



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 1

### BANKRUPTCY

#### *Modification of composition procedure*

#### **21 Modification of composition procedure**

- (1) Schedule 4 to the 1985 Act (discharge on composition) is amended as follows.
- (2) In paragraph 1(1), for “clerk issues the act and warrant to the permanent” substitute “or, as the case may be, the Accountant in Bankruptcy appoints the”.
- (3) In paragraph 4, for sub-paragraphs (c) and (d) substitute—
  - “(c) not later than 1 week after the date of publication of such notice, send to every creditor known to him—
    - (i) a copy of the terms of offer; and
    - (ii) such other information as may be prescribed.”.
- (4) For paragraphs 5 to 8, substitute—
  - “5 The notice mentioned in paragraph 4(b) of this Schedule shall be in the prescribed form and shall contain such information as may be prescribed.
  - 6 Where, within the period of 5 weeks beginning with the date of publication of the notice under paragraph 4(b) of this Schedule, the trustee has not received notification in writing from a majority in number or not less than one third in value of the creditors that they reject the offer of composition, the offer of composition shall be approved by the trustee.
  - 7 Where the trustee has received notification within the period and to the extent mentioned in paragraph 6 of this Schedule, the offer of composition shall be rejected by the trustee.

- 8 Any creditor who has been sent a copy of the terms of the offer as referred to in paragraph 4(c)(i) of this Schedule and who has not notified the trustee as mentioned in paragraph 6 of this Schedule that he objects to the offer shall be treated for all purposes as if he had accepted the offer.
- 8A (1) The Scottish Ministers may by regulations amend paragraphs 4 to 8 of this Schedule by replacing them, varying them or adding to or deleting anything from them.
- (2) Regulations made under sub-paragraph (1) above may contain such amendments of this Act as appear to the Scottish Ministers to be necessary in consequence of any amendment made by the regulations to the said paragraphs 4 to 8.
- 8B (1) Where an offer of composition is approved, a creditor who has not been sent a copy of the terms of the offer as mentioned in paragraph 4(c)(i) of this Schedule or who has notified the trustee of his rejection of the offer as mentioned in paragraph 6 of this Schedule may, not more than 28 days after the expiry of the period mentioned in said paragraph 6, appeal to the Accountant in Bankruptcy against such approval.
- (2) In determining an appeal under sub-paragraph (1) above, the Accountant in Bankruptcy may—
- (a) approve or reject the offer of composition; and
  - (b) make such other determination in consequence of that approval or rejection as he thinks fit.”.
- (5) In paragraph 9(3), for “paragraph 9(2) and (3) of Schedule 2 to” substitute “section 53A of”.
- (6) In paragraph 10—
- (a) for “lodged with the sheriff clerk” substitute “sent to the Accountant in Bankruptcy”; and
  - (b) in sub-paragraph (a), for “permanent trustee” substitute “trustee (where he is not the Accountant in Bankruptcy)”.
- (7) For paragraph 11, substitute—
- “11 (1) Where the documents have been sent to the Accountant in Bankruptcy under paragraph 10 of this Schedule and either—
- (a) the period mentioned in paragraph 8B(1) of this Schedule has expired; or
  - (b) the Accountant in Bankruptcy, in determining an appeal under said paragraph 8B(1), has approved the offer of composition,
- the Accountant in Bankruptcy shall grant the certificates of discharge referred to in sub-paragraph (2) below.
- (2) Those certificates are—
- (a) a certificate discharging the debtor; and
  - (b) a certificate discharging the trustee.
- (3) A certificate granted under sub-paragraph (1) above shall be in the prescribed form.
- (4) The Accountant in Bankruptcy shall—

- (a) send a certified copy of the certificate discharging the debtor to the keeper of the register of inhibitions for recording in that register; and
  - (b) send a copy of that certificate to the trustee who shall insert it in the sederunt book or, where the Accountant in Bankruptcy is the trustee, insert a copy of that certificate in the sederunt book.”.
- (8) In paragraph 12, for “An order under paragraph 11” substitute “A certificate granted under paragraph 11(1)”.
- (9) In paragraph 14—
  - (a) the words “the sheriff makes an order approving” are repealed; and
  - (b) after “composition”, where it first occurs, insert “is approved”.
- (10) In paragraph 16—
  - (a) in sub-paragraph (1), for the words from “an” to “effective” substitute “the granting of a certificate under paragraph 11(1) of this Schedule discharging the debtor”; and
  - (b) in sub-paragraph (2), for “an order under paragraph 11 above” substitute “the granting of a certificate under paragraph 11(1) of this Schedule”.
- (11) In paragraph 17(1)—
  - (a) the words from “Without” to “decrees,” are repealed; and
  - (b) for the words from “order” to “and”, where it first occurs, substitute “approval of the offer of composition and the granting of certificates”.
- (12) In paragraph 18(1)—
  - (a) the words from “Without” to “decrees,” are repealed; and
  - (b) for “an order under paragraph 11” substitute “a certificate granted under paragraph 11(1)”.
- (13) In paragraph 4 of Schedule 1 to that Act (determination of amount of creditor’s claim), the words “by the sheriff” are repealed.