



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 1

### BANKRUPTCY

#### *Miscellaneous and general*

#### **25 Debt limits in sequestrations**

In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—

- (a) in subsection (2B)(a), for “£1,500” substitute “£3,000 or such sum as may be prescribed”; and
- (b) in subsection (4), for “£1,500”, in both places where it occurs, substitute “£3,000”.

#### **26 Creditor to provide debt advice and information package**

In section 5 of the 1985 Act, after subsection (2C), insert—

“(2D) No petition may be presented under subsection (2)(b)(i) above unless the qualified creditor has provided, by such time prior to the presentation of the petition as may be prescribed, the debtor with a debt advice and information package.

(2E) In subsection (2D) above, “debt advice and information package” means the debt advice and information package referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act [2002 \(asp 17\)](#).”.

#### **27 Continuation of sequestration proceedings**

(1) Section 12 of the 1985 Act is amended as follows.

(2) In subsection (3), for “subsection (3A)” substitute “subsections (3A) to (3C)”.

(3) After subsection (3A) insert—

“(3B) Where the sheriff is satisfied that the debtor shall, before the expiry of the period of 42 days beginning with the day on which the debtor appears before the sheriff, pay or satisfy—

- (a) the debt in respect of which the debtor became apparently insolvent; and
- (b) any other debt due by the debtor to the petitioner and any creditor concurring in the petition,

the sheriff may continue the petition for a period of no more than 42 days.

(3C) Where the sheriff is satisfied—

- (a) that a debt payment programme (within the meaning of Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)) relating to—
  - (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 any creditor concurring in the petition,

has been applied for and has not yet been approved or rejected; or

- (b) that such a debt payment programme will be applied for,

the sheriff may continue the petition for such period as he thinks fit.”.

## 28 Abolition of summary administration

- (1) The following provisions of the 1985 Act are repealed.
- (2) In section 21A of that Act (calling of statutory meeting where interim trustee is Accountant in Bankruptcy), in subsection (3)(b)—
  - (a) sub-paragraph (ii); and
  - (b) the word “and” immediately preceding that sub-paragraph.
- (3) Section 23A of that Act (summary administration) and Schedule 2A to that Act.
- (4) In section 24 of that Act (election of permanent trustee), subsections (3B), (4A) and (5).
- (5) In section 25 of that Act (confirmation of permanent trustee), subsection (2A).

## 29 Non-vested contingent interest reinvested in debtor

In section 31 of the 1985 Act (vesting of estate at date of sequestration), after subsection (5), insert—

“(5A) Any non-vested contingent interest vested in the trustee by virtue of subsection (5) above shall, where it remains so vested in the trustee on the date on which the debtor’s discharge becomes effective, be reinvested in the debtor as if an assignation of that interest had been executed by the trustee and intimation thereof made at that date.”.

### **30 Debtor’s requirement to give account of state of affairs**

After section 43 of the 1985 Act, insert—

#### **“43A Debtor’s requirement to give 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—
    - (i) an order made by the sheriff under subsection (2) of section 32 of this Act; or
    - (ii) an agreement entered into under subsection (4B) of that section.
- (2) The trustee shall, at the end of—
  - (a) the period of 6 months beginning with the date of sequestration; and
  - (b) each subsequent period of 6 months,require the debtor to give an account in writing, in such form as may be prescribed, of his current state of affairs.”.

### **31 Restriction of debtor’s right to appeal under sections 49(6) and 53(6) of the 1985 Act**

- (1) In section 49 of the 1985 Act (adjudication of claims)—
  - (a) in subsection (6), after “debtor” insert “(subject to subsection (6A) below)”; and
  - (b) after subsection (6), insert—

“(6A) A debtor may appeal under subsection (6) above if, and only if, he satisfies the sheriff that he has, or is likely to have, a pecuniary interest in the outcome of the appeal.”.
- (2) In section 53 of that Act (procedure after end of accounting period)—
  - (a) in subsection (6), after “debtor” insert “(subject to subsection (6A) below)”; and
  - (b) after subsection (6), insert—

“(6A) A debtor may appeal under subsection (6) above if, and only if, he satisfies the Accountant in Bankruptcy or, as the case may be, the sheriff that he has, or is likely to have, a pecuniary interest in the outcome of the appeal.”.

### **32 Status of order on petition to convert protected trust deed into sequestration**

After section 59C(2) of the 1985 Act (content of court order converting protected trust deed into sequestration), insert—

- “(2A) The provisions of this Act shall apply to an order made by the sheriff under subsection (1) above as if it was a determination by the Accountant in Bankruptcy of a debtor application under section 12(1) of this Act and in relation to which the member State liquidator was a concurring creditor.”.

**33 Power to provide for lay representation in sequestration proceedings**

In section 32(1) of the Sheriff Courts (Scotland) Act 1971 (c. 58) (power of Court of Session to regulate civil procedure in sheriff court), after paragraph (l) insert—

- “(m) permitting a debtor appearing before a sheriff under section 12 of the Bankruptcy (Scotland) Act 1985 (c. 66) (award of sequestration) to be represented, in such circumstances as may be specified in the act of sederunt, by a person who is neither an advocate nor a solicitor.”

**34 Treatment of student loans on sequestration**

(1) In section 73B(12) of the Education (Scotland) Act 1980 (c. 44) (power to make provision in relation to treatment of student loans upon discharge under the 1985 Act), after “receive,” insert “before, on or”.

(2) In paragraph 6 of Schedule 2 to the Education (Student Loans) Act 1990 (c. 6) (treatment of student loans on sequestration), which, notwithstanding its repeal by section 44 of and Schedule 4 to the Teaching and Higher Education Act 1998 (c. 30), is saved by virtue of article 3 of the Teaching and Higher Education Act 1998 (Commencement No. 2 and Transitional Provisions) Order 1998 (S.I. 1998 No. 2004)

- (a) after “Where,” insert “before, on or”; and  
(b) after “before” insert “, on”.

**35 Certain regulations under the 1985 Act: procedure**

In section 72 of the 1985 Act (regulations)—

- (a) the existing words become subsection (1);  
(b) at the beginning insert “Subject to subsection (2) below,”; and  
(c) at the end insert—

“(2) No regulations such as are mentioned in subsection (3) below may be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

(3) The regulations are—

- (a) regulations made under—  
(i) subsection (2B)(a) and (4) of section 5;  
(ii) section 5A; and  
(iii) section 39A(4),  
of this Act; and  
(b) the first regulations under paragraph 5 of Schedule 5 to this Act made after the commencement of section 20 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).”

**36 Minor and consequential amendments of the 1985 Act**

Schedule 1 to this Act, which contains minor amendments of the 1985 Act and amendments of that Act consequential on the provisions of this Part, has effect.