

# **BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Functions of sheriff and Accountant in Bankruptcy in sequestration***

##### ***Section 28 – Appointment of replacement trustee***

70. This section provides that the existing section 25 of the 1985 Act should be replaced by 3 new sections, a new section 25 ('Appointment of replacement trustee'), section 25A ('Applications to Accountant in Bankruptcy: procedure') and section 25B ('Applications and appeals to sheriff: procedure').
71. The new section 25 provides that, on the election of a replacement trustee, the original trustee should immediately make a report of the proceedings at the statutory meeting to AiB instead of to the sheriff. If AiB was the original trustee, the report is made to the sheriff. If there are no objections, which must state the grounds for objection, then AiB is required to declare the elected person appointed.
72. Section 25A provides that any person who wishes to object to the election of the replacement trustee under this procedure should submit their objections to AiB, at which point AiB is to make clear to the other parties that they have the right to make written representations, and then to make a decision. The trustee, the objector or any other interested person may apply to AiB for a review of its decision. An application for a review must be made within 14 days of AiB making and notifying the decision. Section 25A(8) confirms that the right of onward appeal to the sheriff remains, once AiB has reviewed its decision, within 14 days of the review decision.
73. Section 25B places similar duties on the sheriff as at present under section 25, i.e. it sets out the procedure for hearing objections. This section only applies where a person is appealing a decision by AiB, under the new subsection 25A(8) or where AiB itself has an objection under the new subsection 25(3)(b). The sheriff must give the parties an opportunity to be heard.
74. **Section 28(2)** of the Act amends section 28 of the 1985 Act (resignation and death of trustee) to substitute the current application to the sheriff where there is no election of a new trustee following the resignation or death of the trustee, with an application to AiB. An application by an eligible person to be appointed trustee can be made to AiB within 14 days, failing which AiB will become trustee. This section is not relevant where AiB was originally trustee as the role will not fall vacant for these reasons.