



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 15

MORATORIUM ON DILIGENCE

195 Moratorium on diligence: notice of intention to make debtor application under section 2(1)(a)

- (1) A person may give written notice to AiB of the person's intention—
 - (a) to make a debtor application under section 2(1)(a),
 - (b) to seek to fulfil the conditions required in order for a trust deed granted by or on behalf of that person to be granted the status of protected trust deed, or
 - (c) to apply for the approval of a debt payment programme in accordance with section 2 of the 2002 Act.
- (2) A person may not give notice under subsection (1) if that person has given such notice in the immediately preceding 12 months.
- (3) AiB must, without delay after receipt of a notice under subsection (1), enter in the registers mentioned in subsection (4)—
 - (a) the name of the person who gave the notice, and
 - (b) such other information as AiB considers appropriate in relation to that person.
- (4) The registers are—
 - (a) the register of insolvencies, and
 - (b) the register of debt payment programmes (in this Part referred to as the “DAS register”) established and maintained in accordance with section 7 of the 2002 Act.

Commencement Information

11 S. 195 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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196 Moratorium on diligence: notice of intention to make debtor application under section 6

- (1) A person may give written notice to AiB of the person's intention to make a debtor application under section 6.
- (2) A person may not give notice under subsection (1) in respect of an estate if any person has given such notice in respect of the same estate in the immediately preceding 12 months.
- (3) AiB must, without delay after receipt of a notice under subsection (1), enter in the register of insolvencies—
 - (a) the name of the person who is the subject of the notice, and
 - (b) such other information as AiB considers appropriate in relation to that person.

Commencement Information

I2 S. 196 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

197 Moratorium on diligence following notice under section 195(1) or 196(1)

- (1) This section applies where a person gives notice under section 195(1) or 196(1).
- (2) A moratorium on diligence applies in relation to the person who is the subject of the notice for the moratorium period determined in accordance with section 198.
- (3) While a moratorium on diligence applies in relation to the person it is not competent—
 - (a) to serve a charge for payment in respect of any debt owed by the person, or
 - (b) to commence or execute any diligence to enforce payment of any debt owed by the person,
 - (c) to found on any debt owed by the person in presenting, or concurring in the presentation of, a petition for sequestration of the person's estate, or
 - (d) where an arrestment mentioned in subsection (1) of section 73J of the Debtors (Scotland) Act 1987 has been granted in respect of funds due to the person, to release funds to the creditor under subsection (2) of that section.
- (4) The moratorium period applying in relation to the person must be disregarded for the purpose of determining the period mentioned in subsection (3) of that section 73J.
- (5) Despite subsection (3)(b), it is competent to—
 - (a) auction an article which has been attached in accordance with the 2002 Act where—
 - (i) notice has been given to the debtor under section 27(4) of that Act, or
 - (ii) the article has been removed, or notice of removal has been given, under section 53 of that Act,
 - (b) implement a decree of furthcoming,
 - (c) implement a decree or order for sale of a ship (or of a share of a ship) or cargo, or
 - (d) execute—
 - (i) an earnings arrestment,
 - (ii) a current maintenance arrestment, or
 - (iii) a conjoined arrestment order,

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which came into effect before the day on which the moratorium period in relation to the person began.

Commencement Information

I3 S. 197 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

198 Period of moratorium

- (1) The moratorium period applying in relation to a person is the period which—
- (a) begins on the day on which an entry is made under section 195(3) or 196(3) in the register of insolvencies, and
 - (b) ends on—
 - (i) the day which is [^{F1}6 months] after that day,
 - (ii) such earlier day as is mentioned in subsection (2), or
 - (iii) if subsection (3), (5) or (7) applies, such later day as is determined in accordance with subsection (4), (6) or (8).
- (2) The earlier day is the day on which, in relation to the person who is the subject of the moratorium—
- (a) an entry is made in the register of insolvencies recording the award of sequestration of the estate,
 - (b) an entry is made in the register of insolvencies recording that a trust deed granted by the person has been granted or refused protected status,
 - (c) an entry is made in the DAS register recording the approval of a debt payment programme in accordance with section 2 of the 2002 Act, or
 - (d) written notice is given to AiB—
 - (i) by the person withdrawing the notice given under section 195(1), or
 - (ii) by or on behalf of the person withdrawing the notice given under section 196(1).
- (3) This subsection applies if, on the day which is [^{F2}6 months] after the day on which the moratorium began under subsection (1)(a)—
- (a) a debtor application has been made for sequestration of the estate of the person who is the subject of the moratorium,
 - (b) the moratorium has not ended by virtue of subsection (2)(a), and
 - (c) no decision has been made by AiB under section 27(7)(b).
- (4) Where subsection (3) applies, the moratorium period ends on—
- (a) the day on which an entry is made in the register of insolvencies recording the award of sequestration of the estate,
 - (b) in the case of refusal to award sequestration—
 - (i) the day of the expiry of the period applying by virtue of section 27(6) where no application for review is made under section 27(5), or
 - (ii) the day on which a decision is made by AiB under section 27(7)(b) where an application for review is made, or
 - (c) the day on which written notice is given to AiB—
 - (i) by the person withdrawing the notice given under section 195(1), or

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- (ii) by or on behalf of the person withdrawing the notice given under section 196(1).
- (5) This subsection applies if, on the day which is [^{F3}6 months] after the day on which the moratorium began under subsection (1)(a)—
- (a) an entry has been made in the register of insolvencies recording an application for a trust deed granted by or on behalf of the person who is the subject of the moratorium to be granted the status of protected trust deed, and
 - (b) the moratorium has not ended by virtue of subsection (2)(b).
- (6) Where subsection (5) applies, the moratorium period ends on—
- (a) the day on which an entry is made in the register of insolvencies recording that the trust deed granted by or on behalf of the person has been granted the status of protected trust deed,
 - (b) where such an entry is not made, the day which is [^{F4}7 weeks after the day on which the moratorium would have ended but for this subsection]), or
 - (c) the day on which written notice is given to AiB by the person withdrawing the notice given under section 195(1).
- (7) This subsection applies if, on the day which is [^{F5}6 months] after the day on which the moratorium began under subsection (1)(a)—
- (a) the person who is the subject of the moratorium has applied for approval of a debt payment programme under section 2 of the 2002 Act,
 - (b) the moratorium has not ended by virtue of subsection (2)(c), and
 - (c) the application has not been determined.
- (8) Where subsection (7) applies, the moratorium period ends on—
- (a) the day on which an entry is made in the DAS register recording the approval of the debt payment programme in accordance with section 2 of the 2002 Act,
 - (b) in the case of a rejection of a debt payment programme, the day on which an entry is made in the DAS register recording the rejection, or
 - (c) the day on which written notice is given to AiB by the person withdrawing the notice given under section 195(1).
- [^{F6}(9) The Scottish Ministers may by regulations modify this section so as to vary any of the periods specified in subsections (1)(b)(i), (3), (5), (6)(b) or (7).]

Textual Amendments

- F1** Words in s. 198(1)(b)(i) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\), ss. 23\(2\)\(a\), 59\(1\)](#)
- F2** Words in s. 198(3) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\), ss. 23\(2\)\(b\), 59\(1\)](#)
- F3** Words in s. 198(5) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\), ss. 23\(2\)\(c\), 59\(1\)](#)
- F4** Words in s. 198(6)(b) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\), ss. 23\(3\), 59\(1\)](#)
- F5** Words in s. 198(7) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\), ss. 23\(2\)\(d\), 59\(1\)](#)
- F6** S. 198(9) inserted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\), ss. 24\(2\), 59\(1\)](#)

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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\(2\)\(b\)](#)