



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 8

ADMINISTRATION OF ESTATE BY TRUSTEE

General

108 Taking possession of estate by trustee

- (1) The trustee in the sequestration must—
 - (a) for the purpose of recovering the estate of the debtor under section 50(1)(a), take possession as soon as may be after the trustee's appointment—
 - (i) of the debtor's whole estate so far as vesting in the trustee under sections 78 and 86, and
 - (ii) of any document in the debtor's possession or control relating to the debtor's assets or the debtor's business or financial affairs,
 - (b) make up and maintain an inventory and valuation of the estate, and
 - (c) forthwith thereafter send a copy of the inventory and valuation to AiB.
- (2) Paragraph (a) of subsection (1) is subject to section 113.
- (3) The trustee is entitled to have access to, and to make a copy of, any document relating to the assets or the business or financial affairs of the debtor—
 - (a) sent by or on behalf of the debtor to a third party, and
 - (b) in the third party's hands.
- (4) If a person obstructs the trustee in the trustee's exercise, or attempted exercise, of a power conferred by subsection (3), the sheriff may, on the trustee's application, order the person to cease obstructing the trustee.
- (5) The trustee may require delivery to the trustee of any title deed or other document of the debtor, even if a right of lien is claimed over it.
- (6) Subsection (5) is without prejudice to any preference of the holder of the lien.

109 Management and realisation of estate

- (1) The trustee in the sequestration, as soon as may be after the trustee's appointment, must consult with AiB concerning the exercise of the trustee's functions under section 50(1) (a).
- (2) The trustee must comply with any general or specific directions given to the trustee (as the case may be)—
 - (a) by the creditors,
 - (b) on the application under this subsection of the commissioners, by the sheriff, or
 - (c) by AiB,
 as to the exercise by the trustee of such functions.
- (3) But subsection (2) is subject to subsections (4), (9) and (12).
- (4) Subsections (1) and (2) do not apply where the trustee is AiB.
- (5) The trustee may—
 - (a) carry on or close down any business of the debtor,
 - (b) bring, defend or continue any legal proceedings relating to the estate of the debtor,
 - (c) create a security over any part of the estate,
 - (d) where any right, option or other power forms part of the debtor's estate, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power,
 - (e) borrow money in so far as it is necessary for the trustee to do so to safeguard the debtor's estate, and
 - (f) effect or maintain insurance policies in respect of the business or property of the debtor.
- (6) Any sale of the debtor's estate by the trustee may either be by public sale or by private bargain.
- (7) The following rules apply to the sale of any part of the debtor's heritable estate over which a heritable security is held by a creditor or creditors if the rights of the secured creditor or creditors are preferable to those of the trustee—
 - (a) the trustee may sell that part only with the concurrence of every such creditor unless the trustee obtains a sufficiently high price to discharge every such security,
 - (b) the following acts are precluded—
 - (i) the taking of steps by a creditor to enforce the creditor's security over the part after the trustee has intimated to the creditor that the trustee intends to sell the part,
 - (ii) the commencement by the trustee of the procedure for the sale of the part after the creditor has intimated to the trustee that the creditor intends to commence the procedure for its sale,
 - (c) except that where the trustee or a creditor has given intimation under paragraph (b) but has unduly delayed in proceeding with the sale then, if authorised by the sheriff in the case of—
 - (i) sub-paragraph (i) of that paragraph, any creditor to whom intimation has been given may enforce the creditor's security, or

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- (ii) sub-paragraph (ii) of that paragraph, the trustee may sell the part.
- (8) The function of the trustee under section 50(1)(a) to realise the debtor's estate includes the function of selling, with or without recourse against the estate, debts owing to the estate.
- (9) The trustee may sell any perishable goods without complying with any directions given to the trustee under subsection (2)(a) or (c) if the trustee considers that compliance with such directions would adversely affect the sale.
- (10) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this section.
- (11) It is not competent for the trustee or an associate of the trustee, or for any commissioner, to purchase any of the debtor's estate in pursuance of this section.
- (12) The trustee—
- (a) must comply with the requirements of subsection (7) of this section, and
 - (b) may do anything permitted by this section,
- only in so far as, in the trustee's view, it would be of financial benefit to the estate of the debtor, and in the interests of the creditors, to do so.

Contractual powers and money received

110 Contractual powers of trustee

- (1) The trustee in the sequestration may, as respects any contract entered into by the debtor before the date of sequestration—
- (a) adopt it (except where adoption is precluded by its express or implied terms) if the trustee considers that its adoption would be beneficial to the administration of the debtor's estate, or
 - (b) refuse to adopt it.
- (2) But subsection (1) is subject to subsections (3) and (10).
- (3) The trustee must, within 28 days after the receipt by the trustee of a request in writing from any party to a contract entered into by the debtor, adopt or refuse to adopt the contract.
- (4) The 28 days mentioned in subsection (3) may be extended—
- (a) in a case where AiB is the trustee, by the sheriff on the application of AiB, and
 - (b) in any other case, by AiB on the application of the trustee.
- (5) The trustee may, within 14 days beginning with the day of the decision, apply to AiB for a review of a decision of AiB under subsection (4)(b).
- (6) If an application for a review under subsection (5) is made, AiB must—
- (a) take into account any representations made by an interested party within 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision within 28 days beginning with that day.
- (7) The trustee may, within 14 days beginning with the day of the decision, appeal to the sheriff against a decision by AiB under subsection (6)(b).

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- (8) AiB may refer a case to the sheriff for a direction before—
 - (a) making a decision under subsection (4)(b), or
 - (b) undertaking any review under this section.
- (9) An application for a review under subsection (5) may not be made in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (8).
- (10) If, within the 28 days mentioned in subsection (3) or as the case may be within the longer period allowed by virtue of subsection (4), the trustee does not reply in writing to a request under subsection (3), the trustee is deemed to have refused to adopt the contract.
- (11) The trustee may enter into any contract where the trustee considers that to do so would be beneficial for the administration of the debtor’s estate.

111 Money received by trustee

- (1) All money received by the trustee in the sequestration in the exercise of the trustee’s functions must be deposited by the trustee in the name of the debtor’s estate in an interest-bearing account in an appropriate bank or institution.
- (2) But subsection (1) is subject to subsections (3) and (5).
- (3) In any case where the trustee is AiB, all money received by AiB in the exercise of AiB’s functions as trustee must be deposited by AiB in an interest-bearing account in an appropriate bank or institution—
 - (a) in the name of the debtor’s estate, or
 - (b) in the name of the Scottish Ministers.
- (4) But subsection (3) is subject to subsection (5).
- (5) The trustee may at any time retain in the trustee’s hands a sum not exceeding £200 or such other sum as may be prescribed.

Debtor’s home

112 Debtor’s family home

- (1) This section applies where a debtor’s sequestrated estate includes any right or interest in the debtor’s family home.
- (2) At the end of 3 years beginning with the date of sequestration, the right or interest—
 - (a) ceases to form part of the debtor’s sequestrated estate, and
 - (b) is reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (3) Subsection (2) does not apply if—
 - (a) during the 3 years mentioned in subsection (2), the trustee in the sequestration—
 - (i) disposes of or otherwise realises the right or interest,
 - (ii) concludes missives for sale of the right or interest,
 - (iii) sends a memorandum to the Keeper of the Register of Inhibitions under section 26(6),

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- (iv) completes title in the Land Register of Scotland, or as the case may be in the Register of Sasines, in relation to the right or interest,
 - (v) commences proceedings to obtain the authority of the sheriff under section 113(1)(b) to sell or dispose of the right or interest,
 - (vi) commences proceedings in an action for division and sale of the family home,
 - (vii) commences proceedings in an action for the purpose of obtaining vacant possession of the family home,
 - (viii) enters with the debtor into an agreement such as is mentioned in subsection (4), or
 - (ix) commences an action under section 98 in respect of the right or interest, or
 - (b) the trustee in the sequestration—
 - (i) does not, at any time during the 3 years mentioned in subsection (2), know about the facts giving rise to a right of action under section 98, but
 - (ii) commences an action under that section reasonably soon after becoming aware of those facts.
- (4) The agreement referred to in subsection (3)(a)(viii) is an agreement that the debtor is to incur a specified liability to the debtor's estate (with or without interest from the date of the agreement) in consideration of which the right or interest is to—
- (a) cease to form part of the debtor's sequestrated estate, and
 - (b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (5) If the debtor does not inform the trustee or AiB of the right or interest within 3 months beginning with the date of sequestration then the 3 years mentioned in subsection (2) is to be taken—
- (a) not to begin with the date of sequestration, but
 - (b) to begin instead with the date on which the trustee becomes aware of the right or interest.
- (6) The sheriff may, on the trustee's application, substitute for the 3 years mentioned in subsection (2) a longer period—
- (a) in prescribed circumstances, and
 - (b) in such other circumstances as the sheriff thinks appropriate.
- (7) The Scottish Ministers may, by regulations—
- (a) make provision for this section to have effect with the substitution, in such circumstances as may be specified in the regulations, of a shorter period for the 3 years mentioned in subsection (2),
 - (b) prescribe circumstances in which this section does not apply,
 - (c) prescribe circumstances in which a sheriff may disapply this section,
 - (d) make provision requiring the trustee to give notice that this section applies or does not apply,
 - (e) make provision about compensation,
 - (f) make such provision as they consider necessary or expedient in consequence of regulations made under paragraphs (a) to (e), or
 - (g) modify sub-paragraphs (i) to (viii) of subsection (3)(a) so as to—

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- (i) add or remove a matter, or
 - (ii) vary a matter,
- referred to in that subsection.

(8) In this section, “family home” has the same meaning as in section 113.

113 Power of trustee in relation to debtor’s family home

- (1) Before the trustee in the sequestration (in this section referred to as “T”), or the trustee acting under the trust deed (in this section referred to as “TU”), sells or disposes of any right or interest in the debtor’s family home, T or TU must—
 - (a) obtain the relevant consent, or
 - (b) where unable to obtain that consent, obtain the authority of the sheriff in accordance with subsection (2) or as the case may be (3).
- (2) Where T or TU requires to obtain the authority of the sheriff in terms of subsection (1) (b), the sheriff, after having regard to all the circumstances of the case including—
 - (a) the needs and financial resources of the debtor’s spouse or former spouse,
 - (b) the needs and financial resources of the debtor’s civil partner or former civil partner,
 - (c) the needs and financial resources of any child of the family,
 - (d) the interests of the creditors, and
 - (e) the length of the period during which (whether before or after the relevant date) the family home was used as a residence by any of the persons referred to in paragraphs (a) to (c),

may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 3 years) as the sheriff may consider reasonable in the circumstances or may grant the application subject to such conditions as the sheriff may prescribe.
- (3) Subsection (2) applies to an action brought by T or TU—
 - (a) for division and sale of, or
 - (b) for the purpose of obtaining vacant possession of,

the debtor’s family home as that subsection applies to an application under subsection (1)(b).
- (4) Before commencing proceedings to obtain the authority of the sheriff under subsection (2) or (3), T or TU must give notice of the proceedings to the local authority in whose area the home is situated.
- (5) Notice under subsection (4) must be given in such form and manner as may be prescribed.
- (6) For the purposes of subsection (3), any reference in subsection (2) to the granting of the application is to be construed as a reference to the granting of decree in the action.
- (7) In this section—

“family home” means any property in which, at the relevant date, the debtor had a right or interest (whether alone or in common with another person), being property which was occupied at that date as a residence—

 - (a) by—
 - (i) the debtor and the debtor’s spouse or civil partner,

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- (ii) the debtor’s spouse or civil partner,
 - (iii) the debtor’s former spouse or former civil partner,
- in any of those cases, whether with or without a child of the family, or
- (b) by the debtor with a child of the family,
- “child of the family” includes—
- (a) any child or grandchild of either—
 - (i) the debtor, or
 - (ii) the debtor’s spouse or civil partner (or former spouse or civil partner), and
 - (b) any person who has been brought up or accepted by either—
 - (i) the debtor, or
 - (ii) the debtor’s spouse or civil partner (or former spouse or civil partner),
- as if a child of the debtor, spouse, civil partner or former spouse or civil partner,
- (whatever age the child, grandchild or person may be),
- “relevant consent” means, in relation to the sale or disposal of any right or interest in a family home—
- (a) in a case where the family home is occupied by the debtor’s spouse or civil partner (or former spouse or civil partner), the consent of the spouse or civil partner (or as the case may be former spouse or civil partner) whether or not the family home is also occupied by the debtor,
 - (b) where paragraph (a) does not apply, in a case where the family home is occupied by the debtor with a child of the family, the consent of the debtor, and
- “relevant date” means the day immediately preceding the date of sequestration or, as the case may be, the day immediately preceding the date the trust deed was granted.

Rights of spouse or civil partner

114 Protection of rights of spouse against arrangements intended to defeat them

- (1) Subsections (2) and (3) apply where a debtor’s sequestrated estate includes a matrimonial home in respect of which—
 - (a) the debtor, immediately before the date the order was made appointing the trustee, was an entitled spouse, and
 - (b) the other spouse is a non-entitled spouse.
- (2) Where the trustee in the sequestration knows—
 - (a) that the debtor is married to the non-entitled spouse, and
 - (b) where the non-entitled spouse is residing,

the trustee must inform the non-entitled spouse, within 14 days beginning with the date mentioned in subsection (1)(a), of the fact that sequestration of the debtor’s estate has been awarded, of the right of petition which exists under section 29 and of the effect of subsection (3).
- (3) On the petition under section 29 of the non-entitled spouse presented either within 40 days beginning with the date mentioned in subsection (1)(a) or within 10 weeks

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beginning with the date of the award of sequestration the sheriff, if satisfied that the purpose of the petition for sequestration, or as the case may be the debtor application, was wholly or mainly to defeat the occupancy rights of the non-entitled spouse, may—

- (a) under section 30, recall the sequestration, or
 - (b) make such order as the sheriff thinks appropriate to protect the occupancy rights of the non-entitled spouse.
- (4) The reference in subsection (1)(a) to the date the order is made appointing the trustee is, in a case where more than one trustee is appointed in the sequestration, to be construed as a reference to the date the first order is made appointing a trustee.
- (5) In this section—
- “entitled spouse” and “non-entitled spouse” are to be construed in accordance with section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981,
 - “matrimonial home” has the meaning given by section 22 of that Act, and
 - “occupancy rights” has the meaning given by section 1(4) of that Act.

115 Protection of rights of civil partner against arrangements intended to defeat them

- (1) Subsections (2) and (3) apply where a debtor’s sequestrated estate includes a family home in respect of which—
- (a) the debtor, immediately before the date the order was made appointing the trustee, was an entitled partner, and
 - (b) the other partner in the civil partnership is a non-entitled partner.
- (2) Where the trustee in the sequestration knows—
- (a) that the debtor is in civil partnership with the non-entitled partner, and
 - (b) where the non-entitled partner is residing,
- the trustee must inform the non-entitled partner, within 14 days beginning with the date mentioned in subsection (1)(a), of the fact that sequestration of the debtor’s estate has been awarded, of the right of petition which exists under section 29 and of the effect of subsection (3).
- (3) On the petition under section 29 of the non-entitled partner presented either within 40 days beginning with the date mentioned in subsection (1)(a) or within 10 weeks beginning with the date of the award of sequestration the sheriff, if satisfied that the purpose of the petition for sequestration, or as the case may be the debtor application, was wholly or mainly to defeat the occupancy rights of the non-entitled partner, may—
- (a) under section 30, recall the sequestration, or
 - (b) make such order as the sheriff thinks appropriate to protect the occupancy rights of the non-entitled partner.
- (4) The reference in subsection (1)(a) to the date the order is made appointing the trustee is, in a case where more than one trustee is appointed in the sequestration, to be construed as a reference to the date the first order is made appointing a trustee.
- (5) In this section—
- “entitled partner” and “non-entitled partner” are to be construed in accordance with section 101 of the Civil Partnership Act 2004,
 - “family home” has the meaning given by section 135 of that Act, and

“occupancy rights” means the rights conferred by section 101(1) of that Act.

Account of state of affairs

116 Debtor’s account of state of affairs

- (1) This section applies to a debtor who—
 - (a) has not been discharged under this Act, or
 - (b) is subject to a debtor contribution order.
- (2) The trustee in the sequestration must, at the end of—
 - (a) 6 months beginning with the date of sequestration, and
 - (b) each subsequent 6 months,require the debtor to give an account in writing, in such form as may be prescribed, of the debtor’s current state of affairs.

Financial education for debtor

117 Financial education for debtor

- (1) The trustee must notify a living debtor that the debtor is required to undertake a prescribed course of financial education (a “financial education course”) specified by the trustee if, in the opinion of the trustee—
 - (a) any of the circumstances mentioned in subsection (2) applies, and
 - (b) undertaking the course would be appropriate for the debtor.
- (2) The circumstances are—
 - (a) that in the 5 years ending on the date on which the sequestration was awarded—
 - (i) the debtor’s estate was sequestered,
 - (ii) the debtor granted a protected trust deed,
 - (iii) an analogous remedy (as defined in section 17(8)) was in force in respect of the debtor, or
 - (iv) the debtor participated in a debt management programme under which the debtor made regular payments,
 - (b) that the debtor is subject to, or under investigation with a view to an application being made for, a bankruptcy restrictions order,
 - (c) that the trustee considers that the pattern of the debtor’s behaviour, whether before or after the award of sequestration, is such that the debtor would benefit from a financial education course, and
 - (d) that the debtor agrees to undertake a financial education course.
- (3) The trustee must decide whether to issue a notification under subsection (1)—
 - (a) within 6 months beginning with the date of the award of sequestration, and
 - (b) in a case where section 143 applies, as soon as reasonably practicable after—
 - (i) the trustee ascertains the whereabouts of the debtor, or
 - (ii) the debtor makes contact with the trustee.

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- (4) A debtor must not be required to undertake or, as the case may be, complete the financial course specified by the trustee if, in the opinion of the trustee, the debtor—
- (a) is unable to participate in the course as a result of the debtor’s health (including by reason of disability or of physical or mental illness), or
 - (b) has completed a financial education course in the 5 years ending on the date on which the sequestration of the debtor’s estate was awarded.
- (5) Regulations under subsection (1) may in particular—
- (a) prescribe the content, format and method of delivery of a course,
 - (b) prescribe different courses for different circumstances, or
 - (c) make provision for particular courses to be specified by a trustee where particular circumstances in subsection (2) apply.
- (6) In subsection (2)(a)(iv), “debt management programme” includes in particular a programme approved in accordance with section 2 of the 2002 Act.