

SCHEDULE 8

(introduced by section 234(1))

MODIFICATION OF ENACTMENTS

Judicial Factors (Scotland) Act 1889

- 1 In section 11A(2) of the Judicial Factors (Scotland) Act 1889 (application for judicial factor on estate of person deceased), for the words “73(2) of the Bankruptcy (Scotland) Act 1985, section 51” there is substituted “228(5) of the Bankruptcy (Scotland) Act 2016, section 129”.

Sheriff Courts (Scotland) Act 1907

- 2 In section 34 of the Sheriff Courts (Scotland) Act 1907 (removings), for the words “1856” there is substituted “1985 or 2016”.

Conveyancing (Scotland) Act 1924

- 3 In section 44(4)(c) (limitation of effect of entries in the Register of Inhibitions)—
- (a) after the words “1985”, where they first occur, there is inserted “or the Bankruptcy (Scotland) Act 2016”, and
 - (b) in paragraph (b)—
 - (i) after the words “1985” there is inserted “or (1)(a) of section 26 of the Bankruptcy (Scotland) Act 2016”, and
 - (ii) for the words “that section” there is substituted “the said section 14 or (4) of the said section 26”.

Administration of Justice Act 1956

- 4 In section 47G of the Administration of Justice Act 1956 (ranking of arresting creditor of demise charterer in sequestration or winding up of owner), for subsection (3) there is substituted—
- “(3) Subsections (6) to (8) of section 24 of the Bankruptcy (Scotland) Act 2016 (further provision as regards the effect of sequestration on diligence) and, in so far as applying and modifying those subsections, section 185(1)(a) and (2) of the Insolvency Act 1986 (application of sequestration provisions relating to diligence on winding up) shall apply to such an arrestment as they apply to any other arrestment.”.

Conveyancing and Feudal Reform (Scotland) Act 1970

- 5 In section 19(3) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (calling up of standard security), for the words “1913” there is substituted “2016”.

Prescription and Limitation (Scotland) Act 1973

- 6 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) In section 9(1) (definition of “relevant claim” for purposes of sections 6, 7 and 8 of the Act)—

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- (a) in paragraph (b), for the words “22 or 48 of the Bankruptcy (Scotland) Act 1985” there is substituted “46 or 122 of the Bankruptcy (Scotland) Act 2016”, and
 - (b) in paragraph (c), for the words “5(2)(c) of the Bankruptcy (Scotland) Act 1985” there is substituted “228(1) of the Bankruptcy (Scotland) Act 2016”.
- (3) In section 22A(3) (10 years’ prescription of obligations), in paragraph (b) of the definition of “relevant claim”, for the words “22 or 48 of the Bankruptcy (Scotland) Act 1985” there is substituted “46 or 122 of the Bankruptcy (Scotland) Act 2016”.

Local Government (Scotland) Act 1973

- 7 In section 31 of the Local Government (Scotland) Act 1973 (disqualification for nomination, election and holding office as member of local authority)—
- (a) in subsection (2)(b), for the words “1985” there is substituted “2016”, and
 - (b) in subsection (3B)(a), for the words “56A of the Bankruptcy (Scotland) Act 1985” there is substituted “155 of the Bankruptcy (Scotland) Act 2016”.

Education (Scotland) Act 1980

- 8 In section 73B(12) of the Education (Scotland) Act 1980 (regulations relating to student loans), for the words “54, 54A or 54C of the Bankruptcy (Scotland) Act 1985 or on an order being made under paragraph 11 of Schedule 4 to that Act” there is substituted “137, 138 or 140 of the Bankruptcy (Scotland) Act 2016”.

Family Law (Scotland) Act 1985

- 9 (1) The Family Law (Scotland) Act 1985 is amended as follows.
- (2) In section 14(5)(b) (incidental orders), for the words “41 of the Bankruptcy (Scotland) Act 1985” there is substituted “114 of the Bankruptcy (Scotland) Act 2016”.
 - (3) In section 16(3)(b) (agreements on financial provision), for the words “10(5) of the Bankruptcy (Scotland) Act 1985” there is substituted “17(7) of the Bankruptcy (Scotland) Act 2016”.

Legal Aid (Scotland) Act 1986

- 10 In Part 2 of schedule 2 of the Legal Aid (Scotland) Act 1986 (civil legal aid: excepted proceedings), in paragraph 3(d), for the words “5(2)(a) of the Bankruptcy (Scotland) Act 1985” there is substituted “2(1)(a) of the Bankruptcy (Scotland) Act 2016”.

Debtors (Scotland) Act 1987

- 11 (1) The Debtors (Scotland) Act 1987 is amended as follows.
- (2) In section 9(10)(b) (effect of time to pay order on diligence), for the words “7 of the Bankruptcy (Scotland) Act 1985” there is substituted “16 of the Bankruptcy (Scotland) Act 2016”.
 - (3) In section 13(2) (saving of creditor’s rights and remedies), for the words “24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985” there is substituted “1 of schedule 7 of the Bankruptcy (Scotland) Act 2016”.

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- (4) In section 66 (recall and variation of conjoined arrestment order)—
 - (a) in subsection (2)(e), for the words “13 of the Bankruptcy (Scotland) Act 1985 or the permanent” there is substituted “55 of the Bankruptcy (Scotland) Act 2016 or the”, and
 - (b) in subsection (7), the words “the permanent” are omitted.
- (5) In section 67 (equalisation of diligences not to apply), for the words “24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985” there is substituted “1 of schedule 7 of the Bankruptcy (Scotland) Act 2016”.
- (6) In section 72(5) (effect of sequestration on diligence against earnings), for the words “12(4) of the Bankruptcy (Scotland) Act 1985” there is substituted “22(7) of the Bankruptcy (Scotland) Act 2016”.
- (7) In section 93(4) (recovery from debtor of expenses of certain diligences)—
 - (a) in paragraph (b), for the words “1985” there is substituted “2016”, and
 - (b) in paragraph (f), for the words “Schedule 5 to the Bankruptcy (Scotland) Act 1985” there is substituted “schedule 4 of the Bankruptcy (Scotland) Act 2016”.

Agricultural Holdings (Scotland) Act 1991

- 12 (1) The Agricultural Holdings (Scotland) Act 1991 is amended as follows.
- (2) In section 21(6) (notice to quit and notice of intention to quit), after the words “under the” there is inserted “Bankruptcy (Scotland) Act 2016, the”.
 - (3) In section 22(2)(f) (restrictions on operation of notices to quit), for the words “7 of the Bankruptcy (Scotland) Act 1985” there is substituted “16 of the Bankruptcy (Scotland) Act 2016”.
 - (4) In section 41(3)(b) (direction by Land Court that holding be treated as market garden), for the words “7 of the Bankruptcy (Scotland) Act 1985” there is substituted “16 of the Bankruptcy (Scotland) Act 2016”.
 - (5) In section 85(1) (interpretation), in the definition of—
 - (a) “landlord”, for the words from “, tutor” to the end there is substituted “or tutor of a landlord or the trustee or interim trustee in the sequestration of a landlord’s estate;”, and
 - (b) “tenant”, for the words from “, curator” to the end there is substituted “or curator bonis of a tenant or the trustee or interim trustee in the sequestration of a tenant’s estate;”.

Crofters (Scotland) Act 1993

- 13 In paragraph 10 of schedule 2 of the Crofters (Scotland) Act 1993 (the statutory conditions), for the words “1985” there is substituted “2016”.

Proceeds of Crime (Scotland) Act 1995

- 14 In paragraph 2(1)(j) of schedule 1 of the Proceeds of Crime (Scotland) Act 1995 (administrators), for the words “74 of the Bankruptcy (Scotland) Act 1985” there is substituted “229 of the Bankruptcy (Scotland) Act 2016”.

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Education (Scotland) Act 1996

- 15 In paragraph 4 of schedule 1 of the Education (Scotland) Act 1996 (the Scottish Qualifications Authority), in sub-paragraph (2)(b), for the words “1985” there is substituted “2016”.

Adults with Incapacity (Scotland) Act 2000

- 16 In section 87(4) of the Adults with Incapacity (Scotland) Act 2000 (interpretation), for the words “5 to the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “4 of the Bankruptcy (Scotland) Act 2016”.

International Criminal Court (Scotland) Act 2001

- 17 (1) Schedule 6 of the International Criminal Court (Scotland) Act 2001 (freezing orders in respect of property liable to forfeiture) is amended as follows.
- (2) In paragraph 8 (sequestration)—
- (a) in sub-paragraph (1)(a), for the words “12(4) of the 1985” there is substituted “22(7) of the 2016”,
 - (b) in sub-paragraph (2), for the words “22 of that Act or the permanent trustee in accordance with section 48” there is substituted “46 of that Act or the trustee in the sequestration in accordance with section 122”,
 - (c) in sub-paragraph (2)(a), for the words “31(8) of the 1985” there is substituted “79(1) of the 2016”,
 - (d) in sub-paragraph (2)(b), for the words “32A” there is substituted “90”,
 - (e) in sub-paragraph (2)(c), for the words “31(10) or 32(6) of that Act vests in the permanent trustee” there is substituted “79(4) or 86(5) of that Act vests in the trustee in the sequestration”,
 - (f) in sub-paragraph (3), for the words “1985” there is substituted “2016”,
 - (g) in sub-paragraph (4), for the words “2(5) of the 1985” there is substituted “54(1) of the 2016”, and
 - (h) sub-paragraph (5) is omitted.
- (3) In paragraph 12 (interpretation)—
- (a) the definition of “the 1985 Act” is omitted, and
 - (b) after the definition of “the 1986 Act” there is inserted—

““the 2016 Act” means the Bankruptcy (Scotland) Act 2016;”.

Debt Arrangement and Attachment (Scotland) Act 2002

- 18 (1) The Debt Arrangement and Attachment (Scotland) Act 2002 is amended as follows.
- (2) In section 9Q(3) (recovery of expenses of interim attachment)—
- (a) in paragraph (b), for the words “1985 (c.66)” there is substituted “2016”, and
 - (b) in paragraph (f), for the words “5 to the 1985” there is substituted “4 of the 2016”.
- (3) In section 31(1) (disposal of proceeds of auction), for the words “37 (effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “24 (further provision as regards the effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 2016”.

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- (4) In section 40(3) (recovery from debtor of expenses of attachment)—
- (a) in paragraph (b), for the words “1985 (c.66)” there is substituted “2016”, and
 - (b) in paragraph (f), for the words “5 to the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “4 of the Bankruptcy (Scotland) Act 2016”.

Agricultural Holdings (Scotland) Act 2003

- 19 In section 93 of the Agricultural Holdings (Scotland) Act 2003 (interpretation), in the definition of—
- (a) “landlord”—
 - (i) after the word “guardian” there is inserted “or”, and
 - (ii) for the words from “or permanent” to the end there is substituted “of a landlord or the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of a landlord’s estate;”.
 - (b) “tenant”—
 - (i) after the word “guardian” there is inserted “or”, and
 - (ii) for the words from “or permanent” to the end there is substituted “of a tenant or the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of a tenant’s estate;”.

Fire (Scotland) Act 2005

- 20 In schedule 1A of the Fire (Scotland) Act 2005 (the Scottish Fire and Rescue Service), in paragraph 5(2)(c), after the words “(c.66)” there is inserted “, the Bankruptcy (Scotland) Act 2016”.

Further and Higher Education (Scotland) Act 2005

- 21 In schedule 2B of the Further and Higher Education (Scotland) Act 2005 (regional boards)—
- (a) in paragraph 6(2)(c), after the words “1985” there is inserted “, the Bankruptcy (Scotland) Act 2016”, and
 - (b) in paragraph 6(2)(d), for the words “under either of those Acts” there is substituted “by virtue of paragraph 7 of schedule 4A of that Act of 1986”.

Charities and Trustee Investment (Scotland) Act 2005

- 22 In section 70(3)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (disqualification: supplementary)—
- (a) in sub-paragraph (i), for the words “54, 54A, 54C or 75(4) of the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “137, 138 or 140 of the Bankruptcy (Scotland) Act 2016”, and
 - (b) sub-paragraph (ii) is omitted.

Licensing (Scotland) Act 2005

- 23 In section 28(8) of the Licensing (Scotland) Act 2005 (period of effect of premises licence), for the words “1985 (c.66)” there is substituted “2016”.

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Bankruptcy and Diligence etc. (Scotland) Act 2007

- 24 (1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.
 (2) After section 127 there is inserted—

“127A Amendment of Bankruptcy (Scotland) Act 2016

- (1) The Bankruptcy (Scotland) Act 2016 is amended as follows.
 (2) After section 23 there is inserted—

“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

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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).
- (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.”.
- (3) In section 25 (effect of sequestration on diligence: estate of deceased debtor)
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- (a) in subsection (1), for the words “Section 24 applies” there is substituted “Sections 23A(1) and (2) and 24 apply” and
 - (b) in subsection (3), the words “to raise or insist in an adjudication against the estate of a debtor (including any estate vesting under section 86(5) or” are omitted.”.
- (3) In section 195(4) (recovery from debtor of expenses of money attachment)—
- (a) in paragraph (a), for the words “1985 Act” there is substituted “Bankruptcy (Scotland) Act 2016”, and
 - (b) in paragraph (e), for the words “the 1985 Act” there is substituted “that Act of 2016”.

Criminal Proceedings etc. (Reform) (Scotland) Act 2007

- 25 In section 73(2)(b) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (disqualification where sequestration or bankruptcy), for the words “1985 (c.66)” there is substituted “2016”.

Legal Services (Scotland) Act 2010

- 26 (1) The Legal Services (Scotland) Act 2010 is amended as follows.
- (2) In section 58(3)(a) (conditions for disqualification)—
- (a) the words “or undertaking” are omitted, and

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- (b) after the words “1985,” there is inserted “the Bankruptcy (Scotland) Act 2016.”.
- (3) In section 64(3)(b) (factors as to fitness)—
 - (a) the words “or undertaking” are omitted, and
 - (b) after the words “1985,” there is inserted “the Bankruptcy (Scotland) Act 2016.”.

Housing (Scotland) Act 2010

- 27 (1) The Housing (Scotland) Act 2010 is amended as follows.
- (2) In section 60(3) (power to remove officers), for the words “has the meaning given by the Bankruptcy (Scotland) Act 1985 (c.66)” there is substituted “is to be construed in accordance with section 16 of the Bankruptcy (Scotland) Act 2016”.
- (3) In section 165 (interpretation), in paragraph (c)(i) of the definition of “undischarged bankrupt”, after the words “1985 (c.66)” there is inserted “, the Bankruptcy (Scotland) Act 2016”.

Food (Scotland) Act 2015

- 28 In section 58(1) of the Food (Scotland) Act 2015 (general interpretation), in the definition of “undischarged bankrupt”—
 - (a) in paragraph (c), after the words “1985” there is inserted “, the Bankruptcy (Scotland) Act 2016”, and
 - (b) in paragraph (d), for the words “either of those Acts” there is substituted “that Act of 1985 or that Act of 1986”.