Status: *Point in time view as at 01/03/2007. This version of this schedule contains provisions that are not valid for this point in time.*
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VALID FROM 01/04/2008

SCHEDULE 1

(introduced by section 36)

MINOR AND CONSEQUENTIAL AMENDMENTS OF THE 1985 ACT

1 The 1985 Act is amended as follows.

2 In section 1A (supervisory functions of the Accountant in Bankruptcy)—

(a) in subsection (1)(a)(ii), for "permanent trustees" substitute " trustees (not being the Accountant in Bankruptcy) "; and

(b) in subsection (2), for "court which" substitute " sheriff who ".

3 (1) Section 2 (appointment and functions of interim trustee) is amended as follows.

(2) For the word "court", in each place where it occurs, substitute " sheriff ".

(3) In subsection (1), for the word "interim", where it first and third occurs, substitute " the ".

(4) In subsection (2)—

(a) for "it" substitute " he "; and

(b) for the word "interim", where it first and third occurs, substitute " the ".

(5) In subsection (3)(c), for sub-paragraphs (i) and (ii) substitute " as the trustee ".

(6) In subsection (7), for the words from "the", where it first occurs, to "trustee", where it second occurs, substitute—

"(a) a trustee is appointed in a sequestration where the petition was presented by a creditor or the trustee acting under a trust deed; or

(b) an interim trustee is appointed in pursuance of subsection (5) above,

he ".

4 (1) Section 5 (sequestration of the estate of living or deceased debtor) is amended as follows.

(2) In subsection (2A), for "petition" substitute " application ".

(3) In subsection (2B)—

(a) in both paragraphs (a) and (b), for "of presentation of the petition" substitute " the debtor application is made "; and

(b) in sub-paragraph (ii) of paragraph (c), for the words from "and" to the end of the sub-paragraph substitute " which is not a protected trust deed by reason of the creditors objecting, or not agreeing, in accordance with regulations under paragraph 5 of Schedule 5 to this Act, to the trust deed, ".

(4) In subsection (2C), for "(2)(c)" substitute " (2)(b)(iv) ".

(5) In subsection (4), after "petition" insert " or, as the case may be, the date the debtor application is made ".

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(6) In subsection (5), after "petition" insert " or, as the case may be, the date the debtor application is made ".

(7) For subsection (6A) substitute—

"(6A) In the case of a debtor application, the debtor shall send a statement of assets and liabilities to the Accountant in Bankruptcy along with the application.".

(8) After subsection (7), insert—

"(7A) Where, after a debtor application is made but before the sequestration is awarded, the debtor dies, then the application shall fall.".

(9) After subsection (8), insert—

"(8A) Where, after a debtor application is made but before the sequestration is awarded, a creditor who concurs in the application withdraws or dies, any other creditor who was a qualified creditor at the date the debtor application was made and who remains so qualified may notify the Accountant in Bankruptcy that he concurs in the application in place of the creditor who has withdrawn or died.".

(10) In subsection (9)(a), for "(6A)(b)" substitute " (6A) ".

(11) In subsection (10)(a), for "(6A)(b)" substitute " (6A) ".

5 In section 6(5) (combination of certain petitions for sequestration), for "subsection (4)(aa) to (b)" substitute " subsection (4)(b) ".

6 In section 7(2)(c) (end of apparent insolvency), for "when" substitute " until ".

7 In section 9(5) (jurisdiction), after "petition" insert " , the date the debtor application is made ".

8 For section 10 (concurrent proceedings for sequestration or analogous remedy) substitute—

"**10 Duty to notify existence of concurrent proceedings for sequestration or analogous remedy**

(1) If, in the course of sequestration proceedings (referred to in this section and in section 10A of this Act as the "instant proceedings")—

(a) a petitioner for sequestration;

(b) the debtor; or

(c) a creditor concurring in a debtor application,

is, or becomes, aware of any of the circumstances mentioned in subsection (2) below, he shall as soon as possible take the action mentioned in subsection (3) below.

(2) Those circumstances are that, notwithstanding the instant proceedings—

(a) a petition for sequestration of the debtor's estate is before a sheriff or such sequestration has been awarded;

(b) a debtor application has been made in relation to the debtor's estate or sequestration has been awarded by virtue of such an application;

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(c) a petition for the appointment of a judicial factor on the debtor's estate is before a court or such a judicial factor has been appointed;

(d) a petition is before a court for the winding up of the debtor under Part IV or V of the Insolvency Act 1986 (c. 45) or section 372 of the Financial Services and Markets Act 2000 (c. 8); or

(e) an application for an analogous remedy in respect of the debtor's estate is proceeding or such an analogous remedy is in force.

(3) The action referred to in subsection (1) above is—

(a) in a case where the instant proceedings are by petition for sequestration, to notify the sheriff to whom that petition was presented; and

(b) in a case where the instant proceedings are by debtor application, to notify the Accountant in Bankruptcy,

of the circumstance referred to in subsection (2) above.

(4) If a petitioner fails to comply with subsection (1) above, he may be made liable for the expenses of presenting the petition for sequestration.

(5) If a creditor concurring in a debtor application fails to comply with subsection (1) above, he may be made liable for the expenses of making the debtor application.

(6) If a debtor fails to comply with subsection (1) above, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(7) In this section and in section 10A of this Act "analogous remedy" means a bankruptcy order under the Bankruptcy Act 1914 (c. 59) or an individual voluntary arrangement or bankruptcy order under the Insolvency Act 1986 (c. 45) or an administration order under section 112 of the County Courts Act 1984 (c. 28) in England and Wales or under any enactment having the like effect in Northern Ireland or a remedy analogous to any of the aforesaid remedies, or to sequestration, in any other country (including England, Wales and Northern Ireland).

10A Powers in relation to concurrent proceedings for sequestration or analogous remedy

(1) Where, in the course of instant proceedings which are by petition, any of the circumstances mentioned in paragraphs (a) to (d) of section 10(2) of this Act exists, the sheriff to whom the petition in the instant proceedings was presented may, on his own motion or at the instance of the debtor or any creditor or other person having an interest, allow that petition to proceed or may sist or dismiss it.

(2) Without prejudice to subsection (1) above, where, in the course of instant proceedings which are by petition, any of the circumstances mentioned in paragraphs (a), (c) or (d) of section 10(2) of this Act exists, the Court of Session may, on its own motion or on the application of the debtor or any creditor or other person having an interest, direct the sheriff before whom the petition in the instant proceedings is pending, or the sheriff before whom the other petition is pending, to sist or dismiss the petition

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in the instant proceedings or, as the case may be, the other petition, or may order the petitions to be heard together.

(3) Without prejudice to subsection (1) above, where, in the course of instant proceedings which are by petition, the circumstance mentioned in paragraph (b) of section 10(2) of this Act exists, the sheriff to whom the petition in the instant proceedings was presented may, on his own motion or at the instance of the debtor or any creditor or other person having an interest, direct the Accountant in Bankruptcy to dismiss the debtor application.

(4) Where, in the course of instant proceedings which are by debtor application, any of the circumstances mentioned in paragraphs (a) to (d) of section 10(2) of this Act exists, the Accountant in Bankruptcy may dismiss the debtor application in the instant proceedings.

(5) Where, in respect of the same estate–

(a) a petition for sequestration is pending before a sheriff; and

(b) an application for an analogous remedy is proceeding or an analogous remedy is in force,

the sheriff, on his own motion or at the instance of the debtor or any creditor or other person having an interest, may allow the petition for sequestration to proceed or may sist or dismiss it.

(6) Where, in respect of the same estate–

(a) a debtor application has been made and has not been determined; and

(b) an application for an analogous remedy is proceeding or an analogous remedy is in force,

the Accountant in Bankruptcy may proceed to determine the application or may dismiss it.”.

9 In section 11 (creditor's oath)—

(a) in subsection (1), for “petition by a debtor” substitute “ debtor application ”; and

(b) in subsection (4)—

(i) for “court to which” substitute “ sheriff to whom ”; and

(ii) after “presented” insert “ or, in the case of a creditor concurring in a debtor application, the Accountant in Bankruptcy ”.

10 In section 12 (when sequestration is awarded)—

(a) in subsection (1)(c), for “subsections (6) and” substitute “ subsection ”;

(b) in subsection (2)—

(i) for “court to which” substitute “ sheriff to whom ”; and

(ii) for “it” substitute “ him ”;

(c) in subsection (3)—

(i) for “court” substitute “ sheriff ”; and

(ii) for “it” substitute “ he ”; and

(d) in subsection (4)—

(i) in paragraph (a), for “the petition for sequestration is presented by the debtor” substitute “ a debtor application is made ”; and

(ii) in paragraph (b)(i), for “court” substitute “ sheriff ”.

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11 (1) Section 13 (resignation, removal etc. of interim trustee) is amended as follows.

(2) Before subsection (1), insert—

"(A1) This section applies where an interim trustee is appointed under section 2(5) of this Act and the petition for sequestration has not been determined.".

(3) For the word "court", in each place where it occurs, substitute " sheriff ".

(4) In subsection (3), for "it" substitute " the sheriff ".

(5) In subsection (6), for "disqualified from acting as permanent" substitute " ineligible to be elected as replacement ".

12 (1) Section 14 (registration of court order) is amended as follows.

(2) In subsection (1)—

(a) for "clerk of the court" substitute " sheriff clerk "; and

(b) in paragraph (a), for "relevant court order" substitute " order of the sheriff granting warrant under section 12(2) of this Act ".

(3) After subsection (1), insert—

"(1A) Where the Accountant in Bankruptcy awards sequestration on a debtor application he shall forthwith after the date of sequestration send a certified copy of his determination of the application to the keeper of the register of inhibitions for recording in that register.".

(4) In subsection (2), after "subsection (1)(a)" insert " or (1A) ".

(5) In subsection (3)—

(a) after paragraph (a), insert—

"(aa) on the recording under paragraph 11(4)(a) of Schedule 4 to this Act of a certified copy of a certificate;"; and

(b) in paragraph (b), for "paragraph (a)" substitute " paragraphs (a) and (aa) ".

(6) The heading to that section becomes " Registration of warrant or determination of debtor application ".

13 In section 15 (further provision relating to award of sequestration), after subsection (3), insert—

"(3A) Where the Accountant in Bankruptcy, on determining a debtor application, refuses to award sequestration, the debtor or a creditor concurring in the application may appeal against such a determination within 14 days of it being made to the sheriff.".

14 In section 16 (petition for recall of sequestration)—

(a) in subsection (1)(a), for "petition" substitute " debtor application "; and

(b) in subsection (2), for "petition", where it first occurs, substitute " debtor application ".

15 In section 17 (recall of sequestration)—

(a) in subsection (1)(c), for "section 10(5)" substitute " section 10(7) ";

(b) in subsection (3)(a)—

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(i) after "sequestration" insert " or, as the case may be, the debtor application "; and

(ii) for "permanent" substitute " the ";

(c) in subsection (3)(b), for "petition" substitute " debtor application "; and

(d) in subsection (5)—

(i) in paragraph (a), after "sequestration" insert " , the making of the debtor application ";

(ii) in paragraph (b), for "permanent" substitute " the "; and

(iii) after paragraph (b) insert—

"(c) affect a bankruptcy restrictions order which has not been annulled under section 56J(1)(a) of this Act.".

16 (1) Section 18 (interim preservation of estate) is amended as follows.

(2) In subsection (1), after "may" insert " , in pursuance of the function conferred on him by section 2(6A) of this Act, ".

(3) In subsection (2)—

(a) for "functions" substitute " function "; and

(b) for "2(4)(a)" substitute " 2(6A) ".

(4) After subsection (2) insert—

"(2A) Section 43 of this Act applies to an interim trustee as it applies to a trustee.".

(5) In subsection (3)—

(a) for "court" substitute " sheriff "; and

(b) in paragraph (c), for "it" substitute " he ".

(6) In subsection (4)—

(a) for "court", in both places where it occurs, substitute " sheriff "; and

(b) for "it", in both places where it occurs, substitute " he ".

(7) The italic cross-heading preceding that section becomes " Initial stages of sequestration ".

17 (1) Section 19 (statement of assets and liabilities) is amended as follows.

(2) In subsection (1)—

(a) for "petitioner for sequestration is the debtor" substitute " debtor has made a debtor application ";

(b) for "interim trustee", where it first occurs, substitute " trustee under section 2 of this Act "; and

(c) for "lodged in court in pursuance of section 5(6A)(a)" substitute " sent to the Accountant in Bankruptcy in pursuance of section 5(6A) ".

(3) In subsection (2), for "2(7)" substitute " 2(7)(a) ".

18 In section 20 (trustee's duty to send information to Accountant in Bankruptcy before statutory meeting)—

(a) in subsection (2)—

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(i) after "meeting" insert " or, where the trustee does not intend to hold such a meeting, not later than 60 days after the date on which sequestration is awarded, ";

(ii) in paragraph (a), after "liabilities" insert " (unless the statement has already been received by the Accountant in Bankruptcy by virtue of section 5(6A) of this Act) "; and

(iii) in paragraph (b), at the beginning insert " subject to subsection (2A) below, " and

(b) after that subsection insert—

"(2A) The trustee need not send a statement of the debtor's affairs to the Accountant in Bankruptcy in accordance with subsection (2)(b) above if the trustee has sent a copy of the inventory and valuation to the Accountant in Bankruptcy in accordance with section 38(1)(c) of this Act.".

19 The italic cross-heading preceding section 21 becomes " Statutory meeting of creditors and trustee vote ".

20 In section 21A(2) (time limit for giving notice of intention to call statutory meeting), for "of the sequestration" substitute " on which sequestration is awarded ".

21 In section 21B (report where no statutory meeting called)—

(a) in subsection (1)(a), for "sheriff" substitute " Accountant in Bankruptcy "; and

(b) after subsection (1), insert—

"(1A) This section does not apply in any case where the Accountant in Bankruptcy is the trustee.".

22 In section 22(3)(a) (trustee's duty to inform creditors outside Scotland), for "21(2)" substitute " 21A(2) ".

23 (1) Section 24 (election of permanent trustee) is amended as follows.

(2) In subsection (2), for the word "permanent", where it first and second occurs, substitute " replacement ".

(3) In subsection (3), for the words "election of the permanent trustee" substitute " trustee vote ".

(4) In subsection (3A)—

(a) for the word "interim" substitute " original ";

(b) in paragraph (a), for the words "election of the permanent trustee" substitute " trustee vote ";

(c) in paragraph (b), for the word "permanent" substitute " replacement "; and

(d) for the words "section 25A of this Act shall apply" substitute " shall continue to act as the trustee ".

(5) In subsection (4)—

(a) for the word "interim", where it first and second occurs, substitute " original ";

(b) for the words "election of the permanent trustee" substitute " trustee vote ";

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(c) for the word "permanent", where it second occurs, substitute " replacement "; and

(d) after paragraph (b), insert— " and he shall continue to act as the trustee. ".

24 (1) Section 25 (confirmation of permanent trustee) is amended as follows.

(2) In subsection (1)—

(a) for the word "permanent", in both places where it occurs, substitute " replacement "; and

(b) for the word "interim", in both places where it occurs, substitute " original ".

(3) In subsection (2)—

(a) for "permanent trustee" substitute " trustee in the sequestration "; and

(b) for the words from "confirm" to "Bankruptcy" substitute " make an order appointing him as such ".

(4) In subsection (4), in paragraph (b)—

(a) for "interim" substitute " original "; and

(b) for "for the election of a permanent trustee" substitute " at which a new trustee vote shall be held ".

(5) In subsection (5), for "confirmation" substitute " appointment ".

(6) In subsection (6)—

(a) for the word "permanent", where it first occurs, substitute " replacement "; and

(b) in paragraph (b), for "confirmed in office" substitute " appointed ".

25 (1) Section 26 (provisions relating to termination of interim trustee's functions) is amended as follows.

(2) Before subsection (1), insert—

"(A1) This section applies where a replacement trustee is appointed under section 25 of this Act.".

(3) In subsection (1), for the words from "Where" to "office" substitute " The original trustee, shall, on the appointment of the replacement trustee ".

(4) In subsection (2)—

(a) for the words from "confirmation" to "interim", where it first occurs, substitute " appointment of the replacement trustee, the original "; and

(b) in paragraph (b), for "permanent", where it first occurs, substitute " replacement ".

(5) After subsection (2), insert—

"(2A) Where the original trustee was appointed under section 2(5) of this Act as the interim trustee in the sequestration, his accounts and the claim referred to in subsection (2)(a) above shall include accounts and a claim for the period of his appointment as interim trustee.".

(6) In subsection (3)—

(a) in paragraph (a)(ii), for "interim" substitute " original ";

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(b) in paragraph (b)(i), for "interim", where it first occurs, substitute " original "; and

(c) in paragraph (b)(ii)—

(i) for "interim" substitute " original "; and

(ii) for "permanent" substitute " replacement ".

(7) In subsection (4)—

(a) for "interim" substitute " original "; and

(b) for "permanent" substitute " replacement ".

(8) In subsection (5)—

(a) for "permanent" substitute " replacement ";

(b) for "confirmed in office" substitute " appointed ";

(c) for "confirmation" substitute " appointment "; and

(d) for "interim" substitute " original ".

(9) In subsection (5A), for "interim" substitute " original ".

(10) The heading to that section becomes " Provisions relating to termination of original trustee's functions ".

26 (1) Section 26A (Accountant in Bankruptcy to account for intromissions) is amended as follows.

(2) In subsection (1)—

(a) for "interim" substitute " original "; and

(b) for "becomes the permanent trustee" substitute " is appointed as replacement trustee under section 25 of this Act ".

(3) In subsection (2)—

(a) for "confirmation of the permanent trustee in office" substitute " the appointment of the replacement trustee ";

(b) for the word "permanent", where it second occurs, substitute " replacement "; and

(c) for the word "interim", where it first occurs, substitute " original ".

(4) In subsection (3)—

(a) for "confirmation in office of the permanent" substitute " appointment of the replacement ";

(b) for the word "permanent", where it second occurs, substitute " replacement "; and

(c) in paragraph (a), for "interim" substitute " original ".

(5) In subsection (5), for "permanent" substitute " replacement ".

(6) In subsection (8)—

(a) for "permanent" substitute " replacement ";

(b) for "confirmed in office" substitute " appointed "; and

(c) for "confirmation" substitute " appointment ".

27 (1) In section 27 (discharge of interim trustee)—

(a) in subsection (2), after "debtor", where it first occurs, insert " , to all creditors known to the original trustee ";

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(b) for the word "interim", in each place where it occurs, substitute " original "; and

(c) for the word "permanent", in each place where it occurs, substitute " replacement ".

(2) The heading to that section becomes " Discharge of original trustee ".

28 (1) Section 28 (resignation and death of permanent trustee) is amended as follows.

(2) In subsections (1), (1A) and (2), for "sheriff", in each place where it occurs, substitute " Accountant in Bankruptcy ".

(3) In subsection (4)—

(a) for "and confirmation in office of the", substitute " of a replacement trustee and the appointment of that "; and

(b) for "confirmation in office", where it second occurs, substitute " appointment ".

(4) In subsection (5), for ", the provisions of section 25A of this Act shall apply" substitute—

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

may apply to the sheriff for appointment as trustee in the sequestration; and, on such application, the sheriff shall make an order so appointing the Accountant in Bankruptcy or, as the case may be, the person nominated by him. ".

(5) The heading to that section becomes " Resignation and death of trustee ".

(6) The italic cross-heading preceding that section becomes " Replacement of trustee ".

29 (1) Section 29 (removal of permanent trustee and trustee not acting) is amended as follows.

(2) In subsection (7)—

(a) for "and confirmation in office of the", substitute " of a replacement trustee and the appointment of that "; and

(b) for "confirmation in office", where it second occurs, substitute " appointment ".

(3) After subsection (9), insert—

"(10) This section does not apply in any case where the Accountant in Bankruptcy is the trustee.".

(4) The heading to that section becomes " Removal of trustee and trustee not acting ".

30 (1) Section 31 (vesting of estate at date of sequestration) is amended as follows.

(2) In subsection (2), for "the act and warrant" substitute " his appointment ".

(3) In subsection (4), for "the act and warrant" substitute " his appointment ".

(4) In subsection (6)—

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(a) for "court", in both places where it occurs, substitute " sheriff "; and
(b) for "it" substitute " he ".

(5) In subsection (7), for "court" substitute " sheriff ".

(6) The italic cross-heading preceding that section becomes " Vesting of estate in trustee ".

31 Section 31A (proceedings under EC regulation: modified definition of "estate") as inserted by regulation 12 of the Insolvency (Scotland) Regulations 2003 (S.I. 2003 No. 2109) is renumbered as section 31ZA.

32 In section 32 (vesting of estate and dealings of debtor after sequestration), in subsection (6)—
(a) for "act and warrant" substitute " order "; and
(b) for "confirming the permanent trustee's appointment" substitute " or, as the case may be, by the Accountant in Bankruptcy appointing the trustee ".

33 In section 37(1) (effect of sequestration on diligence), for "court" substitute " sheriff or, as the case may be, the determination of the debtor application by the Accountant in Bankruptcy ".

34 (1) In section 38(1)(a) (taking possession of estate by permanent trustee), for "confirmation in office" substitute " appointment ".

(2) The heading to that section becomes " Taking possession of estate by trustee "

(3) The italic cross-heading preceding that section becomes " Administration of estate by trustee ".

35 (1) Section 39 (management and realisation of estate) is amended as follows.

(2) In subsection (1)—
(a) for "confirmation in office" substitute " appointment ";
(b) for "subsection (6)" substitute " subsections (1A), (6) and (9) "; and
(c) in paragraph (b), for "court" substitute " sheriff ".

(3) After subsection (1), insert—

"(1A) Subsection (1) above does not apply in any case where the Accountant in Bankruptcy is the trustee.".

(4) In subsection (2)—
(a) in paragraph (a), after "on" insert " or close down "; and
(b) after paragraph (d), insert—
"(e) borrow money in so far as it is necessary for the trustee to do so to safeguard the debtor's estate;
(f) effect or maintain insurance policies in respect of the business or property of the debtor.".

(5) In subsection (4)(c), for "court" substitute " sheriff ".

36 In section 40 (power in relation to family home)—
(a) in subsection (1), for "court" substitute " sheriff ";
(b) in subsection (2)—

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(i) for "court", in both places where it occurs, substitute " sheriff "; and

(ii) for "it", in both places where it occurs, substitute " he "; and

(c) the heading to that section becomes " Power of trustee in relation to the debtor's family home ".

37 In section 41(1) (protection of occupancy rights of non-entitled spouse)—

(a) for "of issue of the act and warrant of" substitute " the order is made appointing ";

(b) for "such act and warrant is issued" substitute " trustee is appointed ";

(c) for "such issue" substitute " order making such an appointment "; and

(d) in paragraph (b)—

(i) for "Court of Session" substitute " sheriff ";

(ii) after "date", where it second occurs, insert " of the award ";

(iii) for "it", in both places where it occurs, substitute " he "; and

(iv) after "sequestration", where it third occurs, insert " or, as the case may be, the debtor application ".

38 In section 41A(1) (protection of occupancy rights of civil partner)—

(a) for "of issue of the act and warrant of" substitute " the order is made appointing ";

(b) for "such act and warrant is issued" substitute " trustee is appointed ";

(c) for "such issue" substitute " order making such an appointment "; and

(d) in paragraph (b)—

(i) for "Court of Session" substitute " sheriff ";

(ii) after "date", where it second occurs, insert " of the award ";

(iii) for "it", in both places where it occurs, substitute " he "; and

(iv) after "sequestration", where it third occurs, insert " or, as the case may be, the debtor application ".

39 In section 42 (contractual powers of permanent trustee)—

(a) in subsection (2), for "court" substitute " sheriff "; and

(b) the heading to that section becomes " Contractual powers of trustee ".

40 The heading to section 43 becomes " Money received by trustee ".

41 In section 46(1) (warrant to apprehend)—

(a) in paragraph (a), for "messenger-at-arms or sheriff officer" substitute " judicial officer "; and

(b) in the proviso, for "court" substitute " sheriff ".

Commencement Information

I1 Sch. 1 para. 41 partly in force; Sch. 1 para. 41 not in force at Royal Assent see s. 227; Sch. 1 para. 41 in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(1)(i)(i)** (with arts. 4-6, 10)

42 In section 48 (submission of claims to permanent trustee)—

(a) in subsection (2), in paragraph (b), for the words from "and" to the end of that paragraph, substitute " which has not been rejected in whole ";

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(b) in subsection (3), for the words from "for", where it second occurs, to "trustee", where it second occurs, substitute " after the word "trustee" there were inserted the words " "; and

(c) the heading to that section becomes " Submission of claims to trustee ".

Commencement Information

I2 Sch. 1 para. 42 partly in force; Sch. 1 para. 42 not in force at Royal Assent see s. 227; Sch. 1 para. 42(a) in force at 31.3.2007 by S.S.I. 2007/82, **art. 4(a)(d)**

43 In section 51(1)(d) (order of priority in distribution), for "the petition" substitute " a debtor application ".

44 (1) Section 52 (estate to be distributed in respect of accounting periods) is amended as follows.

(2) In subsection (2)—

(a) for "6", in both places where it occurs, substitute " 12 "; and

(b) in paragraph (a)—

(i) at the beginning insert " subject to subsection (2ZA) below, "; and

(ii) for "of sequestration" substitute " on which sequestration is awarded ".

(3) After subsection (2), insert—

"(2ZA) Where the trustee was appointed under section 2(5) of this Act as interim trustee in the sequestration, the first accounting period shall be the period beginning with the date of his appointment as interim trustee and ending on the date 12 months after the date on which sequestration is awarded.".

Commencement Information

I3 Sch. 1 para. 44 partly in force; Sch. 1 para. 44 not in force at Royal Assent see s. 227; Sch. 1 para. 44(1)(2)(a) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(1)(i)(i)**

45 In section 53 (procedure after end of accounting period)—

(a) in subsection (2A)(c), for "have not determined that the account should" substitute " or, if there are no commissioners, the Accountant in Bankruptcy, have determined that the account need not "; and

(b) after subsection (6A) (as inserted by section 30(2)(b) of this Act) insert—

"(6B) Before—

(a) a debtor; or

(b) a creditor,

appeals under subsection (6) above, he must give notice to the trustee of his intention to appeal.".

46 After section 53, insert—

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"**53A Modification of procedure under section 53 where Accountant in Bankruptcy is trustee**

(1) In any case where the Accountant in Bankruptcy is the trustee, section 53 of this Act shall have effect subject to the following modifications.

(2) For subsections (1) to (7) of that section, there shall be substituted—

"(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 (subject to subsection (5) below) 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) A debtor may appeal under subsection (4) above if, and only if, he satisfies the sheriff that he has, or is likely to have, a pecuniary interest in the outcome of the appeal.

(6) Before—

(a) a debtor; or

(b) any creditor,

appeals under subsection (4) above, he must give notice to the Accountant in Bankruptcy of his intention to appeal.

(7) 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 ".".

47 In section 55, subsection (3) (references to a fine or penalty to include a confiscation order), as inserted by paragraph 15(5) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29), is renumbered as subsection (2A).

48 The italic cross-heading preceding section 57 becomes " Discharge of trustee ".

49 The heading to section 57 becomes " Discharge of trustee ".

50 In section 58A(7) (discharge of Accountant in Bankruptcy), after "sequestration" insert " including, where the Accountant in Bankruptcy was the interim trustee, the functions of the interim trustee ".

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51 In section 59A(1) (petition for conversion into sequestration), for "court", where it first occurs, substitute " sheriff ".

52 In section 59B(1)(c) (contents of affidavit), for "court", in both places where it occurs, substitute " sheriff ".

53 In section 59C (power of court)—

(a) for "court", in each place where it occurs, substitute " sheriff ";

(b) in subsection (1), for "it" substitute " he "; and

(c) the heading to that section becomes " Power of sheriff ".

54 In section 60B(2) (trustee to give notice or provide copies of documents to member State liquidator)—

(a) for "or a permanent" substitute " trustee or a "; and

(b) for "court", where it second occurs, substitute " sheriff ".

55 In section 61 (extortionate credit transactions), for "court", in both places where it occurs, substitute " sheriff ".

56 The heading to section 64 becomes " Debtor to co-operate with trustee ".

57 In section 65(1) (arbitration and compromise), for "court" substitute " sheriff ".

58 The heading to section 69 becomes " Outlays of insolvency practitioner in actings as interim trustee or trustee ".

59 In section 70(1)(a) (supplies by utilities), for "the petition was presented by the debtor" substitute " a debtor application was made ".

60 (1) Section 73 (interpretation) is amended as follows.

(2) In subsection (1)—

(a) after the definition of "associate", insert—

""bankruptcy restrictions order" has the meaning given by section 56A(1) of this Act;

" "bankruptcy restrictions undertaking" has the meaning given by section 56G(1) of this Act;";

(b) after the definition of "debtor", insert—

""debtor application" means an application for sequestration made to the Accountant in Bankruptcy under sections 5(2)(a) or 6(3)(a), (4)(a) or (6)(a) of this Act;";

(c) after the definition of "the EC regulation", insert—

""enactment" includes an Act of the Scottish Parliament and any enactment comprised in subordinate legislation under such an Act;";

(d) in the definition of "interim trustee", for "2" substitute " 2(5) ";

(e) after the definition of "ordinary debt", insert—

""original trustee" shall be construed in accordance with section 24(1)(a) of this Act;";

(f) after the definition of "relevant person", insert—

""replacement trustee" shall be construed in accordance with section 24(1)(b) of this Act;";

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(g) after the definition of "sederunt book", insert—

""sequestration proceedings" includes a debtor application and analogous expressions shall be construed accordingly;"; and

(h) after the definition of "trust deed", insert—

""trustee" means trustee in the sequestration;

"trustee vote" shall be construed in accordance with section 24(1) of this Act;".

(3) In subsection (5)(b), for "such a petition" substitute " a debtor application ".

(4) In subsection (6), for "clerk of the court" substitute " sheriff clerk ".

(5) After subsection (6), insert—

"(6A) Any reference in this Act, howsoever expressed, to the time when a debtor application is made shall be construed as a reference to the time when the application is received by the Accountant in Bankruptcy.".

61 In Schedule 6 (meetings of creditors and commissioners)—

(a) for "court", in each place where it occurs, substitute " sheriff "; and

(b) in paragraph 15(1), for "shall", in both places where it occurs, substitute " may ".

62 In Part II of Schedule 7 (re-enactment of certain provisions of the Bankruptcy (Scotland) Act 1913), in paragraph 24(5), for "(5)" substitute " (4) ".

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