



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Advice and education

1 Sequestration of estate of living debtor: money advice

- (1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—
- (a) in subsection (2B), after paragraph (b), insert—
 - “(ba) the debtor has obtained the advice of a money adviser in accordance with section 5C(1),”, and
 - (b) after subsection (4B), insert—
 - “(4BA) A debtor application must—
 - (a) include a declaration by the money adviser who provided the advice referred to in section 5C(1) that such advice has been given, and
 - (b) specify the name and address of the money adviser.”.
- (2) After section 5B of the 1985 Act, insert—

“5C Money advice

- (1) An application for the sequestration of a living debtor’s estate may not be made unless the debtor has obtained from a money adviser—
- (a) advice on the debtor’s financial circumstances,
 - (b) advice on the effect of the proposed sequestration of the debtor’s estate,
 - (c) advice on the preparation of the application, and
 - (d) advice on such other matters as may be prescribed.
- (2) In this Act, “money adviser” means a person who—
- (a) is not an associate of the debtor, and
 - (b) is of a prescribed description or falls within a prescribed class.”.

2 Financial education for debtor

After section 43A of the 1985 Act, insert—

“43B Financial education

- (1) The trustee must notify a living debtor that the debtor is required to undertake a prescribed course of financial education (a “financial education course”) specified by the trustee if, in the opinion of the trustee—
 - (a) any of the circumstances mentioned in subsection (2) apply, and
 - (b) undertaking the course would be appropriate for the debtor.
- (2) The circumstances are—
 - (a) in the period of 5 years ending on the date on which the sequestration of the debtor’s estate was awarded—
 - (i) the debtor’s estate was sequestrated,
 - (ii) the debtor granted a protected trust deed,
 - (iii) an analogous remedy (within the meaning of section 10(7)) was in force in respect of the debtor, or
 - (iv) the debtor participated in a debt management programme under which the debtor made regular payments (including in particular a programme approved in accordance with section 2 of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#)),
 - (b) the debtor is subject to, or under investigation with a view to an application being made for, a bankruptcy restrictions order,
 - (c) the trustee considers that the pattern of the debtor’s behaviour, whether before or after the award of sequestration, is such that the debtor would benefit from a financial education course,
 - (d) the debtor agrees to undertake a financial education course.
- (3) The trustee must decide whether to issue a notification under subsection (1)—
 - (a) before the end of the period of 6 months beginning with the date of award of sequestration, and
 - (b) in a case where section 54F applies, as soon as reasonably practicable after the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee.
- (4) A debtor must not be required to undertake or, as the case may be, complete the financial education course specified by the trustee if, in the opinion of the trustee—
 - (a) the debtor is unable to participate in the course as a result of the debtor’s health (including by reason of disability or physical or mental illness), or
 - (b) the debtor has completed a financial education course in the period of 5 years ending on the date on which the sequestration of the debtor’s estate was awarded.
- (5) Regulations under subsection (1) may in particular—
 - (a) prescribe the content, format and method of delivery of a course,
 - (b) prescribe different courses for different circumstances,

- (c) make provision for particular courses to be specified by a trustee where particular circumstances in subsection (2) apply.”.

Payments by debtor following sequestration

3 Debtor’s contribution: common financial tool

- (1) After section 5C of the 1985 Act (inserted by section 1(2)), insert—

“5D Assessment of debtor’s contribution

- (1) The Scottish Ministers may by regulations specify a method (the “common financial tool”) to be used to assess an appropriate amount of a living debtor’s income to be paid to a trustee after the sequestration of the debtor’s estate (the “debtor’s contribution”).
- (2) Regulations under subsection (1) may in particular—
 - (a) prescribe a method for assessing a debtor’s financial circumstances (including the debtor’s assets, income, liabilities and expenditure),
 - (b) prescribe a method for determining a reasonable amount of expenditure for a debtor after the sequestration of the debtor’s estate,
 - (c) prescribe the proportion of a debtor’s income that is to constitute the debtor’s contribution,
 - (d) prescribe that a method determined by another person is to be used (with or without modification in accordance with regulations made under subsection (1)) as the common financial tool.
- (3) The common financial tool must ensure that the amount of reasonable expenditure for a debtor is not less than the total amount of any income received by the debtor by way of guaranteed minimum pension (within the meaning of the [Pension Schemes Act 1993 \(c.48\)](#)).
- (4) The common financial tool must ensure that an amount is allowed for—
 - (a) aliment for the debtor,
 - (b) the debtor’s relevant obligations.
- (5) The “debtor’s relevant obligations” are—
 - (a) any obligation of aliment owed by the debtor (“obligation of aliment” having the same meaning as in the [Family Law \(Scotland\) Act 1985 \(c.37\)](#)),
 - (b) any obligation of the debtor to make a periodical allowance to a former spouse or former civil partner, and
 - (c) any obligation of the debtor to pay child support maintenance under the [Child Support Act 1991 \(c.48\)](#).
- (6) The amount allowed for the debtor’s relevant obligations referred to in paragraphs (a) and (b) of subsection (5) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance.”.

- (2) In section 7(2) of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#) (debt payment programmes: power to make further provision), after paragraph (bc) insert—

“(bd) the method of assessing the amount of a debtor’s assets, income, liabilities and expenditure in considering applications for the approval, or the variation, of a debt payment programme,”.

4 Debtor contribution order

After section 32 of the 1985 Act, insert—

“32A Debtor contribution order

- (1) The Accountant in Bankruptcy must make an order fixing the debtor’s contribution (a “debtor contribution order”)—
 - (a) in the case of a debtor application, at the same time as awarding sequestration of the debtor’s estate,
 - (b) in the case of an award of sequestration following a petition under section 5(2)(b), after considering initial proposals for the debtor’s contribution provided by the trustee.
- (2) In a case referred to in subsection (1)(b), the trustee must send initial proposals for the debtor’s contribution before the end of the period of 6 weeks beginning with the date of award of sequestration.
- (3) In making a debtor contribution order, the Accountant in Bankruptcy must use the common financial tool to assess the debtor’s contribution.
- (4) A debtor contribution order may fix the amount of the debtor’s contribution as zero.
- (5) A debtor contribution order may be made irrespective of sections 11 and 12 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).
- (6) A debtor contribution order may provide that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.
- (7) Where a third person pays a sum of money to the trustee in accordance with subsection (6), the third person is discharged from any liability to the debtor to the extent of the sum so paid.
- (8) The Accountant in Bankruptcy must, immediately following the making of a debtor contribution order, give written notice of the order to—
 - (a) the debtor,
 - (b) the trustee, and
 - (c) any third person mentioned in the order.
- (9) A debtor contribution order must not take effect on a date before the expiry of the period of 14 days beginning with the day of notification of the order.

32B Debtor contribution order: payment period and intervals

- (1) A debtor contribution order must contain provision requiring the debtor to pay the debtor's contribution (if not zero)—
 - (a) during the payment period, and
 - (b) at regular intervals determined by the person making or varying the order.
- (2) In subsection (1)(a), “payment period” means—
 - (a) the period of 48 months beginning with the date of the first payment,
 - (b) such shorter period as is determined by the person making or varying the order, or
 - (c) such longer period as is—
 - (i) determined by the trustee where there is a period during which the debtor did not pay an amount required under the debtor contribution order, or
 - (ii) agreed by the debtor and the trustee.
- (3) The person making or varying the order may determine a shorter period under subsection (2)(b) only if, in the opinion of that person, the value of—
 - (a) the debtor's contribution during the shorter period, and
 - (b) any other estate of the debtor taken possession of by the trustee,would be sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 51.
- (4) The Accountant in Bankruptcy must, when making an order under section 32A—
 - (a) determine the date of the first payment, or
 - (b) in a case where the debtor's contribution is fixed as zero, determine the date which is to be deemed as the date of the first payment under the order.

32C Debtor contribution order: review and appeal

- (1) The debtor, the trustee or any other interested person may apply to the Accountant in Bankruptcy for a review of a debtor contribution order made by the Accountant in Bankruptcy under section 32A.
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the debtor contribution order is made.
- (3) If an application under subsection (1) is made, the debtor contribution order is suspended until the determination of that review by the Accountant in Bankruptcy.
- (4) If an application for a review under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

- (b) confirm, amend or revoke the debtor contribution order before the expiry of the period of 28 days beginning with the day on which the application is made.
- (5) The trustee or the debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (4)(b) before the expiry of the period of 14 days beginning with the date of the decision.

32D Effect of debtor contribution order

- (1) The debtor must pay to the trustee any debtor's contribution which is not zero as—
 - (a) fixed by the Accountant in Bankruptcy in making the debtor contribution order, or
 - (b) varied in accordance with section 32F.
- (2) The requirement to pay the debtor's contribution applies irrespective of the debtor's discharge.
- (3) If the value of the debtor's estate and income when taken possession of by the trustee is sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 51, any debtor contribution order ceases to have effect.

32E Deductions from debtor's earnings and other income

- (1) Subsections (2) to (6) apply where under a debtor contribution order—
 - (a) the debtor is required to pay to the trustee an amount from the debtor's earnings or other income, or
 - (b) in accordance with section 32A(6), a third person is required to pay to the trustee money otherwise due to the debtor by way of income.
- (2) The debtor must give the person mentioned in subsection (3) an instruction to make—
 - (a) deductions of specified amounts from the debtor's earnings or other income, and
 - (b) payments to the trustee of the amounts so deducted.
- (3) The person mentioned is—
 - (a) in the case of an amount to be paid from the debtor's earnings from employment, the person by whom the debtor is employed,
 - (b) in the case of an amount to be paid from other earnings or income of the debtor, a third person who is required to pay the earnings or income to the debtor, and
 - (c) in the case mentioned in subsection (1)(b), the third person who is required to pay the income to the trustee.
- (4) The trustee may give the person mentioned in subsection (3) an instruction of the type mentioned in subsection (2) if—
 - (a) the debtor fails to comply with the requirements imposed by that subsection, and

- (b) the debtor fails to pay the debtor's contribution in respect of 2 payment intervals applying by virtue of the debtor contribution order.
- (5) A person mentioned in subsection (3) must comply with an instruction provided in accordance with subsection (2) or (4).
- (6) Where the person by whom the debtor is employed or another third person pays a sum of money to the trustee in accordance with this section, that person is discharged from any liability to the debtor to the extent of the sum so paid.
- (7) The Scottish Ministers may by regulations make provision about instructions to be provided under this section, including in particular—
 - (a) the form in which an instruction must be made,
 - (b) the manner in which an instruction provided in accordance with subsection (2) or (4) affects the recipient of that instruction, and
 - (c) the consequence of any failure of a recipient of an instruction provided in accordance with subsection (2) or (4) to comply with the duty imposed by subsection (5).

32F Variation and removal of debtor contribution order by trustee

- (1) The trustee may vary or quash a debtor contribution order—
 - (a) on the application of the debtor, following any change in the debtor's circumstances,
 - (b) if the trustee considers it to be appropriate, following any change in the debtor's circumstances, or
 - (c) if the trustee considers it to be appropriate when—
 - (i) sending a report to the Accountant in Bankruptcy under section 54(4), or
 - (ii) granting a discharge under section 54A(2).
- (2) In deciding whether to vary or quash a debtor contribution order, the trustee must use the common financial tool to assess the debtor's contribution.
- (3) A decision by the trustee under subsection (1)(b) must not take effect on a day before the end of the period of 14 days beginning with the day on which the decision is made.
- (4) The trustee must notify in writing the persons mentioned in subsection (5) immediately following—
 - (a) any variation or quashing of a debtor contribution order,
 - (b) any refusal of an application.
- (5) The persons are—
 - (a) the debtor,
 - (b) the Accountant in Bankruptcy (if the trustee is not the Accountant in Bankruptcy),
 - (c) any third person required to make a payment under the debtor contribution order or under section 32E(5), and
 - (d) any other interested person.

32G Payment break

- (1) The trustee may, on the application of the debtor, extend the payment period of a debtor contribution order by granting a payment break.
- (2) A “payment break” is a period not exceeding 6 months during which payments under the debtor contribution order are deferred.
- (3) A debtor may apply for a payment break if—
 - (a) there has been a reduction of at least 50% in the debtor’s disposable income (as determined using the common financial tool) as a result of any of the circumstances mentioned in subsection (4) arising in relation to the debtor, and
 - (b) the debtor has not previously applied for a payment break in relation to a debtor contribution order applying after the sequestration of the debtor’s estate.
- (4) The circumstances are—
 - (a) a period of unemployment or change in employment,
 - (b) a period of leave from employment because of the birth or adoption of a child or the need to care for a dependant,
 - (c) a period of illness of the debtor,
 - (d) a divorce or dissolution of civil partnership,
 - (e) a separation from a person to whom the debtor is married or is the civil partner,
 - (f) the death of a person who, along with the debtor, cared for a dependant of the debtor.
- (5) An application for a payment break must specify the period during which the debtor wishes payments to be deferred.
- (6) If, in the opinion of the trustee, a payment break is fair and reasonable, the trustee may grant a payment break on such conditions and for such period as the trustee thinks fit.
- (7) The trustee must notify in writing the grant of a payment break to—
 - (a) the debtor,
 - (b) the Accountant in Bankruptcy (if the trustee is not the Accountant in Bankruptcy), and
 - (c) any third person required to make a payment under the debtor contribution order.
- (8) If the trustee decides not to grant a payment break, the trustee must notify the debtor of that decision and of the reasons.
- (9) The payment period in a debtor contribution order is deemed to be varied by the addition to the period of any payment break granted under this section.

32H Sections 32F and 32G: review and appeal

- (1) The debtor or any other interested person may apply to the Accountant in Bankruptcy for a review of a decision by the trustee under section 32F or 32G.

- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the decision is made.
- (3) If an application under subsection (1) relates to a decision by the trustee under section 32F(1)(b), the decision is suspended until the determination of that review by the Accountant in Bankruptcy.
- (4) If an application for a review under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (5) The trustee or the debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (4)(b) before the expiry of the period of 14 days beginning with the date of the decision.”

Sequestration where debtor has few assets

5 Debtor application

- (1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—
 - (a) in subsection (2)(a), after “subsection” insert “(2ZA) or”, and
 - (b) after subsection (2), insert—

“(2ZA) This subsection applies to the debtor where—

 - (a) the debtor—
 - (i) has been assessed by the common financial tool as requiring to make no debtor’s contribution, or
 - (ii) has been in receipt of a prescribed payment for a period of at least 6 months ending with the day on which the application is made,
 - (b) the total amount of the debtor’s debts (including interest) at the date the debtor application is made is—
 - (i) not less than £1500 or such other sum as may be prescribed, and
 - (ii) no more than £17000 or such other sum as may be prescribed,
 - (c) the total value of the debtor’s assets (leaving out of account any liabilities) on the date the debtor application is made does not exceed £2000 or such other amount as may be prescribed,
 - (d) the value of a single asset of the debtor does not exceed £1000 or such other amount as may be prescribed,
 - (e) the debtor does not own land,
 - (f) within the prescribed period, the debtor has been granted a certificate for sequestration of the debtor’s estate in accordance with section 5B,

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- (g) in the period of 10 years ending on the day before the day on which the debtor application is made or such other period as may be prescribed no award of sequestration has been made against the debtor in pursuance of an application made by the debtor by virtue of this subsection, and
- (h) in the period of 5 years ending on the day before the day on which the debtor application is made no award of sequestration has been made against the debtor in pursuance of—
 - (i) an application made by the debtor other than by virtue of this subsection, or
 - (ii) a petition.

(2ZB) For the purposes of subsection (2ZA)(c) and (d)—

- (a) any property of the debtor is not to be regarded as an asset if, under any provision of this or any other enactment, it would be excluded from vesting in the Accountant in Bankruptcy as trustee,
- (b) if the debtor reasonably requires the use of a vehicle, any vehicle owned by the debtor the value of which does not exceed £3000 or such other amount as may be prescribed is not to be regarded as an asset,
- (c) any other property of the debtor that is of a prescribed type is not to be regarded as an asset.

(2ZC) For the purposes of subsection (2ZA)(c) and (d), the Scottish Ministers may by regulations make provision about how the value of the debtor's assets is to be determined.

(2ZD) The Scottish Ministers may by regulations modify subsection (2ZA).

(2ZE) Schedule A1 to this Act makes further provision about the application of certain provisions of this Act in relation to a debtor to whom subsection (2ZA) applies.”.

- (2) Before Schedule 1 to the 1985 Act, insert the Schedule A1 set out in schedule 1 to this Act.

6 Circumstances where Accountant in Bankruptcy appointed as trustee

In section 2 of the 1985 Act (appointment and functions of trustee in sequestration)—

- (a) in subsection (1A), for “(1C)” substitute “(1D)”, and
- (b) after subsection (1C) insert—

“(1D) The Accountant in Bankruptcy is not to make an appointment under subsection (1A) where—

- (a) the debtor application is made by a debtor to whom section 5(2ZA) applies, and
- (b) the Accountant in Bankruptcy awards sequestration of the debtor's estate.”.

7 Discharge, conditions etc.

(1) After section 54B of the 1985 Act (inserted by section 17), insert—

“54C Debtor to whom section 5(2ZA) applies: discharge

- (1) Where section 5(2ZA) applies to a debtor, the debtor is discharged on the date which is 6 months after the date on which sequestration is awarded.
- (2) A debtor may, following a discharge, apply to the Accountant in Bankruptcy for a certificate of discharge in the prescribed form.”.

(2) After section 55 of the 1985 Act, insert—

“55A Discharge under section 54C: conditions

- (1) This section applies where a debtor is discharged under section 54C.
- (2) During the relevant period the debtor must comply with the condition in subsection (3) before the debtor, either alone or jointly with another person, obtains credit—
 - (a) to the extent of £2000 (or such other sum as may be prescribed) or more, or
 - (b) of any amount where, at the time of obtaining credit, the debtor has debts amounting to £1000 (or such other sum as may be prescribed) or more.
- (3) The condition is that the debtor must inform the person who is providing credit to the debtor (or, as the case may be, jointly to the debtor and another person) that the debtor is required to comply with the conditions in this section.
- (4) During the relevant period, the debtor must not engage (whether directly or indirectly) in a business under a name other than that to which the discharge relates unless the debtor complies with the condition in subsection (5).
- (5) The condition is that the debtor must inform any person with whom the debtor enters into any business transaction of the name of the business to which the discharge relates.
- (6) In this section, “relevant period” means the period of 6 months beginning with the date of discharge.

55B Section 55A: sanctions

- (1) If a debtor fails to comply with the requirement imposed by subsection (2) or (4) of section 55A, that section applies in relation to the debtor as if the relevant period were the period of 12 months beginning with the date of discharge of the debtor.
- (2) If a debtor fails to comply with the requirement imposed by subsection (2) or (4) of section 55A during the period when the section applies in relation to the debtor by virtue of subsection (1), the debtor commits an offence.
- (3) A debtor who is guilty of an offence under subsection (2) is liable on summary conviction to—

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- (a) a fine not exceeding the statutory maximum,
 - (b) imprisonment for—
 - (i) a term not exceeding 3 months, or
 - (ii) a term not exceeding 6 months, if the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, or
 - (c) both such fine and imprisonment.
- (4) A debtor who is guilty of an offence under subsection (2) is liable on conviction on indictment to—
- (a) a fine,
 - (b) imprisonment for a term not exceeding 2 years, or
 - (c) both such fine and imprisonment.”.

Moratorium on diligence

8 Moratorium on diligence

After section 4 of the 1985 Act, insert—

“Moratorium on diligence

4A Notice of intention to apply: debtor application etc.

- (1) A person may give written notice to the Accountant in Bankruptcy of the person’s intention—
 - (a) to make a debtor application for sequestration under section 5,
 - (b) to seek to fulfil the conditions required in order for a trust deed granted by or on behalf of that person to be granted the status of protected trust deed,
 - (c) to apply for the approval of a debt payment programme in accordance with section 2 of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#).
- (2) A person may not give a notice if that person has given a notice under subsection (1) in the immediately preceding period of 12 months.
- (3) The Accountant in Bankruptcy must, without delay after receipt of a notice under subsection (1), enter in the registers mentioned in subsection (4)—
 - (a) the name of the person who gave the notice, and
 - (b) such other information as the Accountant in Bankruptcy considers appropriate in relation to that person.
- (4) The registers are—
 - (a) the register of insolvencies, and
 - (b) the register of debt payment programmes established and maintained in accordance with section 7 of the Debt Arrangement and Attachment (Scotland) Act 2002 (the “DAS register”).

4B Notice of intention to apply: sequestration of estate under section 6

- (1) A person may give written notice to the Accountant in Bankruptcy of the person's intention to make a debtor application under section 6.
- (2) A person may not give a notice in respect of an estate mentioned in section 6 if any person has given a notice under subsection (1) in respect of the same estate in the immediately preceding period of 12 months.
- (3) The Accountant in Bankruptcy must, without delay after receipt of a notice under subsection (1), enter in the register of insolvencies—
 - (a) the name of the person who is the subject of the notice, and
 - (b) such other information as the Accountant in Bankruptcy considers appropriate in relation to that person.

4C Moratorium on diligence

- (1) This section applies where a person gives notice to the Accountant in Bankruptcy in accordance with section 4A(1) or 4B(1).
- (2) A moratorium on diligence applies in relation to the person who is the subject of the notice for the moratorium period determined in accordance with section 4D.
- (3) While a moratorium on diligence applies in relation to the person it is not competent—
 - (a) to serve a charge for payment in respect of any debt owed by the person,
 - (b) to commence or execute any diligence to enforce payment of any debt owed by the person,
 - (c) to found on any debt owed by the person in presenting, or concurring in the presentation of, a petition for sequestration of the person's estate, or
 - (d) in the case where an arrestment mentioned in subsection (1) of section 73J of the [Debtors \(Scotland\) Act 1987 \(c.18\)](#) has been granted in respect of funds due to the person, to release funds to the creditor under subsection (2) of that section.
- (4) The moratorium period applying in relation to the person is to be disregarded for the purposes of determining the period mentioned in section 73J(3) of the [Debtors \(Scotland\) Act 1987 \(c.18\)](#).
- (5) Despite subsection (3)(b), it is competent to—
 - (a) auction an article which has been attached in accordance with the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#) where—
 - (i) notice has been given to the debtor under section 27(4) of that Act, or
 - (ii) the article has been removed, or notice of removal has been given, under section 53 of that Act,
 - (b) implement a decree of furthcoming,
 - (c) implement a decree or order for sale of a ship (or a share of it) or cargo,
 - (d) execute an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order which came into effect before the day on which the moratorium period in relation to the person begins.

4D Period of moratorium

- (1) The moratorium period applying in relation to the person is the period which—
 - (a) begins on the day on which an entry is made in the register of insolvencies under section 4A(3) or 4B(3), and
 - (b) ends on—
 - (i) the day which is 6 weeks after that day,
 - (ii) such earlier day as is mentioned in subsection (2), or
 - (iii) if subsection (3), (5) or (7) applies, such later day as is determined in accordance with subsection (4), (6) or (8).
- (2) The earlier day is the day on which, in relation to the person who is the subject of the moratorium—
 - (a) an entry is made in the register of insolvencies recording the award of sequestration of the estate,
 - (b) an entry is made in the register of insolvencies recording that a trust deed granted by the person has been granted or refused protected status,
 - (c) an entry is made in the DAS register recording the approval of a debt payment programme in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
 - (d) written notice is given to the Accountant in Bankruptcy—
 - (i) by the person withdrawing the notice given under section 4A(1), or
 - (ii) by or on behalf of the person withdrawing the notice given under section 4B(1).
- (3) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—
 - (a) a person has made a debtor application for sequestration of the estate of the person who is the subject of the moratorium,
 - (b) the moratorium has not ended in accordance with subsection (2)(a), and
 - (c) no decision has been made by the Accountant in Bankruptcy under section 15(3C)(b).
- (4) Where subsection (3) applies, the moratorium period ends on—
 - (a) the day on which an entry is made in the register of insolvencies recording the award of sequestration of the estate,
 - (b) in the case of refusal to award sequestration—
 - (i) the day of the expiry of the period applying by virtue of section 15(3B) where no application for review is made under section 15(3A), or
 - (ii) the day on which a decision is made by the Accountant in Bankruptcy under section 15(3C)(b) where an application for review is made, or
 - (c) the day on which written notice is given to the Accountant in Bankruptcy—
 - (i) by the person withdrawing the notice given under section 4A(1), or

- (ii) by or on behalf of the person withdrawing the notice given under section 4B(1).
- (5) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—
 - (a) an entry has been made in the register of insolvencies recording an application for a trust deed granted by or on behalf of the person who is the subject of the moratorium to be granted the status of protected trust deed, and
 - (b) the moratorium has not ended in accordance with subsection (2)(b).
- (6) Where subsection (5) applies, the moratorium period ends on—
 - (a) the day on which an entry is made in the register of insolvencies recording that the trust deed granted by or on behalf of the person has been granted the status of protected trust deed,
 - (b) where such an entry is not made, the day which is 13 weeks after the day on which the moratorium began under subsection (1)(a), or
 - (c) the day on which written notice is given to the Accountant in Bankruptcy by the person withdrawing the notice given under section 4A(1).
- (7) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—
 - (a) the person who is the subject of the moratorium has applied for approval of a debt payment programme under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002,
 - (b) the moratorium has not ended in accordance with subsection (2)(c), and
 - (c) the application has not been determined.
- (8) Where subsection (7) applies, the moratorium period ends on—
 - (a) the day on which an entry is made in the DAS register recording the approval of the debt payment programme in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002,
 - (b) in the case of a rejection of a debt payment programme, the day on which an entry is made in the DAS register recording the rejection, or
 - (c) the day on which written notice is given to the Accountant in Bankruptcy by the person withdrawing the notice given under section 4A(1).”.

Application for sequestration

9 Statement of undertakings

- (1) In section 2 of the 1985 Act (appointment and functions of the trustee in the sequestration), after subsection (7), insert—
 - “(8) The trustee must at the same time as notifying the debtor under subsection (7) (a) or (b), send to the debtor, for signature by the debtor, a statement of undertakings in the form prescribed.”.
- (2) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—
 - (a) in subsection (2B), after paragraph (ba) (inserted by section 1(1)(a)), insert—

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- “(bb) the debtor has given a statement of undertakings (including an undertaking to pay to the trustee after the award of sequestration of the debtor’s estate an amount determined using the common financial tool),”, and
- (b) after subsection (6A), insert—

“(6B) In the case of a debtor application, the debtor must send a statement of undertakings to the Accountant in Bankruptcy along with the application.”.

10 Debtor application: incomplete or inappropriate application

Before section 12 of the 1985 Act (but after the italic cross-heading immediately preceding it), insert—

“11A Debtor application: incomplete application

- (1) This section applies where a debtor application is made and the Accountant in Bankruptcy considers that—
 - (a) the application is incomplete,
 - (b) further information is required in relation to the application,
 - (c) further evidence is required to substantiate any fact relevant to the application, or
 - (d) any fee or charge applicable to the application is outstanding.
- (2) The Accountant in Bankruptcy must specify by notice in writing to the debtor—
 - (a) any further information which is to be provided,
 - (b) any further evidence which is to be provided, and
 - (c) any fee or charge to be paid.
- (3) Any information, evidence, fee or charge to be provided or paid under subsection (2) must be provided or paid within 21 days or such longer period as may be specified by the Accountant in Bankruptcy.
- (4) The Accountant in Bankruptcy may refuse to award sequestration if, after the expiry of the period referred to in subsection (3), the Accountant in Bankruptcy considers that—
 - (a) the application remains incomplete,
 - (b) the debtor has provided insufficient information or evidence under subsection (2)(a) or (b), or
 - (c) any fee or charge applicable to the application remains outstanding.

11B Refusal of debtor application: inappropriate application

- (1) This section applies where a debtor application is made and the Accountant in Bankruptcy considers that an award of sequestration may not be appropriate in the circumstances of the case.
- (2) The Accountant in Bankruptcy must specify by notice in writing to the debtor—
 - (a) the reason why the Accountant in Bankruptcy considers the application may not be appropriate, and

- (b) any further information which is to be provided within 21 days or such longer period as may be specified by the Accountant in Bankruptcy.
- (3) The Accountant in Bankruptcy may refuse to award sequestration if, after the expiry of the period referred to in subsection (2), the Accountant in Bankruptcy remains of the view that an award of sequestration would be inappropriate in the circumstances of the case.”.

11 Sequestration: application by executor

- (1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor), for subsection (3), substitute—
 - “(3) The sequestration of the estate of a deceased debtor is—
 - (a) by debtor application made by the executor, or a person entitled to be appointed as executor, on the estate,
 - (b) on the petition of a qualified creditor, or qualified creditors, of the deceased debtor,
 - (c) on the petition of a temporary administrator,
 - (d) on the petition of a member State liquidator appointed in main proceedings, or
 - (e) on the petition of a trustee acting under a trust deed.”.
- (2) In section 6B of the 1985 Act (debtor application: provision of information)—
 - (a) in subsection (1), after “application”, where it first occurs, insert “, other than an application under section 5(3)(a),”, and
 - (b) after subsection (2), insert—
 - “(2A) Where a debtor application is made by an executor under section 5(3)
 - (a) the executor must—
 - (a) state in the application whether or not the debtor’s centre of main interests was situated in the United Kingdom or in another member State, and
 - (b) state in the application whether or not the debtor possessed an establishment in the United Kingdom or in another member State.”.
- (3) In section 8A of the 1985 Act (further provisions relating to debtor applications)—
 - (a) in subsection (1), for “subsection (2)” substitute “subsections (2) and (2A)”, and
 - (b) after subsection (2), insert—
 - “(2A) Any intromission by an executor with the deceased debtor’s estate after the period mentioned in subsection (2B) is deemed an intromission without a title unless, within that period, the executor—
 - (a) makes a debtor application under section 5(3)(a), or
 - (b) petitions for the appointment of a judicial factor to administer the estate.
 - (2B) The period referred to in subsection (2A) is the period of 12 months following the day on which the executor knew or ought to have known that the estate was absolutely insolvent and likely to remain so.”.

- (4) In section 12 of the 1985 Act (when sequestration is awarded)—
- (a) in subsection (1) after “application”, where it first occurs, insert “, other than an application under section 5(3)(a),”, and
 - (b) after that subsection, insert—
 - “(1B) Where a debtor application is made under section 5(3)(a) the Accountant in Bankruptcy must award sequestration forthwith if the Accountant is satisfied—
 - (a) that the application has been made in accordance with the provisions of this Act and any provision made under this Act, and
 - (b) that the provisions of subsection (6A) of section 5 have been complied with.”.

12 Concurrent proceedings for sequestration: recall

In section 10A of the 1985 Act (powers in relation to concurrent proceedings for sequestration or analogous remedy), after subsection (3) insert—

- “(3A) The Accountant in Bankruptcy must grant a recall of an award of sequestration if—
- (a) sequestration has been awarded by virtue of a debtor application, and
 - (b) the sheriff directs the Accountant in Bankruptcy to dismiss the debtor application.
- (3B) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor or, as the case may be, the other person would have been in if the sequestration had not been awarded.
- (3C) A recall of an award of sequestration does not—
- (a) affect the interruption of prescription caused by—
 - (i) the presentation of the petition for sequestration,
 - (ii) the making of the debtor application, or
 - (iii) the submission of a claim under section 22 or 48,
 - (b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee, with a person acting in good faith, or
 - (c) affect a bankruptcy restrictions order which has not been annulled under section 56J(1)(a).
- (3D) Without delay after granting a recall of an award of sequestration under subsection (3A), the Accountant in Bankruptcy must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.”.

Administration of estate

13 Debtor’s bank account

In section 32 of the 1985 Act (vesting of estate, and dealings of debtor, after sequestration)—

- (a) after subsection (5), insert—
 - “(5A) Where the trustee knows, or becomes aware, of any estate vested in the trustee under section 31 or this section which comprises funds held by a bank, the trustee must serve a notice on the bank—
 - (a) informing the bank of the sequestration, and
 - (b) specifying reasonable detail in order to allow the bank to identify the debtor and the funds held.
 - (5B) A notice under subsection (5A)—
 - (a) must be in writing and may be sent—
 - (i) by first class post or by using a registered or recorded delivery postal service to the bank,
 - (ii) in some other manner (including by electronic means) which the trustee reasonably considers likely to cause it to be delivered to the bank on the same or next day,
 - (b) is deemed to have been received the day after it is sent.”
- (b) in subsection (6), after sub-paragraph (i) insert—
 - “(ia) the trustee is not entitled by virtue of this subsection to any remedy against a bank in respect of a banking transaction entered into before the receipt by the bank of a notice under subsection (5A) (whether or not the bank is aware of the sequestration),”
- (c) in subsection (8), after “(9)” insert “and (9C)”,
- (d) after subsection (9B), insert—
 - “(9C) Subsection (8) does not apply where the dealing is a banking transaction entered into before the receipt by the bank of a notice under subsection (5A) (whether or not the bank is aware of the sequestration).”, and
- (e) after subsection (10), insert—
 - “(11) In this section “bank” has the same meaning as “appropriate bank or institution” in section 73(1).”

14 Submission of claims to trustee

In section 48 of the 1985 Act (submission of claims)—

- (a) in subsection (1)—
 - (i) for “subsection (2)” substitute “subsections (1A) and (2)”, and
 - (ii) for sub-paragraph (ii) substitute—
 - “(ii) in accordance with subsection (1A).”, and
- (b) after subsection (1), insert—
 - “(1A) A creditor must, in order to obtain an adjudication as to the creditor’s entitlement (so far as funds are available) to a dividend out of the debtor’s estate, submit a claim to the trustee not later than the relevant day.
 - (1B) The “relevant day”, in relation to a creditor, means—

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- (a) where a notice is given to the creditor under section 21A(2), the day which is 120 days after the day on which the notice is given, or
- (b) where no notice is given to the creditor under that section, the day which is 120 days after the day on which the trustee gives notice to that creditor inviting the submission of claims.

(1C) If a creditor submits a claim to the trustee after the relevant day, the trustee may, in respect of any accounting period, provide an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate if—

- (a) the claim is submitted not later than 8 weeks before the end of the accounting period, and
- (b) there were exceptional circumstances which prevented the claim from being submitted before the relevant day.”.

15 First accounting period

In section 52 of the 1985 Act (estate to be distributed in respect of accounting periods)

- (a) in subsection (2)(a) after “months” insert “or such shorter period as may be agreed or determined in accordance with subsection (2ZB), either period”,
- (b) in subsection (2ZA) after “awarded” insert “or such shorter period as may be agreed or determined in accordance with subsection (2ZB)”, and
- (c) after subsection (2ZA) insert—

“(2ZB) This subsection applies where the trustee considers that the funds of the debtor's estate are sufficient to pay a dividend in accordance with subsection (3) in respect of—

- (a) in the case where the trustee is the Accountant in Bankruptcy, a shorter period of not less than 6 months determined by the Accountant in Bankruptcy,
- (b) in any other case, a shorter period of not less than 6 months agreed—
 - (i) between the trustee and the commissioners, or
 - (ii) if there are no commissioners, between the trustee and the Accountant in Bankruptcy.”.

16 Vesting of estate after sequestration

- (1) In section 31(5A) of the 1985 Act (reinvestment of non-vested contingent interest), for “on which the debtor's discharge becomes effective” substitute “which is 4 years after the date of sequestration”.
- (2) In section 32(10) of the 1985 Act (meaning of “relevant date” for purposes of vesting etc.), for “on which the debtor's discharge becomes effective” substitute “which is 4 years after the date of sequestration”.

Discharge following sequestration

17 Discharge of debtor

For section 54 of the 1985 Act (automatic discharge of debtor) substitute—

“54 Discharge where Accountant in Bankruptcy not the trustee

- (1) This section applies where the Accountant in Bankruptcy is not the trustee.
- (2) The Accountant in Bankruptcy may discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded by granting a certificate of discharge in the prescribed form.
- (3) Before deciding whether to discharge the debtor under subsection (2), the Accountant in Bankruptcy must—
 - (a) consider the report provided by the trustee under subsection (4), and
 - (b) take into account any representations received during the period mentioned in subsection (6)(b).
- (4) The trustee must prepare and send a report to the Accountant in Bankruptcy—
 - (a) without delay after the date which is 10 months after the date on which sequestration is awarded, and
 - (b) if the debtor is not otherwise discharged, before sending to the Accountant in Bankruptcy the documentation referred to in section 57(1)(b).
- (5) The report must include—
 - (a) information about—
 - (i) the debtor’s assets, liabilities, financial affairs and business affairs,
 - (ii) the debtor’s conduct in relation to those assets, liabilities, financial affairs and business affairs,
 - (iii) the sequestration, and
 - (iv) the debtor’s conduct in the course of the sequestration,
 - (b) a statement of whether, in the opinion of the trustee, the debtor has as at the date of the report—
 - (i) complied with any debtor contribution order,
 - (ii) co-operated with the trustee in accordance with section 64,
 - (iii) complied with the statement of undertakings,
 - (iv) made a full and fair surrender of the debtor’s estate,
 - (v) made a full disclosure of all claims which the debtor is entitled to make against other persons, and
 - (vi) delivered to the trustee every document under the debtor’s control relating to the debtor’s estate, business or financial affairs, and
 - (c) a statement of whether the trustee has, as at the date that the report is sent to the Accountant in Bankruptcy, carried out all of the trustee’s functions in accordance with section 3.

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- (6) The trustee must, at the same time as sending a report to the Accountant in Bankruptcy under this section, give to the debtor and every creditor known to the trustee—
- (a) a copy of the report, and
 - (b) a notice informing the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the report before the expiry of the period of 28 days beginning with the day on which the notice is given.
- (7) A discharge under this section must not take effect before the end of the period of 14 days beginning with the day of notification of the decision.

54A Discharge where Accountant in Bankruptcy the trustee

- (1) This section applies where the Accountant in Bankruptcy is the trustee.
- (2) The Accountant in Bankruptcy may discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded by granting a certificate of discharge in the prescribed form.
- (3) The Accountant in Bankruptcy must, as soon as is practicable after the date which is 12 months after the date on which sequestration is awarded—
- (a) decide whether to discharge the debtor under subsection (2),
 - (b) notify the debtor and every creditor known to the Accountant in Bankruptcy of that decision, and
 - (c) send a report to those persons.
- (4) The report must give an account of—
- (a) the debtor's assets, liabilities, financial affairs and business affairs,
 - (b) the debtor's conduct in relation to those assets, liabilities, financial affairs and business affairs,
 - (c) the sequestration, and
 - (d) the debtor's conduct in the course of the sequestration, including compliance with the statement of undertakings.
- (5) Subsection (6) applies where—
- (a) the Accountant in Bankruptcy refuses to discharge the debtor under subsection (2), and
 - (b) the debtor is not otherwise discharged.
- (6) The Accountant in Bankruptcy must, as soon as is practicable after the date which is 12 months after the date of the refusal—
- (a) decide whether to discharge or refuse to discharge the debtor under subsection (2),
 - (b) notify the debtor and every creditor known to the Accountant in Bankruptcy of that decision, and
 - (c) send a report giving an account of the matters mentioned in subsection (4) to those persons.
- (7) A discharge under this section must not take effect before the end of the period of 14 days beginning with the day of notification of the decision.

54B Discharge of debtor: review and appeal

- (1) The trustee or the debtor may apply to the Accountant in Bankruptcy for a review of a decision under section 54(2) or 54A(2) to refuse to discharge the debtor.
- (2) Any creditor may apply to the Accountant in Bankruptcy for a review of a decision under section 54(2) or 54A(2) to discharge the debtor.
- (3) An application under subsection (1) or (2) must be made before the end of the period of 14 days beginning with the day of notification of the decision under section 54(2) or, as the case may be, 54A(2).
- (4) If an application for a review under subsection (2) is made, the discharge is suspended until the determination of that review by the Accountant in Bankruptcy.
- (5) If an application for a review under subsection (1) or (2) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (6) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (5)(b) before the end of the period of 14 days beginning with the date of the decision.”.

18 Repeal of discharge on composition

- (1) Section 56 of the 1985 Act (discharge on composition) is repealed.
- (2) Section 56K of the 1985 Act (effect of discharge on approval of offer of composition) is repealed.
- (3) Schedule 4 to the 1985 Act (discharge on composition) is repealed.

19 Deferral of discharge where debtor cannot be traced

After section 54C of the 1985 Act (inserted by section 7(1)), insert—

“54D Deferral of discharge where debtor cannot be traced

- (1) Subsection (2) applies where—
 - (a) the trustee, having made reasonable inquiries, is unable to ascertain the whereabouts of the debtor, and
 - (b) as a result is unable to carry out the trustee’s functions in accordance with section 3.
- (2) The trustee must—
 - (a) notify the debtor by sending to the last known address of the debtor a deferral notice in the prescribed form,

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- (b) give a deferral notice to every creditor known to the trustee, and
 - (c) where the trustee is not the Accountant in Bankruptcy, apply in the prescribed form to the Accountant in Bankruptcy for a deferral.
- (3) A deferral application under subsection (2)(c) must be made by the trustee—
- (a) no earlier than the date which is 8 months after the date on which sequestration is awarded, and
 - (b) no later than the date which is 10 months after the date on which sequestration is awarded.
- (4) After receiving a deferral application, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 14 days beginning with the day on which the application is made, and
 - (b) if satisfied of the matters mentioned in subsection (5), issue a certificate deferring indefinitely the discharge of the debtor.
- (5) The matters are—
- (a) that the trustee is unable to ascertain the whereabouts of the debtor, and
 - (b) it would not be reasonably practicable for the trustee to continue to search for the debtor.
- (6) Where the Accountant in Bankruptcy is the trustee and has given a deferral notice in accordance with subsection (2)(b), the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 14 days beginning with the day on which the deferral notice is given, and
 - (b) if satisfied that it would not be reasonably practicable to continue to search for the debtor, issue a certificate deferring indefinitely the discharge of the debtor.
- (7) Where a certificate is issued under subsection (4)(b) or (6)(b), the Accountant in Bankruptcy must make an appropriate entry in the register of insolvencies.

54E Debtor not traced: new trustee

- (1) This section applies where a certificate is issued under section 54D(4)(b).
- (2) The trustee may apply to the Accountant in Bankruptcy in the prescribed form for authority to resign office.
- (3) An application under subsection (2) must include details of every creditor known to the trustee.
- (4) An application under subsection (2) may not be made—
- (a) if after the certificate is issued the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee,
 - (b) after the date which is 6 months after the date on which the certificate is awarded.
- (5) Where an application is made under subsection (2), the Accountant in Bankruptcy must issue to the trustee who made the application a notice in the prescribed form granting the application.

- (6) Where a notice is issued under subsection (5)—
- (a) the Accountant in Bankruptcy is deemed to be the trustee,
 - (b) the Accountant in Bankruptcy must notify every creditor known to the Accountant in Bankruptcy that the Accountant in Bankruptcy is deemed to be the trustee,
 - (c) the former trustee is not entitled to recover outlays and remuneration payable in accordance with section 53 other than by a claim in the final distribution of the debtor's estate, and
 - (d) subsections (6) to (8) of section 28 apply in relation to the appointment of the Accountant in Bankruptcy as the new trustee as they apply in relation to the appointment of a new trustee under that section.

54F Debtor not traced: subsequent debtor contact

- (1) This section applies where—
- (a) a certificate is issued under section 54D(4)(b) or (6)(b), and
 - (b) the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee.
- (2) Where the Accountant in Bankruptcy is the trustee, the Accountant in Bankruptcy may discharge the debtor at any time after the date which is 12 months after the date on which—
- (a) the whereabouts of the debtor were ascertained, or
 - (b) the debtor made contact with the trustee.
- (3) Where the Accountant in Bankruptcy is not the trustee, the trustee must prepare and send a report to the Accountant in Bankruptcy without delay after the date which is 10 months after the earlier of the date on which—
- (a) the whereabouts of the debtor were ascertained by the trustee, or
 - (b) the debtor made contact with the trustee.
- (4) If the trustee sends a report to the Accountant in Bankruptcy under subsection (3)—
- (a) the report must include the matters included in a report sent to the Accountant in Bankruptcy in accordance with subsection (5) of section 54, and
 - (b) subsection (6) of that section applies to the report as it applies to a report sent in accordance with subsection (4) of that section.
- (5) After receiving a report under subsection (3), the Accountant in Bankruptcy may discharge the debtor by granting a certificate of discharge in the prescribed form.
- (6) Before deciding whether to discharge the debtor under subsection (5), the Accountant in Bankruptcy must—
- (a) consider the report prepared by the trustee under subsection (3), and
 - (b) take into account any representations received during the period mentioned in subsection (6) of section 54 (as applied in accordance with subsection (4)).

- (7) A discharge under subsection (2) or (5) must not take effect on a date before the end of the period of 14 days beginning with the day of notification of the decision.
- (8) A discharge under subsection (2) or (5) is deemed for the purposes of section 55 to have been given under section 54(2).

54G Subsequent debtor contact: review and appeal

- (1) The debtor may apply to the Accountant in Bankruptcy for a review of a decision under section 54F(2) or (5) to refuse to discharge the debtor.
- (2) Any creditor may apply to the Accountant in Bankruptcy for a review of a decision under section 54F(2) or (5) to discharge the debtor.
- (3) An application under subsection (1) or (2) must be made before the end of the period of 14 days beginning with the day of notification of the decision under section 54F(2) or, as the case may be, 54F(5).
- (4) If an application for a review under subsection (2) is made, the discharge is suspended until the determination of that review by the Accountant in Bankruptcy.
- (5) If an application for a review under subsection (1) or (2) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (6) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (5)(b) before the end of the period of 14 days beginning with the date of the decision.”.

20 Unclaimed dividends and unapplied balances

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

- (a) in subsection (1)—
 - (i) for paragraph (a), substitute—
 - “(a) must pay to the Accountant in Bankruptcy any unclaimed dividends and unapplied balances,” and
 - (ii) in paragraph (b), the words “and a receipt for the deposit of the unclaimed dividends and unapplied balances” are repealed, and
- (b) after subsection (1A) (inserted by section 23(1)(b)), insert—
 - “(1B) The Accountant in Bankruptcy must deposit any unclaimed dividends and any unapplied balances paid to the Accountant in Bankruptcy under subsection (1)(a) in an appropriate bank or institution.”.

21 Assets discovered after trustee discharge: appointment of trustee

After section 58A of the 1985 Act, insert—

“58B Assets discovered after trustee discharge: appointment of trustee

- (1) This section applies where, after the trustee’s discharge under section 57 or 58A but before the expiry of the period of 5 years from the date of sequestration, the trustee or the Accountant in Bankruptcy becomes aware of any newly identified estate with a value of not less than £1000 (or such other sum as may be prescribed).
- (2) In this section, “newly identified estate” means any part of the debtor’s estate which—
 - (a) vested in the trustee in accordance with section 31 or 32, and
 - (b) was not, before the trustee was discharged, known to the trustee.
- (3) The Accountant in Bankruptcy may—
 - (a) in the case where the trustee was discharged under section 57—
 - (i) on the application of the trustee who was discharged, reappoint that person as trustee on the debtor’s estate, or
 - (ii) appoint the Accountant in Bankruptcy as trustee on the debtor’s estate,
 - (b) in the case where the Accountant in Bankruptcy was discharged under section 58A, reappoint the Accountant in Bankruptcy as trustee on the debtor’s estate.
- (4) The Accountant in Bankruptcy may make an appointment or reappointment under subsection (3) only if, in the opinion of the Accountant in Bankruptcy, the value of the newly identified estate is likely to exceed the costs of—
 - (a) the appointment or reappointment, and
 - (b) the recovery, management, realisation and distribution of the newly identified estate.
- (5) Where the trustee was discharged under section 57 and applies for reappointment under subsection (3)(a)(i), the discharged trustee must provide to the Accountant in Bankruptcy the information mentioned in subsection (8) (a) to (c).
- (6) Where the trustee was discharged under section 57 and does not apply for reappointment under subsection (3)(a)(i), the discharged trustee must—
 - (a) provide to the Accountant in Bankruptcy details of any newly identified estate that the discharged trustee becomes aware of, where that estate has a value which is not less than the value mentioned in subsection (1), and
 - (b) if requested by the Accountant in Bankruptcy, provide to the Accountant in Bankruptcy the information mentioned in subsection (8) (b) and (c).
- (7) Where the Accountant in Bankruptcy was discharged under section 58A, the Accountant in Bankruptcy must record and consider the information mentioned in subsection (8).
- (8) The information is—
 - (a) the estimated value of the newly identified estate,

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- (b) the reason why the newly identified estate forms part of the debtor's estate,
 - (c) the reason why the newly identified estate was not recovered,
 - (d) the estimated outlays and remuneration of the trustee following an appointment or reappointment under subsection (3), and
 - (e) the likely distribution under section 51 following an appointment or reappointment under subsection (3).
- (9) This section is without prejudice to any other right to take action following the discharge of the trustee.

58C Assets discovered after trustee discharge: notice

- (1) The Accountant in Bankruptcy must notify the debtor and any other person the Accountant in Bankruptcy considers to have an interest—
- (a) where an application is made under section 58B(3)(a)(i), and
 - (b) where the Accountant in Bankruptcy proposes to make an appointment or reappointment under section 58B(3)(a)(ii) or (b).
- (2) A notice under subsection (1) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed appointment or reappointment before the expiry of the period of 14 days beginning with the day on which the notice is given.
- (3) Before making an appointment or reappointment under section 58B, the Accountant in Bankruptcy must take into account any representations made by an interested person.
- (4) If the Accountant in Bankruptcy makes an appointment or reappointment under section 58B, the Accountant in Bankruptcy must as soon as is practicable notify the debtor of the appointment or reappointment.
- (5) A notice under subsection (4) must include information in relation to the debtor's duties to co-operate with the trustee under section 64.

58D Assets discovered after trustee discharge: appeal

Where the Accountant in Bankruptcy makes or refuses to make an order under section 58B, an interested person may, no later than 14 days after the date of the decision, appeal to the sheriff."

Records

22 Register of insolvencies

In section 1A of the 1985 Act (supervisory functions of the Accountant in Bankruptcy)

- (a) in subsection (1)(b)—
 - (i) for "the Court of Session by act of sederunt" substitute "regulations made by the Scottish Ministers", and
 - (ii) after paragraph (iii), insert " , and

(iv) any other document as may be specified in regulations made under this subsection or any other enactment.”, and

(b) after subsection (4), insert—

“(5) Regulations under subsection (1)(b) may in particular prescribe circumstances where information need not be included in the register of insolvencies, if in the opinion of the Accountant in Bankruptcy inclusion of the information would be likely to jeopardise the safety or welfare of any person.”.

23 Sederunt book

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

(a) in subsection (1)(b), after “book” insert “in the format specified by subsection (1A) and”,

(b) after subsection (1), insert—

“(1A) The trustee must send an electronic version of the sederunt book in such format as the Accountant in Bankruptcy may from time to time direct.”, and

(c) in subsection (2)(b), for “at the office of the Accountant in Bankruptcy” substitute “following a request made to the Accountant in Bankruptcy”.

(2) In section 58A(4)(b)(ii) of the 1985 Act (notice on sederunt book sent on discharge of Accountant in Bankruptcy as trustee), for “at such address as the Accountant in Bankruptcy may determine” substitute “following a request made to the Accountant in Bankruptcy”.

(3) In section 62 of the 1985 Act (sederunt book and other documents)—

(a) in subsection (2), for “Court of Session may by act of sederunt” substitute “the Scottish Ministers may by regulations”, and

(b) after that subsection, insert—

“(2A) The trustee must insert in the sederunt book the information listed in Schedule 3A to this Act.

(2B) The Scottish Ministers may by regulations modify Schedule 3A.”.

(4) After Schedule 3 to the 1985 Act insert the Schedule 3A set out in schedule 2 to this Act.

24 Abolition of certain requirements in relation to Edinburgh Gazette

(1) In section 16 of the 1985 Act (petitions for recall of sequestration), for subsection (3) substitute—

“(3) On service of a copy of the petition under subsection (2), the Accountant in Bankruptcy must enter particulars of the petition in the register of insolvencies.”.

(2) In section 45 of the 1985 Act (public examination)—

(a) in subsection (3)(a), for “publish in the Edinburgh Gazette” substitute “send to the Accountant in Bankruptcy”, and

(b) after subsection (3), insert—

“(3A) The Accountant in Bankruptcy must enter particulars of the notice sent under subsection (3)(a) in the register of insolvencies.”.

(3) Section 71 (Edinburgh Gazette) is repealed.

Functions of sheriff and Accountant in Bankruptcy in sequestration

25 Application by trustee for direction on matters in sequestration

(1) In section 3(6) of the 1985 Act (trustee application to the sheriff for directions in relation to any particular matter), for “A trustee” substitute “Where the Accountant in Bankruptcy is the trustee, the Accountant in Bankruptcy”.

(2) After section 3 of the 1985 Act, insert—

“3A Application to Accountant in Bankruptcy for a direction

- (1) This section applies where the Accountant in Bankruptcy is not the trustee.
- (2) The trustee may apply to the Accountant in Bankruptcy for a direction in relation to any particular matter arising in the sequestration.
- (3) The Accountant in Bankruptcy may, before giving a direction on any particular matter under this section, refer the matter to the sheriff by making an application for a direction in relation to that matter.
- (4) The trustee may apply to the Accountant in Bankruptcy for a review of a direction given by the Accountant in Bankruptcy under this section.
- (5) An application for a review under subsection (4) may not be made—
 - (a) by an interim trustee,
 - (b) after the expiry of the period of 14 days beginning with the day on which notice of the direction by the Accountant in Bankruptcy is given to the trustee, or
 - (c) in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under subsection (3).
- (6) If an application for a review under subsection (4) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by the trustee, the debtor, any creditor and any other person having an interest before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the direction before the expiry of the period of 28 days beginning with the day on which the application is made.
- (7) The trustee may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (6)(b) before the expiry of the period of 14 days beginning with the day of the decision.”.

26 Recall of sequestration by sheriff

- (1) In section 16 of the 1985 Act (petitions for recall of sequestration)—
- (a) after subsection (1), insert—

“(1A) A petition for recall of an award of sequestration may not be presented to the sheriff if the only ground is that the debtor has paid or is able to pay the debtor’s debts in full.
 - (1B) Subsection (1A) does not apply where—
 - (a) sequestration was awarded following a petition of a qualified creditor or qualified creditors, and
 - (b) a petition for recall of the award of sequestration includes the ground that the debtor was not apparently insolvent.”, and
 - (b) in subsection (4)—
 - (i) after “presented”, where it first occurs, insert “at any time”, and
 - (ii) paragraphs (a) and (b) are repealed.
- (2) The title of section 17 of the 1985 Act becomes “**Recall of sequestration by sheriff**”.
- (3) In section 17 of the 1985 Act—
- (a) in subsection (1)(a), the words “or has given sufficient security for their payment” are repealed,
 - (b) after subsection (2), insert—

“(2A) Where the sheriff intends to recall an award of sequestration on the ground that the debtor has paid the debtor’s debts in full, the order recalling the award may not—

 - (a) be made before the payment in full of the outlays and remuneration of the interim trustee and the trustee,
 - (b) be subject to any conditions which are to be fulfilled before the order takes effect.”,
 - (c) in subsection (3), after “On”, insert “or before”, and
 - (d) in subsection (8), after “any”, in the second place where it occurs, insert “interim or final”.

27 Recall of sequestration by Accountant in Bankruptcy

After section 17 of the 1985 Act, insert—

“17A Application to Accountant in Bankruptcy for recall of sequestration

- (1) An application for recall of an award of sequestration may be made to the Accountant in Bankruptcy on the ground that the debtor has paid or is able to pay the debtor’s debts in full.
- (2) An application may be made by—
 - (a) the debtor,
 - (b) any creditor (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),
 - (c) the trustee (where the Accountant in Bankruptcy is not the trustee), or

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- (d) any other person having an interest (whether or not a person who was a petitioner for the sequestration).
- (3) The person making an application must, at the same time as applying to the Accountant in Bankruptcy, give to the persons mentioned in subsection (4)—
 - (a) a copy of the application, and
 - (b) a notice informing the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application before the expiry of the period of 21 days beginning with the day on which the notice is given.
- (4) The persons are—
 - (a) the debtor,
 - (b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration,
 - (c) the trustee.
- (5) Despite an application being made, the proceedings in the sequestration are to continue as if the application had not been made until a recall of an award of sequestration is granted under section 17D(1) (subject to any conditions imposed under section 17D(5)).
- (6) Where the applicant withdraws the application or dies, the Accountant in Bankruptcy may continue the application by substituting any person mentioned in subsection (2) for the applicant.

17B Application under section 17A: further procedure

- (1) This section applies where an application is made under section 17A.
- (2) The trustee must prepare a statement on the debtor's affairs, so far as within the knowledge of the trustee.
- (3) The trustee must submit the statement to the Accountant in Bankruptcy—
 - (a) at the same time as the trustee makes the application under section 17A, or
 - (b) where the application is made by another person, before the expiry of the period of 21 days beginning with the day on which the notice is given under section 17A(3)(b).
- (4) The statement must—
 - (a) indicate whether the debtor has agreed to—
 - (i) the interim trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the interim trustee (including any outlays and remuneration which are yet to be incurred), and
 - (ii) the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee (including any outlays and remuneration which are yet to be incurred),
 - (b) state whether or not the debtor's debts have been paid in full (including the payment of the outlays and remuneration of the interim trustee and the trustee),

- (c) where the debtor's debts have not been so paid—
 - (i) provide details of any debt which has not been paid, and
 - (ii) indicate whether, in the opinion of the trustee, the debtor's assets are likely to be sufficient to pay the debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee) before the day which is 8 weeks after the day on which the statement is submitted, and
 - (d) provide details of any distribution of the debtor's estate.
- (5) The trustee must notify every creditor known to the trustee that an application has been made—
- (a) where the application is made by the trustee, before the expiry of the period of 7 days beginning with the day on which the application is made,
 - (b) where the application is made by another person, before the expiry of the period of 7 days beginning with the day on which the notice is given under section 17A(3)(b).
- (6) If a creditor has not previously submitted a claim under section 22 or 48, the creditor must, in order to be included in the statement made by the trustee, submit a claim.
- (7) A claim must be submitted—
- (a) in accordance with section 22(2) and (3), and
 - (b) before the expiry of the period of 14 days beginning with the day on which notice is given under subsection (5).
- (8) If any creditor submits a claim in accordance with subsection (7), the trustee must update and resubmit the statement before the expiry of the period of 7 days beginning with the expiry of the period mentioned in subsection (7)(b).
- (9) The trustee must update and resubmit the statement if—
- (a) the statement previously submitted did not state in accordance with subsection (4)(b) that the debtor's debts have been paid in full, and
 - (b) before the day on which the application is determined by the Accountant in Bankruptcy, the trustee is able to make that statement.

17C Determination of outlays and remuneration

- (1) This section applies where—
- (a) the Accountant in Bankruptcy receives an application under section 17A, and
 - (b) the statement submitted by the trustee under section 17B indicates that the amount of the outlays and remuneration of the trustee is not agreed.
- (2) The trustee must provide to the Accountant in Bankruptcy—
- (a) at the same time as submitting the statement under section 17B—
 - (i) the trustee's accounts of the trustee's intromissions with the debtor's estate for audit, and
 - (ii) details of the trustee's claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the

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- trustee (including any outlays and remuneration which are yet to be incurred), and
- (b) such other information in relation to that claim as may be reasonably requested by the Accountant in Bankruptcy.
- (3) The Accountant in Bankruptcy must before the expiry of the period of 28 days beginning with the expiry of the period mentioned in section 17B(8) issue a determination fixing the amount of the outlays and the remuneration payable to the trustee.
- (4) The Accountant in Bankruptcy may before the expiry of the period mentioned in subsection (3) determine the expenses reasonably incurred by a creditor who was a petitioner or, as the case may be, concurred in a debtor application for sequestration.
- (5) Subsections (4) and (5) of section 53 apply to the Accountant in Bankruptcy for the purpose of making a determination in accordance with subsection (3) as they apply to the commissioners or the Accountant in Bankruptcy for the purpose of fixing an amount under that section.

17D Recall of sequestration by Accountant in Bankruptcy

- (1) The Accountant in Bankruptcy may grant a recall of an award of sequestration if—
- (a) the trustee has notified the Accountant in Bankruptcy in the statement submitted under section 17B that the debtor's debts have been paid in full (including the payment of the outlays and remuneration of the interim trustee and the trustee), and
 - (b) the Accountant in Bankruptcy is satisfied that in all the circumstances of the case, it is appropriate to do so.
- (2) The Accountant in Bankruptcy may not grant a recall of an award of sequestration after—
- (a) where no appeal is made under section 17G(5)(a), the day which is 8 weeks after the day on which the statement was first submitted under section 17B(3), or
 - (b) where such an appeal is made, such later day which is 14 days after the day on which the appeal is finally determined or abandoned.
- (3) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor or, as the case may be, the other person would have been in if the sequestration had not been awarded.
- (4) A recall of an award of sequestration is not to—
- (a) affect the interruption of prescription caused by—
 - (i) the presentation of the petition for sequestration,
 - (ii) the making of the debtor application, or
 - (iii) the submission of a claim under section 22 or 48,
 - (b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee, with a person acting in good faith, or
 - (c) affect a bankruptcy restrictions order which has not been annulled under section 56J(1)(a).

- (5) If the Accountant in Bankruptcy does not grant a recall of an award of sequestration under subsection (1) the sequestration is to continue but is to be subject to such conditions as the Accountant in Bankruptcy thinks fit.
- (6) Without delay after granting a recall of an award of sequestration under subsection (1), the Accountant in Bankruptcy must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

17E Recall where Accountant in Bankruptcy the trustee

- (1) This section applies where the Accountant in Bankruptcy—
 - (a) is the trustee, and
 - (b) considers that recall of an award of sequestration should be granted on the ground that the debtor has paid or is able to pay the debtor's debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee).
- (2) The Accountant in Bankruptcy must notify the debtor and every creditor known to the Accountant in Bankruptcy that the Accountant in Bankruptcy considers that subsection (1) applies.
- (3) If a creditor has not previously submitted a claim under section 22 or 48, the creditor must, in order for the creditor's claim to a dividend out of the debtor's estate to be considered, submit a claim.
- (4) A claim must be submitted—
 - (a) in accordance with section 22(2) and (3), and
 - (b) before the expiry of the period of 14 days beginning with the day on which notice is given under subsection (2).
- (5) Before granting a recall of an award of sequestration the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the notice is given under subsection (2), and
 - (b) make a determination of the Accountant in Bankruptcy's fees and outlays calculated in accordance with regulations made under section 69A.
- (6) The Accountant in Bankruptcy may grant a recall of an award of sequestration if the Accountant in Bankruptcy is satisfied that—
 - (a) the debtor has paid the debtor's debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee),
 - (b) those debts were paid in full before the expiry of the period of 8 weeks beginning with the expiry of the period mentioned in subsection (5) (a), and
 - (c) in all the circumstances of the case, it is appropriate to do so.
- (7) Subsections (3) and (4) of section 17D apply in relation to a recall of an award of sequestration granted under subsection (6) as they apply in relation to a recall of an award of sequestration granted under that section.

- (8) Without delay after granting a recall of an award of sequestration under subsection (6), the Accountant in Bankruptcy must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.

17F Reference to sheriff

- (1) The Accountant in Bankruptcy may, at any time before deciding under section 17D(1) whether to grant an application for recall of an award of sequestration, remit to the sheriff an application made under section 17A.
- (2) The Accountant in Bankruptcy may, at any time before deciding under section 17E(6) whether to grant a recall of an award of sequestration, remit the case to the sheriff.
- (3) If an application is remitted to the sheriff under subsection (1) or (2), the sheriff may dispose of the application or the case in accordance with section 17 as if it were a petition presented by the Accountant in Bankruptcy under section 16.

17G Recall of sequestration by Accountant in Bankruptcy: review and appeal

- (1) A person mentioned in subsection (2) may apply to the Accountant in Bankruptcy for a review of—
- (a) a decision of the Accountant in Bankruptcy under section 17D(1) or 17E(6) to grant or refuse to grant a recall of an award of sequestration,
 - (b) a determination of the Accountant in Bankruptcy under section 17C(4).
- (2) The persons are—
- (a) the debtor,
 - (b) any creditor,
 - (c) the trustee,
 - (d) any other person having an interest.
- (3) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the decision or, as the case may be, the determination or requirement is made.
- (4) If an application under subsection (1) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision, determination or requirement before the expiry of the period of 28 days beginning with the day on which the application is made.
- (5) A person mentioned in subsection (2) may, before the expiry of the period of 14 days beginning with the day on which the decision, determination or requirement is made, appeal to the sheriff against—
- (a) a determination of the Accountant in Bankruptcy under section 17C(3) or 17E(5)(b),

- (b) a decision of the Accountant in Bankruptcy under subsection (4)(b),
- (6) Any decision of the sheriff on an appeal relating to a determination of the Accountant in Bankruptcy under section 17C(3) or 17E(5)(b) is final.
- (7) In upholding an appeal relating to a decision under section 17C(1) or the sheriff may quash the decision of the Accountant in Bankruptcy and remit the case, together with reasons for the sheriff's decision, to the Accountant in Bankruptcy."

28 Appointment of replacement trustee

- (1) For section 25 of the 1985 Act, substitute—

“25 Appointment of replacement trustee

- (1) This section applies where a replacement trustee is elected by virtue of a trustee vote.
- (2) On the election of the replacement trustee, the original trustee must immediately make a report of the proceedings at the statutory meeting—
 - (a) where the original trustee was not the Accountant in Bankruptcy, to the Accountant in Bankruptcy,
 - (b) where the original trustee was the Accountant in Bankruptcy, to the sheriff.
- (3) The debtor, a creditor, the original trustee, the replacement trustee or the Accountant in Bankruptcy may object to any matter connected with the election—
 - (a) in the case of an objection by a person other than the Accountant in Bankruptcy, by applying to the Accountant in Bankruptcy, or
 - (b) in the case of an objection by the Accountant in Bankruptcy, by making a summary application to the sheriff.
- (4) An objection under subsection (3) must—
 - (a) specify the grounds on which the objection is taken, and
 - (b) be made before the expiry of the period of 4 days beginning with the day of the statutory meeting.
- (5) If there is no timeous objection under subsection (3), the Accountant in Bankruptcy must without delay declare the elected person to be the trustee in the sequestration.
- (6) No expense in objecting under this section is to fall on the debtor's estate.

25A Applications to Accountant in Bankruptcy: procedure

- (1) This section applies where an application is made to the Accountant in Bankruptcy under section 25(3)(a).
- (2) The Accountant in Bankruptcy must—
 - (a) without delay give the original trustee, the replacement trustee, the objector and any other interested person an opportunity to make written submissions on the application, and

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- (b) make a decision.
- (3) If the Accountant in Bankruptcy decides—
 - (a) to reject the objection in the application, the Accountant in Bankruptcy must without delay declare the elected person to be the trustee in the sequestration,
 - (b) to sustain the objection in the application, the Accountant in Bankruptcy must order the original trustee to arrange a new meeting at which a new trustee vote must be held.
- (4) Sections 23 to 25B apply in relation to a meeting arranged by virtue of subsection (3)(b).
- (5) The original trustee, the replacement trustee, the objector and any other interested person may apply to the Accountant in Bankruptcy for a review of a decision under subsection (2)(b).
- (6) An application under subsection (5) must be made before the expiry of the period of 14 days beginning with the day on which notice of the decision is given.
- (7) If an application for a review under subsection (5) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (8) The trustee, the objector and any other interested person may by summary application appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (7)(b), before the expiry of the period of 14 days beginning with the day of the decision.
- (9) No expense in objecting under this section is to fall on the debtor's estate.

25B Applications and appeals to sheriff: procedure

- (1) This section applies where there is—
 - (a) an application by the Accountant in Bankruptcy under section 25(3)(b), or
 - (b) an appeal under section 25A(8).
- (2) The sheriff must—
 - (a) without delay give the parties an opportunity to be heard on the application, and
 - (b) make a decision.
- (3) If the sheriff decides—
 - (a) to reject an objection to the appointment of an elected person, the sheriff must without delay declare the elected person to be the trustee in the sequestration and make an order appointing the elected person to be the trustee in the sequestration,

- (b) to sustain an objection to the appointment of an elected person, the sheriff must order the original trustee to arrange a new meeting at which a new trustee vote must be held.
 - (4) Sections 23 to 25B apply in relation to a meeting arranged by virtue of subsection (3)(b).
 - (5) Any declaration, appointment or decision of the sheriff under this section is final.”.
- (2) In section 28 of the 1985 Act (resignation and death of trustee), for subsection (5), substitute—
- “(5) Where no new trustee is elected in pursuance of subsection (2) or (3) the Accountant in Bankruptcy may appoint as the trustee in the sequestration—
 - (a) a person who applies to the Accountant in Bankruptcy within the period of 14 days beginning with the day of the meeting arranged under subsection (2) or (3), or
 - (b) any other person as may be determined by the Accountant in Bankruptcy and who consents to the appointment.
 - (5A) A person may not be appointed under subsection (5) if the person is ineligible for election as a replacement trustee under section 24(2).
 - (5B) If, after the expiry of the period mentioned in subsection (5)(a), the Accountant in Bankruptcy determines that no person is to be appointed under subsection (5), the Accountant in Bankruptcy is deemed to be the trustee in the sequestration.”.

29 Replacement of trustee acting in more than one sequestration

For section 28A of the 1985 Act, substitute—

“28A Replacement of trustee acting in more than one sequestration

- (1) This section applies where a trustee acting as such in two or more sequestrations—
 - (a) dies,
 - (b) ceases to be qualified to continue to act as trustee by virtue of section 24(2), or
 - (c) becomes subject to the circumstances mentioned in subsection (2).
- (2) The circumstances are that—
 - (a) there is a conflict of interest affecting the trustee, or
 - (b) there is a change in the personal circumstances of the trustee, which prevents, or makes it impracticable for, the trustee to carry out the trustee’s functions.
- (3) The Accountant in Bankruptcy may in a case where subsection (1)(b) or (c) applies, determine that the trustee is removed from office in each sequestration in which the trustee has ceased to be qualified.
- (4) The Accountant in Bankruptcy may appoint as the trustee in each sequestration in which the former trustee was acting a person—

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- (a) determined by the Accountant in Bankruptcy, and
 - (b) who consents to the appointment.
- (5) A person may not be appointed under subsection (4) if the person is ineligible for election as a replacement trustee under section 24(2).
- (6) If, in relation to any sequestration, the Accountant in Bankruptcy determines that no person is to be appointed under subsection (4), the Accountant in Bankruptcy is deemed to be the trustee in that sequestration.
- (7) A determination or appointment under this section may be made—
 - (a) on the application of any person having an interest, or
 - (b) without an application, where the Accountant in Bankruptcy proposes to make a determination or appointment of the Accountant in Bankruptcy's own accord.
- (8) The applicant must notify all interested persons where an application is made under subsection (7)(a).
- (9) The Accountant in Bankruptcy must notify all interested persons where the Accountant in Bankruptcy proposes to make a determination or appointment by virtue of subsection (7)(b).
- (10) A notice under subsection (8) or (9) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed determination or appointment before the expiry of the period of 14 days beginning with the day on which the notice is given.
- (11) Before making a determination or appointment under this section, the Accountant in Bankruptcy must take into account any representations made by an interested person.
- (12) The Accountant in Bankruptcy must notify any determination or appointment under this section to—
 - (a) the former trustee (or in the case where the former trustee has died, the former trustee's representatives),
 - (b) the debtor,
 - (c) the trustee appointed under this section (where the trustee appointed is not the Accountant in Bankruptcy),
 - (d) each sheriff who awarded sequestration or to whom sequestration was transferred under section 15(2) of this Act.
- (13) The trustee appointed under this section—
 - (a) must notify the determination or appointment under this section to every creditor known to the trustee,
 - (b) may require—
 - (i) delivery of all documents relating to each sequestration in which the former trustee was acting which are in the possession of the former trustee or the former trustee's representatives (other than the former trustee's accounts),
 - (ii) delivery of a copy of the former trustee's accounts,
 - (iii) the former trustee or the former trustee's representatives to submit the trustee's accounts for audit to the commissioners

or, if there are no commissioners, to the Accountant in Bankruptcy.

- (14) Where the trustee appointed under this section requires submission of the accounts in accordance with subsection (13)(b)(iii), the commissioners or, as the case may be, the Accountant in Bankruptcy must issue a determination fixing the amount of the outlays and remuneration payable to the former trustee or the former trustee's representatives in accordance with section 53.

28B Determination etc. under section 28A: review

- (1) The persons mentioned in subsections (12)(a) and (b) and (13)(a) of section 28A may apply to the Accountant in Bankruptcy for a review by the Accountant in Bankruptcy of any determination or appointment under that section.
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which notice of the determination or appointment is given.
- (3) If an application under subsection (1) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the determination or appointment before the expiry of the period of 28 days beginning with the day on which the application is made.
- (4) The persons mentioned in subsections (12)(a) and (b) and (13)(a) of section 28A may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (3)(b) before the expiry of the period of 14 days beginning with the day of the decision.
- (5) The Accountant in Bankruptcy may refer a case to the court for a direction before—
- (a) making any determination or appointment under section 28A, or
 - (b) undertaking any review under this section.
- (6) An appeal under subsection (4) and a referral under subsection (5) must be made—
- (a) by a single petition to the Court of Session, where the appeal relates to two or more sequestrations and the sequestrations are, by virtue of section 9, in different sheriffdoms, and
 - (b) in any other case to the sheriff.”.

30 Removal of trustee and trustee not acting

In section 29 of the 1985 Act (removal of trustee and trustee not acting)—

- (a) in subsection (1), for paragraph (b), substitute—
- “(b) by order made by the Accountant in Bankruptcy, if the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of circumstances other than those mentioned in subsection (9),”.

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- (b) after subsection (1), insert—
- “(1A) An order removing a trustee in accordance with subsection (1)(b) may be made—
- (a) on the application of—
- (i) the commissioners, or
- (ii) a person representing not less than one quarter in value of the creditors, or
- (b) in any other case, where the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of circumstances other than those mentioned in subsection (9).”
- (c) for subsection (2), substitute—
- “(2) The Accountant in Bankruptcy must—
- (a) order an application by a person mentioned in subsection (1A) (a) to be served on the trustee,
- (b) enter particulars of the application in the register of insolvencies, and
- (c) before deciding whether or not to make an order under subsection (1)(b), give the trustee the opportunity to make representations.”
- (d) for subsection (3), substitute—
- “(3) The Accountant in Bankruptcy may in ordering, or instead of ordering, the removal of the trustee from office under subsection (1)(b), make such further or other order as the Accountant in Bankruptcy thinks fit.
- (3A) The trustee, the commissioners or any creditor may apply to the Accountant in Bankruptcy for a review of any decision of the Accountant in Bankruptcy under subsection (1)(b) or (3).
- (3B) An application under subsection (3A) must be made before the expiry of the period of 14 days beginning with the day on which the decision is given.
- (3C) If an application for a review under subsection (3A) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
- (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.”
- (e) for subsection (4), substitute—
- “(4) The trustee, the commissioners or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (3C)(b) before the end of the period of 14 days beginning with the date of the decision.”
- (f) in subsection (5), after “following” insert “a review under subsection (3A) or”,
- (g) for subsection (6), substitute—

- “(6) If the Accountant in Bankruptcy is satisfied that any of the circumstances mentioned in subsection (9) apply, the Accountant in Bankruptcy may—
- (a) declare the office of trustee to have become or to be vacant, and
 - (b) make any necessary order to enable the sequestration of the estate to proceed or to safeguard the estate pending the election of a new trustee.
- (6A) The declaration of the office of trustee as vacant and any necessary order in accordance with subsection (6) may be made—
- (a) on the application of—
 - (i) the commissioners,
 - (ii) the debtor, or
 - (iii) a creditor, or
 - (b) in any other case, where the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of the circumstances mentioned in subsection (9).
- (6B) The Accountant in Bankruptcy must order such intimation of an application by a person mentioned in subsection (6A)(a) as the Accountant in Bankruptcy considers necessary.
- (6C) If the Accountant in Bankruptcy makes a declaration under subsection (6A), the commissioners, or if there are no commissioners the Accountant in Bankruptcy, must call a meeting of creditors for the election of a new trustee by the creditors.
- (6D) A meeting called under subsection (6C) must be held before the end of the period of 28 days beginning with the date of the declaration under subsection (6A).
- (6E) The trustee, the debtor, the commissioners or any creditor may apply to the Accountant in Bankruptcy for a review of any declaration or any order made by the Accountant in Bankruptcy under subsection (6).
- (6F) An application under subsection (6E) must be made before the expiry of the period of 14 days beginning with the day on which the declaration is made.
- (6G) If an application for a review under subsection (6E) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the declaration or order before the expiry of the period of 28 days beginning with the day on which the application is made.
- (6H) The trustee, the debtor, the commissioners or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (6G)(b) before the end of the period of 14 days beginning with the date of the decision.

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

(6I) The Accountant in Bankruptcy may refer a case to the sheriff for a direction before—

- (a) making any order under subsection (1)(b) or (3),
- (b) making any declaration or any order under subsection (6), or
- (c) undertaking any review under this section.

(6J) An application for a review under subsection (3A) or (6E) may not be made in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under subsection (6I).”

- (h) in subsection (7), for “(6)” substitute “(6C)”, and
- (i) in subsection (10), after “trustee” insert “and is without prejudice to the powers under section 1A(2)”.

31 Removal of commissioner

In section 30 of the 1985 Act (election, resignation and removal of commissioners)—

- (a) in subsection (4), after paragraph (b) insert—
 - “(c) by order of the sheriff if the sheriff is satisfied that the commissioner is no longer acting in the interests of the efficient conduct of the sequestration.”, and

- (b) after subsection (4), insert—

“(5) An order under subsection (4)(c) may be made on the application of—

- (a) the Accountant in Bankruptcy,
- (b) a person representing not less than one quarter in value of the creditors, or
- (c) the trustee.

(6) The sheriff must—

- (a) order an application by a person mentioned in subsection (5) to be served on the commissioner,
- (b) order that the application is intimated to every creditor who has given a mandate to the commissioner, and
- (c) before deciding whether or not to make an order under subsection (4)(c), give the commissioner the opportunity to make representations.

(7) On an application under subsection (4)(c), the sheriff may, in ordering the removal of the commissioner from office, make such further order as the sheriff thinks fit or may, instead of removing the commissioner from office, make such other order as the sheriff thinks fit.

(8) The trustee, the Accountant in Bankruptcy, any commissioner or any creditor may appeal against the decision of the sheriff on an application under subsection (4)(c) within 14 days after the date of that decision.”

32 Contractual powers of trustee

In section 42 of the 1985 Act (contractual powers of trustee), for subsection (2) substitute—

- “(2) The trustee must, within 28 days from the receipt by the trustee of a request in writing from any party to a contract entered into by the debtor, adopt or refuse to adopt the contract.
- (2A) The period mentioned in subsection (2) may be extended—
- (a) in a case where the Accountant in Bankruptcy is the trustee, by the sheriff on the application of the Accountant in Bankruptcy,
 - (b) in any other case, by the Accountant in Bankruptcy on the application of the trustee.
- (2B) The trustee may, before the expiry of the period of 14 days beginning with the day of the decision, apply to the Accountant in Bankruptcy for a review of a decision of the Accountant in Bankruptcy under subsection (2A)(b).
- (2C) If an application for a review under subsection (2B) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (2D) The trustee may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (2C)(b), before the expiry of the period of 14 days beginning with the day of the decision.
- (2E) The Accountant in Bankruptcy may refer a case to the sheriff for a direction before—
- (a) making a decision under subsection (2A)(b), or
 - (b) undertaking any review under this section.
- (2F) An application for a review under subsection (2B) may not be made in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under subsection (2E).”.

33 Bankruptcy restrictions order

- (1) For section 56A of the 1985 Act, substitute—

“56A Bankruptcy restrictions order

- (1) Where sequestration of a living debtor’s estate is awarded, an order (to be known as a “bankruptcy restrictions order”) in respect of the debtor may be made by the—
- (a) Accountant in Bankruptcy, or
 - (b) the sheriff.
- (2) A bankruptcy restrictions order may be made by the sheriff only on the application of the Accountant in Bankruptcy.
- (3) The Accountant in Bankruptcy must notify the debtor where the Accountant in Bankruptcy proposes to make a bankruptcy restrictions order.

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

- (4) A notice under subsection (3) must inform the debtor that the debtor has a right to make representations to the Accountant in Bankruptcy in relation to the proposed bankruptcy restrictions order.
- (5) Before making a bankruptcy restrictions order the Accountant in Bankruptcy must take into account any representations made by the debtor.”
- (2) In section 56B of the 1985 Act (grounds for making order)—
- (a) for subsection (1), substitute—
- “(1) A bankruptcy restrictions order must be made if the Accountant in Bankruptcy, or as the case may be, the sheriff thinks it appropriate having regard to the conduct of the debtor (whether before or after the date of sequestration).”
- (b) in subsection (2)—
- (i) after “The”, where it first occurs, insert “Accountant in Bankruptcy, or as the case may be, the”, and
- (ii) after paragraph (b), insert—
- “(ba) failing to supply accurate information to an authorised person for the purpose of the granting under section 5B of a certificate for sequestration of the debtor’s estate,”, and
- (c) in subsection (3), after “The”, where it first occurs insert “Accountant in Bankruptcy, or as the case may be, the”.
- (3) In section 56C(1) of the 1985 Act (application of section 67(9)), after “the”, in the first and second places where it occurs, insert “Accountant in Bankruptcy, or as the case may be, the”.
- (4) The title of section 56D of the 1985 Act becomes “**Timing for making an order**”.
- (5) In section 56D of the 1985 Act—
- (a) in subsection (1), for “An application for a bankruptcy restrictions order must be made” substitute “The Accountant in Bankruptcy must make, or apply to the sheriff for, a bankruptcy restrictions order”,
- (b) for subsection (2), substitute—
- “(2) After the end of the period referred to in subsection (1), the Accountant in Bankruptcy may—
- (a) make a bankruptcy restrictions order only with the permission of the sheriff, and
- (b) make an application for a bankruptcy restrictions order only with the permission of the sheriff.”.
- (6) In section 56E of the 1985 Act (duration of order and application for annulment)—
- (a) for subsection (2), substitute—
- “(2) The date specified in a bankruptcy restrictions order under subsection (1)(b)—
- (a) in the case of an order made by the Accountant in Bankruptcy—

- (i) must not be before the end of the period of 2 years beginning with the date on which the order is made, but
 - (ii) must be before the end of the period of 5 years beginning with that date, and
 - (b) in the case of an order made by the sheriff must not be—
 - (i) before the end of the period of 5 years beginning with the date on which the order is made, or
 - (ii) after the end of the period of 15 years beginning with that date.”,
 - (b) in subsection (3), for “sheriff” substitute “person mentioned in subsection (4)”,
 - (c) after subsection (3), insert—
 - “(4) The person is—
 - (a) in the case of a bankruptcy restrictions order made by the Accountant in Bankruptcy, the Accountant in Bankruptcy, and
 - (b) in the case of a bankruptcy restrictions order made by the sheriff, the sheriff.
 - (5) If an application under subsection (3) is made to the Accountant in Bankruptcy, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
 - (6) The debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (5)(b) before the end of the period of 14 days beginning with the date of the decision.
 - (7) The sheriff may—
 - (a) in determining such an appeal, or
 - (b) otherwise on an application by the Accountant in Bankruptcy, make an order providing that the debtor may not make another application under subsection (3) for such period as may be specified in the order.”.
- (7) In section 56F of the 1985 Act (interim bankruptcy restrictions order)—
 - (a) for subsections (1) and (2), substitute—
 - “(1) Subsection (2) applies at any time—
 - (a) after the Accountant in Bankruptcy notifies the debtor under section 56A(3) that the Accountant in Bankruptcy proposes to make a bankruptcy restrictions order, and
 - (b) before the Accountant in Bankruptcy decides whether to make the order.

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- (2) The Accountant in Bankruptcy may make an interim bankruptcy restrictions order if the Accountant in Bankruptcy thinks that—
 - (a) there are *prima facie* grounds to suggest that a bankruptcy restrictions order will be made, and
 - (b) it is in the public interest to make an interim bankruptcy restrictions order.
 - (2A) Subsection (2B) applies at any time between—
 - (a) the making of an application to the sheriff for a bankruptcy restrictions order, and
 - (b) the determination of the application.
 - (2B) The sheriff may, on the application of the Accountant in Bankruptcy, make an interim bankruptcy restrictions order if the sheriff thinks that—
 - (a) there are *prima facie* grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
 - (b) it is in the public interest to make an interim bankruptcy restrictions order.”
 - (b) subsection (3) is repealed, and
 - (c) for subsection (5), substitute—
 - “(5) An interim order ceases to have effect—
 - (a) in the case of an interim order made by the Accountant in Bankruptcy, on the Accountant in Bankruptcy deciding whether or not to make a bankruptcy restrictions order,
 - (b) in the case of an interim order made by the sheriff, on the determination of the application for the bankruptcy restrictions order, or
 - (c) if the sheriff discharges the interim order, on the application of the Accountant in Bankruptcy or of the debtor.”
- (8) In section 56J of the 1985 Act (effect of recall of sequestration), after subsection (3) insert—
- “(4) Where an award of sequestration of a debtor’s estate is recalled under section 17D(1) or 17E(6)—
 - (a) the Accountant in Bankruptcy may annul any bankruptcy restrictions order or interim bankruptcy restrictions order which is in force in respect of the debtor, and
 - (b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.
 - (5) Where the Accountant in Bankruptcy refuses to annul a bankruptcy restrictions order or interim bankruptcy restrictions order under subsection (4) the debtor may apply to the Accountant in Bankruptcy for a review of such a refusal.
 - (6) An application under subsection (5) must be made before the end of the period of 14 days beginning with the day on which the award of sequestration is recalled.

- (7) If an application under subsection (5) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm the refusal or annul the order before the expiry of the period of 28 days beginning with the day on which the application is made.
- (8) The debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (7)(b) before the end of the period of 14 days beginning with the date of the decision.
- (9) The decision of the sheriff on an appeal under subsection (8) is final.”.

34 Conversion of protected trust deed into sequestration

- (1) The title of section 59A of the 1985 Act becomes “**Application for conversion to sequestration**”.
- (2) In section 59A of the 1985 Act—
 - (a) in subsection (1)—
 - (i) for “petition the sheriff” substitute “apply to the Accountant in Bankruptcy”, and
 - (ii) for “lodged in court in support of the petition” substitute “submitted to the Accountant in Bankruptcy in support of the application”, and
 - (b) in subsection (2), for “petition” substitute “application”.
- (3) In section 59B(1)(c) of the 1985 Act (contents of the affidavit), for “sheriff”, in both places where it occurs, substitute “Accountant in Bankruptcy”.
- (4) The title of section 59C of the 1985 Act becomes “**Power of Accountant in Bankruptcy**”.
- (5) In section 59C of the 1985 Act—
 - (a) for subsection (1), substitute—

“(1) The Accountant in Bankruptcy may, after considering an application for conversion of a protected trust deed into a sequestration, make such order as the Accountant in Bankruptcy thinks fit.”, and
 - (b) in subsections (2), (2A) and (3), for “sheriff”, in each place where it occurs, substitute “Accountant in Bankruptcy”.

35 Power to cure defects in procedure

- (1) The title of section 63 of the 1985 Act becomes “**Power of court to cure defects in procedure**”.
- (2) In section 63 of the 1985 Act—
 - (a) after subsection (1), insert—

“(1A) An order under subsection (1) may waive a failure to comply with a requirement mentioned in section 63A(1)(a) or (b) only if the failure relates to—

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- (a) a document to be lodged with the sheriff,
 - (b) a document issued by the sheriff, or
 - (c) a time limit specified in relation to proceedings before the sheriff or a document relating to those proceedings.”, and
- (b) in subsection (2)(b) after “estate” insert “the Accountant in Bankruptcy or”.
- (3) After section 63 of the 1985 Act, insert—

“63A Power of Accountant in Bankruptcy to cure defects in procedure

- (1) The Accountant in Bankruptcy may make an order—
 - (a) correcting a clerical or incidental error in a document required by or under this Act, or
 - (b) waiving a failure to comply with a time limit—
 - (i) which is specified by or under this Act, and
 - (ii) for which no provision is made by or under this Act.
- (2) An order under subsection (1) may be made—
 - (a) on the application of any person having an interest, or
 - (b) without an application if the Accountant in Bankruptcy proposes to correct or waive a matter mentioned in subsection (1).
- (3) The applicant must notify all interested persons where an application is made under subsection (2)(a).
- (4) The Accountant in Bankruptcy must notify all interested persons where the Accountant in Bankruptcy proposes to make an order by virtue of subsection (2)(b).
- (5) A notice under subsection (3) or (4) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed order before the expiry of the period of 14 days beginning with the day on which the notice is given.
- (6) Before making an order under subsection (1), the Accountant in Bankruptcy must take into account any representations made by an interested person.
- (7) An order under subsection (1) may—
 - (a) so far as practicable, restore any person prejudiced by the error or failure to the position that person would have been in but for the error or failure,
 - (b) impose such conditions, including conditions as to expenses, as the Accountant in Bankruptcy thinks fit.
- (8) After making an order which affects a matter which is recorded in the Register of Inhibitions, the Accountant in Bankruptcy must without delay send a certified copy of the order to the Keeper of that register for recording in that register.

63B Decision under section 63A: review

- (1) An interested person may apply to the Accountant in Bankruptcy for a review of a decision of the Accountant in Bankruptcy to make, or refuse to make, an order under section 63A(1).
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day of the decision.
- (3) If an application under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (4) An interested person may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (3)(b) before the expiry of the period of 14 days beginning with the day of the decision.
- (5) The decision of the sheriff on an appeal under subsection (4) is final.”.

36 Regulations: applications to Accountant in Bankruptcy etc.

After section 71B of the 1985 Act, insert—

“71C Regulations: applications to Accountant in Bankruptcy etc.

- (1) The Scottish Ministers may, by regulations, make provision in relation to the procedure to be followed in relation to—
 - (a) an application to the Accountant in Bankruptcy under this Act,
 - (b) an application to the Accountant in Bankruptcy for a review under this Act,
 - (c) any other decision made by the Accountant in Bankruptcy under this Act.
- (2) In this section “decision” includes any appointment, determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation made by the Accountant in Bankruptcy.
- (3) Regulations under subsection (1) may in particular make provision for or in connection with—
 - (a) the procedure to be followed by the person making an application,
 - (b) the form of any report or other document that may be required for the purposes of an application or a decision,
 - (c) the form of a statement of undertakings that must be given by the debtor when making a debtor application,
 - (d) time limits applying in relation to the procedure,
 - (e) the procedure to be followed in connection with the production and recovery of documents relating to an application or a decision,

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- (f) the procedure to be followed (including provision about those entitled to participate) in determining an application or making a decision, and
- (g) the procedure to be followed after an application is determined or a decision is made.

(4) Regulations under subsection (1) may—

- (a) include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate,
- (b) modify any enactment (including this Act).”.

37 Valuation of debts depending on contingency

In paragraph 3 of Schedule 1 to the 1985 Act (debts depending on contingency)—

- (a) in sub-paragraph (2), for “sheriff”, in both places where it occurs, substitute “Accountant in Bankruptcy”, and
- (b) for sub-paragraph (3), substitute—

“(3) An interested person may apply to the Accountant in Bankruptcy for a review of a valuation under sub-paragraph (2) by the trustee.

(4) An application under sub-paragraph (3) must be made before the expiry of the period of 14 days beginning with the day of the valuation.

(5) If an application under subsection (3) is made, the Accountant in Bankruptcy must—

- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
- (b) confirm or vary the valuation before the expiry of the period of 28 days beginning with the day on which the application is made.

(6) An interested person may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (5)(b) before the expiry of the period of 14 days beginning with the day of the decision.

(7) The Accountant in Bankruptcy may refer a case to the sheriff for a direction before making a decision under sub-paragraph (5)(b).

(8) An appeal to the sheriff under sub-paragraph (6) may not be made in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under sub-paragraph (7).”.

Review of decisions made by Accountant in Bankruptcy

38 Review of decisions about interim trustee

(1) In section 13A of the 1985 Act (termination of interim trustee’s functions when interim trustee is not appointed as trustee)—

- (a) after subsection (10), insert—

- “(10A) The interim trustee or any person mentioned in subsection (4)(b) may apply to the Accountant in Bankruptcy for a review of a determination under subsection (10).
- (10B) An application under subsection (10A) must be made before the expiry of the period of 14 days beginning with the day on which the determination is issued under subsection (10).
- (10C) If an application under subsection (10A) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the determination under subsection (10) before the expiry of the period of 28 days beginning with the day on which the application is made.”, and
- (b) for subsection (11), substitute—
- “(11) The interim trustee or any person mentioned in subsection (4)(b) may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (10C)(b) before the expiry of the period of 14 days beginning with the day of the decision.”.
- (2) In section 13B of the 1985 Act (termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee)—
- (a) in subsection (5), after paragraph (a) insert—
 - “(aa) that an application for a review may be made under subsection (6A)”,
 - (b) after subsection (6), insert—
 - “(6A) The debtor, the petitioner or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy's actings as interim trustee.
 - (6B) An application under subsection (6A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(a)(iii) or (b).
 - (6C) If an application for a review under subsection (6A) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the discharge before the expiry of the period of 28 days beginning with the day on which the application is made.”, and
 - (c) for subsection (7), substitute—
 - “(7) The debtor, the petitioner or any creditor may appeal to the sheriff against—

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- (a) the determination of the Accountant in Bankruptcy mentioned in subsection (4)(a)(ii) before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(a)(iii) or (b),
- (b) a decision by the Accountant in Bankruptcy under subsection (6C)(b) before the expiry of the period of 14 days beginning with the day of the decision.

(7A) The sheriff clerk must, following an appeal, send a copy of the decree to the Accountant in Bankruptcy.”.

(3) In section 18 of the 1985 Act (interim preservation of estate)—

(a) after subsection (3), insert—

“(3A) Where the Accountant in Bankruptcy is the interim trustee, the debtor may apply to the Accountant in Bankruptcy for a review of a direction under subsection (1) on the ground that the direction is unreasonable.

(3B) If an application under subsection (3A) is made, the Accountant in Bankruptcy must—

- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
- (b) confirm, amend or revoke the direction (whether or not substituting a new direction) before the expiry of the period of 28 days beginning with the day on which the application is made.

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

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

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

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

39 Review of decision not to award sequestration

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

- “(3A) If, following a debtor application, the Accountant in Bankruptcy refuses to award sequestration, the debtor or a creditor concurring in the application may apply to the Accountant in Bankruptcy for a review of the refusal.
- (3B) An application under subsection (3A) must be made before the expiry of the period of 14 days beginning with the day on which the Accountant in Bankruptcy refuses to award sequestration.
- (3C) If an application under subsection (3A) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm the refusal or award sequestration before the expiry of the period of 28 days beginning with the day on which the application is made.
- (3D) If the Accountant in Bankruptcy confirms the refusal to award sequestration under subsection (3C)(b), the debtor or a creditor concurring in the application may, before the expiry of the period of 14 days beginning with the day of that confirmation, appeal to the sheriff.”.

40 Review of decisions about replacement trustee

- (1) In section 26A of the 1985 Act (Accountant in Bankruptcy to account for intromissions)—
- (a) in subsection (4)(b), after paragraph (ii) insert—
 - “(iia) that an application for a review may be made under subsection (4A)”,
 - (b) after subsection (4), insert—
 - “(4A) The replacement trustee, the debtor or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s actings as trustee.
 - (4B) An application under subsection (4A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b).
 - (4C) If an application under subsection (4A) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the discharge before the expiry of the period of 28 days beginning with the day on which the application is made.”,
 - (c) for subsection (5), substitute—
 - “(5) The replacement trustee, the debtor or any creditor may appeal to the sheriff against—

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- (a) the determination of the Accountant in Bankruptcy mentioned in subsection (3)(b) before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b),
- (b) a decision by the Accountant in Bankruptcy under subsection (4C)(b) before the expiry of the period of 14 days beginning with the day on which the decision is made.”, and
- (d) for subsection (6), substitute—

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

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

- (a) after subsection (3), insert—

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

(3B) An application under subsection (3A) must be made before the expiry of the period of 14 days beginning with the day on which the determination is issued under subsection (3).

(3C) If an application under subsection (3A) is made, the Accountant in Bankruptcy must—

- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
- (b) confirm, amend or revoke the determination under subsection (3) (whether or not granting a certificate of discharge) before the expiry of the period of 28 days beginning with the day on which the application is made.”, and
- (b) in subsection (4), for “issuing of the determination under subsection (3) above” substitute “day of the decision under subsection (3C)(b)”.

41 Review of decisions about adjudication of creditor’s claims

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

- (a) for subsection (6), substitute—

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

- (a) the acceptance or rejection of any claim, or
- (b) a decision in respect of any matter requiring to be specified under subsection (5)(a) or (b).”.
- (b) for subsection (6A), substitute—

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

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

- (a) in the case of a review relating to an acceptance or rejection under subsection (1), before the expiry of the period of 14 days beginning with the day of that decision, and
 - (b) in the case of a review relating to an acceptance or rejection under subsection (2), before the expiry of the period of 28 days beginning with the day of that decision.
- (6C) If an application under subsection (6) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (6D) The debtor or any creditor may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (6C)(b) before the expiry of the period of 14 days beginning with the day of the decision.
- (6E) The debtor may appeal under subsection (6D) only if the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.”.

42 Review of decision about discharge of trustee

- (1) In section 57 of the 1985 Act (discharge of trustee)—
- (a) after subsection (3), insert—
 - “(3A) A certificate of discharge granted under subsection (3)—
 - (a) must take effect after the expiry of the period mentioned in subsection (3C), and
 - (b) has no effect if an application for review is made under subsection (3B).
- (3B) The trustee, the debtor or any creditor who has made representations under subsection (2)(a) may apply to the Accountant in Bankruptcy for a review of a determination under subsection (3).
- (3C) An application under subsection (3B) must be made before the expiry of the period of 14 days beginning with the day of the determination.
- (3D) If an application for a review under subsection (3B) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the determination (whether or not issuing a new certificate of discharge) before the expiry of the period of 28 days beginning with the day on which the application is made.”, and

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

- (b) in subsection (4), for “the issuing of the determination under subsection (3) above” substitute “a decision by the Accountant in Bankruptcy under subsection (3D)(b)”.
- (2) In section 58A of the 1985 Act (discharge of Accountant in Bankruptcy)—
- (a) in subsection (4)(b), after paragraph (ii) insert—
 - “(ia) that an application for a review may be made under subsection (4A)”,
 - (b) after subsection (4), insert—
 - “(4A) The debtor or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s acting as trustee.
 - (4B) An application under subsection (4A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b).
 - (4C) If an application under subsection (4A) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the discharge before the expiry of the period of 28 days beginning with the day on which the application is made.”,
 - (c) for subsection (5), substitute—
 - “(5) The debtor or any creditor may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (4C)(b) before the expiry of the period of 14 days beginning with the day on which the decision is made.”, and
 - (d) for subsection (6), substitute—
 - “(6) The decision of the sheriff on an appeal under subsection (5) is final.”.

43 Appeals against decisions on review

After section 63B of the 1985 Act insert—

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

- (1) For the avoidance of doubt, an appeal under a provision mentioned in subsection (2) may be made on—
 - (a) a matter of fact,
 - (b) a point of law, or
 - (c) the merits.
- (2) The provisions are—
 - (a) section 3A(7),
 - (b) section 13A(11),

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

Miscellaneous amendments

44 Representation of Accountant in Bankruptcy in sheriff court

After section 1C of the 1985 Act insert—

“1D Conduct of proceedings in the sheriff court

- (1) A person authorised by the Accountant in Bankruptcy may conduct civil proceedings in the sheriff court in relation to a function of the Accountant in Bankruptcy (including the functions listed in section 1A).
- (2) In subsection (1), “civil proceedings” are proceedings which are not in respect of an offence.”.

45 Failure to send statements of assets and liabilities

- (1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—
 - (a) in subsection (9)—
 - (i) paragraph (a) and the word “or” immediately following it are repealed, and
 - (ii) in paragraph (b), for “such statement of assets and liabilities” substitute “a statement of assets and liabilities sent to the Accountant in Bankruptcy in accordance with subsection (6A)”, and
 - (b) in subsection (10), paragraph (a) and the word “or” immediately following it are repealed.

- (2) In section 19 of the 1985 Act (statement of assets and liabilities etc.)—
- (a) in subsection (3)—
 - (i) paragraph (a) is repealed, and
 - (ii) in paragraph (b), for “such statement of assets and liabilities” substitute “a statement of assets and liabilities sent to the trustee in accordance with subsection (1) or (2)”, and
 - (b) in subsection (4), paragraph (a) and the word “or” immediately following it are repealed.

46 Time limits for sequestration of limited partnership

- (1) In section 8 of the 1985 Act (further provisions relating to presentation of petitions), for subsection (2) substitute—
- “(2) A petition for the sequestration of the estate of a limited partnership may be presented—
- (a) by a qualified creditor or qualified creditors only if the apparent insolvency founded on in the petition was constituted within 4 months (or such other period as may be prescribed) before the date of presentation of the petition, or
 - (b) at any time by—
 - (i) a temporary administrator,
 - (ii) a member State liquidator appointed in main proceedings, or
 - (iii) a trustee acting under a trust deed.”.
- (2) In section 8A of the 1985 Act (further provisions relating to debtor applications), for subsection (2) substitute—
- “(2) A debtor application made in relation to the estate of a limited partnership may be made—
- (a) at any time, or
 - (b) within such time as may be prescribed.”.

47 Petition for sequestration by trustee under trust deed

In section 12(3) of the 1985 Act (conditions for sheriff to award sequestration), for paragraph (e) substitute—

- “(e) that, in the case of a petition by a trustee—
- (i) one or more of the conditions in section 5(2C)(a) applies, or
 - (ii) the petition includes an averment in accordance with section 5(2C)(b).”.

48 Effect of sequestration: renewal of period of inhibition etc.

In section 14 of the 1985 Act (registration of warrant or determination of debtor application), for subsection (4) substitute—

- “(4) The trustee may, if not discharged, send a memorandum in a form prescribed by the Court of Session by act of sederunt to the Keeper of the Register of Inhibitions for recording in that register before the expiry of—

- (a) the period of 3 years mentioned in subsection (3)(b), or
- (b) a period for which the effect mentioned in subsection (2) has been renewed by virtue of subsection (4A).

(4A) The recording of a memorandum sent in accordance with subsection (4) renews the effect mentioned in subsection (2) for a period of 3 years beginning with the expiry of—

- (a) the period mentioned in subsection (3)(b), or
- (b) as the case may be, the period mentioned in subsection (4)(b).

(4B) The trustee may, if appointed or reappointed under section 58B, send a memorandum in a form prescribed by the Court of Session by act of sederunt to the Keeper of the Register of Inhibitions for recording in that register before the expiry of that appointment.

(4C) The recording of a memorandum sent in accordance with subsection (4B) imposes the effect mentioned in subsection (2) for a period of 3 years beginning with the day of notification in accordance with section 58C(1).”.

49 Division and sale of debtor’s family home

In section 40 of the 1985 Act (power of trustee in relation to the debtor’s family home)

- (a) in subsection (1)(b), after “subsection (2)” insert “or, as the case may be, subsection (3)”, and
- (b) in subsection (3A), for “subsection (1)(b)” substitute “subsection (2) or (3)”.

50 Effect of discharge of debtor

In section 55 of the 1985 Act (effect of discharge under section 54 or 54A), after subsection (3) insert—

“(4) Nothing in this section affects regulations in relation to which section 73B of the [Education \(Scotland\) Act 1980 \(c.44\)](#) (regulations relating to student loans) applies.”.

51 Offence of obtaining credit: increase in amount

In section 67(9)(a) of the 1985 Act (offence of obtaining credit above certain amount without giving information as to status etc.), for “£500” substitute “£2000”.

52 Bankruptcy restrictions undertaking: repeal

Section 56G of the 1985 Act (which makes provision about bankruptcy restrictions undertakings) is repealed.

53 Debt arrangement schemes: extension to non-natural persons and fees

- (1) The [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#) is amended as follows.
- (2) In section 1 (debt arrangement scheme), for “individuals” substitute “persons”.

- (3) In section 7(2) (debt payment programmes: power to make further provision), after paragraph (ua) insert—
 - “(ub) the remuneration of payments distributors and money advisers,”.
- (4) Section 9(2) is repealed.

General

54 Meaning of “the 1985 Act”

In this Act, “the 1985 Act” means the [Bankruptcy \(Scotland\) Act 1985 \(c.66\)](#).

55 Ancillary provision

- (1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.
- (2) The power of Scottish Ministers to make an order under subsection (1) includes power to make different provision for different purposes.
- (3) An order under subsection (1) may modify any enactment (including this Act).
- (4) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.
- (5) Otherwise, an order under subsection (1) is subject to the negative procedure.

56 Minor and consequential amendments and repeals

- (1) Schedule 3 contains minor amendments and amendments consequential on the provisions of this Act.
- (2) The enactments mentioned in the first column of schedule 4 (which include enactments that are spent) are repealed to the extent set out in the second column.

57 Commencement

- (1) This section and sections 54, 55 and 58 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may contain transitory or transitional provision or savings.

58 Short title

The short title of this Act is the Bankruptcy and Debt Advice (Scotland) Act 2014.