

## SCHEDULES

### SCHEDULE 7

Section 75(1).

#### PART I

##### CONSEQUENTIAL AMENDMENTS

###### *The Judicial Factors (Scotland) Act 1880 (c.4)*

- 1 In section 3 (interpretation), for the words "section 14 or 163 of the Bankruptcy (Scotland) Act 1913 " there shall be substituted the words " section 11A of the Judicial Factors (Scotland) Act 1889 ".

###### *The Bankruptcy Act 1883 (c.52)*

- 2 (1) In subsection (1) of section 32 after the words "adjudged bankrupt" there shall be inserted the words " or his estate has been sequestrated ".
- (2) After subsection (2) of that section there shall be inserted the following subsection
- “(2A) The disqualifications to which a debtor whose estate has been sequestrated in Scotland is subject shall cease to have effect if and when—
- (a) the award of sequestration is recalled or reduced; or
- (b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.”.
- (3) After section 34 there shall be inserted the following section—

###### **“34A Extent of Part II.**

This Part of this Act (except section 34 above) shall extend to Scotland.”.

###### *The Judicial Factors (Scotland) Act 1889 (c.39)*

- 3 In section 2, at the beginning there shall be inserted the words " Without prejudice to section 1(2) of the Bankruptcy (Scotland) Act 1985 (Accountant of Court to be Accountant in Bankruptcy), ".
- 4 After section 11 there shall be inserted the following sections—

###### **“11A Application for judicial factor on estate of person deceased.**

- (1) It shall be competent to one or more creditors of parties deceased, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting, to apply by summary petition to the Court of

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Session or to the sheriff of the sheriffdom within which the deceased resided or carried on business during the year immediately preceding the date of the petition, or within which heritage belonging to the deceased at the time of his death is situated, for the appointment of a judicial factor.

- (2) After such intimation of the petition to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the Court or sheriff may appoint such factor, who shall administer the estate subject to the supervision of the accountant in accordance with this Act and the Judicial Factors (Scotland) Act 1880 and relative acts of sederunt; and, if the deceased's estate is absolutely insolvent within the meaning of section 73(2) of the Bankruptcy (Scotland) Act 1985, section 51 of, and Schedule 1 to, that Act shall apply as if for references to—
- (a) the interim trustee or permanent trustee there were substituted references to the judicial factor; and
  - (b) the date of sequestration there were substituted references to the date of the judicial factor's appointment.

#### **11B Judicial factor's duties to be regulated by act of sederunt.**

The Court of Session shall have full power to regulate by act of sederunt—

- (a) the caution to be found by a factor appointed under section 11A above ;
- (b) the mode in which he shall proceed in realising and dividing the funds, and otherwise in the discharge of his duties ; and
- (c) any other matter which they may deem necessary.”.

#### *The Conveyancing (Scotland) Act 1924 (c. 27)*

5 In section 44(4)(c) (limitation of effect of entries in the register of inhibitions and adjudications)—

- (a) after the words "Bankruptcy (Scotland) Act 1913" there shall be inserted the words " or the Bankruptcy (Scotland) Act 1985 ";
- (b) after the words " effect of recording " there shall be inserted " (a) " and after the words " as aforesaid " there shall be inserted the words " ; or (b) under subsection (1)(a) of section 14 of the Bankruptcy (Scotland) Act 1985 the certified copy of an order shall have expired by virtue of subsection (3) of that section " ; and
- (c) for the words " in terms of paragraph (b) of this subsection ", there shall be substituted the words " in the form provided by Schedule O to this Act ".

#### *The Third Parties (Rights Against Insurers) Act 1930 (c.25)*

6 (1) In section 1(2) (rights of third parties against insurers on bankruptcy of insured), after the words "provable in bankruptcy " there shall be inserted the words " (in Scotland, any claim accepted in the sequestration) ".

(2) In section 4 (application to Scotland)—

- (a) paragraph (a) shall be omitted ; and
- (b) in paragraph (b), for the words "one hundred and sixty three of the Bankruptcy (Scotland) Act 1913 " there shall be substituted the words " 11A of the Judicial Factors (Scotland) Act 1889 ".

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*The Exchange Control Act 1947 (c.14)*

- 7 In paragraph 7 of the Fourth Schedule (application of that Schedule to Scotland), for sub-paragraph (4) there shall be substituted the following sub-paragraph—

“(4) In paragraph 6, for the words from 'complies' to 'creditor's debt' there shall be substituted the words 'is a debt which would allow a creditor to be a qualified creditor in accordance with the requirements of subsection (4) of section 5 of the Bankruptcy (Scotland) Act 1985, be a debt in respect of which a creditor may present a petition for sequestration'.”

*The Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)*

- 8 In paragraph 9(2)(b) of Schedule 3 ("insolvent" for purposes of standard condition as to default), for the words "163 of the Bankruptcy (Scotland) Act 1913" there shall be substituted the words "11A of the Judicial Factors (Scotland) Act 1889".

*The Superannuation Act 1972 (all)*

- 9 In section 5(2) (benefits under civil service superannuation schemes not negotiable), for the words "148" and "1913" there shall be substituted respectively, the words "32(2) and (4)" and "1985".

*The Road Traffic Act 1972 (c.20)*

- 10 In section 150(2) (effect of bankruptcy of insured or secured persons)—
- (a) the words from "'company'" to "and", where it first occurs, shall be omitted; and
  - (b) for the words from "163" to "1913" there shall be substituted the words "11A of the Judicial Factors (Scotland) Act 1889".

*The Prescription and Limitation (Scotland) Act 1973 (c. 52)*

- 11 In section 9(1), for paragraph (b) there shall be substituted the following paragraphs—
- “(b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 48 of the Bankruptcy (Scotland) Act 1985 (or those sections as applied by section 613 of the Companies Act 1985); or
  - (c) by a creditor to the trustee acting under a trust deed as denned in section 5(2)(c) of the Bankruptcy (Scotland) Act 1985 ;”.

*The Local Government (Scotland) Act 1973 (c.65)*

- 12 In section 31(2) (disqualifications regarding members of local authority), for paragraph (b) there shall be substituted the following paragraph—
- “(b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.”.

*The Social Security Pensions Act 1975 (c.60)*

- 13 In section 58 of the Social Security Pensions Act 1975 (under which Schedule 3 to that Act has effect for giving priority in bankruptcy etc. to certain debts) after

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the word "effect" there shall be inserted the words " for the purposes, in respect of the sequestration of estates in Scotland, of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (preferred debts) " ; and, for the purposes of the sequestration of a debtor's estate in Scotland, Schedule 3 to the said Act of 1975 shall have effect as if—

- (i) in paragraph 3(1), for the words " a person going into liquidation or being adjudged bankrupt" there were substituted the words " the sequestration of a debtor's estate " ; and
- (ii) in paragraph 4, for the words "Schedule 4 to the Insolvency" there were substituted the words " Part I of Schedule 3 to the Bankruptcy (Scotland) " .

*The Employment Protection {Consolidation} Act 1978 (c. 44)*

- 14 (1) In section 106(6) (payments out of fund to employees), in paragraph (b) for the words from " 163 " to " 1913 " there shall be substituted the words " 11A of the Judicial Factors (Scotland) Act 1889 " .
- (2) In section 122(8) (employee's rights on insolvency of employer), for the word " admitted " there shall be substituted the word " accepted " .
- (3) In section 125(2) (transfer to Secretary of State of rights and remedies), for paragraph (b) there shall be substituted the following paragraph—  
“(b) section 51 of the Bankruptcy (Scotland) Act 1985 ; and”.
- (4) In section 127(2)(b) (interpretation) for the words from " 163 " to " 1913 " there shall be substituted the words " 11A of the Judicial Factors (Scotland) Act 1889 " .

*The Land Registration (Scotland) Act 1979 (c.33)*

- 15 In section 12(3)(b) (restriction as regards indemnity in respect of registered interest in land), after the word " reduced", where it first occurs, there shall be inserted the words " , whether or not under subsection (4) of section 34, or subsection (5) of section 36, of the Bankruptcy (Scotland) Act 1985 (or either of those subsections as applied by sections 615A(4) and 615B of the Companies Act 1985, respectively), " .

*The Banking Act 1979 (c.37)*

- 16 In section 28 (payments to depositors on institution's insolvency)—
- (a) in subsection (6)—
    - (i) in paragraph (a), after the word " proved " there shall be inserted the words " or whose claim has been accepted in the sequestration " ; and
    - (ii) in paragraph (6)(iii), for the words " 72" and " 1913 " there shall be substituted, respectively, the words " 30 " and " 1985 " ; and
  - (b) in subsection (7)(c)—
    - (i) the words from " where " to " court," shall cease to have effect; and
    - (ii) for the words " deed of arrangement or other settlement or arrangement by way " there shall be substituted the words " trust deed, contract of composition or offer " .

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*The Estate Agents Act 1979 (c.38)*

- 17 In section 23(2) (bankrupts not to engage in estate agency work), in paragraph (a) after the word "recalled" there shall be inserted the words " or reduced ".

*The Value Added Tax Act 1983 (c.55)*

- 18 In section 22(4)(a)(ii) ("insolvency" for purposes of refund of tax in cases of bad debts), for the words " 163 of the Bankruptcy (Scotland) Act 1913 " there shall be substituted the words " 11A of the Judicial Factors (Scotland) Act 1889 ".

*The Companies Act 1985 (c.6)*

- 19 (1) In section 613 (ranking of claims in Scotiand)—
- (a) in subsection (1), for the words from " following provisions " to the end of paragraph (c) there shall be substituted the words—
- “following enactments—
- (a) sections 22 (except subsection (8)), 23(1) and (2),48 (except in so far as it relates to the application of section 22(8)), 49 and 50 of, and Schedule 1 to, the Bankruptcy (Scotland) Act 1985 (claims by creditors for voting and payment of dividends) ;
- (b) paragraphs 11 and 13 of Schedule 6 to that Act (voting at meetings);
- (c) section 60 of that Act (liabilities and rights of co-obligants); and
- (d) sections 8(5) and 22(8) of that Act (including section 22(8) as applied by section 48(7) of that Act);”and
- (b) in subsection (2)—
- (i) for the word " 1913 " there shall be substituted the word " 1985 ";
- (ii) for the word " trustee " there shall be substituted the words " interim or permanent trustee "; and
- (iii) for the word " bankrupt " there, shall be substituted the word " debtor
- 20 After section 615 there shall be inserted the following sections—

**“615A Gratuitous alienations.**

- (1) Where this subsection applies and—
- (a) the winding up of a company has commenced, an alienation by the company is challengeable by—
- (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of such commencement; or
- (ii) the liquidator ;
- (b) an administration order is in force in relation to a company, an alienation by the company is challengeable by the administrator.
- (2) Subsection (1) applies where—
- (a) by the alienation, whether before or after the coming into force of section 75 of the Bankruptcy (Scotland) Act 1985, any part of

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- the company's property is transferred or any claim or right of the company is discharged or renounced ; and
- (b) the alienation takes place on a relevant day.
- (3) For the purposes of subsection (2)(b), the day on which an alienation takes place is the day on which it becomes completely effectual ; and in that subsection " relevant day" means, if the alienation has the effect of favouring—
- (a) a person who is an associate (within the meaning of the Bankruptcy (Scotland) Act 1985) of the company, a day not earlier than 5 years before the date on which—
- (i) the winding up of the company commences ; or
- (ii) as the case may be, the administration order is made ; or
- (b) any other person, a day not earlier than 2 years before such date.
- (4) Subsections (4) to (6) and (8) of section 34 of the Bankruptcy (Scotland) Act 1985 (challenge of gratuitous alienation) apply for the purposes of this section as they apply for the purposes of that section but as if—
- (a) for any reference to the debtor there is substituted a reference to the company ; and
- (b) in subsection (8) for the words: from the beginning to " 1889 " there are substituted the words " A liquidator and, after the coming into force of Chapter III of Part II of the Insolvency Act 1985, an administrator appointed thereunder ".
- (5) In subsections (1) to (3) above, any reference to an administrator or to an administration order—
- (a) shall be construed in accordance with Chapter III of Part II of the Insolvency Act 1985 ; and
- (b) shall be of no effect until the coming into force of that Chapter.
- (6) This section extends to Scotland only.

### **615B Unfair preferences.**

- (1) Section 36 of the Bankruptcy (Scotland) Act 1985 (unfair preferences) applies for the purposes of this Act as it applies for the purposes of that Act but as if—
- (a) for any reference to a debtor there is substituted a reference to a company ;
- (b) in subsection (1), for paragraphs (a) to (c) there are substituted the words " the commencement of the winding up of the company or the making of an administration order in relation to the company. " ;
- (c) in subsection (4) for paragraphs (d) and (b) there are substituted the following paragraphs—
- “(a) in the case of a winding up—
- (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of commencement of the winding up ; or
- (ii) the liquidator ; and (b) in the case of an administration order, the administrator.” ;

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- (d) in subsection (6), for the words from the beginning to " 1889 " there are substituted the words " A liquidator and an administrator "; and
- (e) for subsection (7) there is substituted the following subsection—

“(7) This section shall be construed as one with Part XX of the Companies Act 1985 ; and subsection (5) of section 615A of that Act shall apply in relation to the foregoing provisions of this section as it applies in relation to subsections (1) to (3) of that section.”.

(2) This section applies to Scotland only.”

21 For subsections (1) to (5) of section 623 (effect of diligence within 60 days of winding up Scottish company), there shall be substituted the following subsections—

“(1) In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act 1985—

- (a) subsections (1) to (6) of section 37 (effect of sequestration on diligence); and
- (b) subsections (3), (4), (7) and (8) of section 39 (realisation of estate), apply, so far as is consistent with this Act, in like manner as they apply in the sequestration of a debtor's estate, with the substitutions specified below and with any other necessary modifications.

(2) The substitutions to be made in those sections of the Act of 1985 are as follows—

- (a) for references to the debtor, substitute references to the company,
- (b) for references to the sequestration, substitute references to the winding up,
- (c) for references to the date of sequestration, substitute references to the commencement of the winding up of the company, and
- (d) for references to the permanent trustee, substitute references to the liquidator.

(3) In this section, " the commencement of the winding up of the company " means, where it is being wound up by the court, the day on which the winding up order is made.”.

22 In section 643 (unclaimed dividends etc. in Scotland to be lodged in bank)—

- (a) for the words " a joint stock bank of issue in Scotland" there shall be substituted the words " an appropriate bank or institution as defined in section 73(1) (interpretation) of the Bankruptcy (Scotland) Act 1985 ";
- (b) after the word "bank" wherever it occurs there shall be inserted the words " or institution "; and
- (c) for the words "one hundred and fifty-three of the Bankruptcy (Scotland) Act 1913 " there shall be substituted the words " 58 of the Bankruptcy (Scotland) Act 1985 ".

*The Family Law (Scotland) Act 1985 (c.37)*

23 In section 14(5)(b) for the words from "sections 30" to "1913" there shall be substituted the words " section 41 of the Bankruptcy (Scotland) Act 1985 " .

**PART II**RE-ENACTMENT OF CERTAIN PROVISIONS OF **BANKRUPTCY (SCOTLAND) ACT 1913 (C.20)***Arrestments and POUNDINGS*

- 24 (1) Subject to sub-paragraph (2) below, all arrestments and poundings which have been executed within 60 days prior to the constitution of the apparent insolvency of the debtor, or within four months thereafter, shall be ranked *pari passu* as if they had all been executed on the same date.
- (2) Any such arrestment which is executed on the dependence of an action, shall be followed up without undue delay.
- (3) Any creditor judicially producing in a process relative to the subject of such arrestment or pouncing liquid grounds of debt or decree of payment within the 60 days or four months referred to in sub-paragraph (1) above shall be entitled to rank as if he had executed an arrestment or a pouncing; and if the first or any subsequent arrester obtains in the meantime a decree of furthcoming, and recovers payment, or a pouncing creditor carries through a sale, he shall be accountable for the sum recovered to those who, by virtue of this Act, may be eventually found to have a right to a ranking *pari passu* thereon, and shall be liable in an action at their instance for payment to them proportionately, after allowing out of the fund the expense of such recovery.
- (4) Arrestments executed for attaching the same effects of the debtor after the period of four months subsequent to the constitution of his apparent insolvency shall not compete with those within the said periods prior or subsequent thereto, but may rank with each other on any reversion of the fund attached in accordance with any enactment or rule of law relating thereto.
- (5) Any reference in the foregoing provisions of this paragraph to a debtor shall be construed as including a reference to an entity whose apparent insolvency may, by virtue of subsection (5) of section 7 of this Act, be constituted under subsection (1) of that section.
- (6) This paragraph shall apply in respect of arrestments and poundings which have been executed either before or after the coming into force of this paragraph.
- (7) The repeal of the Bankruptcy (Scotland) Act 1913 shall not affect the equalisation of arrestments and poundings (whether executed before or after the coming into force of this paragraph) in consequence of the constitution of notour bankruptcy under that Act.

*Exemptions from stamp or other duties for conveyances, deeds etc. relating to sequestrated estates*

- 25 Any—
- (a) conveyance, assignation, instrument, discharge, writing, or deed relating solely to the estate of a debtor which has been or may be sequestrated, either under this or any former Act, being estate which after the execution of such conveyance, assignation, instrument, discharge, writing, or deed, shall be and remain the property of such debtor, for the benefit of his creditors, or the interim or permanent trustee appointed or chosen under or by virtue of such sequestration,



- (b) discharge to such debtor,
- (c) deed, assignation, instrument, or writing for reinvesting the debtor in the estate,
- (d) article of roup or sale, or submission,
- (e) other instrument or writing whatsoever relating solely to the estate of any such debtor ; and
- (f) other deed or writing forming part of the proceedings ordered under such sequestration,

shall be exempt from all stamp duties or other Government duty.