



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 4

TRUSTEES AND COMMISSIONERS

Removal of trustee and appointment of new trustee

70 Removal of trustee other than where trustee is unable to act or should no longer continue to act: general

- (1) The trustee in the sequestration (in this section and in sections 71 to 73 referred to as “T”) may be removed from office—
 - (a) by the creditors at a meeting called for the purpose if they also forthwith elect a new trustee, or
 - (b) by order made by AiB if AiB is satisfied that, on the basis of circumstances other than those mentioned in section 72(2), there are reasons to remove T from office.
- (2) An order removing T 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 $\frac{1}{4}$ in value of the creditors, or
 - (b) in any other case where AiB is satisfied as mentioned in that subsection.
- (3) “Creditors”, in subsection (1)(a), does not include—
 - (a) anyone who, other than by succession, acquires after the date of sequestration a debt due by the debtor, or
 - (b) any creditor to the extent that the creditor’s debt is a postponed debt.
- (4) AiB must—
 - (a) order any application by a person mentioned in subsection (2)(a) to be served on T,
 - (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 T the opportunity to make representations.

Changes to legislation: Bankruptcy (Scotland) Act 2016, Cross Heading: Removal of trustee and appointment of new trustee is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (5) AiB may—
- (a) in ordering, or
 - (b) instead of ordering,
- the removal of T from office under subsection (1)(b), make such further or other order as AiB thinks fit.
- (6) This section and sections 71 to 75 do not apply where AiB is the trustee in the sequestration.
- (7) This section is without prejudice to section 200(4).

Commencement Information

II [S. 70](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

71 Removal of trustee other than where trustee is unable to act or should no longer continue to act: review, appeal and election of new trustee

- (1) T, the commissioners or any creditor may apply to AiB for a review of any decision of AiB under section 70(1)(b) or (5).
- (2) Any application under subsection (1) must be made within 14 days beginning with the day on which the decision is given.
- (3) If an application under subsection (1) for a review 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, amend or revoke the decision within 28 days beginning with that day.
- (4) T, the commissioners or any creditor may, within 14 days beginning with the day on which a decision of AiB under subsection (3)(b) is given, appeal to the sheriff against that decision.
- (5) Subsection (6) applies where T has been removed from office—
 - (a) under section 70(1)(b),
 - (b) under section 200(4),
 - (c) following a review under subsection (1), or
 - (d) following an appeal under subsection (4).
- (6) The commissioners (or if there are no commissioners AiB) must call a meeting of creditors, to be held within 28 days after the removal, for the election by the creditors of a new trustee.
- (7) AiB may refer a case to the sheriff for a direction before—
 - (a) making an order under section 70(1)(b) or (5), or
 - (b) undertaking any review under this section.
- (8) An application for a review under subsection (1) may not be made in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (7).

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Commencement Information

I2 [S. 71](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

72 Removal of trustee where trustee is unable to act or should no longer continue to act: general

- (1) If AiB is satisfied that any of the circumstances mentioned in subsection (2) apply, AiB may—
- (a) declare the office of trustee to have become, or to be, vacant, and
 - (b) make any necessary order—
 - (i) to enable the sequestration of the estate to proceed, or
 - (ii) to safeguard the estate pending the election of a new trustee.
- (2) The circumstances are that—
- (a) T is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever other than death), or
 - (b) T's conduct has been such that T should no longer continue to act in the sequestration.
- (3) The declaration under subsection (1)(a), and any order under subsection (1)(b), may be made—
- (a) on the application of the commissioners, of the debtor or of a creditor, or
 - (b) in any other case where AiB is satisfied as mentioned in subsection (1).
- (4) AiB must order such intimation of an application by a person mentioned in subsection (3)(a) as AiB considers necessary.
- (5) This section is without prejudice to section 200(4).

Commencement Information

I3 [S. 72](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

73 Removal of trustee where trustee is unable to act or should no longer continue to act: review, appeal and election of new trustee

- (1) If AiB makes a declaration under section 72(1)(a), the commissioners (or if there are no commissioners AiB) must call a meeting of creditors, to be held within 28 days beginning with the day of the declaration, for the election of a new trustee by the creditors.
- (2) T, the commissioners, the debtor or any creditor may apply to AiB for a review of any declaration made under section 72(1)(a) or of any order made under section 72(1)(b).
- (3) Any application under subsection (2) must be made within 14 days beginning with the day of the declaration.
- (4) If an application under subsection (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

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- (b) confirm, amend or revoke the declaration or order within 28 days beginning with that day.
- (5) T, the commissioners, the debtor or any creditor may, within 14 days beginning with the day of any decision of AiB under subsection (4)(b), appeal to the sheriff against that decision.
- (6) AiB may refer a case to the sheriff for a direction before—
 - (a) making any declaration or any order under section 72(1), or
 - (b) undertaking any review under this section.
- (7) An application for a review under subsection (2) may not be made in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (6).

Commencement Information

I4 [S. 73](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

74 Election or appointment of new trustee by virtue of section 71(6) or 73(1)

The preceding provisions of this Part in relation to the election of a replacement trustee and the appointment of that trustee also apply, subject to any necessary modifications, in relation to the election and appointment of a new trustee by virtue of section 71(6) or 73(1).

Commencement Information

I5 [S. 74](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

75 Further provision as regards election or appointment of new trustee

Subsections (6) to (13) of section 69 apply for the purposes of sections 70 to 74 as those subsections apply for the purposes of section 69.

Commencement Information

I6 [S. 75](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)