Bankruptcy (Scotland) Bill 2011

[CONSULTATION DRAFT]

CONTENTS

Section

PART 1

APPLICATION OR PETITION FOR SEQUESTRATION

Applications and petitions

- 1 Sequestration of estate
- 2 Sequestration of estate of living debtor
- 3 Sequestration of estate of deceased debtor
- 4 Sequestration of other estates
- 5 Qualified creditor and qualified creditors
- 6 Debtor applications: general
- 7 Debtor applications by low income and low asset debtors
- 8 Certificate for sequestration
- 9 Death or withdrawal
- 10 Petition for sequestration of estate: provision of information
- 11 Debtor application: provision of information
- 12 Further provisions relating to presentation of petitions
- 13 Further provisions relating to debtor applications

Jurisdiction

14 Petition or debtor application for sequestration of estate: jurisdiction

Meaning of apparent insolvency

15 Meaning of apparent insolvency

Concurrent proceedings

- 16 Duty to notify existence of concurrent proceedings for sequestration or analogous remedy
- 17 Powers in relation to concurrent proceedings for sequestration or analogous remedy

Creditor's oath

18 Creditor's oath

PART 2

AWARD OF SEQUESTRATION ETC.

Award of sequestration

- 19 When sequestration is awarded
- 20 Effect of sequestration on land attachment
- 21 Further provision as regards the effect of sequestration on diligence

- 22 Registration of warrant or determination of debtor application
- 23 Further provisions relating to award of sequestration

Recall of sequestration

- 24 Petitions for recall of sequestration
- 25 Recall of sequestration

PART 3

INITIAL STAGES OF SEQUESTRATION, STATUTORY MEETING AND TRUSTEE VOTE

Initial stages

- 26 Interim preservation of estate
- 27 Statement of assets and liabilities etc.
- 28 Trustee's duties on receipt of list of assets and liabilities

Statutory meeting

- 29 Statutory meeting
- 30 Calling of statutory meeting
- 31 Procedure where no statutory meeting called
- 32 Submission of claims for voting purposes at statutory meeting
- 33 Proceedings at statutory meeting before trustee vote

Trustee vote

34 Trustee vote

PART 4

TRUSTEES AND COMMISSIONERS

Trustees

- 35 Functions of the trustee
- 36 Functions of an interim trustee
- 37 Appointment of trustee or of interim trustee
- 38 Resignation, removal etc. of interim trustee
- 39 Termination of interim trustee's functions where not appointed trustee
- 40 Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee
- 41 Appointment of replacement trustee
- 42 Provisions relating to termination of original trustee's functions
- 43 Accountant in Bankruptcy to account for intromissions in capacity of original trustee
- 44 Discharge of original trustee
- 45 Resignation and death of trustee
- 46 Replacement of trustee acting in 2 or more sequestrations
- 47 Removal of trustee and provision for where trustee is unable to act or should no longer continue to act

Commissioners

- 48 Commissioners
- 49 Election, resignation and removal of commissioners

ii

PART 5

VESTING

Vesting

- 50 Vesting of estate at date of sequestration
- 51 Provision supplementary to section 50
- 52 Property subject to restraint order
- 53 Property released from detention
- 54 Property in respect of which receivership or administration order is made
- 55 Property in respect of which realisation order is made
- 56 Property subject to certain orders where confiscation order discharged or quashed
- 57 Vesting of estate after sequestration
- 58 Debtor's agreement
- 59 Further provision as regards vesting of estate after sequestration
- 60 Dealings and circumstances of debtor after sequestration

Limitation on vesting

61 Limitation on vesting

PART 6

$SAFEGUARDING \ \text{INTERESTS} \ \text{OF} \ \text{CREDITORS}$

Gratuitous alienations and unfair preferences

- 62 Gratuitous alienations
- 63 Unfair preferences

Recall of certain orders

64 Recall of order for payment of capital sum on divorce or on dissolution of civil partnership

Excessive contributions

- 65 Recovery of excessive pension contributions
- 66 Orders under section 65
- 67 Orders under section 65: supplementary
- 68 Recovery of excessive contributions in pension-sharing cases
- 69 Excessive contributions in pension-sharing cases: recovery orders
- 70 Recovery orders: supplementary

PART 7

ADMINISTRATION OF ESTATE BY TRUSTEE

General

- 71 Taking possession of estate by trustee
- 72 Management and realisation of estate

Contractual powers and money received

- 73 Contractual powers of trustee
- 74 Money received by trustee

Debtor's home

75 Debtor's home ceasing to form part of sequestrated estate

76 Power of trustee in relation to the debtor's family home

Rights of spouse or civil partner

- 77 Protection of rights of spouse against arrangements intended to defeat them
- 78 Protection of rights of civil partner against arrangements intended to defeat them

Account of state of affairs

79 Debtor's requirement to give account of state of affairs

PART 8

EXAMINATION OF DEBTOR

Private and public examination

- 80 Private examination
- 81 Public examination
- 82 Provisions ancillary to sections 80 and 81

Conduct of examination

83 Conduct of examination

PART 9

CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

Submission and adjudication of claims

- 84 Submission of claims to trustee
- 85 Evidence as to validity or amount of claim
- False claims etc.
- 87 Further provision as to claims
- 88 Adjudication of claims

Entitlement to vote and draw a dividend

89 Entitlement to vote and draw a dividend

Distribution

- 90 Order of priority in distribution
- 91 Accounting periods
- 92 Estate to be distributed in accordance with accounting periods

Procedure after end of accounting period

- 93 Submission of accounts and scheme of division
- Audit of accounts and determination as to outlays and remuneration payable to trustee
- 95 Appeal against determination as to outlays and remuneration payable to trustee
- 96 Further provision as to procedure after end of accounting period
- 97 Procedure after end of accounting period where Accountant in Bankruptcy is trustee

PART 10

DISCHARGE

Discharge of debtor

98 Automatic discharge of debtor

- 99 Deferral of automatic discharge
- 100 Effect of discharge under section 98
- 101 Discharge on composition

Discharge of trustee

- 102 Discharge of trustee
- 103 Unclaimed dividends
- 104 Discharge of Accountant in Bankruptcy

PART 11

BANKRUPTCY RESTRICTIONS ORDERS, INTERIM BANKRUPTCY RESTRICTIONS ORDERS AND BANKRUPTCY RESTRICTIONS UNDERTAKINGS

Bankruptcy restrictions orders

- 105 Bankruptcy restrictions order
- 106 Grounds for making bankruptcy restrictions order
- 107 Bankruptcy restrictions order: application of section 134(8)
- 108 Timing of application for bankruptcy restrictions order
- 109 Duration of bankruptcy restrictions order and application for annulment

Interim bankruptcy restrictions orders

110 Interim bankruptcy restrictions orders

Bankruptcy restriction undertakings

- 111 Bankruptcy restrictions undertakings
- 112 Bankruptcy restrictions undertakings: application of section 134(8)
- 113 Bankruptcy restrictions orders, interim bankruptcy restrictions orders and bankruptcy restrictions undertakings: effect of recall of sequestration

Effect of discharge on approval of offer of composition

114 Effect of discharge on approval of offer of composition

PART 12

VOLUNTARY TRUST DEEDS FOR CREDITORS

- 115 Voluntary trust deeds for creditors
- 116 Petition for conversion into sequestration
- 117 Contents of affidavit required under section 116(2)
- 118 Power of sheriff on petition for conversion of trust deed

PART 13

ACCOUNTANT IN BANKRUPTCY

Appointment

119 The Accountant in Bankruptcy

Functions

- 120 Supervisory functions of the Accountant in Bankruptcy
- 121 Performance of certain functions of the Accountant in Bankruptcy
- 122 Further duty of Accountant in Bankruptcy

Directions to Accountant in Bankruptcy

123 Directions to Accountant in Bankruptcy

Fees for Accountant in Bankruptcy

124 Fees for Accountant in Bankruptcy

PART 14

$M {\rm ISCELLANEOUS} \ {\rm AND} \ {\rm GENERAL}$

Miscellaneous

- 125 Liabilities and rights of co-obligants
- 126 Member State liquidator deemed creditor
- 127 Trustee's duty to provide certain notices and copies of documents to member State liquidator
- 128 Extortionate credit transactions
- 129 Sederunt book and other documents
- 130 Power to cure defect in procedure
- 131 Debtor to co-operate with trustee
- 132 Arbitration and compromise
- 133 Meetings of creditors and commissioners
- 134 General offences by debtor etc.
- 135 Summary proceedings
- 136 Outlays of insolvency practitioner in actings as interim trustee or trustee
- 137 Supplies by utilities
- 138 Edinburgh Gazette
- 139 Disqualification provisions: power to make orders

General

- 140 Regulations
- 141 Modification of regulation making powers
- 142 Variation of references to time, money etc.
- 143 Interpretation
- 144 Meaning of "associate"
- 145 Proceedings under EC Regulation: modified definition of "estate"
- 146 Crown application
- 147 Re-enactment
- 148 Modifications, repeals, savings, revocations and transitional provisions
- 149 Continuity of the law
- 150 Short title and commencement
- Schedule 1-Determination of amount of creditor's claim
- Schedule 2—Preferred debts
 - Part 1-List of preferred debts
 - Part 2—Interpretation of part 1
- Schedule 3—Discharge on composition
- Schedule 4—Voluntary trust deeds for creditors
- Schedule 5-Meetings of creditors and commissioners
 - Part 1—Meetings of creditors other than the statutory meeting
 - Part 2—All meetings of creditors

- Part 3—Meetings of commissioners
- Schedule 6—Re-enactment of sections 10 and 189 of the Bankruptcy (Scotland) Act 1913
- Schedule 7—Modification of enactments Schedule 8—Repeals and revocations
- - Part 1—Repeals
 - Part 2—Revocations