



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Functions of sheriff and Accountant in Bankruptcy in sequestration

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).”
- (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—

Status: This is the original version (as it was originally enacted).

- “(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.
 - (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)”.