

Changes to legislation: Bankruptcy (Scotland) Act 2016, SCHEDULE 2 is up to date with all changes known to be in force on or before 19 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. (See end of Document for details) View outstanding changes

SCHEDULE 2

(introduced by sections 7(4), 46(9) and 125(4))

DETERMINATION OF AMOUNT OF CREDITOR'S CLAIM

Amount which may be claimed generally

- 1 (1) Subject to the provisions of this schedule, the amount in respect of which a creditor is entitled to claim is the accumulated sum of principal and any interest which is due on the debt as at the date of sequestration.
- (2) If a debt does not depend on a contingency but would not be payable but for the sequestration until after the date of the sequestration, the amount of the claim must be calculated as if the debt were payable on that date but subject to the deduction of interest at the rate specified in section 129(10) from that date until the date for payment of the debt.
- (3) In calculating the amount of a creditor's claim, the creditor must deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the debtor or by the usage of trade.

Commencement Information

II Sch. 2 para. 1 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Claims for aliment and for periodical allowance on divorce or on dissolution of civil partnership

- 2 (1) A person entitled to aliment, however arising, from a living debtor as at the date of sequestration, or from a deceased debtor immediately before the debtor's death, is not entitled to include in the amount of the person's claim—
 - (a) any unpaid aliment for any period before the date of sequestration unless the amount of the aliment has been quantified by court decree or by any legally binding obligation which is supported by evidence in writing, and—
 - (i) in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses), or
 - (ii) in the case of civil partners (or, where the aliment is payable to a former civil partner in respect of a child after dissolution of a civil partnership, former civil partners),
they were living apart during that period, or
 - (b) any aliment for a period after the date of sequestration.
- (2) Sub-paragraph (1) applies to a periodical allowance payable on divorce or on dissolution of a civil partnership—
 - (a) by virtue of a court order, or
 - (b) under any legally binding obligation which is supported by evidence in writing,
as it applies to aliment and as if, for sub-paragraphs (i) and (ii) of sub-paragraph (1) (a) and the word “they” which immediately follows sub-paragraph (ii), there were substituted “the payer and payee”.

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Commencement Information

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

Debts depending on contingency

- 3 (1) The amount which a creditor is entitled to claim does not include a debt in so far as its existence or amount depend on a contingency.
- (2) But sub-paragraph (1) is subject to sub-paragraph (3).
- (3) On an application by the creditor—
- (a) to the trustee in the sequestration, or
 - (b) if there is no trustee, to AiB,
- the trustee, or AiB, must put a value on the debt in so far as it is contingent.
- (4) The amount in respect of which the creditor is then entitled to claim is that value but no more.
- (5) And where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.
- (6) An interested person may apply to AiB for a review of a valuation under sub-paragraph (3) by the trustee.
- (7) Any application under sub-paragraph (6) must be made within 14 days beginning with the day of the valuation.
- (8) If an application under sub-paragraph (6) 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 or vary the valuation within 28 days beginning with that day.
- (9) An interested person may appeal to the sheriff against a decision by AiB under sub-paragraph (8)(b) within 14 days beginning with the day of the decision.
- (10) AiB may refer a case to the sheriff for a direction before making a decision under sub-paragraph (8)(b).
- (11) An appeal to the sheriff under sub-paragraph (9) may not be made in relation to a matter on which AiB has applied for a direction under sub-paragraph (10).

Commencement Information

I3 [Sch. 2 para. 3](#) in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Secured debts

- 4 (1) A secured creditor, in calculating the amount of the secured creditor's claim, must deduct the value of any security as estimated by the secured creditor.
- (2) But if the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the debtor's estate, the secured creditor is not required to make a deduction of the value of that security.

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- (3) The trustee in the sequestration may, at any time after the expiry of 12 weeks after the date of sequestration, require the secured creditor, at the expense of the debtor's estate, to discharge the security or convey or assign it to the trustee on payment to the creditor of the value specified by the creditor.
- (4) The amount in respect of which the creditor is then entitled to claim is any balance of the creditor's debt remaining after receipt of the payment.
- (5) A creditor whose security has been realised, in calculating the amount of the creditor's claim, must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

Commencement Information

I4 Sch. 2 para. 4 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Valuation of claims against partners for debts of the partnership

- 5
- (1) Where a creditor claims, in respect of a debt of a partnership, against the estate of one of its partners, the creditor must estimate the value of—
 - (a) the debt to the creditor from the firm's estate where that estate has not been sequestrated, or
 - (b) the creditor's claim against that estate where it has been sequestrated, and deduct that value from the creditor's claim against the partner's estate.
 - (2) The amount in respect of which the creditor is entitled to claim on the partner's estate is the balance remaining after that deduction is made.

Commencement Information

I5 Sch. 2 para. 5 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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