



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 10

#### CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

##### *Procedure after end of accounting period*

#### **132 Submission of accounts and scheme of division**

- (1) Within 2 weeks after the end of an accounting period the trustee in the sequestration must, in respect of that period, submit to the commissioners (or, if there are no commissioners, to AiB)—
  - (a) the trustee's accounts of the trustee's intromissions with the estate of the debtor for audit and, where funds are available after making allowance for future contingencies, a scheme of division of the divisible funds, and
  - (b) a claim for the outlays reasonably incurred by the trustee and for the trustee's remuneration.
- (2) Where documents mentioned in subsection (1) are submitted to the commissioners, the trustee must send a copy of them to AiB.
- (3) All accounts in respect of legal services incurred by the trustee are, before they are paid by the trustee, to be submitted for taxation to the auditor of the court before which the sequestration is pending.
- (4) But subsection (3) is subject to subsection (5).
- (5) The trustee may pay the account without submitting it for taxation where—
  - (a) any such account has been agreed between the trustee and the person entitled to payment in respect of that account,
  - (b) the trustee is not an associate of that person, and
  - (c) the commissioners have (or, if there are no commissioners, AiB has) determined that the account need not be submitted for taxation.
- (6) This section and sections 133 to 135 do not apply where AiB is the trustee in the sequestration.

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**Commencement Information**

**II** S. 132 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**133 Audit of accounts and determination as to outlays and remuneration payable to trustee**

- (1) Within 6 weeks after the end of an accounting period—
  - (a) the commissioners (or, as the case may be, AiB)—
    - (i) may audit the accounts, and
    - (ii) must issue a determination fixing the amount of the outlays and the remuneration payable to the trustee in the sequestration, and
  - (b) the trustee must make the audited accounts, scheme of division and that determination available for inspection by the debtor and the creditors.
- (2) The basis for fixing the amount of the remuneration payable to the trustee may be a commission calculated by reference to the value of the debtor's estate which has been realised by the trustee.
- (3) But there is in any event to be taken into account—
  - (a) the work which, having regard to that value, was reasonably undertaken by the trustee, and
  - (b) the extent of the trustee's responsibilities in administering the debtor's estate.
- (4) In fixing the amount of such remuneration in respect of any accounting period, the commissioners (or, as the case may be, AiB) may take into account any adjustment which the commissioners or AiB may wish to make in the amount of remuneration fixed in respect of any earlier accounting period.

**Commencement Information**

**I2** S. 133 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**134 Appeal against determination as to outlays and remuneration payable to trustee**

- (1) Not later than 8 weeks after the end of an accounting period the trustee in the sequestration, the debtor or any creditor may appeal against a determination issued under section 133(1)(a)(ii)—
  - (a) to AiB where it is a determination of the commissioners, and
  - (b) to the sheriff where it is a determination of AiB.
- (2) But subsection (1) is subject to subsection (4).
- (3) The determination of AiB in an appeal under paragraph (a) of subsection (1) is appealable to the sheriff (whose decision on an appeal under this subsection or under paragraph (b) of subsection (1) is final).
- (4) The debtor may appeal under subsection (1) if, and only if, the debtor satisfies AiB, or as the case may be the sheriff, that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.

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- (5) Before the debtor or a creditor appeals under subsection (1) or (3), the debtor or, as the case may be, the creditor must give notice to the trustee of the intention to appeal.

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**Commencement Information**

**I3** [S. 134](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

### **135 Further provision as to procedure after end of accounting period**

- (1) The trustee in the sequestration must pay to the creditors their dividends in accordance with the scheme of division on—
- (a) the expiry of the 8 weeks mentioned in section 134(1), or
  - (b) if there is an appeal under that subsection, on the final determination of the last such appeal.
- (2) There must be deposited by the trustee, in an appropriate bank or institution, any dividend—
- (a) allocated to a creditor but not cashed or uplifted, or
  - (b) dependent on a claim in respect of which an amount has been set aside under subsection (5) or (7) of section 131.
- (3) If a creditor's claim is revalued, the trustee may—
- (a) in paying any dividend to that creditor, make such adjustment to it as the trustee considers necessary to take account of that revaluation, or
  - (b) require the creditor to repay to the trustee the whole or part of a dividend already paid to the creditor.

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**Commencement Information**

**I4** [S. 135](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

### **136 Procedure after end of accounting period where Accountant in Bankruptcy is trustee**

- (1) In any case where AiB is the trustee in the sequestration, AiB must at the end of each accounting period—
- (a) prepare accounts of AiB's intromissions with the estate of the debtor, and
  - (b) make a determination of AiB's fees and outlays calculated in accordance with regulations under section 205.
- (2) Such accounts and determination must be available for inspection by the debtor and the creditors by not later than 6 weeks after the end of the accounting period to which they relate.
- (3) In making a determination as mentioned in subsection (1), AiB may take into account any adjustment which AiB may wish to make in the amount of AiB's remuneration fixed in respect of any earlier accounting period.
- (4) Not later than 8 weeks after the end of an accounting period the debtor or any creditor may appeal to the sheriff against AiB's determination.

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- (5) But subsection (4) is subject to subsection (7).
- (6) The decision of the sheriff on an appeal under subsection (4) is final.
- (7) The debtor may appeal under subsection (4) if, and 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.
- (8) Before the debtor or a creditor appeals under subsection (4), the debtor or as the case may be the creditor must give notice to AiB of the intention to appeal.
- (9) On the expiry of the 8 weeks mentioned in subsection (4), AiB must pay to the creditors their dividends in accordance with the scheme of division.
- (10) There must be deposited by AiB, in an appropriate bank or institution, any dividend—
  - (a) allocated to a creditor but not cashed or uplifted, or
  - (b) dependent on a claim in respect of which an amount has been set aside under subsection (5) or (7) of section 131.
- (11) If a creditor's claim is revalued, AiB may—
  - (a) in paying any dividend to that creditor, make such adjustment to it as AiB considers necessary to take account of that revaluation, or
  - (b) require the creditor to repay to AiB the whole or part of a dividend already paid to the creditor.

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**Commencement Information**

**I5** [S. 136](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)