



Bankruptcy and Debt Advice (Scotland) Act 2014

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Functions of sheriff and Accountant in Bankruptcy in sequestration

25 Application by trustee for direction on matters in sequestration

- (1) In section 3(6) of the 1985 Act (trustee application to the sheriff for directions in relation to any particular matter), for “A trustee” substitute “Where the Accountant in Bankruptcy is the trustee, the Accountant in Bankruptcy”.
- (2) After section 3 of the 1985 Act, insert—

“3A Application to Accountant in Bankruptcy for a direction

- (1) This section applies where the Accountant in Bankruptcy is not the trustee.
- (2) The trustee may apply to the Accountant in Bankruptcy for a direction in relation to any particular matter arising in the sequestration.
- (3) The Accountant in Bankruptcy may, before giving a direction on any particular matter under this section, refer the matter to the sheriff by making an application for a direction in relation to that matter.
- (4) The trustee may apply to the Accountant in Bankruptcy for a review of a direction given by the Accountant in Bankruptcy under this section.
- (5) An application for a review under subsection (4) may not be made—
 - (a) by an interim trustee,
 - (b) after the expiry of the period of 14 days beginning with the day on which notice of the direction by the Accountant in Bankruptcy is given to the trustee, or
 - (c) in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under subsection (3).
- (6) If an application for a review under subsection (4) is made, the Accountant in Bankruptcy must—

- (a) take into account any representations made by the trustee, the debtor, any creditor and any other person having an interest before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the direction before the expiry of the period of 28 days beginning with the day on which the application is made.
- (7) The trustee may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (6)(b) before the expiry of the period of 14 days beginning with the day of the decision.”.

26 Recall of sequestration by sheriff

- (1) In section 16 of the 1985 Act (petitions for recall of sequestration)—
- (a) after subsection (1), insert—
 - “(1A) A petition for recall of an award of sequestration may not be presented to the sheriff if the only ground is that the debtor has paid or is able to pay the debtor’s debts in full.
 - (1B) Subsection (1A) does not apply where—
 - (a) sequestration was awarded following a petition of a qualified creditor or qualified creditors, and
 - (b) a petition for recall of the award of sequestration includes the ground that the debtor was not apparently insolvent.”, and
 - (b) in subsection (4)—
 - (i) after “presented”, where it first occurs, insert “at any time”, and
 - (ii) paragraphs (a) and (b) are repealed.
- (2) The title of section 17 of the 1985 Act becomes “**Recall of sequestration by sheriff**”.
- (3) In section 17 of the 1985 Act—
- (a) in subsection (1)(a), the words “or has given sufficient security for their payment” are repealed,
 - (b) after subsection (2), insert—
 - “(2A) Where the sheriff intends to recall an award of sequestration on the ground that the debtor has paid the debtor’s debts in full, the order recalling the award may not—
 - (a) be made before the payment in full of the outlays and remuneration of the interim trustee and the trustee,
 - (b) be subject to any conditions which are to be fulfilled before the order takes effect.”,
 - (c) in subsection (3), after “On”, insert “or before”, and
 - (d) in subsection (8), after “any”, in the second place where it occurs, insert “interim or final”.

27 Recall of sequestration by Accountant in Bankruptcy

After section 17 of the 1985 Act, insert—

“17A Application to Accountant in Bankruptcy for recall of sequestration

- (1) An application for recall of an award of sequestration may be made to the Accountant in Bankruptcy on the ground that the debtor has paid or is able to pay the debtor’s debts in full.
- (2) An application may be made by—
 - (a) the debtor,
 - (b) any creditor (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),
 - (c) the trustee (where the Accountant in Bankruptcy is not the trustee), or
 - (d) any other person having an interest (whether or not a person who was a petitioner for the sequestration).
- (3) The person making an application must, at the same time as applying to the Accountant in Bankruptcy, give to the persons mentioned in subsection (4)—
 - (a) a copy of the application, and
 - (b) a notice informing the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application before the expiry of the period of 21 days beginning with the day on which the notice is given.
- (4) The persons are—
 - (a) the debtor,
 - (b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration,
 - (c) the trustee.
- (5) Despite an application being made, the proceedings in the sequestration are to continue as if the application had not been made until a recall of an award of sequestration is granted under section 17D(1) (subject to any conditions imposed under section 17D(5)).
- (6) Where the applicant withdraws the application or dies, the Accountant in Bankruptcy may continue the application by substituting any person mentioned in subsection (2) for the applicant.

17B Application under section 17A: further procedure

- (1) This section applies where an application is made under section 17A.
- (2) The trustee must prepare a statement on the debtor’s affairs, so far as within the knowledge of the trustee.
- (3) The trustee must submit the statement to the Accountant in Bankruptcy—
 - (a) at the same time as the trustee makes the application under section 17A, or
 - (b) where the application is made by another person, before the expiry of the period of 21 days beginning with the day on which the notice is given under section 17A(3)(b).

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- (4) The statement must—
- (a) indicate whether the debtor has agreed to—
 - (i) the interim trustee’s claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the interim trustee (including any outlays and remuneration which are yet to be incurred), and
 - (ii) the trustee’s claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred),
 - (b) state whether or not the debtor’s debts have been paid in full (including the payment of the outlays and remuneration of the interim trustee and the trustee),
 - (c) where the debtor’s debts have not been so paid—
 - (i) provide details of any debt which has not been paid, and
 - (ii) indicate whether, in the opinion of the trustee, the debtor’s assets are likely to be sufficient to pay the debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee) before the day which is 8 weeks after the day on which the statement is submitted, and
 - (d) provide details of any distribution of the debtor’s estate.
- (5) The trustee must notify every creditor known to the trustee that an application has been made—
- (a) where the application is made by the trustee, before the expiry of the period of 7 days beginning with the day on which the application is made,
 - (b) where the application is made by another person, before the expiry of the period of 7 days beginning with the day on which the notice is given under section 17A(3)(b).
- (6) If a creditor has not previously submitted a claim under section 22 or 48, the creditor must, in order to be included in the statement made by the trustee, submit a claim.
- (7) A claim must be submitted—
- (a) in accordance with section 22(2) and (3), and
 - (b) before the expiry of the period of 14 days beginning with the day on which notice is given under subsection (5).
- (8) If any creditor submits a claim in accordance with subsection (7), the trustee must update and resubmit the statement before the expiry of the period of 7 days beginning with the expiry of the period mentioned in subsection (7)(b).
- (9) The trustee must update and resubmit the statement if—
- (a) the statement previously submitted did not state in accordance with subsection (4)(b) that the debtor’s debts have been paid in full, and
 - (b) before the day on which the application is determined by the Accountant in Bankruptcy, the trustee is able to make that statement.

17C Determination of outlays and remuneration

- (1) This section applies where—
 - (a) the Accountant in Bankruptcy receives an application under section 17A, and
 - (b) the statement submitted by the trustee under section 17B indicates that the amount of the outlays and remuneration of the trustee is not agreed.
- (2) The trustee must provide to the Accountant in Bankruptcy—
 - (a) at the same time as submitting the statement under section 17B—
 - (i) the trustee's accounts of the trustee's intromissions with the debtor's estate for audit, and
 - (ii) details of the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred), and
 - (b) such other information in relation to that claim as may be reasonably requested by the Accountant in Bankruptcy.
- (3) The Accountant in Bankruptcy must before the expiry of the period of 28 days beginning with the expiry of the period mentioned in section 17B(8) issue a determination fixing the amount of the outlays and the remuneration payable to the trustee.
- (4) The Accountant in Bankruptcy may before the expiry of the period mentioned in subsection (3) determine the expenses reasonably incurred by a creditor who was a petitioner or, as the case may be, concurred in a debtor application for sequestration.
- (5) Subsections (4) and (5) of section 53 apply to the Accountant in Bankruptcy for the purpose of making a determination in accordance with subsection (3) as they apply to the commissioners or the Accountant in Bankruptcy for the purpose of fixing an amount under that section.

17D Recall of sequestration by Accountant in Bankruptcy

- (1) The Accountant in Bankruptcy may grant a recall of an award of sequestration if—
 - (a) the trustee has notified the Accountant in Bankruptcy in the statement submitted under section 17B that the debtor's debts have been paid in full (including the payment of the outlays and remuneration of the interim trustee and the trustee), and
 - (b) the Accountant in Bankruptcy is satisfied that in all the circumstances of the case, it is appropriate to do so.
- (2) The Accountant in Bankruptcy may not grant a recall of an award of sequestration after—
 - (a) where no appeal is made under section 17G(5)(a), the day which is 8 weeks after the day on which the statement was first submitted under section 17B(3), or

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- (b) where such an appeal is made, such later day which is 14 days after the day on which the appeal is finally determined or abandoned.
- (3) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor or, as the case may be, the other person would have been in if the sequestration had not been awarded.
- (4) A recall of an award of sequestration is not to—
 - (a) affect the interruption of prescription caused by—
 - (i) the presentation of the petition for sequestration,
 - (ii) the making of the debtor application, or
 - (iii) the submission of a claim under section 22 or 48,
 - (b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee, with a person acting in good faith, or
 - (c) affect a bankruptcy restrictions order which has not been annulled under section 56J(1)(a).
- (5) If the Accountant in Bankruptcy does not grant a recall of an award of sequestration under subsection (1) the sequestration is to continue but is to be subject to such conditions as the Accountant in Bankruptcy thinks fit.
- (6) Without delay after granting a recall of an award of sequestration under subsection (1), the Accountant in Bankruptcy must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

17E Recall where Accountant in Bankruptcy the trustee

- (1) This section applies where the Accountant in Bankruptcy—
 - (a) is the trustee, and
 - (b) considers that recall of an award of sequestration should be granted on the ground that the debtor has paid or is able to pay the debtor's debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee).
- (2) The Accountant in Bankruptcy must notify the debtor and every creditor known to the Accountant in Bankruptcy that the Accountant in Bankruptcy considers that subsection (1) applies.
- (3) If a creditor has not previously submitted a claim under section 22 or 48, the creditor must, in order for the creditor's claim to a dividend out of the debtor's estate to be considered, submit a claim.
- (4) A claim must be submitted—
 - (a) in accordance with section 22(2) and (3), and
 - (b) before the expiry of the period of 14 days beginning with the day on which notice is given under subsection (2).
- (5) Before granting a recall of an award of sequestration the Accountant in Bankruptcy must—

- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the notice is given under subsection (2), and
 - (b) make a determination of the Accountant in Bankruptcy's fees and outlays calculated in accordance with regulations made under section 69A.
- (6) The Accountant in Bankruptcy may grant a recall of an award of sequestration if the Accountant in Bankruptcy is satisfied that—
 - (a) the debtor has paid the debtor's debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee),
 - (b) those debts were paid in full before the expiry of the period of 8 weeks beginning with the expiry of the period mentioned in subsection (5) (a), and
 - (c) in all the circumstances of the case, it is appropriate to do so.
- (7) Subsections (3) and (4) of section 17D apply in relation to a recall of an award of sequestration granted under subsection (6) as they apply in relation to a recall of an award of sequestration granted under that section.
- (8) Without delay after granting a recall of an award of sequestration under subsection (6), the Accountant in Bankruptcy must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

17F Reference to sheriff

- (1) The Accountant in Bankruptcy may, at any time before deciding under section 17D(1) whether to grant an application for recall of an award of sequestration, remit to the sheriff an application made under section 17A.
- (2) The Accountant in Bankruptcy may, at any time before deciding under section 17E(6) whether to grant a recall of an award of sequestration, remit the case to the sheriff.
- (3) If an application is remitted to the sheriff under subsection (1) or (2), the sheriff may dispose of the application or the case in accordance with section 17 as if it were a petition presented by the Accountant in Bankruptcy under section 16.

17G Recall of sequestration by Accountant in Bankruptcy: review and appeal

- (1) A person mentioned in subsection (2) may apply to the Accountant in Bankruptcy for a review of—
 - (a) a decision of the Accountant in Bankruptcy under section 17D(1) or 17E(6) to grant or refuse to grant a recall of an award of sequestration,
 - (b) a determination of the Accountant in Bankruptcy under section 17C(4).
- (2) The persons are—
 - (a) the debtor,
 - (b) any creditor,
 - (c) the trustee,
 - (d) any other person having an interest.

- (3) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the decision or, as the case may be, the determination or requirement is made.
- (4) If an application under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision, determination or requirement before the expiry of the period of 28 days beginning with the day on which the application is made.
- (5) A person mentioned in subsection (2) may, before the expiry of the period of 14 days beginning with the day on which the decision, determination or requirement is made, appeal to the sheriff against—
 - (a) a determination of the Accountant in Bankruptcy under section 17C(3) or 17E(5)(b),
 - (b) a decision of the Accountant in Bankruptcy under subsection (4)(b),
- (6) Any decision of the sheriff on an appeal relating to a determination of the Accountant in Bankruptcy under section 17C(3) or 17E(5)(b) is final.
- (7) In upholding an appeal relating to a decision under section 17C(1) or the sheriff may quash the decision of the Accountant in Bankruptcy and remit the case, together with reasons for the sheriff's decision, to the Accountant in Bankruptcy.”.

28 Appointment of replacement trustee

- (1) For section 25 of the 1985 Act, substitute—

“25 Appointment of replacement trustee

- (1) This section applies where a replacement trustee is elected by virtue of a trustee vote.
- (2) On the election of the replacement trustee, the original trustee must immediately make a report of the proceedings at the statutory meeting—
 - (a) where the original trustee was not the Accountant in Bankruptcy, to the Accountant in Bankruptcy,
 - (b) where the original trustee was the Accountant in Bankruptcy, to the sheriff.
- (3) The debtor, a creditor, the original trustee, the replacement trustee or the Accountant in Bankruptcy may object to any matter connected with the election—
 - (a) in the case of an objection by a person other than the Accountant in Bankruptcy, by applying to the Accountant in Bankruptcy, or
 - (b) in the case of an objection by the Accountant in Bankruptcy, by making a summary application to the sheriff.
- (4) An objection under subsection (3) must—

- (a) specify the grounds on which the objection is taken, and
 - (b) be made before the expiry of the period of 4 days beginning with the day of the statutory meeting.
- (5) If there is no timeous objection under subsection (3), the Accountant in Bankruptcy must without delay declare the elected person to be the trustee in the sequestration.
- (6) No expense in objecting under this section is to fall on the debtor's estate.

25A Applications to Accountant in Bankruptcy: procedure

- (1) This section applies where an application is made to the Accountant in Bankruptcy under section 25(3)(a).
- (2) The Accountant in Bankruptcy must—
- (a) without delay give the original trustee, the replacement trustee, the objector and any other interested person an opportunity to make written submissions on the application, and
 - (b) make a decision.
- (3) If the Accountant in Bankruptcy decides—
- (a) to reject the objection in the application, the Accountant in Bankruptcy must without delay declare the elected person to be the trustee in the sequestration,
 - (b) to sustain the objection in the application, the Accountant in Bankruptcy must order the original trustee to arrange a new meeting at which a new trustee vote must be held.
- (4) Sections 23 to 25B apply in relation to a meeting arranged by virtue of subsection (3)(b).
- (5) The original trustee, the replacement trustee, the objector and any other interested person may apply to the Accountant in Bankruptcy for a review of a decision under subsection (2)(b).
- (6) An application under subsection (5) must be made before the expiry of the period of 14 days beginning with the day on which notice of the decision is given.
- (7) If an application for a review under subsection (5) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (8) The trustee, the objector and any other interested person may by summary application appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (7)(b), before the expiry of the period of 14 days beginning with the day of the decision.
- (9) No expense in objecting under this section is to fall on the debtor's estate.

25B Applications and appeals to sheriff: procedure

- (1) This section applies where there is—
 - (a) an application by the Accountant in Bankruptcy under section 25(3)(b), or
 - (b) an appeal under section 25A(8).
 - (2) The sheriff must—
 - (a) without delay give the parties an opportunity to be heard on the application, and
 - (b) make a decision.
 - (3) If the sheriff decides—
 - (a) to reject an objection to the appointment of an elected person, the sheriff must without delay declare the elected person to be the trustee in the sequestration and make an order appointing the elected person to be the trustee in the sequestration,
 - (b) to sustain an objection to the appointment of an elected person, the sheriff must order the original trustee to arrange a new meeting at which a new trustee vote must be held.
 - (4) Sections 23 to 25B apply in relation to a meeting arranged by virtue of subsection (3)(b).
 - (5) Any declaration, appointment or decision of the sheriff under this section is final.”.
- (2) In section 28 of the 1985 Act (resignation and death of trustee), for subsection (5), substitute—
- “(5) Where no new trustee is elected in pursuance of subsection (2) or (3) the Accountant in Bankruptcy may appoint as the trustee in the sequestration—
- (a) a person who applies to the Accountant in Bankruptcy within the period of 14 days beginning with the day of the meeting arranged under subsection (2) or (3), or
 - (b) any other person as may be determined by the Accountant in Bankruptcy and who consents to the appointment.
- (5A) A person may not be appointed under subsection (5) if the person is ineligible for election as a replacement trustee under section 24(2).
- (5B) If, after the expiry of the period mentioned in subsection (5)(a), the Accountant in Bankruptcy determines that no person is to be appointed under subsection (5), the Accountant in Bankruptcy is deemed to be the trustee in the sequestration.”.

29 Replacement of trustee acting in more than one sequestration

For section 28A of the 1985 Act, substitute—

“28A Replacement of trustee acting in more than one sequestration

- (1) This section applies where a trustee acting as such in two or more sequestrations—
 - (a) dies,
 - (b) ceases to be qualified to continue to act as trustee by virtue of section 24(2), or
 - (c) becomes subject to the circumstances mentioned in subsection (2).
- (2) The circumstances are that—
 - (a) there is a conflict of interest affecting the trustee, or
 - (b) there is a change in the personal circumstances of the trustee,which prevents, or makes it impracticable for, the trustee to carry out the trustee’s functions.
- (3) The Accountant in Bankruptcy may in a case where subsection (1)(b) or (c) applies, determine that the trustee is removed from office in each sequestration in which the trustee has ceased to be qualified.
- (4) The Accountant in Bankruptcy may appoint as the trustee in each sequestration in which the former trustee was acting a person—
 - (a) determined by the Accountant in Bankruptcy, and
 - (b) who consents to the appointment.
- (5) A person may not be appointed under subsection (4) if the person is ineligible for election as a replacement trustee under section 24(2).
- (6) If, in relation to any sequestration, the Accountant in Bankruptcy determines that no person is to be appointed under subsection (4), the Accountant in Bankruptcy is deemed to be the trustee in that sequestration.
- (7) A determination or appointment under this section may be made—
 - (a) on the application of any person having an interest, or
 - (b) without an application, where the Accountant in Bankruptcy proposes to make a determination or appointment of the Accountant in Bankruptcy’s own accord.
- (8) The applicant must notify all interested persons where an application is made under subsection (7)(a).
- (9) The Accountant in Bankruptcy must notify all interested persons where the Accountant in Bankruptcy proposes to make a determination or appointment by virtue of subsection (7)(b).
- (10) A notice under subsection (8) or (9) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed determination or appointment before the expiry of the period of 14 days beginning with the day on which the notice is given.
- (11) Before making a determination or appointment under this section, the Accountant in Bankruptcy must take into account any representations made by an interested person.

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- (12) The Accountant in Bankruptcy must notify any determination or appointment under this section to—
- (a) the former trustee (or in the case where the former trustee has died, the former trustee's representatives),
 - (b) the debtor,
 - (c) the trustee appointed under this section (where the trustee appointed is not the Accountant in Bankruptcy),
 - (d) each sheriff who awarded sequestration or to whom sequestration was transferred under section 15(2) of this Act.
- (13) The trustee appointed under this section—
- (a) must notify the determination or appointment under this section to every creditor known to the trustee,
 - (b) may require—
 - (i) delivery of all documents relating to each sequestration in which the former trustee was acting which are in the possession of the former trustee or the former trustee's representatives (other than the former trustee's accounts),
 - (ii) delivery of a copy of the former trustee's accounts,
 - (iii) the former trustee or the former trustee's representatives to submit the trustee's accounts for audit to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy.
- (14) Where the trustee appointed under this section requires submission of the accounts in accordance with subsection (13)(b)(iii), the commissioners or, as the case may be, the Accountant in Bankruptcy must issue a determination fixing the amount of the outlays and remuneration payable to the former trustee or the former trustee's representatives in accordance with section 53.

28B Determination etc. under section 28A: review

- (1) The persons mentioned in subsections (12)(a) and (b) and (13)(a) of section 28A may apply to the Accountant in Bankruptcy for a review by the Accountant in Bankruptcy of any determination or appointment under that section.
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which notice of the determination or appointment is given.
- (3) If an application under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the determination or appointment before the expiry of the period of 28 days beginning with the day on which the application is made.
- (4) The persons mentioned in subsections (12)(a) and (b) and (13)(a) of section 28A may appeal to the sheriff against a decision by the Accountant in Bankruptcy

under subsection (3)(b) before the expiry of the period of 14 days beginning with the day of the decision.

- (5) The Accountant in Bankruptcy may refer a case to the court for a direction before—
- (a) making any determination or appointment under section 28A, or
 - (b) undertaking any review under this section.
- (6) An appeal under subsection (4) and a referral under subsection (5) must be made—
- (a) by a single petition to the Court of Session, where the appeal relates to two or more sequestrations and the sequestrations are, by virtue of section 9, in different sheriffdoms, and
 - (b) in any other case to the sheriff.”.

30 Removal of trustee and trustee not acting

In section 29 of the 1985 Act (removal of trustee and trustee not acting)—

- (a) in subsection (1), for paragraph (b), substitute—
- “(b) by order made by the Accountant in Bankruptcy, if the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of circumstances other than those mentioned in subsection (9).”.
- (b) after subsection (1), insert—
- “(1A) An order removing a trustee in accordance with subsection (1)(b) may be made—
 - (a) on the application of—
 - (i) the commissioners, or
 - (ii) a person representing not less than one quarter in value of the creditors, or
 - (b) in any other case, where the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of circumstances other than those mentioned in subsection (9).”.
- (c) for subsection (2), substitute—
- “(2) The Accountant in Bankruptcy must—
 - (a) order an application by a person mentioned in subsection (1A) (a) to be served on the trustee,
 - (b) enter particulars of the application in the register of insolvencies, and
 - (c) before deciding whether or not to make an order under subsection (1)(b), give the trustee the opportunity to make representations.”.
- (d) for subsection (3), substitute—
- “(3) The Accountant in Bankruptcy may in ordering, or instead of ordering, the removal of the trustee from office under subsection (1)(b), make such further or other order as the Accountant in Bankruptcy thinks fit.

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- (3A) The trustee, the commissioners or any creditor may apply to the Accountant in Bankruptcy for a review of any decision of the Accountant in Bankruptcy under subsection (1)(b) or (3).
- (3B) An application under subsection (3A) must be made before the expiry of the period of 14 days beginning with the day on which the decision is given.
- (3C) If an application for a review under subsection (3A) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.”,
- (e) for subsection (4), substitute—
- “(4) The trustee, the commissioners or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (3C)(b) before the end of the period of 14 days beginning with the date of the decision.”,
- (f) in subsection (5), after “following” insert “a review under subsection (3A) or”,
- (g) for subsection (6), substitute—
- “(6) If the Accountant in Bankruptcy is satisfied that any of the circumstances mentioned in subsection (9) apply, the Accountant in Bankruptcy may—
- (a) declare the office of trustee to have become or to be vacant, and
 - (b) make any necessary order to enable the sequestration of the estate to proceed or to safeguard the estate pending the election of a new trustee.
- (6A) The declaration of the office of trustee as vacant and any necessary order in accordance with subsection (6) may be made—
- (a) on the application of—
 - (i) the commissioners,
 - (ii) the debtor, or
 - (iii) a creditor, or
 - (b) in any other case, where the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of the circumstances mentioned in subsection (9).
- (6B) The Accountant in Bankruptcy must order such intimation of an application by a person mentioned in subsection (6A)(a) as the Accountant in Bankruptcy considers necessary.
- (6C) If the Accountant in Bankruptcy makes a declaration under subsection (6A), the commissioners, or if there are no commissioners the Accountant in Bankruptcy, must call a meeting of creditors for the election of a new trustee by the creditors.

- (6D) A meeting called under subsection (6C) must be held before the end of the period of 28 days beginning with the date of the declaration under subsection (6A).
- (6E) The trustee, the debtor, the commissioners or any creditor may apply to the Accountant in Bankruptcy for a review of any declaration or any order made by the Accountant in Bankruptcy under subsection (6).
- (6F) An application under subsection (6E) must be made before the expiry of the period of 14 days beginning with the day on which the declaration is made.
- (6G) If an application for a review under subsection (6E) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the declaration or order before the expiry of the period of 28 days beginning with the day on which the application is made.
- (6H) The trustee, the debtor, the commissioners or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (6G)(b) before the end of the period of 14 days beginning with the date of the decision.
- (6I) The Accountant in Bankruptcy may refer a case to the sheriff for a direction before—
 - (a) making any order under subsection (1)(b) or (3),
 - (b) making any declaration or any order under subsection (6), or
 - (c) undertaking any review under this section.
- (6J) An application for a review under subsection (3A) or (6E) may not be made in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under subsection (6I).”
- (h) in subsection (7), for “(6)” substitute “(6C)”, and
- (i) in subsection (10), after “trustee” insert “and is without prejudice to the powers under section 1A(2)”.

31 Removal of commissioner

In section 30 of the 1985 Act (election, resignation and removal of commissioners)—

- (a) in subsection (4), after paragraph (b) insert—
 - “(c) by order of the sheriff if the sheriff is satisfied that the commissioner is no longer acting in the interests of the efficient conduct of the sequestration.”, and
- (b) after subsection (4), insert—
 - “(5) An order under subsection (4)(c) may be made on the application of—
 - (a) the Accountant in Bankruptcy,
 - (b) a person representing not less than one quarter in value of the creditors, or

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- (c) the trustee.
- (6) The sheriff must—
 - (a) order an application by a person mentioned in subsection (5) to be served on the commissioner,
 - (b) order that the application is intimated to every creditor who has given a mandate to the commissioner, and
 - (c) before deciding whether or not to make an order under subsection (4)(c), give the commissioner the opportunity to make representations.
- (7) On an application under subsection (4)(c), the sheriff may, in ordering the removal of the commissioner from office, make such further order as the sheriff thinks fit or may, instead of removing the commissioner from office, make such other order as the sheriff thinks fit.
- (8) The trustee, the Accountant in Bankruptcy, any commissioner or any creditor may appeal against the decision of the sheriff on an application under subsection (4)(c) within 14 days after the date of that decision.”.

32 Contractual powers of trustee

In section 42 of the 1985 Act (contractual powers of trustee), for subsection (2) substitute—

- “(2) The trustee must, within 28 days from the receipt by the trustee of a request in writing from any party to a contract entered into by the debtor, adopt or refuse to adopt the contract.
- (2A) The period mentioned in subsection (2) may be extended—
 - (a) in a case where the Accountant in Bankruptcy is the trustee, by the sheriff on the application of the Accountant in Bankruptcy,
 - (b) in any other case, by the Accountant in Bankruptcy on the application of the trustee.
- (2B) The trustee may, before the expiry of the period of 14 days beginning with the day of the decision, apply to the Accountant in Bankruptcy for a review of a decision of the Accountant in Bankruptcy under subsection (2A)(b).
- (2C) If an application for a review under subsection (2B) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (2D) The trustee may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (2C)(b), before the expiry of the period of 14 days beginning with the day of the decision.
- (2E) The Accountant in Bankruptcy may refer a case to the sheriff for a direction before—
 - (a) making a decision under subsection (2A)(b), or

(b) undertaking any review under this section.

(2F) An application for a review under subsection (2B) may not be made in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under subsection (2E).”.

33 Bankruptcy restrictions order

(1) For section 56A of the 1985 Act, substitute—

“56A Bankruptcy restrictions order

(1) Where sequestration of a living debtor’s estate is awarded, an order (to be known as a “bankruptcy restrictions order”) in respect of the debtor may be made by the—

- (a) Accountant in Bankruptcy, or
- (b) the sheriff.

(2) A bankruptcy restrictions order may be made by the sheriff only on the application of the Accountant in Bankruptcy.

(3) The Accountant in Bankruptcy must notify the debtor where the Accountant in Bankruptcy proposes to make a bankruptcy restrictions order.

(4) A notice under subsection (3) must inform the debtor that the debtor has a right to make representations to the Accountant in Bankruptcy in relation to the proposed bankruptcy restrictions order.

(5) Before making a bankruptcy restrictions order the Accountant in Bankruptcy must take into account any representations made by the debtor.”.

(2) In section 56B of the 1985 Act (grounds for making order)—

(a) for subsection (1), substitute—

“(1) A bankruptcy restrictions order must be made if the Accountant in Bankruptcy, or as the case may be, the sheriff thinks it appropriate having regard to the conduct of the debtor (whether before or after the date of sequestration).”.

(b) in subsection (2)—

(i) after “The”, where it first occurs, insert “Accountant in Bankruptcy, or as the case may be, the”, and

(ii) after paragraph (b), insert—

“(ba) failing to supply accurate information to an authorised person for the purpose of the granting under section 5B of a certificate for sequestration of the debtor’s estate.”, and

(c) in subsection (3), after “The”, where it first occurs insert “Accountant in Bankruptcy, or as the case may be, the”.

(3) In section 56C(1) of the 1985 Act (application of section 67(9)), after “the”, in the first and second places where it occurs, insert “Accountant in Bankruptcy, or as the case may be, the”.

(4) The title of section 56D of the 1985 Act becomes “**Timing for making an order**”.

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- (5) In section 56D of the 1985 Act—
- (a) in subsection (1), for “An application for a bankruptcy restrictions order must be made” substitute “The Accountant in Bankruptcy must make, or apply to the sheriff for, a bankruptcy restrictions order”,
 - (b) for subsection (2), substitute—
 - “(2) After the end of the period referred to in subsection (1), the Accountant in Bankruptcy may—
 - (a) make a bankruptcy restrictions order only with the permission of the sheriff, and
 - (b) make an application for a bankruptcy restrictions order only with the permission of the sheriff.”.
- (6) In section 56E of the 1985 Act (duration of order and application for annulment)—
- (a) for subsection (2), substitute—
 - “(2) The date specified in a bankruptcy restrictions order under subsection (1)(b)—
 - (a) in the case of an order made by the Accountant in Bankruptcy—
 - (i) must not be before the end of the period of 2 years beginning with the date on which the order is made, but
 - (ii) must be before the end of the period of 5 years beginning with that date, and
 - (b) in the case of an order made by the sheriff must not be—
 - (i) before the end of the period of 5 years beginning with the date on which the order is made, or
 - (ii) after the end of the period of 15 years beginning with that date.”,
 - (b) in subsection (3), for “sheriff” substitute “person mentioned in subsection (4)”,
 - (c) after subsection (3), insert—
 - “(4) The person is—
 - (a) in the case of a bankruptcy restrictions order made by the Accountant in Bankruptcy, the Accountant in Bankruptcy, and
 - (b) in the case of a bankruptcy restrictions order made by the sheriff, the sheriff.
 - (5) If an application under subsection (3) is made to the Accountant in Bankruptcy, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

- (6) The debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (5)(b) before the end of the period of 14 days beginning with the date of the decision.
- (7) The sheriff may—
 - (a) in determining such an appeal, or
 - (b) otherwise on an application by the Accountant in Bankruptcy, make an order providing that the debtor may not make another application under subsection (3) for such period as may be specified in the order.”.
- (7) In section 56F of the 1985 Act (interim bankruptcy restrictions order)—
 - (a) for subsections (1) and (2), substitute—
 - “(1) Subsection (2) applies at any time—
 - (a) after the Accountant in Bankruptcy notifies the debtor under section 56A(3) that the Accountant in Bankruptcy proposes to make a bankruptcy restrictions order, and
 - (b) before the Accountant in Bankruptcy decides whether to make the order.
 - (2) The Accountant in Bankruptcy may make an interim bankruptcy restrictions order if the Accountant in Bankruptcy thinks that—
 - (a) there are *prima facie* grounds to suggest that a bankruptcy restrictions order will be made, and
 - (b) it is in the public interest to make an interim bankruptcy restrictions order.
 - (2A) Subsection (2B) applies at any time between—
 - (a) the making of an application to the sheriff for a bankruptcy restrictions order, and
 - (b) the determination of the application.
 - (2B) The sheriff may, on the application of the Accountant in Bankruptcy, make an interim bankruptcy restrictions order if the sheriff thinks that—
 - (a) there are *prima facie* grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
 - (b) it is in the public interest to make an interim bankruptcy restrictions order.”,
 - (b) subsection (3) is repealed, and
 - (c) for subsection (5), substitute—
 - “(5) An interim order ceases to have effect—
 - (a) in the case of an interim order made by the Accountant in Bankruptcy, on the Accountant in Bankruptcy deciding whether or not to make a bankruptcy restrictions order,
 - (b) in the case of an interim order made by the sheriff, on the determination of the application for the bankruptcy restrictions order, or
 - (c) if the sheriff discharges the interim order, on the application of the Accountant in Bankruptcy or of the debtor.”.

(8) In section 56J of the 1985 Act (effect of recall of sequestration), after subsection (3) insert—

“(4) Where an award of sequestration of a debtor’s estate is recalled under section 17D(1) or 17E(6)—

- (a) the Accountant in Bankruptcy may annul any bankruptcy restrictions order or interim bankruptcy restrictions order which is in force in respect of the debtor, and
- (b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.

(5) Where the Accountant in Bankruptcy refuses to annul a bankruptcy restrictions order or interim bankruptcy restrictions order under subsection (4) the debtor may apply to the Accountant in Bankruptcy for a review of such a refusal.

(6) An application under subsection (5) must be made before the end of the period of 14 days beginning with the day on which the award of sequestration is recalled.

(7) If an application under subsection (5) is made, the Accountant in Bankruptcy must—

- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
- (b) confirm the refusal or annul the order before the expiry of the period of 28 days beginning with the day on which the application is made.

(8) The debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (7)(b) before the end of the period of 14 days beginning with the date of the decision.

(9) The decision of the sheriff on an appeal under subsection (8) is final.”.

34 Conversion of protected trust deed into sequestration

(1) The title of section 59A of the 1985 Act becomes “**Application for conversion to sequestration**”.

(2) In section 59A of the 1985 Act—

- (a) in subsection (1)—
 - (i) for “petition the sheriff” substitute “apply to the Accountant in Bankruptcy”, and
 - (ii) for “lodged in court in support of the petition” substitute “submitted to the Accountant in Bankruptcy in support of the application”, and
- (b) in subsection (2), for “petition” substitute “application”.

(3) In section 59B(1)(c) of the 1985 Act (contents of the affidavit), for “sheriff”, in both places where it occurs, substitute “Accountant in Bankruptcy”.

(4) The title of section 59C of the 1985 Act becomes “**Power of Accountant in Bankruptcy**”.

(5) In section 59C of the 1985 Act—

- (a) for subsection (1), substitute—
 - “(1) The Accountant in Bankruptcy may, after considering an application for conversion of a protected trust deed into a sequestration, make such order as the Accountant in Bankruptcy thinks fit.”, and
- (b) in subsections (2), (2A) and (3), for “sheriff”, in each place where it occurs, substitute “Accountant in Bankruptcy”.

35 Power to cure defects in procedure

- (1) The title of section 63 of the 1985 Act becomes “**Power of court to cure defects in procedure**”.
- (2) In section 63 of the 1985 Act—
 - (a) after subsection (1), insert—
 - “(1A) An order under subsection (1) may waive a failure to comply with a requirement mentioned in section 63A(1)(a) or (b) only if the failure relates to—
 - (a) a document to be lodged with the sheriff,
 - (b) a document issued by the sheriff, or
 - (c) a time limit specified in relation to proceedings before the sheriff or a document relating to those proceedings.”, and
 - (b) in subsection (2)(b) after “estate” insert “the Accountant in Bankruptcy or”.
- (3) After section 63 of the 1985 Act, insert—

“63A Power of Accountant in Bankruptcy to cure defects in procedure

- (1) The Accountant in Bankruptcy may make an order—
 - (a) correcting a clerical or incidental error in a document required by or under this Act, or
 - (b) waiving a failure to comply with a time limit—
 - (i) which is specified by or under this Act, and
 - (ii) for which no provision is made by or under this Act.
- (2) An order under subsection (1) may be made—
 - (a) on the application of any person having an interest, or
 - (b) without an application if the Accountant in Bankruptcy proposes to correct or waive a matter mentioned in subsection (1).
- (3) The applicant must notify all interested persons where an application is made under subsection (2)(a).
- (4) The Accountant in Bankruptcy must notify all interested persons where the Accountant in Bankruptcy proposes to make an order by virtue of subsection (2)(b).
- (5) A notice under subsection (3) or (4) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed order before the expiry of the period of 14 days beginning with the day on which the notice is given.

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- (6) Before making an order under subsection (1), the Accountant in Bankruptcy must take into account any representations made by an interested person.
- (7) An order under subsection (1) may—
 - (a) so far as practicable, restore any person prejudiced by the error or failure to the position that person would have been in but for the error or failure,
 - (b) impose such conditions, including conditions as to expenses, as the Accountant in Bankruptcy thinks fit.
- (8) After making an order which affects a matter which is recorded in the Register of Inhibitions, the Accountant in Bankruptcy must without delay send a certified copy of the order to the Keeper of that register for recording in that register.

63B Decision under section 63A: review

- (1) An interested person may apply to the Accountant in Bankruptcy for a review of a decision of the Accountant in Bankruptcy to make, or refuse to make, an order under section 63A(1).
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day of the decision.
- (3) If an application under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (4) An interested person may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (3)(b) before the expiry of the period of 14 days beginning with the day of the decision.
- (5) The decision of the sheriff on an appeal under subsection (4) is final.”.

36 Regulations: applications to Accountant in Bankruptcy etc.

After section 71B of the 1985 Act, insert—

“71C Regulations: applications to Accountant in Bankruptcy etc.

- (1) The Scottish Ministers may, by regulations, make provision in relation to the procedure to be followed in relation to—
 - (a) an application to the Accountant in Bankruptcy under this Act,
 - (b) an application to the Accountant in Bankruptcy for a review under this Act,
 - (c) any other decision made by the Accountant in Bankruptcy under this Act.

- (2) In this section “decision” includes any appointment, determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation made by the Accountant in Bankruptcy.
- (3) Regulations under subsection (1) may in particular make provision for or in connection with—
 - (a) the procedure to be followed by the person making an application,
 - (b) the form of any report or other document that may be required for the purposes of an application or a decision,
 - (c) the form of a statement of undertakings that must be given by the debtor when making a debtor application,
 - (d) time limits applying in relation to the procedure,
 - (e) the procedure to be followed in connection with the production and recovery of documents relating to an application or a decision,
 - (f) the procedure to be followed (including provision about those entitled to participate) in determining an application or making a decision, and
 - (g) the procedure to be followed after an application is determined or a decision is made.
- (4) Regulations under subsection (1) may—
 - (a) include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate,
 - (b) modify any enactment (including this Act).”.

37 Valuation of debts depending on contingency

In paragraph 3 of Schedule 1 to the 1985 Act (debts depending on contingency)—

- (a) in sub-paragraph (2), for “sheriff”, in both places where it occurs, substitute “Accountant in Bankruptcy”, and
- (b) for sub-paragraph (3), substitute—
 - “(3) An interested person may apply to the Accountant in Bankruptcy for a review of a valuation under sub-paragraph (2) by the trustee.
 - (4) An application under sub-paragraph (3) must be made before the expiry of the period of 14 days beginning with the day of the valuation.
 - (5) If an application under subsection (3) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm or vary the valuation before the expiry of the period of 28 days beginning with the day on which the application is made.
 - (6) An interested person may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (5)(b) before the expiry of the period of 14 days beginning with the day of the decision.

Status: This is the original version (as it was originally enacted).

- (7) The Accountant in Bankruptcy may refer a case to the sheriff for a direction before making a decision under sub-paragraph (5)(b).
- (8) An appeal to the sheriff under sub-paragraph (6) may not be made in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under sub-paragraph (7).”.