STATUTORY INSTRUMENTS

2016 No. 1034

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
BANKRUPTCY

The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016

Made - - - -	*27th October 2016*
Coming into force - -	*30th November 2016*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2) to (5) and (7) of the Scotland Act 1998(**1**).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 and comes into force on 30th November 2016.

Interpretation

2.—(1) In this Order unless the context otherwise requires—

"the 2016 Act" means the Bankruptcy (Scotland) Act 2016(**2**);

"Accountant in Bankruptcy" is to be construed in accordance with section 199 of the 2016 Act;

"creditor" includes a member State liquidator deemed to be a creditor under section 207 of the 2016 Act(**3**);

"date of sequestration" has the meaning given by section 22(7) of the 2016 Act;

(**1**) 1998 c.46.
(**2**) 2016 asp 21 ("the 2016 Act").
(**3**) A member State liquidator is defined in section 228(1) of the 2016 Act as a person falling within the definition of liquidator in Article 2(b) of Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p.19) appointed in proceedings to which it applies in a member State other than the UK. That Regulation is replaced from 26th June 2017 by Regulation (EU) 2015/848 of the Council and the Parliament of 20th May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p.19).

"debtor" includes, without prejudice to the expression's generality, an entity whose estate may be sequestrated by virtue of section 6 of the 2016 Act, a deceased debtor, a deceased debtor's executor or a person entitled to be appointed a deceased debtor's executor;

"debtor application" means an application for sequestration made to the Accountant in Bankruptcy under section 2(1)(a), 5(a) or 6(3)(a), (4)(b) or (7)(a) of the 2016 Act;

"trust deed" means—

(a) a voluntary trust deed granted by or on behalf of a debtor whereby the debtor's estate (other than such of that estate as would not, under any provision of the 2016 Act or of any other enactment, vest in the trustee were that estate sequestrated) is conveyed to the trustee for the benefit of the debtor's creditors generally; and

(b) any other trust deed which would fall within sub-paragraph (a) but for—

(i) the exclusion from the estate conveyed to the trustee of the whole or part of the debtor's dwellinghouse, where a secured creditor holds a security over it; and

(ii) the fact that the debtor's estate is not conveyed to the trustee for the benefit of creditors generally because the secured creditor has, at the debtor's request, agreed before the trust deed is granted not to claim under the trust deed for any of the debt in respect of which the security is held.

(2) Any reference in this Order, however expressed, to the time when a petition for sequestration is presented is to be construed as a reference to the time when the petition is received by the sheriff clerk.

(3) Any reference in this Order, however expressed, to the time when a debtor application is made is to be construed as a reference to the time when the application is received by the Accountant in Bankruptcy.

Provisions ancillary to sections 118 and 119 of the 2016 Act

3.—(1) If a debtor or relevant person is to be examined under section 118 or 119 of the 2016 Act and is residing in a part of the United Kingdom other than Scotland, the sheriff may on the application of the trustee grant a warrant for the arrest of the debtor or relevant person and to have the arrested person taken to the place of the examination.

(2) But a warrant under paragraph (1) must not be granted unless the sheriff is satisfied that it is necessary to grant it to secure the attendance of the debtor or relevant person at the examination.

(3) If the debtor or relevant person is for any good reason prevented from attending for examination, the sheriff may grant a commission to take the examination of the debtor or relevant person (the commissioner being, in this article and in section 121 of the 2016 Act, referred to as an "examining commissioner").

(4) Paragraph (3) is without prejudice to paragraph (5).

(5) The sheriff or the examining commissioner may at any time adjourn the examination to such day as the sheriff or examining commissioner may fix.

(6) The sheriff or examining commissioner may order the debtor or a relevant person to produce for inspection any document—

(a) in the custody or control of the person so ordered; and

(b) relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs,

and to deliver the document or a copy of the document to the trustee in the sequestration for further examination by the trustee.

(7) In this article—

"examination" means a private examination under section 118, or a public examination under section 119, of the 2016 Act;

"relevant person" means a spouse, civil partner or any other person who the trustee believes can give information relating to the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs.

Effect of discharge under section 137, 138 or 140 of the 2016 Act

4.—(1) On the discharge of the debtor under section 137, 138 or 140 of the 2016 Act, the debtor is discharged of all debts and obligations contracted by the debtor, or for which the debtor was liable, at the date of sequestration.

(2) Paragraph (1) is subject to paragraphs (3) and (5).

(3) The debtor is not discharged by virtue of paragraph (1) from—

(a) any liability to pay a fine or other penalty due to the Crown;

(b) any liability to pay a fine imposed in Scotland in a justice of the peace court (or a district court);

(c) any liability under a compensation order (within the meaning of section 249 of the Criminal Procedure (Scotland) Act 1995(**4**));

(d) any liability to forfeiture of a sum of money deposited in court under section 24(6) of the Criminal Procedure (Scotland) Act 1995;

(e) any liability incurred by reason of fraud or breach of trust;

(f) any obligation to pay—

(i) aliment, or any sum of an alimentary nature, under any enactment or rule of law; or

(ii) any periodical allowance payable on divorce by virtue of a court order or under an obligation; or

(g) the obligation imposed on the debtor by section 215 of the 2016 Act.

(4) The obligations mentioned in sub-paragraph (f) of paragraph (3) do not include—

(a) aliment, or a periodical allowance, which could be included in the amount of a creditor's claim under paragraph 2 of schedule 2 to the 2016 Act; or

(b) child support maintenance within the meaning of the Child Support Act 1991(**5**) which was unpaid in respect of any period before the date of sequestration of—

(i) any person by whom it was due to be paid; or

(ii) any employer by whom it was, or was due to be, deducted under section 31(5) of that Act.

(5) The discharge of the debtor under section 137, 138 or 140 of the 2016 Act does not affect any right of a secured creditor for an obligation in respect of which the debtor has been discharged, to enforce the security in respect of that obligation.

(6) In paragraph (3)(a), the reference to a fine or other penalty due to the Crown includes a reference to a confiscation order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002(**6**).

(7) This article extends to all parts of the United Kingdom other than Scotland (and is without prejudice to section 145 of the 2016 Act).

(**4**) 1995 c.46.
(**5**) 1991 c.48.
(**6**) 2002 c.29.

Regulations under section 103, 106 or 205(2) of, or schedule 3 to, the 2016 Act

5.—(1) Any power of the Secretary of State to make regulations under section 103(4), 106(4) or 205(2) of, or paragraph 2(1) or 3 of schedule 3 to, the 2016 Act is exercisable by statutory instrument.

(2) A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Such regulations may make different provision for different cases or classes of case.

Limitation of actions

6.—(1) The following bar the effect of any enactment or rule of law relating to the limitation of actions—

(a) the presentation of a petition for sequestration under section 2, 5 or 6 of the 2016 Act;

(b) concurrence in a debtor application under section 8 of that Act;

(c) the submission of a claim under section 46 or 122 of that Act;

(d) the submission by a creditor of a claim to the trustee acting under a trust deed.

(2) Reference to any of a creditor's acts mentioned in sub-paragraphs (a) to (d) of paragraph (1) barring the effect of any enactment or rule of law relating to the limitation of actions is to be construed as reference to that act having the same effect, for the purposes of the enactment or rule of law, as an effective acknowledgement of the creditor's claim.

(3) Reference in paragraph (1) or (2) to an enactment does not include reference to an enactment which implements or gives effect to any international agreement or obligation.

(4) This article extends to all parts of the United Kingdom other than Scotland (and is without prejudice to sections 13(5), 14(5), 46(8), and 125(3) of, and paragraph 4 of schedule 4 to, the 2016 Act).

Modifications, repeals, revocations and savings provisions

7.—(1) Schedule 1 makes provision for the modification of enactments.

(2) The enactments mentioned in Schedule 2 are repealed, or as the case may be revoked, to the extent mentioned in the second column of that Schedule.

(3) Nothing in this Order affects—

(a) any of the enactments repealed, revoked or modified by this Order in the enactment's operation in relation to—

(i) a sequestration as regards which the petition is presented, or the debtor application is made before; or

(ii) a trust deed executed before,

the coming into force of this Order, or

(b) any power to repeal, revoke or amend any such enactment, in so far as the power relates to such operation of the enactment.

(4) Any modification, repeal or revocation made by Schedule 1 or 2 has the same extent as the enactment to which it relates.

Sequestrations and trust deeds to which Order applies

8.—(1) This Order applies to sequestrations as regards which the petition is presented, or the debtor application is made, on or after the day on which section 236 of the 2016 Act comes into force.

(2) This Order applies to trust deeds executed on or after the day on which Part 14 of the 2016 Act comes into force.

Crown application

9. This Order binds the Crown as creditor only.

Dover House
London
27th October 2016

David Mundell
Secretary of State
Scotland Office