



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 4

#### TRUSTEES AND COMMISSIONERS

##### *Replacement trustees*

#### **60 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 AiB, to AiB, or
  - (b) where the original trustee was AiB, to the sheriff.
- (3) The debtor, a creditor, the original trustee, the replacement trustee or AiB may object to any matter connected with the election—
  - (a) in the case of an objection by a person other than AiB, by applying to AiB,
  - (b) in the case of an objection by AiB, by application to the sheriff.
- (4) Any objection under subsection (3) must—
  - (a) specify the grounds on which the objection is taken, and
  - (b) be made within 4 days beginning with the day of the statutory meeting.
- (5) If there is no timeous objection under subsection (3), AiB 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.

#### **61 Procedure in application to Accountant in Bankruptcy under section 60**

- (1) This section applies where an application is made to AiB under section 60(3)(a).
- (2) AiB must—

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- (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 AiB decides—
- (a) to reject the objection in the application, AiB must without delay declare the elected person to be the trustee in the sequestration,
  - (b) to sustain the objection in the application, AiB must order the original trustee to arrange a new meeting at which a new trustee vote must be held.
- (4) Sections 48, 49, 60 and 62, and this section, 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 party may apply to AiB for a review of a decision under subsection (2)(b).
- (6) Any application under subsection (5) must be made within 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, AiB must—
- (a) take into account any representations made by an interested party 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.
- (8) The trustee, the objector or any other interested party may, within 14 days beginning with the day of a decision of AiB under subsection (7)(b), appeal to the sheriff against that decision.
- (9) No expense in objecting under this section is to fall on the debtor's estate.

## **62 Procedure in application under section 60, or appeal under section 61, to sheriff**

- (1) This section applies where there is—
- (a) an application by AiB under section 60(3)(b), or
  - (b) an appeal under section 61(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, or
  - (b) to sustain such an objection, the sheriff must order the original trustee to arrange a new meeting at which a new trustee vote must be held.
- (4) Sections 48, 49, 60, 61 and this section, 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.

## **63 Termination of original trustee's functions**

- (1) This section applies where—
  - (a) a replacement trustee is appointed under section 60, and
  - (b) the original trustee is not AiB.
- (2) On the appointment of the replacement trustee, the original trustee—
  - (a) must hand over to the replacement trustee everything in the original trustee's possession which relates to the sequestration, including—
    - (i) the statement of assets and liabilities,
    - (ii) a copy of the statement of the debtor's affairs prepared under section 42(1)(a) (as revised under section 48(4)(f) if so revised), and
    - (iii) a copy of the written comments sent under section 42(2)), and
  - (b) on that being done, must cease to act in the sequestration.
- (3) Within 3 months after the appointment of the replacement trustee, the original trustee must—
  - (a) submit to AiB—
    - (i) the original trustee's accounts for intromissions (if any) with the debtor's estate,
    - (ii) a claim for outlays reasonably incurred, and for remuneration for work reasonably undertaken, by the original trustee, and
  - (b) send to the replacement trustee a copy of what is submitted under paragraph (a).
- (4) Where the original trustee was appointed under section 54(1) as the interim trustee in the sequestration, the original trustee's accounts and the claim referred to in subsection (3)(a)(ii) must include accounts and a claim for the period of the original trustee's appointment as interim trustee.
- (5) On a submission being made under subsection (3)(a), AiB must—
  - (a) audit the accounts,
  - (b) issue a determination fixing the amount of the outlays and remuneration payable to the original trustee, and
  - (c) send a copy of—
    - (i) the determination to the original trustee, and
    - (ii) the audited accounts and the determination to the replacement trustee.
- (6) The original trustee, the replacement trustee, the debtor or any creditor may appeal to the sheriff against the determination within 14 days after it is issued.
- (7) The decision of the sheriff on an appeal under subsection (6) is final.

## **64 Accountant in Bankruptcy's intromissions in capacity of original trustee**

- (1) This section applies where AiB was the original trustee and some other person is appointed as replacement trustee under section 60.
- (2) On the appointment of the replacement trustee AiB—
  - (a) must hand over to that person everything in AiB's possession—
    - (i) which relates to the sequestration, and

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- (ii) which AiB obtained in the capacity of original trustee (including the statement of assets and liabilities), and
  - (b) on that being done, must cease to act as trustee.
- (3) AiB must, within 3 months after the appointment of the replacement trustee, supply to that person—
  - (a) AiB’s accounts of AiB’s intromissions (if any) as original trustee with the debtor’s estate,
  - (b) a determination of AiB’s fees and outlays calculated in accordance with regulations under section 205, and
  - (c) a copy of the notice mentioned in subsection (4)(b).
- (4) AiB must send to the debtor and to all creditors known to AiB—
  - (a) a copy of the determination mentioned in subsection (3)(b), and
  - (b) a notice in writing stating—
    - (i) that AiB has commenced procedure under this Act leading to discharge in respect of AiB’s actings as trustee,
    - (ii) that the accounts of AiB’s intromissions (if any) with the debtor’s estate are available for inspection at such address as AiB may determine,
    - (iii) that an application for a review may be made under subsection (5),
    - (iv) that an appeal may be made to the sheriff under subsection (8), and
    - (v) the effect of subsections (10) and (11).
- (5) The replacement trustee, the debtor or any creditor may apply to AiB for a review of the discharge of AiB in respect of AiB’s actings as trustee.
- (6) Any application under subsection (5) must be made within 14 days beginning with the day on which notice is sent under subsection (4)(b).
- (7) If an application under subsection (5) 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 or revoke the discharge within 28 days beginning with that day.
- (8) The replacement trustee, the debtor or any creditor may appeal to the sheriff within 14 days beginning with—
  - (a) the day on which notice is sent under subsection (4)(b), against the determination mentioned in subsection (3)(b), or
  - (b) the day of a decision of AiB under subsection (7)(b), against that decision.
- (9) The decision of the sheriff on an appeal under subsection (8) is final.
- (10) Subsection (11) applies where—
  - (a) the requirements of this section have been complied with, and
  - (b) either no appeal is made under subsection (8) or any such appeal is refused as regards the discharge of AiB.
- (11) AiB is discharged from all liability (other than liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of AiB in exercising the functions of trustee in the sequestration.

## **65 Discharge of original trustee**

- (1) On receiving a copy of the determination of AiB sent under section 63(5)(c)(i) the original trustee may apply to AiB for a certificate of discharge.
- (2) The original trustee must send notice of the application to the debtor, to all creditors known to the original trustee and to the replacement trustee and must inform the debtor—
  - (a) that the debtor, the replacement trustee or any creditor may, in relation to the application, make written representations to AiB within 14 days after such notification,
  - (b) that the audited accounts of the original trustee's intromissions (if any) with the debtor's estate are available for inspection at the original trustee's office and that a copy of those accounts has been sent to the replacement trustee, and
  - (c) of the effect mentioned in subsection (11).
- (3) On the expiry of the 14 days mentioned in subsection (2)(a) AiB must, after considering any representations duly made to AiB—
  - (a) grant or refuse to grant the certificate of discharge, and
  - (b) notify accordingly (in addition to the original trustee) the debtor, the replacement trustee and all creditors who have made such representations.
- (4) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may apply to AiB for a review of a determination under subsection (3).
- (5) Any application under subsection (4) must be made within 14 days beginning with the day on which that determination is issued.
- (6) If an application under subsection (4) 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 determination (whether or not granting a certificate of discharge) within 28 days beginning with that day.
- (7) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may, within 14 days after a decision under subsection (6)(b), appeal to the sheriff against that decision.
- (8) If, on such appeal, the sheriff determines that a certificate of discharge which has been refused should be granted the sheriff must order AiB to grant it.
- (9) The sheriff clerk must send a copy of the sheriff's decree to AiB.
- (10) The decision of the sheriff on an appeal under subsection (7) is final.
- (11) The grant of a certificate of discharge under this section by AiB has the effect of discharging the original trustee from all liability (other than liability arising from fraud) to the creditors, or to the debtor, in respect of any act or omission of the original trustee in exercising the functions conferred on the original trustee by this Act.
- (12) This section does not apply where AiB is the original trustee.

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## **66 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, by virtue of section 49(4), to be qualified to continue to act as trustee, or
  - (c) becomes subject to the circumstances mentioned in subsection (2).
- (2) The circumstances are that there is—
  - (a) a conflict of interest affecting the trustee, or
  - (b) a change in the personal circumstances of the trustee,which prevents the trustee from carrying out the trustee's functions, or makes it impracticable for the trustee to carry out those functions.
- (3) AiB 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) AiB may appoint as the trustee in each sequestration in which the former trustee was acting a person—
  - (a) determined by AiB, and
  - (b) who consents to the appointment.
- (5) A person may not be appointed under subsection (4) if the person is ineligible, by virtue of section 49(3), for election as a replacement trustee.
- (6) If, in relation to any sequestration, AiB determines that no person is to be appointed under subsection (4), AiB 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 AiB proposes to make a determination or appointment of AiB's own accord.
- (8) The applicant must notify all interested persons where an application is made under subsection (7)(a).
- (9) AiB must notify all interested persons where AiB 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 recipient has a right to make representations to AiB, in relation to the application or to the proposed determination or appointment, within 14 days beginning with the day on which the notice is given.

## **67 Further provision as regards replacement under section 66**

- (1) Before making a determination or appointment under section 66, AiB must take into account any representations made by an interested person.
- (2) AiB must notify any determination or appointment under section 66 to—
  - (a) the former trustee (or, where the former trustee has died, the former trustee's representatives),
  - (b) the debtor,

- (c) the trustee appointed under section 66 (where the trustee appointed is not AiB), and
  - (d) each sheriff who awarded sequestration or to whom sequestration was transferred under section 27(1).
- (3) The trustee appointed under section 66—
- (a) must notify the determination or appointment under that section to every creditor known to the trustee,
  - (b) may require—
    - (i) delivery of all documents (other than the former trustee’s accounts) relating to each sequestration in which the former trustee was acting and in the possession of the former trustee or of the former trustee’s representatives,
    - (ii) delivery of a copy of the former trustee’s accounts, and
    - (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 AiB.
- (4) Where the trustee appointed under section 66 requires submission in accordance with subsection (3)(b)(iii), the commissioners or, as the case may be, AiB 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 132.

## **68 Review of determination or appointment under section 66**

- (1) A person mentioned in section 67(2)(a) or (b) or (3)(a) may apply to AiB for a review of any determination or appointment under that section.
- (2) Any application under subsection (1) must be made within 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, 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 determination or appointment within 28 days beginning with that day.
- (4) A person mentioned in section 67(2)(a) or (b) or (3)(a) may, within 14 days beginning with the day of a decision of AiB under subsection (3)(b), appeal to the sheriff against that decision.
- (5) AiB may refer a case to the court for a direction before—
  - (a) making any determination or appointment under section 66,
  - (b) issuing any determination under section 67(4), or
  - (c) undertaking any review under this section.
- (6) Any appeal under subsection (4) or 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 15, in different sheriffdoms, and
  - (b) in any other case, to the sheriff.