

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 1 – Bankruptcy

The trustee in the sequestration

Section 6 – Amalgamation of offices of interim trustee and permanent trustee

25. This section amends sections 2 and 3 of the 1985 Act. It has the effect, when read together with the repeal of section 2(4) of the 1985 Act (see Part 1 of schedule 6 to this Act), that in a sequestration where an interim trustee has been appointed, he or she is no longer required to—
- ascertain the reasons for and circumstances surrounding the insolvency; or
 - ascertain the state of the debtor’s liabilities and assets.
26. Those functions will instead be carried out by the trustee in sequestration who is appointed when sequestration is awarded and who combines the existing roles of the interim trustee and permanent trustee from the date of the award.
27. The interim trustee now has the sole function of safeguarding the debtor’s estate pending a decision on the award of sequestration. The interim trustee can now be in place only for the limited period between the creditor presenting the petition for sequestration and the award of (or refusal to award) sequestration.
28. The interim trustee is obliged to co-operate with the AiB and supply whatever information the AiB may need to carry out the AiB’s functions (in particular the AiB has a general supervisory function in relation to all interim trustees (see section 1A(1)(a)(i) of the 1985 Act)). The obligation to supply information applies to both interim trustees who are in office and who have left office, either because the case was dismissed or another trustee has replaced them. If an interim trustee’s obligation under this provision was extinguished after they left office, the AiB’s ability to supervise and investigate the way in which a sequestration was managed would be restricted. The AiB would not be able to rely on getting information from an interim trustee unless they remained in office.
29. Subsection (3) provides for all references to interim trustees and permanent trustees in other legislation to be read as references to the new style trustee in sequestration unless it is clear from the context that a reference to the interim trustee should continue to be a reference to the new style of interim trustee.