall apply to such an arrestment as they apply to any other arrestment.

Status: This is the original version (as it was originally enacted).

47H Arrestment to found jurisdiction in action against demise charterer

Where the defender in an admiralty action is the demise charterer of the ship with which the action is concerned, the court may, on the application of the pursuer, grant warrant to arrest the ship to found jurisdiction.”.

- 13 In section 6(c) of the Sheriff Courts (Scotland) Act 1907 (c. 51) (competence of arresting a ship to found jurisdiction in sheriff court), after “owner”, where it second occurs, insert “or demise charterer”.

SCHEDULE 5

(introduced by section 226)

MINOR AND CONSEQUENTIAL AMENDMENTS

The Companies Clauses Consolidation (Scotland) Act 1845 (c. 17)

- 1 In section 114 of the Companies Clauses Consolidation (Scotland) Act 1845 (summary remedy against parties failing to account), after “attachment” insert “or money attachment”.

The Harbours, Docks and Piers Clauses Act 1847 (c. 27)

- 2 In section 46 of the Harbours, Docks and Piers Clauses Act 1847 (power of justice or sheriff to settle disputes over costs of diligence), after “attachment” insert “or money attachment”.

The Titles to Land Consolidation (Scotland) Act 1868 (c. 101)

- 3 In section 3 of the Titles to Land Consolidation (Scotland) Act 1868 (definitions), in the definition of the “deed” and “conveyance”—
- (a) after “adjudged” insert “in implement”; and
 - (b) after “adjudication”, where it third occurs, insert “in implement”.

The Writs Execution (Scotland) Act 1877 (c. 40)

- 4 In section 3(a) of the Writs Execution (Scotland) Act 1877 (warrant in extract writ to authorise diligence)—
- (a) after “arrestment” insert “, a land attachment, a residual attachment, a money attachment”; and
 - (b) after “executing the” insert “land attachment, residual attachment, money attachment or”.

The Judicial Factors (Scotland) Act 1889 (c. 39)

- 5 In section 11A of the Judicial Factors (Scotland) Act (application for judicial factor on estate of deceased person)—
- (a) in subsection (1)—
 - (i) for “petition to the Court of Session or” substitute “application”; and
 - (ii) for “petition”, where it second occurs, substitute “application”; and

- (b) in subsection (2), for “petition” substitute “application”.

The Sheriff Courts (Scotland) Extracts Act 1892 (c. 17)

- 6 (1) The Sheriff Courts (Scotland) Extracts Act 1892 is amended as follows.
- (2) In section 7(1)(a) (warrant in extract decree to authorise diligence)—
- (a) after “arrestment” insert “, a land attachment, a residual attachment, a money attachment”; and
- (b) after “executing the” insert “land attachment, residual attachment, money attachment or”.
- (3) In section 7(4) (warrant in extract decree of removing), for the words “forty-eight hours” in both places where they occur substitute “14 days”.
- (4) In section 8 (persons who may execute on extracts), for the words “messengers-at-arms, officers of court,” substitute “judicial officers”.

The Execution of Diligence (Scotland) Act 1926 (c. 16)

- 7 (1) The Execution of Diligence (Scotland) Act 1926 is amended as follows.
- (2) In section 2 (execution by registered letter)—
- (a) in subsection (1)(b), for “sheriff officer” substitute “judicial officer”;
- (b) in subsection (2)(b)—
- (i) for the words from “sheriff officer”, where they first occur, to “situated” substitute “judicial officer”;
- (ii) for “sheriff officer, or messenger-at-arms” substitute “judicial officer”; and
- (iii) for “law agent enrolled in such sheriffdom” substitute “solicitor”;
- (c) in subsection (2)(c), for “law agent, messenger-at-arms or sheriff officer” substitute “solicitor or judicial officer”; and
- (d) in subsection (2)(g), for “rule 111” substitute “rule 6.1”.
- (3) In section 3 (authorisation by sheriff to do diligence)—
- (a) for “messenger-at-arms or sheriff officer”, in both places where it occurs, substitute “judicial officer”; and
- (b) for “law agent” substitute “solicitor”.
- (4) In section 6 (regulations, forms and fees), for “messengers-at-arms, sheriff officers” substitute “judicial officers”.

The Local Government (Scotland) Act 1947 (c. 43)

- 8 (1) The Local Government (Scotland) Act 1947 is amended as follows.
- (2) In section 247(3) (diligences which can be used to recover rates), after paragraph (a) insert—
- “(aa) a money attachment;”.
- (3) In section 247A(1) (sheriff officer’s fees and outlays), after “attachment)” insert “and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment)”.

Status: This is the original version (as it was originally enacted).

The Taxes Management Act 1970 (c. 9)

- 9 (1) The Taxes Management Act 1970 is amended as follows.
- (2) In section 63(2) (diligences which can be used to recover tax), after paragraph (a) insert—
- “(aa) a money attachment;”.
- (3) In section 63A(1) (sheriff officer’s fees and outlays), after “attachment)” insert “and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment)”.

The Sheriff Courts (Scotland) Act 1971 (c. 58)

- 10 In section 32(1) of the Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate sheriff court civil procedure), in paragraph (l), for the words “an attachment” substitute “an interim attachment, an attachment, a money attachment, a land attachment or a residual attachment”.

The Animal Health Act 1981 (c. 22)

- 11 In section 92(3) of the Animal Health Act 1981 (power of local authority to apply to sheriff for warrant), for the words “the officers of the court” substitute “a judicial officer”.

The Civil Jurisdiction and Judgments Act 1982 (c. 27)

- 12 In section 27 of the Civil Jurisdiction and Judgments Act 1982 (power of Court of Session to grant provisional and protective measures in respect of proceedings outwith Scotland)—
- (a) in subsection (1), after paragraph (b), insert—
- “(ba) subject to subsection (2)(c) below, grant a warrant for the interim attachment of corporeal moveable property situated in Scotland;”;
- and
- (b) in subsection (2)(c), for the words “and (b)” substitute “, (b) and (ba)”.

The Bankruptcy (Scotland) Act 1985 (c. 66)

- 13 (1) The 1985 Act is amended as follows.
- (2) In section 31 (vesting of estate in trustee), in subsection (1)—
- (a) after “shall”, where it first occurs, insert “, by virtue of the trustee’s appointment;”;
- (b) after “vest”, where it first occurs, insert “in the trustee”.
- (3) In section 37 (effect of sequestration on diligence)—
- (a) in subsection (1)(b), for “a completed poinding” substitute “an attachment”;
- (b) in subsection (2), for “No” substitute “Where an”;
- (c) in subsection (4)—
- (i) after “arrestment” insert “, money attachment, interim attachment”;
- and

Status: This is the original version (as it was originally enacted).

- (ii) after “attached” insert “, or any funds released under section 73J(2) of the Debtors (Scotland) Act 1987 (c. 18) (automatic release of funds)”;
- (d) in subsection (5)—
 - (i) after “arrestment”, where it first occurs, insert “, money attachment, interim attachment”;
 - (ii) in paragraph (a), after “obtaining” insert—
 - “(i) warrant for interim attachment; or
 - (ii)”;
 - (iii) after “arrestment”, where it second occurs, insert “, money attachment”; and
 - (iv) in paragraph (b), after “arrestment” insert “, money attachment, interim attachment”;
- (e) after subsection (5A) insert—
 - “(5B) No land attachment of heritable property of the debtor created within the period of six months before the date of sequestration and whether or not subsisting at that date shall be effectual to create a preference for the creditor.
 - (5C) A creditor who creates a land attachment within the period of six months mentioned in subsection (5B) above shall be entitled to payment, out of the attached land or out of the proceeds of the sale of it, of the expenses incurred—
 - (a) in obtaining the extract of the decree, or other document, containing the warrant for land attachment; and
 - (b) in—
 - (i) serving the charge for payment;
 - (ii) registering the notice of land attachment;
 - (iii) serving a copy of that notice; and
 - (iv) registering certificate of service of that copy.”;
- (f) after subsection (8) insert—
 - “(8A) A notice of land attachment registered—
 - (a) on or after the date of sequestration against land forming part of the heritable estate of the debtor (including any estate vesting in the trustee by virtue of section 32(6) of this Act); or
 - (b) before that date in relation to which, by that date, no land attachment is created,shall be of no effect.
 - (8B) Subject to subsections (8C) to (8F) below, it shall not be competent for a creditor to insist in a land attachment—
 - (a) created over heritable estate of the debtor before the beginning of the period of six months mentioned in subsection (5B) above; and
 - (b) which subsists on the date of sequestration.
 - (8C) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—

Status: This is the original version (as it was originally enacted).

- (a) the trustee shall concur in and ratify the deed implementing that contract; and
 - (b) the appointed person shall account for and pay to the trustee any balance of the proceeds of sale which would, but for the sequestration, be due to the debtor after disbursing those proceeds in accordance with section 116 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (disbursement of proceeds of sale of attached land).
- (8D) Subsection (8C) above shall not apply where the deed implementing the contract is not registered before the expiry of the period of 28 days 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.
- (8E) Where a decree of foreclosure has been granted but an extract of it has not registered, the creditor may proceed to complete title to the land by so registering that extract provided that the extract is registered before the expiry of the period mentioned in subsection (8D) above.
- (8F) The Scottish Ministers may—
- (a) prescribe such other period for the period mentioned in subsection (8D) above; and
 - (b) prescribe different periods for the purposes of that subsection and subsection (8E) above,
- as they think fit.”; and
- (g) at the end insert—
- “(10) Expressions used in subsections (5B), (5C) and (8A) to (8F) above which are also used in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) have the same meanings in those subsections as they have in that Chapter.”.

The Insolvency Act 1986 (c. 45)

- 14 (1) The Insolvency Act 1986 is amended as follows.
- (2) After section 61(1) (which sets out the process by which a receiver may dispose of property subject to both the floating charge and to another security, other encumbrance or diligence) insert—
- “(1B) For the purposes of subsection (1) above, an arrestment is an effectual diligence only where it is executed before the floating charge, by virtue of which the receiver was appointed, attaches to the property comprised in the company’s property and undertaking.”.

- (3) In section 185(1)(a) (effect of diligence in the winding up of a company registered in Scotland), after “subsection (6)” insert “, (8A) to (8F) and (10)”.

The Legal Aid (Scotland) Act 1986 (c. 47)

- 15 In Part 2 of Schedule 2 to the Legal Aid (Scotland) Act 1986 (proceedings in which civil legal aid is not available)—
- (a) in paragraph 4, after “(asp 17)” insert “or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)”; and
 - (b) in paragraph 5, after “(asp 17)” insert “or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)”.

The Debtors (Scotland) Act 1987 (c. 18)

- 16 (1) The 1987 Act is amended as follows.
- (2) In section 2 (effect of time to pay direction on diligence)—
- (a) in subsection (1)(b), after sub-paragraph (iv) insert—
 - “(v) a money attachment;
 - (vi) a land attachment;
 - (vii) a residual attachment.”;
 - (b) in subsection (2), at beginning insert “Subject to subsection (2A) below.”;
 - (c) after that subsection insert—
 - “(2A) Where the arrestment which remains in effect as mentioned in subsection (2) above is an arrestment such as is mentioned in subsection (1) of section 73J of this Act, while the time to pay direction is in effect—
 - (a) it shall not be competent to release funds under subsection (2) of that section; and
 - (b) the period during which the direction is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.
 - (2B) While a time to pay direction is in effect an interim attachment shall remain in effect—
 - (a) if it has not been recalled; or
 - (b) to the extent that it has not been restricted under subsection (3) below.”;
 - (d) in subsection (3), after “restrict” insert “an interim attachment or”;
 - (e) in subsection (4)—
 - (i) after “If” insert “an interim attachment or”; and
 - (ii) after “restriction of the” insert “interim attachment or”; and
 - (f) after subsection (5) insert—
 - “(5A) Where—
 - (a) a time to pay direction is recalled or ceases to have effect as mentioned in subsection (5) above; and

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- (b) an arrestment such as is mentioned in section 73J(1) of this Act is in effect,
the clerk of court or sheriff clerk shall intimate the fact of that recall or cessation to the arrestee.”.
- (3) In section 3 (variation and recall of time to pay direction and arrestment)—
- (a) in subsection (1)(a), after “reasonable” insert “in all the circumstances”;
 - (b) in subsection (1)(b)—
 - (i) after “if” insert “an interim attachment or”;
 - (ii) after “restrict the” insert “interim attachment or”; and
 - (c) in subsection (2), after “If” insert “an interim attachment or”.
- (4) In section 5 (time to pay orders)—
- (a) in subsection (5), for paragraph (a) substitute—
 - “(a) articles belonging to the debtor have been attached and notice of an auction given under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) but no auction has yet taken place;
 - (aa) money owned by the debtor has been attached and removed;”;
 - (b) for paragraph (c) and the word “or” immediately preceding it substitute—
 - “(c) land owned by the debtor has been attached and an order under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (in this Part, the “2007 Act”) granting warrant for sale of the land has been made but that warrant has not yet been executed; or
 - (d) property owned by the debtor has been attached by residual attachment and a satisfaction order under section 136(2) of the 2007 Act has been made but not yet executed;”;
 - (c) after subsection (5) insert—
 - “(5A) Where, in respect of a debt to which this section applies, an arrestment such as is mentioned in subsection (1) of section 73J of this Act has been executed, the sheriff may make a time to pay order in respect of that debt only if less than 8 weeks of the period mentioned in subsection (3) of that section have expired.”.
- (5) In section 6 (application for time to pay order), in subsection (6), leave out paragraph (b) and the word “and” immediately preceding it and insert—
- “(b) serve on—
 - (i) the creditor; and
 - (ii) where an arrestment such as is mentioned in section 73J(1) of this Act is in effect, the arrestee,
a copy of the interim order; and
 - (c) serve on the creditor a copy of any order under subsection (4) above.”.
- (6) In section 7 (disposal of application for time to pay order), in subsection (4)(a), for “and the creditor” substitute “, the creditor and, where an arrestment such as is mentioned in section 73J(1) of this Act is in effect, the arrestee”.

Status: This is the original version (as it was originally enacted).

- (7) In section 8 (effect of interim order on diligence)—
- (a) in subsection (1)—
 - (i) before paragraph (a) insert—

“(za) to attach in execution of the decree any articles which have been attached by interim attachment;”;
 - (ii) in paragraph (a), for “auction any articles which have been attached” substitute “give, in relation to any articles which have been attached, notice of an auction under section 27(4) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)”;
 - (iii) after paragraph (a) insert—

“(aa) to execute a money attachment;”;
 - (iv) in paragraph (c), at the beginning insert “subject to subsection (1A) below;”;
 - (v) for paragraph (d) substitute—
 - (d) subject to subsection (1B) below, to register, under section 83(1)(c) of the 2007 Act, a notice of land attachment;
 - (e) subject to subsection (1C) below, to apply, under section 130(1) of the 2007 Act, for a residual attachment order.”; and
 - (b) after subsection (1) insert—

“(1A) Where the arrestment mentioned in subsection (1)(c) above is an arrestment such as is mentioned in subsection (1) of section 73J of this Act, while the interim order is in effect—

 - (a) it shall not be competent to release funds under subsection (2) of that section; and
 - (b) the period during which the order is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.

(1B) Where, before the interim order is made—

 - (a) a notice of land attachment is registered, it shall not be competent to take any steps other than—
 - (i) serving, under subsection (5) of section 83 of the 2007 Act, a copy of that notice; and
 - (ii) registering, under subsection (6) of that section, a certificate of service; or
 - (b) a land attachment is created, it shall not be competent to make, under section 97(2) of the 2007 Act, an order granting a warrant for sale of the attached land.

(1C) Where, before the interim order is made, a residual attachment order has been made, it shall not be competent—

 - (a) to take any steps other than serving, under section 133(1) of the 2007 Act, a schedule of residual attachment; or
 - (b) to make, under section 136(2) of the 2007 Act, a satisfaction order.”.

Status: This is the original version (as it was originally enacted).

- (8) In section 9 (effect of time to pay order on diligence)—
- (a) in subsection (1)(b), after sub-paragraph (iv) insert—
 - “(v) a money attachment;
 - (vi) a land attachment;
 - (vii) a residual attachment.”;
 - (b) in subsection (2), for paragraph (c) substitute—
 - “(c) where a notice of land attachment has been registered under section 83(1)(c) of the 2007 Act, shall make an order prohibiting the taking of any steps other than—
 - (i) the serving, under subsection (5) of that section, of a copy of the notice; and
 - (ii) the registration, under subsection (6) of that section, of a certificate of service;
 - (ca) where a residual attachment order has been made under section 132(2) of the 2007 Act, shall make an order prohibiting the taking of any steps other than the serving, under section 133(1) of the 2007 Act, of a schedule of residual attachment;
 - (cb) may make an order recalling an interim attachment.”;
 - (c) after subsection (2) insert—
 - “(2A) While a time to pay order is in effect, it shall not be competent in respect of the debt—
 - (a) to make, under section 97(2) of the 2007 Act, an order granting warrant for sale of attached land; or
 - (b) to make, under section 136(2) of the 2007 Act, a satisfaction order.”;
 - (d) in subsection (3)—
 - (i) after “If” insert “an interim attachment,” and
 - (ii) for “or the recall of” substitute “, the recall of the interim attachment or”;
 - (e) in subsection (4)—
 - (i) at the beginning insert “Subject to subsection (4A) below,”; and
 - (ii) for “(2)(d) or (e)” substitute “(2)(cb), (d) or (e)”;
 - (f) after subsection (4) insert—
 - “(4A) Where, in relation to an arrestment such as is mentioned in subsection (1) of section 73J of this Act, the sheriff does not exercise the power conferred on him by subsection (2)(e) above to recall that arrestment, he shall make an order—
 - (a) prohibiting, while the time to pay order is in effect, the release of funds under subsection (2) of section 73J of this Act; and
 - (b) providing that the period during which the time to pay order is in effect shall be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.”;
 - (g) in subsection (6), for “(2)(d) or (e)” substitute “(2)(cb), (d) or (e)”;
 - (h) in subsection (7), after paragraph (b) insert “; and

Status: This is the original version (as it was originally enacted).

- (c) where any order under subsection (4A) above is made in relation to an arrestment such as is mentioned in section 73J(1) of this Act is in effect, intimate that order to the arrestee.”; and
 - (i) in subsection (8)—
 - (i) for paragraph (a) substitute—
 - “(a) to sell articles which have been attached (other than by virtue of section 20(1) or 22(3) of the Debt Arrangement and Attachment (Scotland) Act (asp 17);”;
 - (ii) in paragraph (b), at the beginning insert “to grant”.
- (9) In section 10 (variation and recall of time to pay order and arrestment)—
- (a) in subsection (1)(a), after “reasonable” insert “in all the circumstances”;
 - (b) in subsection (1)(b), after “if” insert “an interim attachment,”; and
 - (c) in subsection (2), after “If” insert “an interim attachment,”.
- (10) In section 13 (saving of creditor’s rights and remedies), in the full-out words to subsection (2), for “poiniding”, in any place where it occurs, substitute “attachment”.
- (11) In section 87(2)(a) (warrant in extract decree to authorise diligence)—
- (a) after “arrestment” insert “, a land attachment, a residual attachment, a money attachment”; and
 - (b) after “executing the” insert “land attachment, residual attachment, money attachment or”.
- (12) In section 104 (regulations), after “Regulations” insert “and orders”.
- (13) In section 105 (application to Crown)—
- (a) the existing words become subsection (1);
 - (b) after “1947” insert “and subject to subsection (2) below”; and
 - (c) at the end insert—
 - “(2) Section 70B of this Act does not affect Her Majesty in Her private capacity as an employer.”
- (14) In section 106 (interpretation)—
- (a) after the definition of “current maintenance”, insert—
 - ““debt advice and information package” has the meaning given to it in section 47(4) of this Act;”;
 - (b) after the definition of “employer”, insert—
 - ““enactment” includes an Act of the Scottish Parliament and any enactment comprised in subordinate legislation under such an Act;”;
 - and
 - (c) in the definition of “officer of court”, for the words from “a” where it first occurs to the end substitute “a judicial officer”.

The Abolition of Domestic Rates etc. (Scotland) Act 1987 (c. 47)

- 17 (1) Schedule 2 to the Abolition of Domestic Rates etc. (Scotland) Act 1987 is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In paragraph 7(3) (diligences which can be used to recover community charge), after paragraph (a) insert—
“(aa) a money attachment;”.
- (3) In paragraph 8(1) (sheriff officer’s fees and outlays), after “attachment)” insert “and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment)”.

The Child Support Act 1991 (c. 48)

- 18 In section 38 of the Child Support Act 1991 (enforcement of liability orders by diligence)—
- (a) in subsection (1)—
- (i) after paragraph (a) insert—
“(aa) for the Secretary of State—
- (i) to charge the person to pay the appropriate amount; and
- (ii) to execute, in respect of the person’s land, a land attachment;”;
- (ii) for the words from “and”, where it fifth occurs, to the end, substitute—
“(c) for an inhibition.”; and
- (b) for subsection (2) substitute—
“(2) In subsection (1)—
- (a) the “appropriate amount” means the amount in respect of which the order was made, to the extent that it remains unpaid; and
- (b) in paragraph (aa), “land” has the same meaning as in section 82 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).”.

The Social Security Administration Act 1992 (c. 5)

- 19 In section 121B of the Social Security Administration Act 1992—
- (a) in subsection (1) (diligences which can be used to recover unpaid contributions), after paragraph (a) insert—
“(aa) a money attachment;”;
- (b) in subsection (4) (sheriff officer’s fees and outlays), after “attachment)” insert “and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment)”.

The Local Government Finance Act 1992 (c. 14)

- 20 (1) Schedule 8 to the Local Government Finance Act 1992 is amended as follows.
- (2) In paragraph 2(3) (diligences which can be used to recover council tax etc.), after paragraph (a) insert—
“(aa) a money attachment;”.

Status: This is the original version (as it was originally enacted).

- (3) In paragraph 4(1) (sheriff officer’s fees and outlays), after “attachment)” insert “and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment)”.

The Tribunals and Inquiries Act 1992 (c. 53)

- 21 In Part II of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Scottish Committee of the Council on Tribunals), after paragraph 54A insert—

“Judicial Officers	54B. The disciplinary committee of the Scottish Civil Enforcement Commission constituted under paragraph 16 of Schedule 2 to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).”.
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The Proceeds of Crime (Scotland) Act 1995 (c. 43)

- 22 In section 32 of the Proceeds of Crime (Scotland) Act (inhibition of property affected by restraint order or by interdict)—

- (a) in subsection (1)—
- (i) for the words “Lord Advocate, the Court of Session” substitute “prosecutor, the court”;
 - (ii) in paragraph (a), for the words “Lord Advocate” substitute “prosecutor”; and
 - (iii) in paragraph (b), for the words from “have” to the end substitute “forthwith be registered by the prosecutor in the Register of Inhibitions.”; and
- (b) in subsection (5), for the words “Lord Advocate” substitute “prosecutor”.

The Criminal Procedure (Scotland) Act 1995 (c. 46)

- 23 In section 221 of the Criminal Procedure (Scotland) Act 1995 (fines: recovery by civil diligence), in subsection (1)(a)—

- (a) for “the execution of an arrestment and the attachment of articles belonging to him” insert—
- “(i) the execution of an arrestment;
 - (ii) the attachment of articles belonging to him; and
 - (iii) the execution of a money attachment;”;
- (b) after “attachment”, where it second occurs, insert “or the money attachment”.

The Finance Act 1997 (c. 16)

- 24 In section 52 of the Finance Act 1997—

- (a) in subsection (2) (diligences which can be used to recover certain taxes), after paragraph (a) insert—
- “(aa) a money attachment;”;

Status: This is the original version (as it was originally enacted).

- (b) in subsection (3) (sheriff officer’s fees and outlays), after “attachment)” insert “and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment)”.

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 25 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act (devolved public bodies), after the entry “Scottish Children’s Reporter Administration”, insert—

“The Scottish Civil Enforcement Commission”.

The Water Industry (Scotland) Act 2002 (asp 3)

- 26 (1) Schedule 4 to the Water Industry (Scotland) Act 2002 is amended as follows
- (2) In paragraph 2(3) (diligences which can be used to recover unpaid charges), after sub-paragraph (za) insert—
- “(zb) a money attachment;”.
- (3) In paragraph 4(1), at the beginning insert “Without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (expenses of attachment) and section 196(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (expenses of money attachment),”.

The Scottish Public Services Ombudsman Act 2002 (asp 11)

- 27 In Part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (Scottish public authorities), after paragraph 37 insert—

“37A The Scottish Civil Enforcement Commission”.

The Freedom of Information (Scotland) Act 2002 (asp 13)

- 28 In schedule 1 to the Freedom of Information (Scotland) Act (public authorities within the meaning of section 3), after paragraph 80 insert—

“80A The Scottish Civil Enforcement Commission.”.

The Proceeds of Crime Act 2002 (c. 29)

- 29 In section 123 of the Proceeds of Crime Act (inhibition of property affected by a restraint order)—
- (a) in subsection (1), for the words “Lord Advocate, the Court of Session” substitute “prosecutor, the court”;
- (b) in subsection (3)—
- (i) in paragraph (a), for the words “Lord Advocate” substitute “prosecutor”; and
- (ii) for paragraph (b) substitute—
- “(b) must forthwith be registered by the prosecutor in the Register of Inhibitions”; and
- (c) in subsection (7), for the words “Lord Advocate” substitute “prosecutor”.

The Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)

- 30 (1) The 2002 Act is amended as follows.
- (2) In section 10(3) (competence of attachment), for paragraphs (a) and (b) substitute—
- “(a) the debtor has been charged to pay the debt;
 - (b) the period for payment specified in the charge has expired without payment being made; and
 - (c) where the debtor is an individual, the creditor has, no earlier than 12 weeks before taking any steps to execute the attachment, provided the debtor with a debt advice and information package.”.
- (3) In section 11 (articles exempt from attachment)—
- (a) in subsection (1), after paragraph (d) insert—
“(e) any money.”; and
 - (b) after subsection (2) insert—
“(3) In subsection (1)(e) above, “money” has the same meaning as in section 175 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).”.
- (4) After section 13 insert—

“13A Schedule of attachment

- (1) The officer must, immediately after executing an attachment, complete a schedule such as is mentioned in subsection (2) below (in this section, the “attachment schedule”).
- (2) An attachment schedule—
 - (a) must be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
 - (b) must specify—
 - (i) the articles attached; and
 - (ii) their value, so far as ascertainable.
- (3) The officer must—
 - (a) give a copy of the attachment schedule to the debtor; or
 - (b) where it is not practicable to do so—
 - (i) give a copy of the schedule to a person present at the place where the attachment was executed; or
 - (ii) where there is no such person, leave a copy of it at that place.
- (4) An attachment is executed on the day on which the officer complies with subsection (3) above.”.
- (5) In section 14 (procedure for attachment of articles kept outwith dwellinghouses), for “19” substitute “19A”.
- (6) In section 15, the title to that section becomes “Valuation”.
- (7) In section 28(1)(b) (restriction on alteration of arrangements for auctions), for “19” substitute “19A”.
- (8) In section 32 (report of auction)—

Status: This is the original version (as it was originally enacted).

- (a) in subsection (2)(a), after sub-paragraph (iii) insert—
 - “(iii) any sums paid by the debtor to account of the sum recoverable;”; and
 - (b) in subsection (4), for the words from “Court” to the end substitute “Scottish Civil Enforcement Commission under section 67(1)(b) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).”.
- (9) In section 33 (audit of report of auction)—
- (a) in subsection (7), for the words from “providing” to the end substitute—
 - “(a) giving—
 - (i) the debtor;
 - (ii) the creditor; and
 - (iii) any third party who claims ownership (whether alone or in common with the debtor) of any attached article,
 - an opportunity to make representations; or
 - (b) holding a hearing.”; and
 - (b) in subsection (8), for “debtor” substitute “persons mentioned in subsection (7)(a) above.”.
- (10) In section 34 (articles belonging to third parties), in subsection (1)(b)(ii), for “so satisfied” substitute “satisfied that the claim is valid”.
- (11) In section 40 (recovery from debtor of expenses of attachment)—
- (a) in subsection (3)—
 - (i) in paragraph (a), for “9(2)(a), (d) or (e)” substitute “9(2)(d) or (10)(b)”; and
 - (ii) in paragraph (c), for “presentation of a petition for an administration order” substitute “appointment of an administrator”; and
 - (b) in subsection (4)(b), for “administration order” substitute “appointment”.
- (12) In section 41(2)(a) (ascription of sums recovered by attachment), after sub-paragraph (i) insert—
- “(ia) any previous interim attachment the expenses of which are chargeable against and recoverable from the debtor under section 9Q(1)(a) of this Act;”.
- (13) In section 45 (interpretation of Parts 2, 3 and 4 of that Act), in the definition of “officer”, for the words from “the” where it first occurs to the end substitute “a judicial officer appointed by a creditor”.
- (14) In section 60(2) (application of the Act to sequestration for rent and arrestment) for the words “such a” substitute “the landlord’s”.
- (15) In schedule 1, in paragraph 1, before “2” insert “1A.”.

The Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 31 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act (the specified authorities to which the Commissioner for Public Appointments in Scotland’s code of practice applies), after the entry “Scottish Children’s Reporter Administration”, insert—

Status: This is the original version (as it was originally enacted).

“Scottish Civil Enforcement Commission”.

The Finance Act 2003 (c. 14)

- 32 In paragraph 3(2) of Schedule 12 to the Finance Act 2003 (diligences which can be used to recover stamp duty land tax), after sub-paragraph (a) insert—
“(aa) a money attachment;”.

The Civil Partnership Act 2004 (c. 33)

- 33 In section 103(6) of the Civil Partnership Act 2004 (warrant to enter premises), for “messenger-at-arms or sheriff officer” substitute “judicial officer”.

SCHEDULE 6

(introduced by section 226)

REPEALS AND REVOCATION

PART 1

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Decrees in Absence Act 1584 (c. 10) (Act of the Parliaments of Scotland)	The whole Act.
Ejection Caution Act 1594 (c. 27) (Act of the Parliaments of Scotland)	The whole Act.
Arrestments Act 1617 (c. 17) (Act of the Parliaments of Scotland)	The whole Act.
Diligence Act 1621 (c. 6) (Act of the Parliaments of Scotland)	The whole Act.
Adjudication Act 1621 (c. 7) (Act of the Parliaments of Scotland)	The whole Act.
Diligence Act 1661 (c. 344) (Act of the Parliaments of Scotland)	The whole Act.
Minority Act 1663 (c. 4) (Act of the Parliaments of Scotland)	The whole Act.
Adjudications Act 1672 (c. 45) (Act of the Parliaments of Scotland)	The whole Act.
Debtors (Scotland) Act 1838 (c. 114)	Section 17. Section 22.
Hypothec Amendment (Scotland) Act 1867 (c. 42)	The whole Act.

Status: This is the original version (as it was originally enacted).

<i>Enactment</i>	<i>Extent of repeal</i>
Titles to Land Consolidation (Scotland) Act 1868 (c. 101)	<p>In section 3, in the definition of the “deed” and “conveyance”, the words “of adjudication for debt, and” and the words “whether for debt or implement,”.</p> <p>In section 62, the words “, whether for debt or”, in both places where they occur.</p> <p>In section 129, the words “, whether for debt or”, in both places where they occur.</p> <p>In section 159, the words “for debt or in security or”.</p> <p>Schedules PP and RR.</p>
Hypothec Abolition (Scotland) Act 1880 (c. 12)	The whole Act.
Judicial Factors (Scotland) Act 1889 (c. 39)	In section 11A(2), the words “Court or”; and in paragraph (a), the word “permanent”.
Heritable Securities (Scotland) Act 1894 (c. 44)	<p>Sections 3, 6 and 7.</p> <p>Schedules A to C</p>
Sheriff Courts (Scotland) Act 1907 (c. 51)	<p>In section 5(4), the words “actions of adjudication save in so far as now competent and”.</p> <p>In section 29, the words “of a warrant of sequestration for rent, or”.</p> <p>In section 40, the word “officers,”.</p>
Conveyancing (Scotland) Act 1924 (c. 27)	In section 44, subsection (1); and in subsection (2), in paragraph (a)(i), the words “and Adjudications”, and paragraph (b).
Execution of Diligence (Scotland) Act 1926 (c. 16)	<p>Section 1.</p> <p>Section 4.</p> <p>In section 5, the words from “a law agent” to the end.</p>
Public Registers and Records (Scotland) Act 1948 (c. 57)	In section 1(2), the words “and Adjudications”.
Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65)	Section 8(2)(e).
Taxes Management Act 1970 (c. 9)	In section 64(1), the words “pounding, sequestration for rent, or”.
Sheriff Courts (Scotland) Act 1971 (c. 58)	In section 35(1)(b), the words “and actions of sequestration for rent” and the words “or the rent in respect of which sequestration is asked,”.

Status: This is the original version (as it was originally enacted).

<i>Enactment</i>	<i>Extent of repeal</i>
Prescription and Limitation (Scotland) Act 1973 (c. 52)	Section 1(4).
Land Registration (Scotland) Act 1979 (c. 33)	In section 6(1)(c), the words “and Adjudications”. In section 12(3)(k), the words “and Adjudications”.
Sale of Goods Act 1979 (c. 54)	In section 62(5), the words “or sequestration for rent”.
Rent (Scotland) Act 1984 (c. 58)	Section 110.
Family Law (Scotland) Act 1985 (c. 37)	Section 19.
Bankruptcy (Scotland) Act 1985 (c. 66)	In section 1A, in subsection (1)(b)(ii), the words “under paragraph 5(1)(e) of Schedule 5 to this Act”; and in subsection (3)(c), the word “permanent”. Section 2(4). In section 3, the word “permanent” in each place where it occurs. In section 4, the words “(other than one to which Schedule 2 to this Act applies)”; and the word “permanent”. In section 5, in subsection (4A), the word “permanent”; in subsection (7), paragraph (a); and in subsection (8)(a), the words “or concurs in a petition by the debtor”. In section 7(1), in paragraph (c), subparagraphs (iii), (iv), (v) and (vi); and the words ““confiscation order””, where they second occur. In section 8, in subsection (1)(a), subparagraph (i); in subsection (5), the words “, or the concurring in,”; and in subsection (6), the words “or concurring” and “or concur”. Section 12(1A). In section 13(2)(b), the words “in the sequestration”. In section 14, in subsection (1)(a), the words “and adjudications”; in subsection (2) the words “and of a citation in an adjudication”; in subsection (3)(a), the words “, or by virtue of paragraph 11 of Schedule 4 to,”; in subsection (4), the word “permanent”

Status: This is the original version (as it was originally enacted).

<i>Enactment</i>	<i>Extent of repeal</i>
	and the words “and adjudications”; and subsection (5).
	In section 15, in subsection (3), the words “or a creditor concurring in the petition for sequestration”; in subsection (5)(a), the words “and adjudications”; in subsection (6), the word “interim”; and in subsection (8)(a), the words from “permanent”, where it first occurs, to “interim”.
	In section 16, in subsection (1)(b), the words “interim trustee, the permanent”; and in subsection (2), the words “interim trustee or permanent”.
	In section 17(8), in paragraph (a), the words “and adjudications”; and in paragraph (b)(ii), the word “permanent”.
	Section 18(2)(g).
	In section 19, in subsection (1), the word “interim”, where it second occurs; and in subsections (2) to (4), the word “interim”, in each place where it occurs.
	In section 20, the word “interim”, in each place where it occurs; and subsections (4) and (5).
	In section 20A, the words “interim” and “21 or”.
	In section 21A, in subsection (1), the word “interim”, where it second occurs; in subsections (2) to (7), the word “interim”, in each place where it occurs; and subsection (9).
	In section 21B, in subsection (1), the word “interim”, where it first occurs and paragraph (b) and the word “and” immediately preceding that paragraph; and subsection (2).
	In section 22, the word “interim”, in each place where it occurs; and in subsection (5) (b)(ii), the words “or permanent trustee”.
	In section 23, the word “interim”, in each place where it occurs.
	In section 24, in subsection (2), the word “permanent”, where it third and fourth occurs; and in subsection (4)(b), the words from “who” to the end.

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<i>Enactment</i>	<i>Extent of repeal</i>
	<p>In section 25, in subsection (6), paragraph (a) and the word “and” immediately following that paragraph; and in paragraph (b), the words “where he is not the same person as the interim trustee,” and the word “permanent”.</p> <p>Section 25A.</p> <p>In section 26, in subsection (2)(b), the words “(unless the interim trustee has himself become the permanent trustee)”; and in subsection (3)(b)(i), the words “(except where the interim trustee has himself become the permanent trustee)”.</p> <p>In section 26A, in subsection (2), the word “interim”, where it second occurs; and in subsections (4), (5) and (7), the word “interim”, in each place where it occurs.</p> <p>Section 27(7).</p> <p>In sections 28 to 30, the word “permanent”, in each place where it occurs.</p> <p>In section 31, in subsection (1), the words “in the permanent trustee” and paragraphs (a) and (b) and the word “; and” immediately preceding them; in subsection (2), the words “(reserving any effect of such inhibition on ranking)”; and in subsections (2) to (7) and (10) the word “permanent”, in each place where it occurs.</p> <p>In section 31A(2) (as inserted by paragraph 15 of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29)), the word “permanent”.</p> <p>In section 31B, in subsection (1), the word “and” following paragraph (a); and in subsection (2), the word “permanent”</p> <p>In sections 31C to 36C, 36E and 36F, the word “permanent”, in each place where it occurs.</p> <p>In section 37, subsection (1)(a); in subsection (2), the word “which”, the words “shall be effectual to create a preference for the inhibitor and” and the word “permanent”; in subsection (4), the word “permanent” in both places where it occurs; in subsection (6), the word “permanent” in both places where it occurs; and in subsection (8), the words from “to”, where it first occurs, to “or”, where</p>

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<i>Enactment</i>	<i>Extent of repeal</i>
	<p>it second occurs; and in subsection (9), the word “permanent”.</p> <p>In section 38, the word “permanent” in each place where it occurs.</p> <p>In section 39, in subsection (1), the word “permanent”, in both places where it occurs, and the words “with the commissioners or, if there are no commissioners,”; and in paragraph (c), the words “if there are no commissioners,”; and in subsection (2), the word “permanent”, the words from “but” to “court” and the words from “if”, where it second occurs, to “estate”, where it first occurs; and in subsections (3) to (6) and (8), the word “permanent” in each place where it occurs.</p> <p>In sections 40 to 45, the word “permanent” in each place where it occurs.</p> <p>In section 46, in subsection (1), in paragraph (a), the word “permanent” and in paragraph (b) the words “the Court of Session or” and the word “permanent”; and in subsection (4), the word “permanent”.</p> <p>In section 47, the word “permanent” in both places where it occurs.</p> <p>In section 48, in subsection (1), the word “permanent”; in subsection (2), in paragraph (a), the word “interim” and in paragraph (b), the word “permanent”; in subsection (3), the words from “, and”, where it second occurs, to the end of the subsection; in subsections (4) and (5), the word “permanent”, in each place where it occurs; in subsection (7), paragraph (a) and in paragraph (b) the words ““interim” and”, “respectively” and ““permanent” and”; and in subsection (8), the word “permanent”.</p> <p>In sections 49 to 53, the word “permanent”, in each place where it occurs.</p> <p>In section 54, the word “permanent”, in each place where it occurs; in subsection (4)(b)(ii), the words “interim or”; and in subsection (7) (a), the words “and adjudications”.</p> <p>In sections 56 and 57, the word “permanent”, in each place where it occurs.</p>

Status: This is the original version (as it was originally enacted).

<i>Enactment</i>	<i>Extent of repeal</i>
	<p>In section 58A, in subsections (1), (4), (5) and (7), the word “permanent”, in each place where it occurs; and subsection (9).</p> <p>In section 60(2), the word “permanent”.</p> <p>In sections 61 to 65, the word “permanent”, in each place where it occurs.</p> <p>In section 67, in subsection (4), the word “permanent”; and in subsection (5), in paragraph (b), the words “interim or permanent”.</p> <p>In sections 69 and 70, the word “permanent”, in each place where it occurs.</p> <p>In section 73(1), the definition of “permanent trustee”.</p> <p>In section 75, in subsection (4), the words “by the permanent trustee”; in subsection (5), paragraph (b); in subsection (7), the word “permanent”; and in subsection (11), the words from “permanent”, where it first occurs, to “interim”.</p> <p>In Schedule 1, the word “permanent”, in each place where it occurs.</p> <p>In Schedule 4, in paragraph 1(1), the word “permanent”, where it second occurs; in paragraph 2, the word “permanent”; in paragraph 4, the word “permanent”, where it first occurs; in paragraph 9, in sub-paragraphs (1) and (1A), the word “permanent”, in each place where it occurs; in paragraph 12, the word “permanent”, in both places where it occurs; in paragraph 17, in sub-paragraphs (1), (3) and (4), the word “permanent”, in each place where it occurs; and in paragraph 18, in sub-paragraphs (3) and (4), the word “permanent”, in each place where it occurs.</p> <p>In Schedule 5, in paragraph 2(1), the words “and adjudications”; and in paragraph 4, sub-paragraphs (b)(ii) and (d).</p> <p>In Schedule 6, the word “permanent”, in each place where it occurs (including the occurrence in the italic cross-heading preceding paragraph 7); and in paragraph 11(2), the words “the interim trustee or, as the case may be,”.</p>

Status: This is the original version (as it was originally enacted).

<i>Enactment</i>	<i>Extent of repeal</i>
	In Schedule 7, in paragraph 25(a), the words “interim or permanent”.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)	In section 8(7), the words “and Adjudications”.
Insolvency Act 1986 (c. 45)	In section 185(2)(d), the word “permanent”.
Debtors (Scotland) Act 1987 (c. 18)	Section 2(1)(b)(iv). In section 5, subsection (1)(c). Section 8(3). In section 9, subsection (1)(b)(iv); and, in subsection (8), the words “to grant”. Section 15(1). Part V. Section 101.
Proceeds of Crime (Scotland) Act 1995 (c. 43)	In Schedule 6, paragraph 3. In section 32, in subsection (2), the words from “as” to the end; subsection (3); and in subsection (5)(b), the words “and Adjudications”. In Schedule 1, in paragraph 7(c), the words from “raise” to “property” where it first occurs
Terrorism Act 2000 (c. 11)	In Schedule 4, in paragraph 21, in sub-paragraph (2)(b) the words from “shall”, where it first occurs, to “and”, where it first occurs, and the words “and adjudications”; in sub-paragraph (3), the words from “as” to the end; and in sub-paragraph (5)(b), the words “and adjudications”.
Mortgage Rights (Scotland) Act 2001 (asp 11)	In section 3(1), the words “and Adjudications”.
International Criminal Court (Scotland) Act 2001 (asp 13)	In Schedule 6, in paragraph 6, in sub-paragraph (2)(b) the words from “shall”, where it first occurs, to “and”, where it first occurs, and the words “and Adjudications”; in sub-paragraph (3), the words from “as” to the end; and in sub-paragraph (6)(b), the words “and Adjudications”. In Schedule 6, in paragraph 10(6), the words “and Adjudications”.
Proceeds of Crime Act 2002 (c. 29)	In section 123, in subsection (4), the words from “as” to the end; and in subsection (7) (b), the words “and Adjudications”.

Status: This is the original version (as it was originally enacted).

<i>Enactment</i>	<i>Extent of repeal</i>
	Section 285(7).
	In Schedule 3, paragraph 7(5), the words from “raise” to “property” where it first occurs.
Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)	Section 4(2A)(d). Section 15(1). Section 60(1), (2)(b), (4) and (5). Schedule 1, paragraph 4(a), the words “of court”.

PART 2

REVOCATION

<i>Enactment</i>	<i>Extent of revocation</i>
The Bankruptcy (Scotland) Regulations 1985 (S.I. 1985 No. 1925)	Regulation 13.
