



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Review of decisions made by Accountant in Bankruptcy

38 Review of decisions about interim trustee

- (1) In section 13A of the 1985 Act (termination of interim trustee's functions when interim trustee is not appointed as trustee)—
- (a) after subsection (10), insert—
 - “(10A) The interim trustee or any person mentioned in subsection (4)(b) may apply to the Accountant in Bankruptcy for a review of a determination under subsection (10).
 - (10B) An application under subsection (10A) must be made before the expiry of the period of 14 days beginning with the day on which the determination is issued under subsection (10).
 - (10C) If an application under subsection (10A) 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 under subsection (10) before the expiry of the period of 28 days beginning with the day on which the application is made.”, and
 - (b) for subsection (11), substitute—
 - “(11) The interim trustee or any person mentioned in subsection (4)(b) may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (10C)(b) before the expiry of the period of 14 days beginning with the day of the decision.”.
- (2) In section 13B of the 1985 Act (termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee)—
- (a) in subsection (5), after paragraph (a) insert—

Status: This is the original version (as it was originally enacted).

- “(aa) that an application for a review may be made under subsection (6A)”,
- (b) after subsection (6), insert—
- “(6A) The debtor, the petitioner or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s acting as interim trustee.
- (6B) An application under subsection (6A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(a)(iii) or (b).
- (6C) If an application for a review under subsection (6A) 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 revoke the discharge before the expiry of the period of 28 days beginning with the day on which the application is made.”, and
- (c) for subsection (7), substitute—
- “(7) The debtor, the petitioner or any creditor may appeal to the sheriff against—
- (a) the determination of the Accountant in Bankruptcy mentioned in subsection (4)(a)(ii) before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(a)(iii) or (b),
 - (b) a decision by the Accountant in Bankruptcy under subsection (6C)(b) before the expiry of the period of 14 days beginning with the day of the decision.
- (7A) The sheriff clerk must, following an appeal, send a copy of the decree to the Accountant in Bankruptcy.”.
- (3) In section 18 of the 1985 Act (interim preservation of estate)—
- (a) after subsection (3), insert—
- “(3A) Where the Accountant in Bankruptcy is the interim trustee, the debtor may apply to the Accountant in Bankruptcy for a review of a direction under subsection (1) on the ground that the direction is unreasonable.
- (3B) If an application 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 direction (whether or not substituting a new direction) before the expiry of the period of 28 days beginning with the day on which the application is made.

(3C) The sheriff may, on an application by the debtor made before the expiry of the period of 14 days beginning with the day on which the Accountant in Bankruptcy makes a decision under subsection (3B) (b)—

- (a) set aside a direction under subsection (1) or (3B)(b) if the sheriff considers it to be unreasonable, and
- (b) in any event, give such directions to the debtor regarding the management of the debtor's estate as the sheriff considers appropriate.

(3D) The debtor must comply with a direction—

- (a) under subsection (1) pending a decision by the Accountant in Bankruptcy under subsection (3B)(b),
- (b) under subsection (3B)(b) pending the final determination of any appeal (subject to any interim order of the sheriff).”,
- (b) in subsection (4), at the beginning insert “Where the Accountant in Bankruptcy is not the interim trustee,”, and
- (c) in subsection (5)(a)(i), after “(1)” insert “, (3B)(b), (3C)(b)”.

39 Review of decision not to award sequestration

In section 15 of the 1985 Act (further provisions relating to award of sequestration), for subsection (3A) substitute—

“(3A) If, following a debtor application, the Accountant in Bankruptcy refuses to award sequestration, the debtor or a creditor concurring in the application may apply to the Accountant in Bankruptcy for a review of the refusal.

(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 Accountant in Bankruptcy refuses to award sequestration.

(3C) If an application 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 the refusal or award sequestration before the expiry of the period of 28 days beginning with the day on which the application is made.

(3D) If the Accountant in Bankruptcy confirms the refusal to award sequestration under subsection (3C)(b), the debtor or a creditor concurring in the application may, before the expiry of the period of 14 days beginning with the day of that confirmation, appeal to the sheriff.”.

40 Review of decisions about replacement trustee

(1) In section 26A of the 1985 Act (Accountant in Bankruptcy to account for intromissions)—

- (a) in subsection (4)(b), after paragraph (ii) insert—

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

“(iia) that an application for a review may be made under subsection (4A)”,

(b) after subsection (4), insert—

“(4A) The replacement trustee, the debtor or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s actings as trustee.

(4B) An application under subsection (4A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b).

(4C) If an application under subsection (4A) 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 revoke the discharge before the expiry of the period of 28 days beginning with the day on which the application is made.”,

(c) for subsection (5), substitute—

“(5) The replacement trustee, the debtor or any creditor may appeal to the sheriff against—

- (a) the determination of the Accountant in Bankruptcy mentioned in subsection (3)(b) before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b),
- (b) a decision by the Accountant in Bankruptcy under subsection (4C)(b) before the expiry of the period of 14 days beginning with the day on which the decision is made.”, and

(d) for subsection (6), substitute—

“(6) The decision of the sheriff on an appeal under subsection (5) is final.”.

(2) In section 27 of the 1985 Act (discharge of original trustee)—

(a) after subsection (3), insert—

“(3A) The original trustee, the replacement trustee, the debtor or any creditor who has made representations may apply to the Accountant in Bankruptcy for a review of a determination under subsection (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 determination is issued under subsection (3).

(3C) If an application 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 determination under subsection (3) (whether or not granting a certificate of

discharge) before the expiry of the period of 28 days beginning with the day on which the application is made.”, and

- (b) in subsection (4), for “issuing of the determination under subsection (3) above” substitute “day of the decision under subsection (3C)(b)”.

41 Review of decisions about adjudication of creditor’s claims

In section 49 of the 1985 Act (adjudication of claims)—

- (a) for subsection (6), substitute—

“(6) The debtor or any creditor may apply to the Accountant in Bankruptcy for a review of—

- (a) the acceptance or rejection of any claim, or
- (b) a decision in respect of any matter requiring to be specified under subsection (5)(a) or (b).”.

- (b) for subsection (6A), substitute—

“(6A) The debtor may make an application under subsection (6) only if the debtor satisfies the Accountant in Bankruptcy that the debtor has, or is likely to have, a pecuniary interest in the outcome of the review.

(6B) An application under subsection (6) must be made—

- (a) in the case of a review relating to an acceptance or rejection under subsection (1), before the expiry of the period of 14 days beginning with the day of that decision, and
- (b) in the case of a review relating to an acceptance or rejection under subsection (2), before the expiry of the period of 28 days beginning with the day of that decision.

(6C) If an application under subsection (6) 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.

(6D) The debtor or any creditor may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (6C)(b) before the expiry of the period of 14 days beginning with the day of the decision.

(6E) The debtor may appeal under subsection (6D) only if the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.”.

42 Review of decision about discharge of trustee

(1) In section 57 of the 1985 Act (discharge of trustee)—

- (a) after subsection (3), insert—

“(3A) A certificate of discharge granted under subsection (3)—

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

- (a) must take effect after the expiry of the period mentioned in subsection (3C), and
 - (b) has no effect if an application for review is made under subsection (3B).
 - (3B) The trustee, the debtor or any creditor who has made representations under subsection (2)(a) may apply to the Accountant in Bankruptcy for a review of a determination under subsection (3).
 - (3C) An application under subsection (3B) must be made before the expiry of the period of 14 days beginning with the day of the determination.
 - (3D) If an application for a review under subsection (3B) 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 (whether or not issuing a new certificate of discharge) before the expiry of the period of 28 days beginning with the day on which the application is made.”, and
 - (b) in subsection (4), for “the issuing of the determination under subsection (3) above” substitute “a decision by the Accountant in Bankruptcy under subsection (3D)(b)”.
- (2) In section 58A of the 1985 Act (discharge of Accountant in Bankruptcy)—
- (a) in subsection (4)(b), after paragraph (ii) insert—
 - “(ia) that an application for a review may be made under subsection (4A)”,
 - (b) after subsection (4), insert—
 - “(4A) The debtor or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s acting as trustee.
 - (4B) An application under subsection (4A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b).
 - (4C) If an application under subsection (4A) 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 revoke the discharge before the expiry of the period of 28 days beginning with the day on which the application is made.”,
 - (c) for subsection (5), substitute—
 - “(5) The debtor or any creditor may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (4C)(b) before the expiry of the period of 14 days beginning with the day on which the decision is made.”, and

(d) for subsection (6), substitute—

“(6) The decision of the sheriff on an appeal under subsection (5) is final.”.

43 Appeals against decisions on review

After section 63B of the 1985 Act insert—

“63C Review of decisions by Accountant in Bankruptcy: grounds of appeal

(1) For the avoidance of doubt, an appeal under a provision mentioned in subsection (2) may be made on—

- (a) a matter of fact,
- (b) a point of law, or
- (c) the merits.

(2) The provisions are—

- (a) section 3A(7),
- (b) section 13A(11),
- (c) section 13B(7),
- (d) section 15(3D),
- (e) section 17G(5),
- (f) section 25A(8),
- (g) section 26A(5),
- (h) section 27(4),
- (i) section 28B(4),
- (j) section 29(4),
- (k) section 29(6H),
- (l) section 32C(5),
- (m) section 32H(5),
- (n) section 42(2D),
- (o) section 49(6D),
- (p) section 54B(6),
- (q) section 54G(6),
- (r) section 56J(8),
- (s) section 57(4),
- (t) section 58A(5),
- (u) section 63B(4),
- (v) paragraph 3(6) of Schedule 1.”