



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Functions of sheriff and Accountant in Bankruptcy in sequestration

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.”.