



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 2

#### SEQUESTRATION: AWARD AND RECALL

##### *Incomplete or inappropriate debtor applications*

#### **20 Debtor application: incomplete application**

- (1) This section applies where a debtor application is made and AiB considers that—
  - (a) the application is incomplete,
  - (b) further information is required in relation to the application,
  - (c) further evidence is required to substantiate any fact relevant to the application, or
  - (d) any fee or charge applicable to the application is outstanding.
- (2) AiB must specify by notice in writing to the debtor—
  - (a) any further information which must be provided,
  - (b) any further evidence which must be provided, and
  - (c) any fee or charge to be paid.
- (3) Any information, evidence, fee or charge to be provided or paid under subsection (2) must be provided or paid within 21 days (or such greater number of days as may be specified by AiB) beginning with the day on which notice is sent under that subsection.
- (4) AiB may refuse to award sequestration if, after the expiry of the days referred to in subsection (3), AiB considers that—
  - (a) the application remains incomplete,
  - (b) the debtor has provided insufficient information or evidence under subsection (2)(a) or (b), or
  - (c) any fee or charge applicable to the application remains outstanding.

#### **Commencement Information**

**11** S. 20 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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## 21 Refusal of debtor application: inappropriate application

- (1) This section applies where a debtor application is made and AiB considers that an award of sequestration may not be appropriate in the circumstances of the case.
- (2) AiB must specify by notice in writing to the debtor—
  - (a) the reason why AiB considers the application may not be appropriate, and
  - (b) any further information which must be provided within 21 days (or such greater number of days as may be specified by AiB) beginning with the day on which notice is sent under this subsection.
- (3) AiB may refuse to award sequestration if, after the expiry of the days referred to in subsection (2)(b), AiB remains of the view that an award of sequestration would be inappropriate in the circumstances of the case.

### Commencement Information

**I2** S. 21 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### *Award of sequestration*

## 22 When sequestration is awarded

- (1) Where a debtor application (other than an application under section 5(a)) is made and neither section 20 nor section 21 applies, AiB must award sequestration forthwith if satisfied—
  - (a) that the application is made in accordance with—
    - (i) this Act, and
    - (ii) any provisions made under this Act,
  - (b) that section 2(8) applies to the debtor, and
  - (c) that the provisions of section 8(3)(a) have been complied with.
- (2) Where a debtor application is made under section 5(a), AiB must award sequestration forthwith if satisfied—
  - (a) that the application has been made in accordance with this Act and with any provisions made under this Act, and
  - (b) that the provisions of section 8(3)(a) have been complied with.
- (3) Where a petition for sequestration of the estate of a debtor is presented by—
  - (a) a creditor, or
  - (b) a trustee acting under a trust deed,
 the sheriff must grant warrant to cite the debtor to appear before the sheriff on such date as is specified in the warrant to show cause why sequestration should not be awarded.
- (4) Any date specified under subsection (3) must be—
  - (a) no fewer than 6, and
  - (b) no more than 14,
 days after the date of citation.
- (5) The sheriff must forthwith award sequestration on that petition on being satisfied—
  - (a) if the debtor has not appeared, that proper citation has been made of the debtor,

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- (b) that the petition has been presented in accordance with this Act,
  - (c) that the provisions of section 13(1) have been complied with,
  - (d) that in the case of a petition by a trustee—
    - (i) at least one of the conditions in section 2(7)(a) applies, or
    - (ii) the petition includes an averment in accordance with section 2(7)(b), and
  - (e) that, in the case of a petition by a creditor, the requirements of this Act relating to apparent insolvency have been fulfilled.
- (6) But subsection (5) is subject to section 23.
- (7) In this Act, “the date of sequestration” means—
- (a) where a debtor application is made, the date on which sequestration is awarded,
  - (b) where the petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, and sequestration is awarded, the date on which the sheriff granted warrant under subsection (3) (or, where more than one warrant is so granted, the date on which the first warrant is so granted).

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**Commencement Information**

**I3** S. 22 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

**23**      **Circumstances in which sequestration is not to be awarded in pursuance of section 22(5)**

- (1) Sequestration must not be awarded in pursuance of section 22(5) if—
- (a) cause is shown why sequestration cannot competently be awarded,
  - (b) the debtor forthwith pays or satisfies, or produces written evidence of the payment or satisfaction of—
    - (i) the debt in respect of which the debtor became apparently insolvent, and
    - (ii) any other debt due by the debtor to the petitioner and to any creditor concurring in the petition.
- (2) Where the sheriff is satisfied that the debtor will, within 42 days beginning with the day the debtor appears before the sheriff, pay or satisfy the debts mentioned in subparagraphs (i) and (ii) of subsection (1)(b), the sheriff may continue the petition for no more than 42 days.
- (3) The sheriff may continue the petition for such period as the sheriff thinks fit if satisfied—
- (a) that a debt payment programme, under Part 1 of the 2002 Act, relating to the debts mentioned in subparagraphs (i) and (ii) of subsection (1)(b) has been applied for and has not yet been approved or rejected, or
  - (b) that such a debt payment programme will be applied for.

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**Commencement Information**

**I4** S. 23 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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### **[<sup>F1</sup>23A Effect of sequestration on land attachment**

- (1) No land attachment of the heritable property of a debtor, created within the 6 months before the date of sequestration (whether or not subsisting at that date), is effectual to create a preference for the creditor.
- (2) A creditor who creates a land attachment within the 6 months mentioned in subsection (1) is entitled to payment, out of the attached land or out of the proceeds of 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 serving the charge for payment, registering the notice of land attachment, serving a copy of that notice, and registering certificate of service of that copy.
- (3) A notice of land attachment—
  - (a) registered on or after the date of sequestration against land forming part of the debtor's heritable estate (including any estate vesting under section 86(5) in the trustee in the sequestration) is of no effect,
  - (b) registered before that date and in relation to which, by that date, no land attachment is created is of no effect.
- (4) It is not competent for a creditor to insist in a land attachment—
  - (a) created over the debtor's heritable estate before the beginning of the 6 months mentioned in subsection (1), and
  - (b) which subsists on the date of sequestration.
- (5) But subsection (4) is subject to subsections (6) to (9).
- (6) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—
  - (a) the trustee must concur in and ratify the deed implementing that contract, and
  - (b) the appointed person must account for and pay to the trustee in the sequestration any balance of the proceeds of sale (being the balance 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 (disbursement of proceeds of sale of attached land).
- (7) Subsection (6) does not apply where the deed implementing the contract is not registered within 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 26, in the Register of Inhibitions, or
  - (b) the certified copy of the determination of AiB awarding sequestration is recorded, under subsection (2) of that section, in that register.
- (8) Where a decree of foreclosure has been granted but an extract of it has not been registered, the creditor may proceed to complete title to the land by registering that extract provided that the creditor does so before the expiry of the days mentioned in subsection (7).
- (9) The Scottish Ministers may, as they think fit, prescribe a period in substitution for the days mentioned in subsection (7); and a different period may be prescribed for the purposes of subsection (8) than is prescribed for the purposes of subsection (7).

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- (10) Expressions used in this section which also occur in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 have the same meanings in this section as they have in that Chapter.]

#### Textual Amendments

- F1** S. 23(A) inserted by 2007 asp 3, s. 127A(2) (as inserted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), sch. 8 para. 24(2) (with ss. 232, 234(3), 235, 236); [S.S.I. 2016/294](#), reg. 2)

#### Modifications etc. (not altering text)

- C1** S. 23(A)(3)-(10) applied by [1986 c. 45, s. 185\(1\)](#) (as substituted (30.11.2016) by [S.I. 2016/1034, Sch. 1 para. 4\(3\)\(a\)](#))

## 24 Effect of sequestration on diligence generally

- (1) The order of the sheriff, or as the case may be the determination of the debtor application by AiB, awarding sequestration has, as from the date of sequestration, in relation to diligence done (whether before or after that date) in respect of any part of the estate of the debtor, the effect mentioned in subsection (2).
- (2) The effect is of—
- a decree of adjudication of the heritable estate of the debtor for payment of debts duly recorded in the Register of Inhibitions on the date of sequestration,
  - an arrestment in execution and decree of furthcoming,
  - an arrestment in execution and warrant for sale, and
  - an attachment,
- in favour of the creditors according to their respective entitlements.
- (3) Where an inhibition on the estate of the debtor takes effect within the 60 days before the date of sequestration, any relevant right of challenge vests, at the date of sequestration, in the trustee in the sequestration as does any right of the inhibitor to receive payment for the discharge of the inhibition.
- (4) But subsection (3) neither entitles the trustee to receive any payment made to the inhibitor before the date of sequestration nor affects the validity of anything done before that date in consideration of such payment.
- (5) In subsection (3), “any relevant right of challenge” means any right to challenge a deed voluntarily granted by the debtor if it is a right which vested in the inhibitor by virtue of the inhibition.
- (6) No arrestment, money attachment, interim attachment or attachment of the debtor's estate (including any estate vesting in the trustee under section 86(5)) executed—
- within the 60 days before the date of sequestration and whether or not subsisting at that date, or
  - on or after that date,
- is effectual to create a preference for the arrester or attacher.
- (7) The estate so arrested or attached is, or any funds released under section 73J(2) of the Debtors (Scotland) Act 1987 (automatic release of funds) or the proceeds of sale of such estate are, to be handed over to the trustee.

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- (8) An arrester or attacher whose arrestment, money attachment, interim attachment or attachment is executed within the period mentioned in subsection (6)(a) is entitled to payment, out of the arrested or attached estate or out of the proceeds of the sale of such estate, of the expenses incurred—
- (a) in obtaining—
    - (i) warrant for interim attachment, or
    - (ii) the extract of the decree or other document on which the arrestment, money attachment or attachment proceeded,
  - (b) in executing the arrestment, money attachment, interim attachment or attachment, and
  - (c) in taking any further action in respect of the diligence.
- (9) Nothing in subsections (6) to (8) applies to an earnings arrestment, a current maintenance arrangement, a conjoined arrestment order or a deduction from earnings order under the Child Support Act 1991.

**Modifications etc. (not altering text)**

- C2** S. 24(6)-(8) applied by 1956 c. 46, s. 47G(3) (as substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), [sch. 8 para. 4](#) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)

**Commencement Information**

- I5** S. 24 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

**25 Effect of sequestration on diligence: estate of deceased debtor**

- (1) [<sup>F2</sup>Sections 23A(1) and (2) and 24 apply] to the estate of a deceased debtor which—
- (a) has been sequestrated within 12 months after the date of death, or
  - (b) was absolutely insolvent at that date and in respect of which a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 within 12 months after that date,
- but with the modifications mentioned in subsection (2).
- (2) The modifications are that—
- (a) any reference to the date of sequestration is to be construed as a reference to the date of death, and
  - (b) any reference to the debtor is to be construed as a reference to the deceased debtor.
- (3) It is not competent, on or after the date of sequestration, for any creditor <sup>F3</sup>... to be confirmed as executor-creditor on the estate.
- (4) Subsections (5) and (6) apply where, within 12 months after the debtor's death—
- (a) the debtor's estate is sequestrated, or
  - (b) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer the debtor's estate and that estate is absolutely insolvent.
- (5) No confirmation as executor-creditor on that estate at any time after the debtor's death is effectual in a question with the trustee or the judicial factor.

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- (6) But the executor-creditor is entitled—
- (a) out of the estate, or
  - (b) out of the proceeds of sale of the estate,
- to the expenses incurred by the executor-creditor in obtaining the confirmation.

#### Textual Amendments

- F2** Words in s. 25(1) substituted by 2007 asp 3, s. 127A(3)(a) (as inserted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), **sch. 8 para. 24(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)
- F3** Words in s. 25(3) omitted by 2007 asp 3, s. 127A(3)(b) (as inserted (30.11.2016) by virtue of [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), **sch. 8 para. 24(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)

#### Commencement Information

- I6** S. 25 in force at 30.11.2016 by [S.S.I. 2016/294](#), reg. 2

## 26 Registration of warrant or determination of debtor application

- (1) On the sheriff granting warrant under section 22(3) the sheriff clerk must forthwith send—
- (a) a certified copy of the order granting the warrant to the Keeper of the Register of Inhibitions for recording in that register,
  - (b) a copy of that order to AiB, and
  - (c) where the debtor is taking part in a debt payment programme under Part 1 of the 2002 Act, a copy of that order to the DAS administrator (“DAS administrator” having the meaning given by regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141)).
- (2) On awarding sequestration on a debtor application AiB must forthwith send a certified copy of AiB's determination of the application to the Keeper of the Register of Inhibitions for recording in that register.
- (3) Recording under subsection (1)(a) or (2) has the effect, as from the date of sequestration, of an inhibition and of a citation in an adjudication of the debtor's heritable estate at the instance of the creditors who subsequently have claims in the sequestration accepted under section 126.
- (4) The effect mentioned in subsection (3) expires—
- (a) on the recording by virtue of section 27(11)(a) of a certified copy of an order refusing to award sequestration or by virtue of section 30(9)(a) of a certified copy of an order recalling an award of sequestration,
  - (b) on the recording by virtue of section 18(7), 34(4) or 35(7) of a certified copy of a decision, or
  - (c) if the effect has not earlier expired by virtue of paragraph (a) or (b), at the end of 3 years beginning with the date of sequestration.
- (5) But subsection (4)(c) is subject to subsections (6) and (7).



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- (6) The trustee may if not discharged send a memorandum, in a form prescribed by act of sederunt, to the Keeper of the Register of Inhibitions for recording in that register before the expiry of—
  - (a) the 3 years mentioned in subsection (4)(c), or
  - (b) a period for which the effect mentioned in subsection (3) has been renewed by virtue of subsection (7).
- (7) The recording of a memorandum sent in accordance with subsection (6) renews the effect mentioned in subsection (3) for 3 years beginning with the expiry of—
  - (a) the 3 years mentioned in subsection (4)(c), or
  - (b) as the case may be, the period mentioned in subsection (6)(b).
- (8) The trustee may, if appointed or reappointed under section 152, send a memorandum in a form prescribed by act of sederunt to the Keeper of the Register of Inhibitions for recording in that register before the expiry of that appointment.
- (9) The recording of a memorandum sent in accordance with subsection (8) imposes the effect mentioned in subsection (3) for 3 years beginning with the day of notification in accordance with section 153(1).

#### **Commencement Information**

**I7** S. 26 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

## **27 Further matters in relation to award of sequestration**

- (1) On application the sheriff may, at any time after sequestration has been awarded, transfer the sequestration to any other sheriff.
- (2) But subsection (1) is subject to subsection (3).
- (3) The debtor may, with the leave of the sheriff, appeal to the Sheriff Appeal Court against such a transfer.
- (4) Where the sheriff makes an order refusing to award sequestration, the petitioner may appeal against the order within 14 days after the date on which the order is made.
- (5) If, following a debtor application, AiB refuses to award sequestration, the debtor or a creditor concurring in the application may apply to AiB for a review of the refusal.
- (6) Any application under subsection (5) must be made within 14 days beginning with the day on which AiB refuses to award sequestration.
- (7) If an application under subsection (5) is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm the refusal, or award sequestration, within 28 days beginning with that day.
- (8) If AiB confirms the refusal to award sequestration under subsection (7)(b), the debtor or a creditor concurring in the application may, within 14 days beginning with the day of that confirmation, appeal to the sheriff.
- (9) An award of sequestration is not subject to review otherwise than by recall under—



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- (a) section 18(4),
  - (b) sections 29 and 30,
  - (c) section 34, or
  - (d) section 35.
- (10) Subsection (9) is without prejudice to any right to bring an action of reduction of an award of sequestration.
- (11) Where a petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, the sheriff clerk is—
- (a) on the final determination or the abandonment of any appeal under subsection (4) in relation to the petition, or (if there is no such appeal) within the 14 days mentioned in that subsection, to send a certified copy of the order refusing to award sequestration to the Keeper of the Register of Inhibitions for recording in that register,
  - (b) to send forthwith a copy of that order to—
    - (i) AiB, and
    - (ii) where the debtor is taking part in a debt payment programme under Part 1 of the 2002 Act, the DAS administrator (“DAS administrator” having the meaning given by regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141)).
- (12) Where sequestration has been awarded the process of sequestration is not to fall asleep.

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**Commencement Information**

**18** S. 27 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

**28 Benefit from another estate**

- (1) Where a debtor learns, whether before or after the date of sequestration, that the debtor may derive benefit from another estate, the debtor must as soon as practicable after that date inform—
- (a) the trustee in the sequestration, of that fact, and
  - (b) the person who is administering that other estate, of the sequestration.
- (2) A debtor who fails to comply with subsection (1) commits an offence.
- (3) A debtor who commits an offence under subsection (2) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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**Commencement Information**

**19** S. 28 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

*Recall of sequestration*

**29 Petitions for recall of sequestration**

- (1) A petition for recall of an award of sequestration may be presented to the sheriff by—

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- (a) the debtor,
  - (b) any creditor,
  - (c) any other person having an interest (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),
  - (d) the trustee in the sequestration, or
  - (e) AiB.
- (2) Such a petition may not be presented to the sheriff if the only ground is that the debtor has paid, or is able to pay, the debtor's debts in full.
- (3) Subsection (2) does not apply where—
- (a) sequestration was awarded following a petition of a qualified creditor or qualified creditors, and
  - (b) a petition for recall of the award of sequestration includes the ground that the debtor was not apparently insolvent.
- (4) A copy of the petition, along with a notice stating that the recipient of the notice may lodge answers to the petition within 14 days after service of the notice, must be served by the petitioner on—
- (a) the debtor,
  - (b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration,
  - (c) the trustee, and
  - (d) AiB.
- (5) On service, under subsection (4), of a copy of the petition AiB must enter particulars of the petition in the register of insolvencies.
- (6) A petition under this section may be presented at any time.
- (7) But subsection (6) is subject to sections 114(3) and 115(3).
- (8) Notwithstanding that a petition has been presented under this section, the proceedings in the sequestration are to continue as if the petition had not been presented until the recall is granted.
- (9) But subsection (8) is subject to section 30(7).
- (10) Subsection (11) applies where a petitioner under this section, or a person who has lodged answers to the petition, withdraws or dies.
- (11) Any person—
- (a) entitled to present, or
  - (b) entitled to lodge answers to,
- a petition under this section may be sisted in place of the person who has withdrawn or died.

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**Commencement Information**

**I10** S. 29 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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### **30 Recall of sequestration by sheriff**

- (1) The sheriff may recall the award of sequestration if satisfied that in all the circumstances of the case (including those arising after the date of the award) it is appropriate to do so.
- (2) In particular, the sheriff may recall the award if satisfied—
  - (a) that the debtor has paid the debtor's debts in full,
  - (b) that a majority in value of the creditors reside in a country other than Scotland and that it is more appropriate for the debtor's estate to be administered in that other country, or
  - (c) that another award of sequestration of the estate, or of an analogous remedy, as defined in section 17(8), has (or other such awards have) been granted.
- (3) Where another award of sequestration of the debtor's estate has been granted, the sheriff may, after such intimation as the sheriff considers necessary, recall an award (whether or not the award in respect of which the petition for recall was presented).
- (4) Where the sheriff intends to recall an award of sequestration on the ground that the debtor has paid the debtor's debts in full, the order recalling the award may not—
  - (a) be made before the payment in full of the outlays and remuneration of the trustee and of the interim trustee, or
  - (b) be subject to any conditions which are to be fulfilled before the order takes effect.
- (5) On or before recalling an award of sequestration, the sheriff—
  - (a) must make provision for the payment of the outlays and remuneration of the trustee in the sequestration (see section 50(1)) and of any interim trustee (see section 53(1))—
    - (i) by directing that such payment must be made out of the debtor's estate, or
    - (ii) by requiring that a person who was a party to the petition for sequestration, or as the case may be to the debtor application, must pay the whole or any part of those outlays and remuneration,
  - (b) may direct that payment of the expenses of a creditor who was a petitioner for sequestration, or concurred in the debtor's application for sequestration, must be made out of the debtor's estate, and
  - (c) may make any further order the sheriff considers necessary or reasonable in all the circumstances of the case.
- (6) Subsection (5)(b) is without prejudice to subsection (8).
- (7) Where the sheriff considers that it is inappropriate to recall, or to refuse to recall, an award of sequestration forthwith, the sheriff may order that the proceedings in the sequestration are to continue but are to be subject to such conditions as the sheriff may think fit.
- (8) The sheriff may make such order in relation to the expenses in a petition for recall as the sheriff thinks fit.
- (9) The sheriff clerk must send—
  - (a) a certified copy of any order recalling an award of sequestration to the Keeper of the Register of Inhibitions for recording in that register, and

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- (b) a copy of any interim or final order recalling, or refusing to recall, an award of sequestration or a copy of any order under section 114(3)(b) or 115(3)(b)—
  - (i) to AiB, and
  - (ii) if AiB is not the trustee in the sequestration, to the trustee in the sequestration.

#### Commencement Information

**I11** S. 30 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 31 Application to Accountant in Bankruptcy for recall of sequestration

- (1) An application for recall of an award of sequestration may be made to AiB on the ground that the debtor has paid or is able to pay the debtor's debts in full.
- (2) An application may be made by—
  - (a) the debtor,
  - (b) any creditor (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),
  - (c) the trustee (where AiB is not the trustee), or
  - (d) any other person having an interest (whether or not a person who was a petitioner for the sequestration).
- (3) The person making an application must, at the same time as applying to AiB, give to the persons mentioned in subsection (4)—
  - (a) a copy of the application, and
  - (b) a notice informing the recipient that the person has a right to make representations to AiB in relation to the application within 21 days beginning with the day on which the notice is given.
- (4) The persons are—
  - (a) the debtor (where the debtor is not the applicant),
  - (b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration, and
  - (c) the trustee.
- (5) Despite an application being made, the proceedings in the sequestration are to continue as if the application had not been made until a recall of an award of sequestration is granted under section 34(1) (subject to any conditions imposed under section 34(3)).
- (6) Where the applicant withdraws the application or dies, AiB may continue the application by substituting any person mentioned in subsection (2) for the applicant.

#### Commencement Information

**I12** S. 31 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 32 Application under section 31: further procedure

- (1) This section applies where an application is made under section 31.

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- (2) The trustee must prepare a statement on the debtor's affairs so far as within the knowledge of the trustee.
- (3) The trustee must submit the statement to AiB—
  - (a) at the same time as the trustee makes the application under section 31, or
  - (b) where that application is made by another person, within 21 days beginning with the day on which notice is given under section 31(3)(b).
- (4) The statement must—
  - (a) indicate whether the debtor has agreed to—
    - (i) the interim trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the interim trustee (including any outlays and remuneration which are yet to be incurred), and
    - (ii) the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred),
  - (b) state whether or not the debtor's debts have been paid in full (including the payment of the outlays and remuneration of the interim trustee and of the trustee),
  - (c) where the debtor's debts have not been so paid—
    - (i) provide details of any debt which has not been paid, and
    - (ii) indicate whether, in the opinion of the trustee, the debtor's assets are likely to be sufficient to pay the debts in full (including the payment of the outlays and remuneration of the interim trustee and of the trustee) within 8 weeks beginning with the day on which the statement is submitted, and
  - (d) provide details of any distribution of the debtor's estate.
- (5) The trustee must notify every creditor known to the trustee that the application has been made—
  - (a) where it is made by the trustee, within 7 days beginning with the day on which it is made, and
  - (b) where it is made by a person other than the trustee, within 7 days beginning with the day on which notice is given under section 31(3)(b).
- (6) If a creditor has not previously submitted a claim under section 46 or 122, the creditor must, in order to be included in the statement made by the trustee, submit a claim.
- (7) That claim must be submitted—
  - (a) in accordance with section 46(2) to (4), and
  - (b) within 14 days beginning with the day on which notice is given under subsection (5).
- (8) If any creditor submits a claim in accordance with subsection (7), the trustee must update and re-submit the statement within 7 days after the days mentioned in paragraph (b) of that subsection have expired.
- (9) The trustee must update and re-submit the statement if—
  - (a) the statement previously submitted did not state in accordance with subsection (4)(b) that the debtor's debts have been paid in full, and

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- (b) before the day on which the application is determined by AiB, the trustee is able to make that statement.

#### Commencement Information

**I13** S. 32 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 33 Determination where amount of outlays and remuneration not agreed

- (1) This section applies where—
- (a) AiB receives an application under section 31, and
  - (b) the statement submitted by the trustee under section 32 indicates that the amount of the outlays and remuneration of the trustee is not agreed.
- (2) The trustee must—
- (a) at the same time as submitting the statement under section 32, provide AiB with—
    - (i) the trustee's accounts of the trustee's intromissions with the debtor's estate for audit, and
    - (ii) details of the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred), and
  - (b) provide AiB with such other information in relation to that claim as may reasonably be requested by AiB.
- (3) AiB must, within 28 days after the days mentioned in section 32(7)(b) have expired, issue a determination fixing the amount of the outlays and of the remuneration payable to the trustee.
- (4) AiB may, within the 28 days mentioned in subsection (3), determine the expenses reasonably incurred by a creditor who was a petitioner for, or as the case may be concurred in a debtor application for, sequestration.
- (5) Subsections (2) to (4) of section 133 apply to AiB for the purpose of issuing a determination in accordance with subsection (3) as they apply to the commissioners or to AiB for the purpose of fixing an amount under that section.

#### Commencement Information

**I14** S. 33 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 34 Recall of sequestration by Accountant in Bankruptcy

- (1) AiB may recall an award of sequestration if—
- (a) the trustee has notified AiB, in the statement submitted under section 32, that the debtor's debts have been paid in full (including the outlays and remuneration of the interim trustee and the trustee), and
  - (b) AiB is satisfied that in all the circumstances it is appropriate to do so.
- (2) AiB may not recall an award of sequestration after—

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- (a) where no appeal is made under section 37(5)(a), the day which is 8 weeks after the day on which the statement was first submitted under section 32(3), or
  - (b) where such an appeal is made, such later day which is 14 days after the day on which the appeal is finally determined or abandoned.
- (3) If AiB does not under subsection (1) recall an award of sequestration, the sequestration must continue but is to be subject to such conditions as AiB thinks fit.
- (4) Without delay after granting recall under subsection (1), AiB must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

#### Commencement Information

**I15** S. 34 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 35 Recall where Accountant in Bankruptcy trustee

- (1) This section applies where AiB—
- (a) is the trustee, and
  - (b) considers recall of an award of sequestration should be granted on the ground that the debtor has paid, or is able to pay, the debtor's debts in full (including the outlays and remuneration of the interim trustee and the trustee).
- (2) AiB must notify the debtor and every creditor known to AiB that AiB considers subsection (1) applies.
- (3) If a creditor has not previously submitted a claim under section 46 or 122, the creditor must, in order for the creditor's claim to a dividend out of the debtor's estate to be considered, submit a claim.
- (4) The claim must be submitted—
- (a) in accordance with section 46(2) to (4), and
  - (b) within 14 days beginning with the day on which notice is given under subsection (2).
- (5) Before recalling an award of sequestration AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which notice is given under subsection (2), and
  - (b) make a determination of AiB's fees and outlays calculated in accordance with regulations under section 205.
- (6) AiB may recall an award of sequestration if satisfied that—
- (a) the debtor has paid the debtor's debts in full (including the outlays and remuneration of the interim trustee and the trustee),
  - (b) those debts were paid in full within 8 weeks after the days mentioned in subsection (5)(a) have expired, and
  - (c) in all the circumstances it is appropriate to recall it.
- (7) Without delay after recalling an award of sequestration under subsection (6), 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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#### Commencement Information

**I16** S. 35 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 36 Application for recall: remit to sheriff

- (1) AiB may, at any time before deciding under section 34(1) whether to recall an award of sequestration, remit to the sheriff an application made under section 31.
- (2) AiB may, at any time before deciding under section 35(6) whether to recall an award of sequestration, remit the case to the sheriff.
- (3) If an application is remitted under subsection (1) or (2), the sheriff may dispose of the application or the case in accordance with section 30 as if it were a petition presented by AiB under section 29.

#### Commencement Information

**I17** S. 36 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 37 Recall of sequestration by Accountant in Bankruptcy: review and appeal

- (1) A person mentioned in subsection (2) may apply to AiB for a review of—
  - (a) a decision of AiB under section 34(1) or 35(6) to recall, or refuse to recall, an award of sequestration, or
  - (b) a determination of AiB under section 33(4).
- (2) The persons are—
  - (a) the debtor,
  - (b) any creditor,
  - (c) the trustee, and
  - (d) any other person having an interest.
- (3) Any application under subsection (1) must be made within 14 days beginning with the day on which the decision or, as the case may be, the determination or requirement is made.
- (4) If an application under subsection (1) is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the decision, determination or requirement within 28 days beginning with that date.
- (5) A person mentioned in subsection (2) may, within 14 days beginning with the day on which the decision, determination or requirement is made, appeal to the sheriff against—
  - (a) a determination of AiB under section 33(3) or 35(5)(b), or
  - (b) a decision of AiB under subsection (4)(b).
- (6) Any decision of the sheriff on an appeal relating to a determination of AiB under section 33(3) or 35(5)(b) is final.

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**Commencement Information**

**I18** S. 37 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

**38 Effect of recall of sequestration**

- (1) 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.
- (2) But subsection (1) is subject to subsection (3).
- (3) A recall of an award of sequestration is not to—
  - (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 in the sequestration, with a person acting in good faith, or
  - (c) affect a bankruptcy restrictions order which has not been revoked under section 161(1)(a).

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**Commencement Information**

**I19** S. 38 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

**Changes to legislation:**

Bankruptcy (Scotland) Act 2016, PART 2 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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