



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 1

APPLICATION OR PETITION FOR SEQUESTRATION

Concurrent proceedings

17 Concurrent proceedings for sequestration or analogous remedy

- (1) If, in the course of sequestration proceedings (referred to in this section and in section 18 as the “instant proceedings”), a person who is a petitioner for sequestration, the debtor, or a creditor concurring in a debtor application is or becomes aware of any of the circumstances mentioned in subsection (2), that person must as soon as may be take the action mentioned in subsection (3).
- (2) The circumstances are that, notwithstanding the instant proceedings—
- (a) a petition for sequestration of the debtor's estate is before a sheriff,
 - (b) such sequestration has been awarded [^{F1}and the debtor's estate is being sequestrated],
 - (c) a debtor application [^{F2}has been made] in relation to the debtor's estate [^{F3}is pending],
 - (d) sequestration has been awarded by virtue of any such application [^{F4}and the debtor's estate is being sequestrated],
 - (e) a petition for the appointment of a judicial factor on the debtor's estate is before a court,
 - (f) such a judicial factor has been appointed,
 - (g) a petition is before a court for the winding up of the debtor under [^{F5}section 28 of the Limited Partnerships Act 1907,] Part 4 or 5 of the Insolvency Act 1986 or section 372 of the Financial Services and Markets Act 2000,
 - [^{F6}(ga) such a petition has been granted,
 - (gb) an application in respect of the debtor is before a court under section 29 of the Limited Partnerships Act 1907,
 - (gc) such an application has been granted,]
 - (h) an application for an analogous remedy in respect of the debtor's estate is proceeding, or

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- (i) such an analogous remedy is in force.
- (3) The action is—
- (a) where the instant proceedings are by petition for sequestration, to notify the sheriff to whom that petition was presented of the circumstances in question,
 - (b) where the instant proceedings are by debtor application, to notify AiB of those circumstances.
- (4) A petitioner who fails to comply with subsection (1) may be made liable for the expenses of presenting the petition for sequestration.
- (5) A debtor who fails so to comply commits an offence.
- (6) A debtor who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A creditor concurring in a debtor application who fails so to comply may be made liable for the expenses of making the debtor application.
- [^{F7}(7A) For the purposes of subsection (2)(c), a debtor application is “pending” if it has been made and has not fallen, been withdrawn or been determined.]
- (8) In this section and in section 18, “analogous remedy” means—
- (a) in relation to England and Wales—
 - (i) an individual voluntary arrangement or bankruptcy order under the Insolvency Act 1986,
 - (ii) an administration order under section 112 of the County Courts Act 1984, or
 - (iii) a remedy having the like effect to any of those mentioned in subparagraphs (i) and (ii) or to sequestration, and
 - (b) in relation to Northern Ireland or to any other country, a remedy having the like effect as a remedy mentioned in paragraph (a).

Textual Amendments

- F1** Words in s. 17(2)(b) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\), ss. 135\(2\)\(a\), 219\(1\)\(2\)\(b\)](#)
- F2** Words in s. 17(2)(c) omitted (26.10.2023 for specified purposes) by virtue of [Economic Crime and Corporate Transparency Act 2023 \(c. 56\), ss. 135\(2\)\(b\)\(i\), 219\(1\)\(2\)\(b\)](#)
- F3** Words in s. 17(2)(c) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\), ss. 135\(2\)\(b\)\(ii\), 219\(1\)\(2\)\(b\)](#)
- F4** Words in s. 17(2)(d) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\), ss. 135\(2\)\(c\), 219\(1\)\(2\)\(b\)](#)
- F5** Words in s. 17(2)(g) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\), ss. 135\(2\)\(d\), 219\(1\)\(2\)\(b\)](#)
- F6** S. 17(2)(ga)-(gc) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\), ss. 135\(2\)\(e\), 219\(1\)\(2\)\(b\)](#)
- F7** S. 17(7A) inserted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\), ss. 135\(2\)\(f\), 219\(1\)\(2\)\(b\)](#)

Commencement Information

- I1** S. 17 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

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18 Powers in relation to concurrent proceedings

- (1) Where, in the course of instant proceedings (see section 17(1)) which are by petition, any of the circumstances mentioned in paragraphs (a) to [F8(g)][F8(gc)] of section 17(2) exists, the sheriff to whom the petition in the instant proceedings was presented may, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest—
 - (a) allow the petition to proceed,
 - (b) sist it, or
 - (c) dismiss it.
- (2) Without prejudice to subsection (1), where, in the course of such instant proceedings, any of the circumstances mentioned in paragraph (a), (b), (e), (f) [F9 or (g)][F9], (g), (ga), (gb) or (gc)] of section 17(2) exists, the Court of Session may, on the Court's own motion or at the instance of the debtor, of a creditor or of any other person having an interest—
 - (a) 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
 - (b) order the petitions to be heard together.
- (3) Without prejudice to subsection (1), where, in the course of such instant proceedings, any of the circumstances mentioned in paragraph (c) or (d) of section 17(2) exists, the sheriff to whom the petition in the instant proceedings was presented may, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest, direct AiB to dismiss the debtor application.
- (4) AiB must recall an award of sequestration if—
 - (a) the award was by virtue of a debtor application, and
 - (b) the sheriff directs AiB to dismiss the debtor application.
- (5) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor or, as the case may be, the other person would have been in if the sequestration had not been awarded.
- (6) A recall of an award of sequestration does not—
 - (a) affect the interruption of prescription caused by—
 - (i) the presentation of the petition for sequestration,
 - (ii) the making of the debtor application, or
 - (iii) the submission of a claim under section 46 or 122,
 - (b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee, with a person acting in good faith, or
 - (c) affect a bankruptcy restrictions order which has not been revoked under section 161(1)(a).
- (7) Without delay after granting recall of an award of sequestration under subsection (4), AiB must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

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- (8) Where, in the course of instant proceedings which are by debtor application, any of the circumstances mentioned in paragraphs (a) to ^{F10}(g)~~[(^{F10}gc)]~~ of section 17(2) exists, AiB may dismiss the debtor application in the instant proceedings.
- (9) Subsection (10) applies 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 (see section 17(8)) is proceeding or an analogous remedy is in force.
- (10) The sheriff, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest, may—
- (a) allow the petition for sequestration to proceed,
 - (b) sist it, or
 - (c) dismiss it.
- (11) Subsection (12) applies where, in respect of the same estate—
- (a) a debtor application has been made and is not yet determined, and
 - (b) an application for an analogous remedy is proceeding or an analogous remedy is in force.
- (12) AiB may proceed to determine the application or may dismiss it.

Textual Amendments

- F8** Word in s. 18(1) substituted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), **ss. 135(3)(a)**, 219(1)(2)(b)
- F9** Words in s. 18(2) substituted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), **ss. 135(3)(b)**, 219(1)(2)(b)
- F10** Word in s. 18(8) substituted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), **ss. 135(3)(c)**, 219(1)(2)(b)
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Commencement Information

- I2** S. 18 in force at 30.11.2016 by [S.S.I. 2016/294](#), **reg. 2**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)