

[1] After section 15, page 19, line 24, insert –

<16 Sequestration to be awarded only where reasonable

In section 12(3) of the Bankruptcy (Scotland) Act 1985 (c.66) –

(a) after the words ‘subject to subsection (3A)’ insert ‘and (3B)’;

(b) after subsection (3A) insert the following –

‘(3B) The court may award sequestration under this section only where it considers it reasonable to do so, and in considering whether to award sequestration the court shall have regard in particular to –

(a) the nature of and reasons why the debtor became apparently insolvent,

(b) the debtor’s ability to repay within a reasonable period through the Debt Arrangement Scheme or otherwise the debt in respect of which the debtor became apparently insolvent,

(c) any action taken by the creditor to assist the debtor in repaying the debt in respect of which the debtor became apparently insolvent, and

(d) where the debtor owns their sole or main residence, the ability of the debtor and any other person residing with them to secure reasonable alternative accommodation’; and

(c) after subsection (3A) insert the following –

‘(3AA) Where in terms of subsection (3B) the court considers it not reasonable to award sequestration, it may as it thinks fit, adjourn proceedings under this Act for a period or periods, with or without imposing conditions’.

[2] In section 86, page 55, line 12, substitute subsection (3) as follows –

‘(3) The sheriff may only grant a warrant for sale under this section if satisfied that it is reasonable to do so, and in considering whether it is reasonable shall have regard in particular to –

(a) the nature of and reasons for the debt recoverable by the land attachment,

(b) the debtor’s ability to repay within a reasonable period through the Debt Arrangement Scheme or otherwise the sum recoverable by the land attachment,

(c) any action taken by the creditor to assist the debtor in repaying the sum recoverable by the land attachment,

(d) where the debtor owns their sole or main residence, the ability of the debtor and any other person residing with them to secure reasonable alternative accommodation,

and where the sheriff is satisfied that it is not reasonable to grant a warrant for sale, the application for warrant for sale may be dismissed or adjourned for a period or periods, with or without imposing conditions’.