

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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(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”.