

Bankruptcy and Diligence (Scotland) Bill — Stage 2

After section 2

Tom Arthur

7 After section 2, insert—

<Recall of sequestration: payment of interest

- (1) Part 2 of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 30 (recall of sequestration by sheriff)—
 - (a) in subsection (2), in paragraph (a), after “full” insert “(including the payment of any interest payable on the debtor’s debts and the payment of the outlays and remuneration of the interim trustee and of the trustee)”, and
 - (b) in subsection (4), in paragraph (a), after “full of” insert “—
 - (i) any interest payable on the debtor’s debts (see section 37A), and
 - (ii)”.
- (3) In section 32(4) (application under section 31: further procedure)—
 - (a) in paragraph (b), for “(including” to the end of that paragraph substitute “, including the payment in full of—
 - (i) any interest payable on the debtor’s debts (see section 37A),
 - (ii) the outlays and remuneration of the interim trustee and of the trustee,” and
 - (b) in paragraph (c)(ii), after “payment of” insert “any interest payable on the debtor’s debts and payment of”.
- (4) In section 34(1) (recall of sequestration by Accountant in Bankruptcy), in paragraph (a), for “(including the outlays and remuneration of the interim trustee and the trustee)” substitute “, including the payment in full of—
 - “(i) any interest payable on the debtor’s debts (see section 37A),
 - (ii) the outlays and remuneration of the interim trustee and of the trustee,”.
- (5) In section 35 (recall where Accountant in Bankruptcy trustee)—
 - (a) in subsection (1), in paragraph (b), after “including” insert “the payment of any interest payable on the debtor’s debts and the payment of”, and
 - (b) in subsection (6), in paragraph (a), for “(including” to the end of that paragraph substitute “, including the payment in full of—
 - “(i) any interest payable on the debtor’s debts (see section 37A),
 - (ii) the outlays and remuneration of the interim trustee and of the trustee,”.
- (6) After section 37, insert—

“37A Interest

- (1) This section applies for the purpose of determining the amount of interest payable on the debtor’s debts in relation to a recall of an award of sequestration.
- (2) Interest, between the date of sequestration and the date of payment of the debt, is payable at the rate specified in section 129(10), unless subsection (3) applies.
- (3) This subsection applies if the whole of the debt is paid in full within 6 months after the date of the award of sequestration, in which case interest is not payable on the debt.
- (4) For the avoidance of doubt, if only part of the debt is paid within 6 months after the date of the award of sequestration, interest is payable on the whole of debt (including any part of the debt already paid since the award) in accordance with subsection (2).”>

After section 3

Tom Arthur

8 After section 3, insert—

<Petition for sequestration: citation of debtor

- (1) Section 22 (when sequestration is awarded) of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) For subsection (4) substitute—
“(4) The debtor must be cited no fewer than 6 days before the date specified under subsection (3).”>

After section 5

Tom Arthur

9 After section 5, insert—

<Debtor not traced: former trustee’s outlays and remuneration

- (1) Section 142 (debtor not traced: new trustee) of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In subsection (6)(c), after “133” insert “(there being no effect on any outlays and remuneration paid to the former trustee before the issue of the notice)”>

Tom Arthur

10 After section 5, insert—

<Failure of debtor to co-operate with trustee in sequestration

- (1) The Bankruptcy (Scotland) Act 2016 is modified by subsections (2) and (3).
- (2) After section 147, insert—

“Failure of debtor to co-operate with trustee

147A Debtor fails to co-operate: Accountant in Bankruptcy appointment as new trustee

- (1) This section applies where—
 - (a) AiB is not the trustee in the sequestration,
 - (b) the period of 5 years beginning with the date of sequestration of a debtor’s estate has expired, and
 - (c) the debtor has not been discharged from that sequestration.
- (2) The trustee in the sequestration may apply to AiB for authority to resign office on account of the debtor’s failure to co-operate.
- (3) An application under subsection (2) must be made in the prescribed form and include information about—
 - (a) the nature and the extent of the debtor’s failure to co-operate with the trustee,
 - (b) the actions taken by the trustee to secure the debtor’s co-operation,
 - (c) any other matters that the trustee considers relevant, and
 - (d) details of every creditor known to the trustee.
- (4) Before making an application under subsection (2), the trustee must—
 - (a) notify the debtor by sending an intention to resign notice, and
 - (b) give an intention to resign notice to every creditor known to the trustee.
- (5) An intention to resign notice must—
 - (a) be in the prescribed form, and
 - (b) include a statement informing the recipient that the recipient has a right to make representations to AiB in relation to the application within 14 days beginning with the day on which the application is made.
- (6) After receiving an application under subsection (2), AiB must—
 - (a) take into account any representations made by an interested person within 14 days beginning with the day on which the application is made, and
 - (b) if satisfied of the matters mentioned in subsection (7), issue to the trustee who made the application a notice in the prescribed form granting the application.
- (7) The matters are—
 - (a) that the debtor has failed to co-operate with the trustee to such an extent that the trustee is prevented from carrying out the trustee’s functions under this Act,
 - (b) that the failure is likely to continue, and
 - (c) that the trustee has taken all reasonable steps to secure the debtor’s co-operation.

- (8) AiB—
 - (a) may request such further information from the trustee as AiB considers necessary to make a decision under subsection (6), and
 - (b) must notify the trustee, the debtor and every creditor known to AiB of its decision under subsection (6).
- (9) Where a notice is issued under subsection (6)(b), 14 days after the notice is given—
 - (a) AiB is deemed to be the trustee,
 - (b) AiB must notify the debtor and every creditor known to AiB that AiB is deemed to be the trustee,
 - (c) AiB must make an appropriate entry in the register of insolvencies,
 - (d) the former trustee is not entitled to recover, other than by a claim in the final distribution of the debtor's estate, outlays and remuneration payable under sections 132 and 133 (there being no effect on any outlays and remuneration paid to the former trustee before the issue of the notice),
 - (e) subsections (9) to (13) of section 69 apply in relation to the appointment of AiB as the new trustee as they apply in relation to the appointment of a new trustee under that section,
 - (f) section 116 applies as if there were substituted for subsection (2)—
 - “(2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.”, and
 - (g) section 138 applies to the sequestration with the modifications in subsection (10).
- (10) The modifications are—
 - (a) in subsection (2), the words “after the date which is 12 months after the date on which sequestration is awarded” are omitted,
 - (b) in subsection (3), for “must, as soon as practicable after the date which is 12 months after the date on which sequestration is awarded” substitute “may, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act”,
 - (c) in subsection (6), for “must, as soon as practicable after the date which is 12 months after the date of the refusal” substitute “may, at any time after a refusal, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act”.

147B Accountant in Bankruptcy appointment as new trustee: review and appeal

- (1) The trustee may apply to AiB for a review of a decision under section 147A(6) to refuse an application.
- (2) The debtor or any creditor may apply to AiB for a review of a decision under section 147A(6) to grant an application.
- (3) Any application under subsection (1) or (2) must be made within 14 days beginning with the day of notification of the decision in question.

- (4) If an application for review under subsection (2) is made, the grant of the application is suspended until the determination of that review by AiB.
- (5) If an application for a review under subsection (1) or (2) 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 revoke the decision within 28 days beginning with the day on which the application is made.
- (6) If, under subsection (5)(b), AiB—
 - (a) revoke a decision to grant an application, AiB must revoke the notice given under section 147A(6)(b) granting the application,
 - (b) revoke a decision to refuse an application, AiB must issue a notice under section 147A(6)(b) granting the application, or
 - (c) confirm a decision to grant an application, section 147A(9) applies as if for the words “14 days after the notice is given” there were substituted “14 days after the AiB decision under section 147B(5)(b)”.
- (7) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of AiB under subsection (5)(b) within 14 days beginning with the day of the decision.
- (8) If an appeal relating to a decision mentioned in subsection (6)(b) or (c) is made, the grant of the application is suspended until the determination of that appeal.
- (9) If, on an appeal under subsection (7), the sheriff determines that an application which has been refused should be granted—
 - (a) the sheriff must order AiB to issue a notice under section 147A(6)(b) granting the application, and
 - (b) section 147A(9) applies as if the words “14 days after the notice is given” were omitted.
- (10) If, on an appeal under subsection (7), the sheriff determines that an application which has been granted should be refused, the sheriff must order AiB to revoke the notice given under section 147A(6)(b) granting the application.
- (11) The sheriff clerk must send AiB a copy of the sheriff's decree.
- (12) The decision of the sheriff on an appeal under subsection (7) is final.

147C Debtor fails to co-operate with AiB as trustee

- (1) This section applies where—
 - (a) AiB is the trustee but was not appointed as trustee under section 147A,
 - (b) the period of 5 years beginning with the date of sequestration a debtor's estate has expired, and
 - (c) the debtor has not been discharged from that sequestration.
- (2) AiB, if satisfied of the matters mentioned in subsection (3), may make a determination that the debtor has failed to co-operate.

- (3) The matters are—
 - (a) that the debtor has failed to co-operate with AiB as trustee to such an extent that AiB is prevented from carrying out the AiB's functions as trustee under this Act,
 - (b) that the failure is likely to continue, and
 - (c) that AiB has taken all reasonable steps to secure the debtor's co-operation.
- (4) If AiB makes a determination under subsection (2)—
 - (a) AiB must notify the debtor and every creditor known to AiB that AiB has made a determination under subsection (2), and
 - (b) section 116 applies as if there were substituted for subsection (2)—
 - “(2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.”, and
 - (c) section 138(6) applies as if for the words “must, as soon as practicable after the date which is 12 months after the date of the refusal” there were substituted “may, at any time after a refusal, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act.”.
- (3) In section 214 of the Bankruptcy (Scotland) Act 2016, after paragraph(2)(q) insert—
 - “(qa) section 147B(5),”.
- (4) In calculating a period of 5 years for the purposes of section 147A(1)(b) or section 147C(1)(b) of the Bankruptcy (Scotland) Act 2016, any part of that period which is before the commencement of subsection (1) may be included.>

Tom Arthur

- 11** After section 5, insert—

<Commissioners: disqualification from office where AiB is trustee

- (1) Part 4 of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 76 (commissioners), in the opening words, after “sequestration” insert “where AiB is not the trustee”.
- (3) In section 77 (election, resignation and removal of commissioners), after subsection (6), insert—
 - “(6A) A commissioner ceases to hold office if AiB is, or becomes, the trustee.”.>

Colin Smyth

- 12** After section 5, insert—

<Earnings arrestments

Earning Arrestments

- (1) Schedule 2 of the Debtors (Scotland) Act 1987 is modified as follows.
- (2) In table A (deductions from weekly earnings), for “£150.94” substitute “£230.14” wherever it appears.

- (3) In table B (deductions from monthly earnings), for “£655.83” substitute “£1,000” wherever it appears.
- (4) In table C (deductions from daily earnings), for “£21.56” substitute “£32.87” wherever it appears.>

Section 6

Tom Arthur

13 In section 6, page 4, line 31, at end insert—

<() After section 73C, insert—

“73CA Service of documents for purposes of sections 73B and 73C

- (1) In relation to the service of documents for the purposes of sections 73B and 73C, the documents may be served on the arrestee—
 - (a) by being delivered personally to the arrestee,
 - (b) by being sent to the proper address of the arrestee—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or
 - (ii) by a postal service which provides for the delivery of the document to be recorded, or
 - (c) by being transmitted to the arrestee electronically.
- (2) For the purpose of subsection (1)(b), the proper address of the arrestee is—
 - (a) in the case of a body corporate, the address of the registered or principal office of the body,
 - (b) in the case of a partnership, the address of the principal office of the partnership,
 - (c) in any other case, the last known address of the arrestee.
- (3) Where a document is served as mentioned in subsection (1)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.
- (4) For the purpose of subsection (1)(c)—
 - (a) electronic transmission of a document must be effected in a way that the arrestee has indicated to the creditor or officer of court that the arrestee is willing to receive the document,
 - (b) the arrestee’s indication of willingness to receive a document in a particular way may be—
 - (i) specific to the document in question or generally applicable to documents of that kind,
 - (ii) expressed specifically to the creditor or officer of court or generally (for example on a website),
 - (iii) inferred from the arrestee having previously been willing to receive documents from the creditor or officer of court in that way and not having indicated unwillingness to do so again,

- (c) the creditor or officer of court's uploading of a document to an electronic storage system from which the arrestee is able to download the document may constitute electronic transmission of the document, where the arrestee is sent a notification that the document has been uploaded in that way,
- (d) a notice transmitted electronically is taken to have been received on the day of transmission unless the contrary is shown.”>

Section 7

Tom Arthur

14 In section 7, page 5, line 10, at end insert—

<() In section 70 (execution and intimation of copies)—

(a) for subsection (3), substitute—

“(3) An earnings arrestment schedule or a current maintenance arrestment schedule may be served on an employer—

(a) by being delivered personally to the employer,

(b) by being sent to the proper address of the employer—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) by being transmitted to the employer electronically.

(3A) For the purpose of subsection (3)(b), the proper address of the employer is—

(a) in the case of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,

(c) in any other case, the last known address of the employer.

(3B) Where a document is served as mentioned in subsection (3)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(3C) For the purpose of subsection (3)(c)—

(a) electronic transmission of a document must be effected in a way that the employer has indicated to the officer of court that the employer is willing to receive the document,

(b) the employer's indication of willingness to receive a document in a particular way may be—

(i) specific to the document in question or generally applicable to documents of that kind,

(ii) expressed specifically to the officer of court or generally (for example on a website),

- (iii) inferred from the employer having previously been willing to receive documents from the officer of court in that way and not having indicated unwillingness to do so again,
 - (c) the officer of court's uploading of a document to an electronic storage system from which the employer is able to download the document may constitute electronic transmission of the document, where the employer is sent a notification that the document has been uploaded in that way,
 - (d) a notice transmitted electronically is taken to have been received on the day of transmission unless the contrary is shown.”, and
- (b) for subsection (5), substitute—
- “(5) Section 12(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 applies to the service of an earnings arrestment schedule, a current maintenance arrestment schedule or a conjoined arrestment order as it applies to the execution of an attachment except where such service is by post or transmitted electronically.”.>

After section 10

Tom Arthur

15 After section 10, insert—

<Arrestment of ships

Arrestment of ships on a Sunday

Any rule of law that prevents the execution of an arrestment on a Sunday ceases to have effect insofar as it relates to the arrestment of ships.>