



# Bankruptcy (Scotland) Act 1993

## 1993 CHAPTER 6

An Act to amend the Bankruptcy (Scotland) Act 1985; and for connected purposes. [18th February 1993]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Accountant in Bankruptcy**

- (1) In the Bankruptcy (Scotland) Act 1985 (in this Act referred to as “the 1985 Act”), for section 1 (functions of the Accountant in Bankruptcy) there shall be substituted the following sections—

#### **“1 Accountant in Bankruptcy**

- (1) The Accountant in Bankruptcy shall be appointed by the Secretary of State on such terms and conditions as the Secretary of State may, with the approval of the Treasury, determine.
- (2) The Accountant in Bankruptcy shall have such staff appointed by the Secretary of State on such terms and conditions as the Secretary of State may, with the approval of the Treasury, determine.
- (3) The Secretary of State may appoint a member of the staff to be Depute Accountant in Bankruptcy to exercise all of the functions of the Accountant in Bankruptcy at any time when the Accountant in Bankruptcy is unable to do so.
- (4) The Secretary of State may pay to the Accountant in Bankruptcy and his staff such remuneration and allowances as the Secretary of State may, with the approval of the Treasury, determine.

- (5) The Secretary of State may, with the approval of the Treasury, make such arrangements as he considers appropriate for the provision of superannuation, pensions or gratuities for the Accountant in Bankruptcy and his staff.

### **1A Supervisory functions of the Accountant in Bankruptcy**

- (1) The Accountant in Bankruptcy shall have the following general functions in the administration of sequestration and personal insolvency—
- (a) the supervision of the performance by—
    - (i) interim trustees (not being the Accountant in Bankruptcy);
    - (ii) permanent trustees; and
    - (iii) commissioners, of the functions conferred on them by this Act or any other enactment (including an enactment contained in subordinate legislation) or any rule of law and the investigation of any complaints made against them;
  - (b) the maintenance of a register (in this Act referred to as the “register of insolvencies”), in such form as may be prescribed by the Court of Session by act of sederunt, which shall contain particulars of—
    - (i) estates which have been sequestrated; and
    - (ii) trust deeds which have been sent to him for registration under paragraph 5(1)(e) of Schedule 5 to this Act;
  - (c) the preparation of an annual report which shall be presented to the Secretary of State and the Court of Session and shall contain—
    - (i) statistical information relating to the state of all sequestrations of which particulars have been registered in the register of insolvencies during the year to which the report relates;
    - (ii) particulars of trust deeds registered as protected trust deeds in that year; and
    - (iii) particulars of the performance of the Accountant in Bankruptcy’s functions under this Act; and
  - (d) such other functions as may from time to time be conferred on him by the Secretary of State.
- (2) If it appears to the Accountant in Bankruptcy that a person mentioned in paragraph (a) of subsection (1) above has failed without reasonable excuse to perform a duty imposed on him by any provision of this Act or by any other enactment (including an enactment contained in subordinate legislation) or by any rule of law, he shall report the matter to the court which, after hearing that person on the matter, may remove him from office or censure him or make such other order as the circumstances of the case may require.
- (3) Where the Accountant in Bankruptcy has reasonable grounds to suspect that an offence has been committed—
- (a) by a person mentioned in paragraph (a) of subsection (1) above in the performance of his functions under this Act or any other enactment (including an enactment contained in subordinate legislation) or any rule of law; or

- (b) in relation to a sequestration, by the debtor in respect of his assets, his dealings with them or his conduct in relation to his business or financial affairs; or
  - (c) in relation to a sequestration, by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the permanent trustee in respect of the debtor's assets, business or financial affairs,
- he shall report the matter to the Lord Advocate.

- (4) The Accountant in Bankruptcy shall—
- (a) make the register of insolvencies, at all reasonable times, available for inspection; and
  - (b) provide any person, on request, with a certified copy of any entry in the register.

### **1B Performance of certain functions of the Accountant in Bankruptcy**

- (1) The functions of the Accountant in Bankruptcy, other than functions conferred by section 1A of this Act, may be carried out on his behalf by any member of his staff authorised by him to do so.
- (2) Without prejudice to subsection (1) above, the Accountant in Bankruptcy may appoint on such terms and conditions as he considers appropriate such persons as he considers fit to perform on his behalf any of his functions in respect of the sequestration of the estate of any debtor.
- (3) A person appointed under subsection (2) above shall comply with such general or specific directions as the Accountant in Bankruptcy may from time to time give to such person as to the performance of his functions in relation to any sequestration.
- (4) The Accountant in Bankruptcy may pay to a person appointed under subsection (2) above such fee as he may consider appropriate.

### **1C Directions**

- (1) The Secretary of State may, after consultation with the Lord President of the Court of Session, give to the Accountant in Bankruptcy general directions as to the performance of his functions under this Act.
  - (2) Directions under this section may be given in respect of all cases or any class or description of cases, but may not be given in respect of any particular case.
  - (3) The Accountant in Bankruptcy shall comply with any directions given to him under this section.”
- (2) When a person is first appointed to be the Accountant in Bankruptcy under section 1 of the 1985 Act as inserted by subsection (1) above, the Accountant of Court shall cease to be the Accountant in Bankruptcy.
- (3) On such appointment—
- (a) the Accountant of Court shall deliver to the Accountant in Bankruptcy all registers, records, documents and other material in his possession relating to the functions of the Accountant in Bankruptcy before the commencement of this section; and

- (b) there shall be transferred to and vest in the Accountant in Bankruptcy all property, rights, liabilities, functions and responsibilities of the Accountant of Court which, immediately before the commencement of this section, were vested in the Accountant of Court in connection with his functions in the administration of sequestrations and personal insolvency under the Bankruptcy (Scotland) Act 1913 or, in his capacity as Accountant in Bankruptcy, under the 1985 Act.

## 2 Appointment and functions of interim trustee

For section 2 of the 1985 Act (interim trustee) there shall be substituted the following section—

### “2 Appointment and functions of interim trustee

- (1) Where the court awards sequestration of the debtor’s estate and the petition for the sequestration—
- (a) nominates a person to be interim trustee;
  - (b) states that the person satisfies the conditions mentioned in subsection (3) below; and
  - (c) has annexed to it a copy of the undertaking mentioned in subsection (3) (c) below,

the court may, if it appears to the court that the person satisfies those conditions and if no interim trustee has been appointed in pursuance of subsection (5) below, appoint that person to be interim trustee in the sequestration.

- (2) Where the court awards sequestration of the debtor’s estate and—
- (a) it does not appoint a person to be interim trustee in pursuance of subsection (1) above; and
  - (b) no interim trustee has been appointed in pursuance of subsection (5) below,

the court shall appoint the Accountant in Bankruptcy to be interim trustee in the sequestration.

- (3) The conditions referred to in subsection (1) above are that the person—

- (a) resides within the jurisdiction of the Court of Session;
- (b) is qualified to act as an insolvency practitioner; and
- (c) has given an undertaking, in writing, that he will act—
  - (i) as interim trustee; and
  - (ii) where no permanent trustee is elected, as permanent trustee,

in the sequestration.

- (4) The interim trustee’s general functions shall be—

- (a) to safeguard the debtor’s estate pending the appointment of a permanent trustee under this Act;
- (b) to ascertain the reasons for the debtor’s insolvency and the circumstances surrounding it;
- (c) to ascertain the state of the debtor’s liabilities and assets;
- (d) to administer the sequestration process pending the appointment of a permanent trustee; and

- (e) whether or not he is still acting in the sequestration, to supply the Accountant in Bankruptcy with such information as the Accountant in Bankruptcy considers necessary to enable him to discharge his functions under this Act.
- (5) Where a petition for sequestration is presented by a creditor or a trustee acting under a trust deed, the court may appoint an interim trustee before sequestration is awarded—
  - (a) if the debtor consents; or
  - (b) if the trustee acting under the trust deed or any creditor shows cause.
- (6) For the purposes of the appointment of an interim trustee under subsection (5) above—
  - (a) where a person is nominated as mentioned in subsection (1)(a) above and the provisions of that subsection apply, the court may appoint that person; and
  - (b) where such a person is not appointed, the court shall appoint the Accountant in Bankruptcy.
- (7) Where the petition for sequestration was presented by a creditor or the trustee acting under a trust deed, the interim trustee shall, as soon as practicable, notify the debtor of his appointment.”

### **3 Petitions for sequestration**

- (1) Section 5 of the 1985 Act (procedure for the sequestration of the estate of a living debtor) shall be amended as follows.
- (2) For subsection (2) (persons who may petition) there shall be substituted the following subsections—
  - “(2) The sequestration of the estate of a living debtor shall be on the petition of—
    - (a) the debtor, if either subsection (2A) or (2B) below applies to him;
    - (b) a qualified creditor or qualified creditors, if the debtor is apparently insolvent; or
    - (c) the trustee acting under a trust deed if, and only if, one or more of the conditions in subsection (2C) below is satisfied.
  - (2A) This subsection applies to the debtor if a qualified creditor or qualified creditors concur in the petition.
  - (2B) This subsection applies to the debtor where—
    - (a) the total amount of his debts (including interest) at the date of presentation of the petition is not less than £1,500;
    - (b) an award of sequestration has not been made against him in the period of 5 years ending on the day before the date of presentation of the petition; and
    - (c) the debtor either—
      - (i) is apparently insolvent; or
      - (ii) has granted a trust deed and the trustee has complied with the requirements of sub-sub-paragraphs (a) to (c) of paragraph 5(1) of Schedule 5 to this Act but has received notification as mentioned in sub-sub-paragraph (d) of that paragraph,

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and for the purposes of this paragraph a debtor shall not be apparently insolvent by reason only that he has granted a trust deed or that he has given notice to his creditors as mentioned in paragraph (b) of section 7(1) of this Act.

(2C) The conditions mentioned in subsection (2)(c) above are—

- (a) that the debtor has failed to comply—
  - (i) with any obligation imposed on him under the trust deed with which he could reasonably have complied; or
  - (ii) with any instruction or requirement reasonably given to or made of him by the trustee for the purposes of the trust deed; or
- (b) that the trustee avers in his petition that it would be in the best interests of the creditors that an award of sequestration be made.”

(3) In subsection (4) delete “£750” where it appears and substitute “£1,500”.

(4) After subsection (4) there shall be inserted the following subsection—

“(4A) In this Act, “trust deed” means a voluntary trust deed granted by or on behalf of the debtor whereby his estate (other than such of his estate as would not, under section 33(1) of this Act, vest in the permanent trustee if his estate were sequestrated) is conveyed to the trustee for the benefit of his creditors generally.”

(5) In subsection (6) (copy of petition to be sent to the Accountant in Bankruptcy) for the words from “send” to “section” there shall be substituted the words “, on the day the petition for sequestration is presented under this section, send a copy of the petition”.

(6) After subsection (6) there shall be inserted the following subsection—

“(6A) Where the petitioner is the debtor—

- (a) he shall lodge with the petition a statement of assets and liabilities; and
- (b) he shall, on the day the petition is presented, send to the Accountant in Bankruptcy such statement of assets and liabilities as was lodged in court in pursuance of paragraph (a) above.”

(7) After subsection (8) there shall be inserted the following subsections—

“(9) If the debtor—

- (a) fails to send to the Accountant in Bankruptcy in accordance with subsection (6A)(b) above such statement of assets and liabilities; or
- (b) fails to disclose any material fact in such statement of assets and liabilities; or
- (c) makes a material misstatement in such statement of assets and liabilities,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

(10) In any proceedings for an offence under subsection (9) above, it shall be a defence for the accused to show that he had a reasonable excuse for—

- (a) failing to send to the Accountant in Bankruptcy in accordance with subsection (6A)(b) above such statement of assets and liabilities; or
- (b) failing to disclose a material fact; or
- (c) making a material misstatement.”

#### **4 Award of sequestration**

(1) Section 12 of the 1985 Act (when sequestration is awarded) shall be amended as follows.

(2) For subsection (1) there shall be substituted the following subsection—

“(1) Where a petition for the sequestration of his estate is presented by the debtor, unless cause is shown why sequestration cannot competently be awarded, the court shall award sequestration forthwith if it is satisfied—

- (a) that the petition has been presented in accordance with the provisions of this Act;
- (b) that either subsection (2A) or (2B) of section 5 of this Act applies to the debtor; and
- (c) that the provisions of subsections (6) and (6A) of that section have been complied with.”

(3) After subsection (1) there shall be inserted the following subsection—

“(1A) Where a petition is presented as mentioned in subsection (1) above, the Accountant in Bankruptcy may, not later than 7 days after the date on which sequestration is awarded, apply to the court for the grant of a certificate for the summary administration of the sequestration of the debtor’s estate.”

(4) For subsection (3) there shall be substituted the following subsections—

“(3) Where, on a petition for sequestration presented by a creditor or a trustee acting under a trust deed, the court is satisfied—

- (a) that, if the debtor has not appeared, proper citation has been made of the debtor;
- (b) that the petition has been presented in accordance with the provisions of this Act;
- (c) that the provisions of subsection (6) of section 5 of this Act have been complied with;
- (d) that, in the case of a petition by a creditor, the requirements of this Act relating to apparent insolvency have been fulfilled; and
- (e) that, in the case of a petition by a trustee, the averments in his petition as to any of the conditions in subsection (2C) of the said section 5 are true,

it shall, subject to subsection (3A) below, award sequestration forthwith.

(3A) Sequestration shall not be awarded in pursuance of subsection (3) above if—

- (a) cause is shown why sequestration cannot competently be awarded; or
- (b) the debtor forthwith pays or satisfies, or produces written evidence of the payment or satisfaction of, or gives or shows that there is sufficient security for the payment of—

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- (i) the debt in respect of which he became apparently insolvent; and
- (ii) any other debt due by him to the petitioner and any creditor concurring in the petition.”

(5) For subsection (4) there shall be substituted the following subsection—

- “(4) In this Act “the date of sequestration” means—
- (a) where the petition for sequestration is presented by the debtor, the date on which sequestration is awarded;
  - (b) where the petition for sequestration is presented by a creditor or a trustee acting under a trust deed—
    - (i) the date on which the court grants warrant under subsection (2) above to cite the debtor; or
    - (ii) where more than one such warrant is granted, the date on which the first such warrant is granted.”

## 5 Calling of statutory meeting

After section 21 of the 1985 Act there shall be inserted the following sections—

### **“21A Calling of statutory meeting where interim trustee is Accountant in Bankruptcy**

- (1) Subject to subsections (5) and (6) below, where the interim trustee is the Accountant in Bankruptcy, the statutory meeting may be held at such time and place as the interim trustee may determine.
- (2) Not later than 60 days after the date of the sequestration, or such longer period as the sheriff may on cause shown allow, the interim trustee shall give notice to every creditor known to him of whether he intends to call the statutory meeting.
- (3) A notice given under subsection (2) above shall—
  - (a) be accompanied by a copy of the interim trustee’s statement of the debtor’s affairs; and
  - (b) where the interim trustee is notifying his intention not to hold the statutory meeting, inform creditors—
    - (i) of the effect of subsections (4) and (5) below; and
    - (ii) whether he intends to apply for the grant of a certificate for the summary administration of the sequestration of the debtor’s estate.
- (4) Within 7 days of the giving of notice under subsection (2) above, any creditor may request the interim trustee to call the statutory meeting.
- (5) Where a request or requests under subsection (4) above are made by not less than one quarter in value of the debtor’s creditors, the interim trustee shall call the statutory meeting not later than 28 days, or such other period as the sheriff may on cause shown allow, after the giving of notice under subsection (2) above.



- (6) Where the interim trustee gives notice under subsection (2) above that he intends to call the statutory meeting, such meeting shall be called not later than 28 days after the giving of such notice.
- (7) Not less than 7 days before the date fixed for the statutory meeting, the interim trustee shall notify every creditor known to him of the date, time and place of the meeting, and shall in such notice invite the submission of such claims as have not already been submitted and inform them of his duties under section 23(3) of this Act.
- (8) The creditors may continue the statutory meeting to a date not later than 7 days after the end of the period mentioned in subsection (6) above or such longer period as the sheriff may on cause shown allow.
- (9) This section applies in any case where the Accountant in Bankruptcy is the interim trustee.

#### **21B Procedure where no statutory meeting called**

- (1) Where the interim trustee does not call the statutory meeting and the period mentioned in section 21A(4) of this Act has expired, he shall—
  - (a) forthwith make a report to the sheriff on the circumstances of the sequestration; and
  - (b) provide to the sheriff a copy of the interim trustee's statement of the debtor's affairs.
- (2) In the case of a sequestration which falls within subsection (1) above—
  - (a) section 25A of this Act shall apply; and
  - (b) the interim trustee may apply to the sheriff for the grant of a certificate for the summary administration of the sequestration of the debtor's estate.”

## **6 Summary administration**

- (1) After section 23 of the 1985 Act, there shall be inserted the following section—

#### **“23A Summary administration**

- (1) Where an application is made to the court under this Act for the grant of a certificate for the summary administration of the sequestration of the debtor's estate, the court shall, subject to subsection (9) below, grant such a certificate where it appears to the court that—
  - (a) the aggregate amount of the debtor's liabilities does not exceed £20,000; and
  - (b) the aggregate amount of the debtor's assets does not exceed £2,000.
- (2) In calculating—
  - (a) the aggregate amount of the debtor's liabilities under paragraph (a) of subsection (1) above, no account shall be taken of any debt to the extent that a creditor holds a security for that debt; and
  - (b) the aggregate amount of the debtor's assets under paragraph (b) of that subsection, no account shall be taken of—

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- (i) any heritable property of his; or
  - (ii) any property of his which, under section 33(1) of this Act, does not vest in the permanent trustee.
- (3) For the purposes of an application under subsection (1) above made by—
- (a) the Accountant in Bankruptcy; or
  - (b) an interim trustee who is not the Accountant in Bankruptcy,
- a certificate by the Accountant in Bankruptcy or, as the case may be, the interim trustee as to the aggregate amounts of the debtor's liabilities and assets shall be sufficient evidence of such aggregate amounts.
- (4) Where a certificate for the summary administration of the sequestration of the debtor's estate is granted—
- (a) in any case where the application for the certificate was made by the Accountant in Bankruptcy, section 25A of this Act; and
  - (b) in every case, Schedule 2A to this Act (which modifies the duties of the permanent trustee),
- shall apply to the sequestration.
- (5) The debtor, a creditor, the permanent trustee or the Accountant in Bankruptcy may, at any time, apply to the sheriff to withdraw the certificate for the summary administration of the sequestration of the debtor's estate.
- (6) Where an application is made under subsection (5) above by a person who is not the permanent trustee, the applicant shall send a copy of the application to the permanent trustee who shall prepare and present to the sheriff a report on all of the circumstances of the sequestration.
- (7) If it appears to the sheriff, on considering an application under subsection (5) above and any report under subsection (6) above, that it is no longer appropriate for the sequestration to be subject to summary administration, he shall withdraw the certificate and the sequestration of the estate shall proceed as if the certificate had not been granted.
- (8) The sheriff clerk shall send to the permanent trustee and, where he is not the permanent trustee, the Accountant in Bankruptcy a copy of the sheriff's decision on any application under subsection (5) above.
- (9) The court shall not grant an application as mentioned in subsection (1) above—
- (a) in any case where the application is made by the Accountant in Bankruptcy and the court has appointed as interim trustee a person who is not the Accountant in Bankruptcy; or
  - (b) in any other case—
    - (i) where a person has been elected as permanent trustee, before the sheriff has confirmed the election of that person as permanent trustee; or
    - (ii) where no such person has been elected, unless the court at the same time appoints the interim trustee as permanent trustee.”
- (2) After Schedule 2 to the 1985 Act there shall be inserted the following Schedule—

## “SCHEDULE 2A

### MODIFICATION OF DUTIES OF PERMANENT TRUSTEE IN SUMMARY ADMINISTRATION

- 1 The permanent trustee shall comply with the requirements of sections 3 and 39 of this Act only in so far as, in his view, it would be of financial benefit to the estate of the debtor and in the interests of creditors to do so.
- 2 The permanent trustee shall, until the debtor is discharged under this Act, at the end of—
  - (a) the period of 6 months beginning with the date of sequestration; and
  - (b) each subsequent period of 6 months,require the debtor to give an account in writing of his current state of affairs.
- 3 (1) Where the Accountant in Bankruptcy is not the permanent trustee, the permanent trustee shall comply with any general or specific directions given to him by the Accountant in Bankruptcy.  
(2) Directions given under this paragraph may be given in respect of any particular case, all cases or any class or description of case.
- 4 (1) The permanent trustee shall, as soon as a certificate for the summary administration of the sequestration of the debtor’s estate has been granted, publish in the Edinburgh Gazette a notice stating that such a certificate has been granted and that he has been appointed permanent trustee and, where no notice under section 15(6) of this Act has been published in respect of the sequestration—
  - (a) stating that sequestration of the debtor’s estate has been awarded; and
  - (b) inviting the submission of claims to him.  
(2) A notice under sub-paragraph (1) above shall also contain such additional information as may be prescribed.
- 5 Except in the case of an application for the grant of a certificate for the summary administration of the sequestration of the debtor’s estate under section 25(2A) of this Act, Schedule 2 to this Act shall have effect in respect of a sequestration to which this Schedule applies.”

## 7 **Appointment of permanent trustee**

After section 25 of the 1985 Act there shall be inserted the following section—

### **“25A Appointment of permanent trustee in certain cases**

- (1) Where this section applies as mentioned in section 21B(2), 23A(4) or 24(3A) of this Act, the court shall appoint as permanent trustee—
  - (a) the Accountant in Bankruptcy; or
  - (b) such person as may be nominated by the Accountant in Bankruptcy (being a person who is not ineligible for election as permanent

trustee under section 24(2) of this Act) if that person consents to the nomination.

- (2) Where this section applies as mentioned in section 28(5) of this Act, if either of the persons mentioned in paragraphs (a) and (b) of subsection (1) above applies to the sheriff for appointment as permanent trustee, the sheriff shall so appoint such person.
- (3) Where a person is appointed to be permanent trustee under this section, the provisions of this Act shall apply to the sequestration subject to such modifications, and with such further provisions, as are set out in Schedule 2 to this Act.”

## **8 Fees for the Accountant in Bankruptcy**

After section 69 of the 1985 Act there shall be inserted the following section—

### **“69A Fees for the Accountant in Bankruptcy**

The Secretary of State may prescribe—

- (a) the fees and outlays to be payable to the Accountant in Bankruptcy in respect of the exercise of any of his functions under this Act;
- (b) the time and manner in which such fees and outlays are to be paid; and
- (c) the circumstances, if any, in which the Accountant in Bankruptcy may allow exemption from payment or the remission or modification of payment of any fees or outlays payable or paid to him.”

## **9 Remuneration of permanent trustee**

- (1) This section applies in the case of any sequestration in respect of which the petition is presented during the period beginning with the day on which this Act is passed and ending with the commencement of section 2 of this Act, being a sequestration to which Schedule 2 to the 1985 Act applies and in respect of which the permanent trustee is entitled to payment of his outlays and remuneration by virtue of paragraph 9 of that Schedule.
- (2) In the case of any sequestration to which this section applies, section 53 of the 1985 Act shall apply for the purposes of the determination of the remuneration and outlays of the permanent trustee subject to the provisions of regulations made under this section.
- (3) Regulations under this section may prescribe—
  - (a) the work in respect of which remuneration and outlays may be claimed, including work undertaken while the permanent trustee was acting as interim trustee;
  - (b) an amount which shall be paid in respect of remuneration and outlays in respect of any sequestration to which this section applies; and
  - (c) a scale of fees relating to the nature and extent of work undertaken to apply for the purposes of determining the remuneration and outlays in respect of any such sequestration.
- (4) Such regulations may enable the Accountant in Bankruptcy, having taken into account the matters mentioned in paragraphs (a) and (b) of section 53(4) of the 1985 Act, to

determine whether, in relation to any sequestration to which this section applies, the remuneration and outlays shall be—

- (a) the amount mentioned in subsection (3)(b) above; or
  - (b) determined by reference to the scale mentioned in subsection (3)(c) above.
- (5) Section 72 of the 1985 Act shall apply to regulations made under this section as it applies to regulations made under that Act.
- (6) A determination by the Accountant in Bankruptcy in pursuance of regulations made under this section may be appealed to the sheriff in accordance with subsection (6) of the said section 53.

## **10 Finance**

- (1) There shall be paid into the Consolidated Fund any fees received by the Accountant in Bankruptcy in pursuance of regulations made under section 69A of the 1985 Act.
- (2) There shall be paid out of money provided by Parliament—
- (a) any fees paid in pursuance of section 1B(4) of the 1985 Act as inserted by section 1(1) of this Act;
  - (b) any administrative expenses incurred by the Secretary of State under this Act; and
  - (c) any increase attributable to this Act in the sums so payable under any other Act.

## **11 Amendments and repeals**

- (1) In section 388 of the Insolvency Act 1986 (meaning of “act as insolvency practitioner”), for subsection (5) there shall be substituted the following subsection—
- “(5) Nothing in this section applies to anything done by—
- (a) the official receiver; or
  - (b) the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985).”
- (2) In section 389 of that Act (acting without qualification an offence), in subsection (2) at the end there shall be inserted the words “or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985).”
- (3) The 1985 Act shall have effect subject to the amendments in Schedule 1 to this Act.
- (4) The enactments mentioned in Schedule 2 to this Act are repealed to the extent mentioned in the third column.

## **12 Short title, interpretation, commencement and extent**

- (1) This Act may be cited as the Bankruptcy (Scotland) Act 1993.
- (2) Expressions used in this Act and in the 1985 Act shall have the same meaning in this Act as they do in that Act.
- (3) The following provisions shall come into force on the day on which this Act is passed, namely—
- section 8;

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section 9;  
this section; and  
paragraphs 22(5), 23 and 31(4) and (5) of Schedule 1 and, so far as relating to those paragraphs, section 11.

- (4) Subject to subsection (3) above, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different purposes and for different provisions.
- (5) An order under subsection (4) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with the provisions brought into force (whether wholly or partly) by the order.
- (6) Notwithstanding anything in an order made under subsection (4) above, nothing in any provision commenced by such an order shall have effect as regards any sequestration in respect of which the petition is presented before such commencement.
- (7) Subject to subsection (8) below, this Act extends to Scotland only.
- (8) The amendment by this Act of an enactment which extends to England and Wales or Northern Ireland extends also to England and Wales or, as the case may be, Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 11.

#### MISCELLANEOUS AMENDMENTS OF THE 1985 ACT

##### *Duties of permanent trustee*

1 In section 3 (duties of the permanent trustee) at the end there shall be added the following subsections—

- “(5) Paragraph (g) of subsection (1) above and subsection (3) above shall not apply in any case where the permanent trustee is the Accountant in Bankruptcy.
- (6) A permanent trustee may apply to the sheriff for directions in relation to any particular matter arising in the sequestration.
- (7) Where the debtor, a creditor or any other person having an interest is dissatisfied with any act, omission or decision of the permanent trustee, he may apply to the sheriff and, on such an application being made, the sheriff may confirm, annul or modify any act or decision of the permanent trustee or may give him directions or make such order as he thinks fit.”

##### *Resignation and removal of interim trustee*

2 For section 13 (appointment and resignation of interim trustee) there shall be substituted the following section.

##### **“13 Resignation, removal etc. of interim trustee.**

- (1) Where, under section 1A(2) of this Act, the court removes from office an interim trustee, the court shall, on the application of the Accountant in Bankruptcy, appoint a new interim trustee.
- (2) Without prejudice to section 1A(2) of this Act or to subsection (1) above, where the court is satisfied that an interim trustee—
- (a) is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever); or
  - (b) has so conducted himself that he should no longer continue to act in the sequestration,
- the court, on the application of the debtor, a creditor or the Accountant in Bankruptcy, shall remove from office the interim trustee and appoint a new interim trustee.
- (3) An interim trustee (not being the Accountant in Bankruptcy) may apply to the court for authority to resign office; and if the court is satisfied that the grounds mentioned in paragraph (a) or (b) of subsection (2) above apply in relation to the interim trustee, it shall grant the application.

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- (4) Where, following an application under subsection (3) above, the interim trustee resigns office, the court shall appoint a new interim trustee.
- (5) Where the interim trustee has died, the court, on the application of the debtor, a creditor or the Accountant in Bankruptcy, shall appoint a new interim trustee.
- (6) No one (other than the Accountant in Bankruptcy) shall act as interim trustee in a sequestration if he would, by virtue of section 24(2) of this Act, be disqualified from acting as permanent trustee in that sequestration; but where an interim trustee is, by virtue of this subsection, prohibited from so acting, he shall forthwith make an application under subsection (3) above.
- (7) Subsections (1) and (2) of section 2 of this Act shall apply as regards the appointment of an interim trustee under this section as if for any reference to—
  - (a) the court awarding sequestration of the debtor’s estate, there was substituted a reference to the court appointing a new interim trustee; and
  - (b) the petition for sequestration there was substituted a reference to the application under this section for the appointment of a new interim trustee.”

*Inhibition on debtor’s heritable estate*

- 3 In section 14 (recording of award of sequestration) in subsection (4) for the word “shall” where it first occurs there shall be substituted the word “may”.

*Interim trustee’s Gazette notice*

- 4 In section 15 (further provisions relating to the award of sequestration) for subsection (6) there shall be substituted the following subsection—
- “(6) The interim trustee shall, as soon as an award of sequestration has been granted, publish in the Edinburgh Gazette a notice—
- (a) stating that sequestration of the debtor’s estate has been awarded;
  - (b) inviting the submission of claims to him; and
  - (c) giving such other information as may be prescribed.”

*Petitions for recall of sequestration*

- 5 (1) Section 16 (petitions for recall of sequestration) shall be amended as follows.
- (2) In subsection (4)(a) after the word “of” there shall be inserted the words “the award of”.

*Preservation of debtor’s estate*

- 6 In section 18(2) (powers to enable preservation of the debtor’s estate)—
- (a) for the words “2(1)(a)” there shall be substituted the words “2(4)(a)”; and
  - (b) at the end there shall be added—



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“(h) carry on any business of the debtor or borrow money in so far as it is necessary for the interim trustee to do so to safeguard the debtor’s estate.”

*Statement of assets and liabilities*

- 7 (1) For section 19 (requirement on debtor to deliver list of assets and liabilities) there shall be substituted the following section—

**“19 Statement of assets and liabilities etc.**

- (1) Where the petitioner for sequestration is the debtor he shall, not later than 7 days after the appointment of the interim trustee (where he is not the Accountant in Bankruptcy), send to the interim trustee such statement of assets and liabilities as was lodged in court in pursuance of section 5(6A) (a) of this Act.
- (2) Where the petitioner for sequestration is a creditor or a trustee acting under a trust deed, the debtor shall, not later than 7 days after having been notified by the interim trustee as mentioned in section 2(7) of this Act, send to the interim trustee a statement of assets and liabilities.
- (3) If the debtor—
- (a) fails to send to the interim trustee in accordance with subsection (1) or (2) above such statement of assets and liabilities; or
  - (b) fails to disclose any material fact in such statement of assets and liabilities; or
  - (c) makes a material misstatement in such statement of assets and liabilities,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.
- (4) In any proceedings for an offence under subsection (3) above, it shall be a defence for the accused to show that he had a reasonable excuse for—
- (a) failing to send to the interim trustee in accordance with subsection (1) or (2) above such statement of assets and liabilities; or
  - (b) failing to disclose a material fact; or
  - (c) making a material misstatement.”

*Statement of debtor’s affairs*

- 8 (1) Section 20 (duty to prepare statement of debtor’s affairs) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—

“(1) When the interim trustee has received the statement of assets and liabilities, he shall, as soon as practicable, prepare a statement of the debtor’s affairs so far as within the knowledge of the interim trustee and shall indicate in the statement of the debtor’s affairs whether, in his opinion, the debtor’s assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in paragraphs (e) to (h) of section 51(1) of this Act.”

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(3) In paragraph (a) of subsection (2) for the words “a copy of the debtor’s list” there shall be substituted the words “the statement”.

(4) After subsection (5) there shall be inserted the following subsection—

“(5A) Subsections (2) and (3) above do not apply in any case where the Accountant in Bankruptcy is the interim trustee.”

*Calling of statutory meeting*

9 Before section 21 there shall be inserted the following section—

“**20A Statutory meeting.**

A meeting of creditors called by the interim trustee under section 21 or 21A of this Act shall, in this Act, be referred to as “the statutory meeting”.

10 (1) Section 21 (calling of statutory meeting) shall be amended as follows.

(2) In subsection (1) for the words from the beginning to “statutory meeting”)” there shall be substituted the words “Where the interim trustee is not the Accountant in Bankruptcy he shall call the statutory meeting”.

(3) After subsection (1) there shall be inserted the following subsection— “(1A) The statutory meeting shall be held at such time and place as the interim trustee determines.”

(4) After subsection (3) there shall be inserted the following subsection—

“(4) This section does not apply in any case where the Accountant in Bankruptcy is the interim trustee.”

*Proceedings at statutory meeting*

11 (1) Section 23 (proceedings at statutory meeting before the election of permanent trustee) shall be amended as follows.

(2) In subsection (3)—

(a) for paragraph (a) there shall be substituted the following paragraph—

“(a) shall make available for inspection—

(i) the statement of assets and liabilities; and

(ii) his statement of the debtor’s affairs prepared under section 20(1) of this Act;”;

(b) for paragraph (d) there shall be substituted the following paragraph—

“(d) shall determine whether it is necessary to revise his statement of the debtor’s affairs and, if he determines that it is necessary to revise the statement, he shall do so either at, or as soon as possible after, the statutory meeting.”

(3) For subsection (5) there shall be substituted the following subsection—

“(5) Where the interim trustee has revised his statement of the debtor’s affairs, he shall, as soon as possible after the statutory meeting, send a copy of the revised statement to every creditor known to him.”

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*Election of permanent trustee*

- 12 (1) Section 24 (election of permanent trustee) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—
- “(1) At the statutory meeting, the creditors shall, at the conclusion of the proceedings under section 23(3) of this Act, proceed to the election of the permanent trustee.”
- (3) In subsection (2) at the end there shall be inserted the following paragraphs—
- “(e) a person who has not given an undertaking, in writing, to act as permanent trustee;
- (f) the Accountant in Bankruptcy.”
- (4) After subsection (3) there shall be inserted the following subsections—
- “(3A) In any case where the Accountant in Bankruptcy is the interim trustee, if—
- (a) no creditor entitled to vote in the election of the permanent trustee attends the statutory meeting; or
- (b) no permanent trustee is elected,
- the Accountant in Bankruptcy shall forthwith report the proceedings at the statutory meeting to the sheriff and section 25A of this Act shall apply.
- (3B) Where a report is made in pursuance of subsection (3A) above, the Accountant in Bankruptcy may apply to the sheriff for the grant of a certificate for the summary administration of the sequestration of the debtor’s estate.”
- (5) In subsection (4) at the beginning there shall be inserted the following words—
- “In any case where the Accountant in Bankruptcy is not the interim trustee,”.
- (6) After subsection (4) there shall be inserted the following subsection—
- “(4A) Where a report is made in pursuance of subsection (4) above, the interim trustee may apply to the sheriff for the grant of a certificate for the summary administration of the sequestration of the debtor’s estate.”

*Procedure on election of permanent trustee*

- 13 (1) Section 25 (confirmation of permanent trustee) shall be amended as follows.
- (2) After subsection (2) there shall be inserted the following subsection—
- “(2A) Where a report is made in pursuance of subsection (1) above, the interim trustee may apply to the sheriff for the grant of a certificate for the summary administration of the sequestration of the debtor’s estate.”
- (3) In paragraph (b) of subsection (6) at the end there shall be added the words “and giving such other information as may be prescribed”.

*Termination of interim trustee’s functions*

- 14 (1) Section 26 (termination of functions of interim trustee) shall be amended as follows.

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- (2) In subsection (1) for the words from “a” to “liabilities” there shall be substituted the words “the statement of assets and liabilities, and a copy”.
- (3) In subsection (4) after the word “issue” there shall be inserted the words “; and the decision of the sheriff on such an appeal shall be final”.
- (4) After subsection (5) there shall be inserted the following subsection—
  - “(5A) This section does not apply in any case where the Accountant in Bankruptcy is the interim trustee.”

*Accountant in Bankruptcy to account for intromissions*

- 15 (1) After section 26 (termination of interim trustee’s functions) there shall be inserted the following section.

**“26A Accountant in Bankruptcy to account for intromissions.**

- (1) This section applies in any case where the Accountant in Bankruptcy was the interim trustee and some other person becomes the permanent trustee.
- (2) The Accountant in Bankruptcy shall, on confirmation of the permanent trustee in office, hand over to the permanent trustee everything in his possession which relates to the sequestration and which he obtained in his capacity as interim trustee (including the statement of assets and liabilities); and thereupon he shall cease to act as interim trustee.
- (3) The Accountant in Bankruptcy shall, not later than 3 months after the confirmation in office of the permanent trustee, supply to the permanent trustee—
  - (a) his accounts of his intromissions (if any) as interim trustee with the debtor’s estate;
  - (b) a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act; and
  - (c) a copy of the notice mentioned in subsection (4)(b) below.
- (4) The Accountant in Bankruptcy shall send to the debtor and to all creditors known to him—
  - (a) a copy of the determination mentioned in subsection (3)(b) above; and
  - (b) a notice in writing stating—
    - (i) that the Accountant in Bankruptcy has commenced the procedure under this Act leading to discharge in respect of his acting as interim trustee;
    - (ii) that the accounts of his intromissions (if any) with the debtor’s estate are available for inspection at such address as the Accountant in Bankruptcy may determine;
    - (iii) that an appeal may be made to the sheriff under subsection (5) below; and
    - (iv) the effect of subsection (7) below.
- (5) The permanent trustee, the debtor and any creditor may appeal to the sheriff against—

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- (a) the determination of the Accountant in Bankruptcy mentioned in subsection (3)(b) above;
  - (b) the discharge of the Accountant in Bankruptcy in respect of his actings as interim trustee; or
  - (c) both such determination and discharge.
- (6) An appeal under subsection (5) above shall be made not more than 14 days after the issue of the notice mentioned in subsection (4)(b) above; and the decision of the sheriff on such an appeal shall be final.
- (7) Where—
- (a) the requirements of this section have been complied with; and
  - (b) no appeal is made to the sheriff under subsection (5) above or such an appeal is made but is refused as regards the discharge of the Accountant in Bankruptcy,
- the Accountant in Bankruptcy shall be discharged from all liability (other than any liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of the Accountant in Bankruptcy in exercising the functions of interim trustee in the sequestration.
- (8) The permanent trustee, on being confirmed in office, shall make such insertions in the sederunt book as are appropriate to provide a record of the sequestration process before his confirmation.”

*Discharge of interim trustee*

- 16 (1) Section 27 (discharge of interim trustee) shall be amended as follows.
- (2) After subsection (4) there shall be inserted the following subsection—
- “(4A) The decision of the sheriff in an appeal under subsection (4) above shall be final.”
- (3) After subsection (7) there shall be inserted the following subsection—
- “(7A) This section does not apply in any case where the Accountant in Bankruptcy is the interim trustee.”

*Replacement of permanent trustee*

- 17 (1) Section 28 (resignation and death of permanent trustee) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsections—
- “(1) The permanent trustee may apply to the sheriff for authority to resign office and, where the sheriff is satisfied that either of the grounds mentioned in paragraphs (a) and (b) of section 13(2) of this Act applies to the permanent trustee, he shall grant the application.
- (1A) The sheriff may make the granting of an application under subsection (1) above subject to the election of a new permanent trustee and to such conditions as he thinks appropriate in all the circumstances of the case.”
- (3) In subsection (4), after the words “subsection (1),” there shall be inserted the word “(1A),”.

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(4) For subsection (5) there shall be substituted the following subsection—

“(5) Where no new permanent trustee is elected in pursuance of subsection (2) or (3) above, the provisions of section 25A of this Act shall apply.”

(5) After subsection (7) there shall be inserted the following subsection—

“(8) The decision of the sheriff on an appeal under subsection (7) above shall be final.”

*Removal of permanent trustee*

18        In section 29 (removal of permanent trustee and provision for where the permanent trustee does not act) in each of subsections (1)(b), (5) and (6) where they occur, for the words “1(3)” there shall be substituted the words “1A(2)”.

*Removal of commissioner from office*

19        In section 30(4) (removal of commissioner from office) for the words “1(3)” there shall be substituted the words “1A(2)”.

*Warrant for arrest of debtor etc.*

20        (1) Section 46 (measures to secure the attendance of the debtor and others at private and public examinations) shall be amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a) at the end there shall be added the words “to apprehend”;
- (b) in paragraph (b) for the words from “request” to the end of the paragraph there shall be substituted the words “grant a warrant for the arrest of”; and
- (c) after paragraph (b)—
  - (i) the words “to apprehend” shall cease to have effect; and
  - (ii) after the word “and” there shall be inserted the word “to”.

(3) In the proviso to subsection (1) for the words from “paragraph (a)” to “made” there shall be substituted the words “this subsection shall not be granted”.

*Accounting period*

21        —In section 52 (estate to be distributed in respect of accounting periods), for subsections (1) and (2) there shall be substituted the following subsections—

“(1) The permanent trustee shall make up accounts of his intromissions with the debtor’s estate in respect of each accounting period.

(2) In this Act “accounting period” shall be construed as follows—

- (a) the first accounting period shall be the period of 6 months beginning with the date of sequestration; and
- (b) any subsequent accounting period shall be the period of 6 months beginning with the end of the last accounting period; except that—
  - (i) in a case where the Accountant in Bankruptcy is not the permanent trustee, the permanent trustee and the

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commissioners or, if there are no commissioners, the Accountant in Bankruptcy agree; or  
(ii) in a case where the Accountant in Bankruptcy is the permanent trustee, he determines,  
that the accounting period shall be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it shall be that other period.

- (2A) An agreement or determination under subsection (2)(b)(i) or (ii) above—
- (a) may be made in respect of one or more than one accounting period;
  - (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, shall not have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended;
  - (c) may provide for different accounting periods to be of different durations,
- and shall be recorded in the sederunt book by the permanent trustee.”

*Procedure after end of accounting periods*

- 22 (1) Section 53 (procedure after end of accounting periods) shall be amended as follows.
- (2) For subsection (2) there shall be substituted the following subsections—
- “(2) Subject to subsection (2A) below, all accounts in respect of legal services incurred by the permanent trustee shall, before payment thereof by him, be submitted for taxation to the auditor of the court before which the sequestration is pending.
- (2A) Where—
- (a) any such account has been agreed between the permanent trustee and the person entitled to payment in respect of that account (in this subsection referred to as “the payee”);
  - (b) the permanent trustee is not an associate of the payee; and
  - (c) the commissioners have not determined that the account should be submitted for taxation,
- the permanent trustee may pay such account without submitting it for taxation.”
- (3) In subsection (3)(a)—
- (a) in sub-paragraph (i) before the word “audit” there shall be inserted the word “may”; and
  - (b) in sub-paragraph (ii) before the word “issue” there shall be inserted the word “shall”.
- (4) In subsection (5) for the words “the final” there shall be substituted the word “any”.
- (5) In subsection (6) at the end there shall be added the words “; and the decision of the sheriff on such an appeal shall be final.”

*Extent of discharge under section 54*

- 23 (1) Section 55 (effect of discharge under section 54) shall be amended as follows.

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(2) In subsection (1) for the words “subsection (2)” there shall be substituted the words “subsections (2) and (3)”.

(3) After subsection (2) there shall be inserted the following subsection—

“(3) The discharge of the debtor under the said section 54 shall not affect any right of a secured creditor—

- (a) for a debt in respect of which the debtor has been discharged to enforce his security for payment of the debt and any interest due and payable on the debt until the debt is paid in full; or
- (b) for an obligation in respect of which the debtor has been discharged to enforce his security in respect of the obligation.”

(4) Section 55 of the 1985 Act shall be deemed always to have had effect as amended by this paragraph.

*Discharge of permanent trustee*

24 (1) Section 57 (discharge of permanent trustee) shall be amended as follows.

(2) After subsection (4) there shall be inserted the following subsection—

“(4A) The decision of the sheriff on an appeal under subsection (4) above shall be final.”

(3) After subsection (7) there shall be inserted the following subsection—

“(8) This section does not apply in any case where the Accountant in Bankruptcy is the permanent trustee.”

*Unclaimed dividends*

25 In section 58 (disposal of unclaimed dividends) in subsections (1) and (3) in both places where they occur, after the words “section 57(1)(a)” there shall be inserted the words “or 58A(3)”.

*Discharge of Accountant in Bankruptcy*

26 After section 58 of the 1985 Act there shall be inserted the following section—

**“58A Discharge of Accountant in Bankruptcy**

- (1) This section applies where the Accountant in Bankruptcy has acted as the permanent trustee in any sequestration.
- (2) After the Accountant in Bankruptcy has made a final division of the debtor’s estate, he shall insert in the sederunt book—
  - (a) his final accounts of his intromissions (if any) with the debtor’s estate;
  - (b) the scheme of division (if any); and
  - (c) a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act.



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- (3) The Accountant in Bankruptcy shall deposit any unclaimed dividends and any unapplied balances in an appropriate bank or institution.
- (4) The Accountant in Bankruptcy shall send to the debtor and to all creditors known to him—
- (a) a copy of the determination mentioned in subsection (2)(c) above; and
  - (b) a notice in writing stating—
    - (i) that the Accountant in Bankruptcy has commenced the procedure under this Act leading to discharge in respect of his acting as permanent trustee;
    - (ii) that the sederunt book relating to the sequestration is available for inspection at such address as the Accountant in Bankruptcy may determine;
    - (iii) that an appeal may be made to the sheriff under subsection (5) below; and
    - (iv) the effect of subsection (7) below.
- (5) The debtor and any creditor may appeal to the sheriff against—
- (a) the determination of the Accountant in Bankruptcy mentioned in subsection (2)(c) above;
  - (b) the discharge of the Accountant in Bankruptcy in respect of his acting as permanent trustee; or
  - (c) both such determination and discharge.
- (6) An appeal under subsection (5) above shall be made not more than 14 days after the issue of the notice mentioned in subsection (4)(b) above; and the decision of the sheriff on such an appeal shall be final.
- (7) Where—
- (a) the requirements of this section have been complied with; and
  - (b) no appeal to the sheriff is made under subsection (5) above or such an appeal is made but is refused as regards the discharge of the Accountant in Bankruptcy,
- the Accountant in Bankruptcy shall be discharged from all liability (other than any liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of the Accountant in Bankruptcy in exercising the functions of permanent trustee in the sequestration.
- (8) Where the Accountant in Bankruptcy is discharged from all liability as mentioned in subsection (7) above, he shall make an entry in the sederunt book recording such discharge.
- (9) Where the Accountant in Bankruptcy—
- (a) has acted as both interim trustee and permanent trustee in a sequestration;
  - (b) has not been discharged under section 26A(7) of this Act,
- references in this section to his acting as or exercising the functions of permanent trustee shall be construed as including references to his acting as or exercising the functions of interim trustee; and subsection (7) above shall have effect accordingly.”

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*Commencement of summary proceedings*

- 27 (1) Section 68 (summary proceedings) shall be amended as follows.
- (2) In subsection (1)—
- (a) at the beginning there shall be inserted the words “Subject to subsection (1A) below,”; and
  - (b) for the word “6” there shall be substituted the word “12”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) No such proceedings shall be commenced by virtue of this section more than three years after the commission of the offence.”
- (4) In subsection (2) for the words “subsection (1) above” there shall be substituted the words “this section”.

*Variation of references to time, money etc.*

- 28 After section 72 (regulations) of the 1985 Act there shall be inserted the following section—

**“72A Variation of references to time, money etc.**

For any reference in this Act to—

- (a) a period of time;
- (b) an amount of money; or
- (c) a fraction,

there shall be substituted a reference to such other period or, as the case may be, amount or fraction as may be prescribed.”

*Interpretation*

- 29 (1) Section 73 (interpretation) shall be amended as follows.
- (2) In subsection (1) in the definition of “accounting period” for the words “52(1) and (6)” there shall be substituted the words “52(2)”.
- (3) In subsection (1) in the definition of “register of insolvencies” for the words “1(1)(c)” there shall be substituted the words “1A(1)(b)”.
- (4) In subsection (1) in the definition of “statutory meeting” for the words “section 21(1)” there shall be substituted the words “section 20A”.
- (5) In subsection (1) after the definition of “standard scale” there shall be inserted the following—
- ““statement of assets and liabilities” means a document (including a copy of a document) in such form as may be prescribed containing—
- (i) a list of the debtor’s assets and liabilities;
  - (ii) a list of his income and expenditure; and
  - (iii) such other information as may be prescribed;”
- (6) In subsection (1) for the definition of “trust deed” there shall be substituted the following—

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““trust deed” has the meaning assigned by section 5(4A) of this Act;”.

(7) At the end there shall be added the following subsection—

“(6) Any reference in this Act, howsoever expressed, to the time when a petition for sequestration is presented shall be construed as a reference to the time when the petition is received by the clerk of the court.”

*Adaptation of procedure where permanent trustee not elected*

30 (1) Schedule 2 (which provides for the adaptation of procedure under the Act where a permanent trustee is not elected) shall be amended as follows.

(2) In paragraph 1 at the beginning there shall be inserted the words “Except where the permanent trustee is the Accountant in Bankruptcy,”.

(3) For paragraph 2 there shall be substituted the following paragraphs—

“2 (1) In place of section 25, sub-paragraph (2) below shall have effect.

(2) The sheriff clerk shall issue to the permanent trustee an act and warrant in such form as shall be prescribed by the Court of Session by act of sederunt.

2A Sections 26 and 26A shall apply as if for any reference to the confirmation of the permanent trustee in office there was substituted a reference to the permanent trustee receiving the act and warrant issued in pursuance of paragraph 2(2) above.”

(4) For paragraph 3 there shall be substituted the following paragraph—

“3 (1) In place of subsections (1A) to (5) of section 28, sub-paragraph (2) below shall have effect.

(2) Where the permanent trustee resigns under subsection (1) of section 28 of this Act or dies—

(a) the Accountant in Bankruptcy; or

(b) such person as may be nominated by the Accountant in Bankruptcy (being a person who is not ineligible for election as permanent trustee under section 24(2) of this Act) if that person consents to the nomination,

may apply to the sheriff for appointment as permanent trustee; and, on such an application being made, the sheriff shall appoint the Accountant in Bankruptcy or, as the case may be, the person nominated by him to be the permanent trustee.”

(5) For paragraph 4 there shall be substituted the following paragraph—

“4 (1) Section 29 shall have effect as follows.

(2) Where the permanent trustee is the Accountant in Bankruptcy, subsections (1) to (6) shall not have effect.

(3) In any other case—

(a) subsection (5) shall not have effect but sub-paragraph (2) of paragraph 3 above shall apply where the permanent trustee has been removed from office under subsection (1)(b) of section 29

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of this Act or following an appeal under subsection (4) of that section as that sub-paragraph applies where he resigns or dies; and

- (b) subsection (6) shall have effect as if for the words from “(b)” to the end there were substituted the words—

“(b) appoint as permanent trustee—

- (i) the Accountant in Bankruptcy; or
- (ii) such person as may be nominated by the Accountant in Bankruptcy (being a person who is not ineligible for election as permanent trustee under section 24(2) of this Act) if that person consents to the nomination.”

- (4) In every case—

- (a) subsection (7) shall not have effect; and
- (b) subsection (8) shall have effect as if for the word “(5)” there were substituted the word “(6)”.

- (6) In paragraph 5 for the words “4(a) or (b)” there shall be substituted the words “4(3) (a) or (b)”.

- (7) In paragraph 7—

- (a) after the words “section 39” there shall be inserted the words “, subsection (1) shall not have effect where the permanent trustee is the Accountant in Bankruptcy and”; and
- (b) for sub-paragraph (b) there shall be substituted the following sub-paragraph—

“(b) in subsection (2) the words “but if there are commissioners only with the consent of the commissioners, the creditors or the court” shall not have effect, and—

- (i) if the permanent trustee is the Accountant in Bankruptcy, no consent shall be required for the actings mentioned in that subsection; and
- (ii) in any other case, the consent of the Accountant in Bankruptcy shall be required for such actings.”

- (8) After paragraph 7 there shall be inserted the following paragraph—

**“7A** In section 43 (money received by permanent trustee) for subsection (1) there shall be substituted the following subsection—

“(1) Subject to subsection (2) below, all money received by—

- (a) the Accountant in Bankruptcy in respect of his actings as permanent trustee shall be deposited by him in the name of the debtor’s estate or in the name of the Secretary of State in an appropriate bank or institution;
- (b) the permanent trustee (where he is not the Accountant in Bankruptcy) in the exercise of his functions shall be deposited by him in the name of the debtor’s estate in an appropriate bank or institution.”.

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- (9) In paragraph 8—
- (a) at the beginning there shall be inserted the words “Except where the permanent trustee is the Accountant in Bankruptcy,”.
- (10) For paragraph 9 there shall be substituted the following paragraph—
- “9 (1) Where the permanent trustee is the Accountant in Bankruptcy, section 53 shall have effect as follows.
- (2) For subsections (1) to (7) there shall be substituted the following subsections—
- “(1) At the end of each accounting period, the Accountant in Bankruptcy shall prepare accounts of his intromissions with the debtor’s estate, and he shall make a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act.
- (2) Such accounts and determination shall be available for inspection by the debtor and the creditors not later than 6 weeks after the end of the accounting period to which they relate.
- (3) In making a determination as mentioned in subsection (1) above, the Accountant in Bankruptcy may take into account any adjustment which he may wish to make in the amount of his remuneration fixed in respect of any earlier accounting period.
- (4) Not later than 8 weeks after the end of an accounting period, the debtor or any creditor may appeal to the sheriff against the determination of the Accountant in Bankruptcy; and the decision of the sheriff on such an appeal shall be final.
- (5) On the expiry of the period within which an appeal may be made under subsection (4) above, the Accountant in Bankruptcy shall pay to the creditors their dividends in accordance with the scheme of division.”
- (3) In subsection (10) for the words “the audited” there shall be substituted the word “his”.”

*Discharge on composition*

- 31 (1) Schedule 4 (discharge on composition) shall be amended as follows.
- (2) In paragraph 2, after the words “permanent trustee” there shall be inserted the words “, where he is not the Accountant in Bankruptcy,”.
- (3) In paragraph 9—
- (a) in sub-paragraph (1), after the words “permanent trustee” there shall be inserted the words “, where he is not the Accountant in Bankruptcy,”;
- (b) after sub-paragraph (1) there shall be inserted the following sub-paragraph—
- “(1A) Where the offer of composition is approved and the permanent trustee is the Accountant in Bankruptcy, the permanent trustee shall prepare accounts of his intromissions with the debtor’s estate and he shall make a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act.”;

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

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(c) after sub-paragraph (2) there shall be inserted the following sub-paragraph—

“(3) Subsections (2), (3), (4), (5) and (10) of section 53 of this Act as adapted by paragraph 9(2) and (3) of Schedule 2 to this Act shall apply, subject to any necessary modifications, in respect of the accounts and determination prepared under sub-paragraph (1A) above as they apply in respect of the accounts and determination prepared under the said section 53 as so adapted.”

(4) Paragraph 16 shall be renumbered sub-paragraph (1) of that paragraph and there shall be added at the end the following sub-paragraph—

“(2) The discharge of the debtor by virtue of an order under paragraph 11 above shall not affect any right of a secured creditor—

- (a) for a debt in respect of which the debtor has been discharged to enforce his security for payment of the debt and any interest due and payable on the debt until the debt is paid in full; or
- (b) for an obligation in respect of which the debtor has been discharged to enforce his security in respect of the obligation.”

(5) Paragraph 16 of Schedule 4 to the 1985 Act shall be deemed always to have had effect as amended by this paragraph.

*Voluntary trust deeds for creditors*

32 (1) Schedule 5 (which makes provision as to voluntary trust deeds for creditors) shall be amended as follows.

(2) For paragraph 5 (which sets out the conditions for a trust deed becoming a protected trust deed) there shall be substituted the following paragraph—

“5 (1) Paragraphs 6 and 7 of this Schedule shall apply in respect of a trust deed if—

- (a) the trustee is a person who would not be disqualified under section 24(2) of this Act from acting as the permanent trustee if the debtor’s estate were being sequestered;
- (b) after the trust deed has been delivered to him, the trustee publishes in the Edinburgh Gazette the notice specified in sub-paragraph (3) below;
- (c) not later than one week after the date of publication of such notice, the trustee sends to every creditor known to him—
  - (i) a copy of the trust deed;
  - (ii) a copy of the notice; and
  - (iii) such other information as may be prescribed;
- (d) within the period of 5 weeks beginning with the date of publication of such notice, 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 object to the trust deed and do not wish to accede to it; and
- (e) immediately after the expiry of the said period of 5 weeks, the trustee sends to the Accountant in Bankruptcy for registration in the register of insolvencies a copy of the trust deed with a certificate endorsed thereon that it is a true copy and that he has

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not received notification as mentioned in sub-sub-paragraph (d) above.

- (2) Any creditor who has been sent a copy of the notice referred to in sub-paragraph (1)(b) above and who has not notified the trustee as mentioned in sub-paragraph (1)(d) above that he objects to the trust deed shall be treated for all purposes as if he had acceded to the trust deed; and any reference in this Act to a creditor who has acceded to a trust deed shall include a reference to a creditor who is treated for all purposes as if he had so acceded.
  - (3) The notice mentioned in sub-paragraph (1)(b) above shall be in the prescribed form and shall contain such information as may be prescribed.
  - (4) The Secretary of State may by regulations amend sub-paragraphs (1) to (3) above by replacing them, varying them or adding to or deleting anything from them.
  - (5) Regulations made under sub-paragraph (4) above may contain such amendments of this Act as appear to the Secretary of State to be necessary in consequence of any amendment made by the regulations to the said sub-paragraphs (1) to (3).”
- (3) In paragraph 6, for sub-paragraph (a) there shall be substituted the following sub-paragraph—
- “(a) subject to paragraph 7 of this Schedule, a creditor who has—
    - (i) not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above; or
    - (ii) notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above,shall have no higher right to recover his debt than a creditor who has acceded to the trust deed;”.
- (4) In paragraph 7, in sub-paragraph (1)—
- (a) for the words “who has not acceded to the trust deed” there shall be substituted the words “who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above or who has notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above”; and
  - (b) in sub-sub-paragraph (a), for the words “paragraph 5(b)” there shall be substituted the words “paragraph 5(1)(b)”.
- (5) In paragraph 10, for the words “who has not acceded to the trust deed” in both places where they occur there shall be substituted the words “who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above or who has notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above”.
- (6) In paragraph 11, for the words “who has not acceded to a protected trust deed” there shall be substituted the words “who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above or who has notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above”.

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## SCHEDULE 2

Section 11.

## REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
52 & 53 Vict. c. 39.	The Judicial Factors (Scotland) Act 1889.	In section 2, the words “Without prejudice to section 1(2) of the Bankruptcy (Scotland) Act 1985 (Accountant of Court to be Accountant in Bankruptcy).”.
1985 c. 66.	The Bankruptcy (Scotland) Act 1985.	In section 18, in subsection (3), paragraph (a). In section 20, in subsection (2)(b), the word “preliminary”. In section 23, subsection (4). In section 25, in subsection (6)(b), the words “in the prescribed form”. In section 28, in subsection (2), the words “paragraph (b) of”. In section 46, in subsection (1), after paragraph (b) the words “to apprehend”. In section 52, subsection (6). In section 53, in subsection (3)(a), the word “shall”. In section 73, in subsection (1), the definition of “list of interim trustees”.
1987 c. 41.	The Criminal Justice (Scotland) Act 1987.	In section 37, in subsection (3), the words “(which provides that nothing in the section is to apply to anything done by the official receiver)”.
1988 c. 33.	The Criminal Justice Act 1988.	In section 87, in subsection (3), the words “(which provides that nothing in the section is to apply to



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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		anything done by the official receiver)".

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