



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 11

#### DISCHARGE

##### *Discharge of trustee*

#### 148 Discharge of trustee

- (1) After the trustee in the sequestration has made a final division of the debtor's estate and has inserted the trustee's final audited accounts in the sederunt book, the trustee—
  - (a) must pay to AiB any unclaimed dividends and unapplied balances,
  - (b) on that being done—
    - (i) must send to AiB the sederunt book (in the format specified by subsection (2)) and a copy of the audited accounts, and
    - (ii) may at the same time apply to AiB for a certificate of discharge.
- (2) The trustee must send an electronic version of the sederunt book in such format as AiB may from time to time direct.
- (3) AiB must deposit any unclaimed dividends and any unapplied balances paid to AiB under subsection (1)(a) in an appropriate bank or institution.
- (4) The trustee must send, to the debtor and to all the creditors known to the trustee, notice of any application under subsection (1)(b)(ii) and must inform the debtor and such creditors—
  - (a) that written representations relating to the application may be made by them to AiB within 14 days after the notification,
  - (b) that the sederunt book is available for inspection following a request made to AiB and contains the audited accounts of, and scheme of division in, the sequestration, and
  - (c) of the effect mentioned in subsection (7).
- (5) On the expiry of the 14 days mentioned in subsection (4)(a), AiB, after examining the documents sent to AiB and considering any representations duly made to AiB, must—
  - (a) grant or refuse to grant the certificate of discharge, and

- (b) notify accordingly—
  - (i) the trustee,
  - (ii) the debtor, and
  - (iii) all creditors who made such representations.
- (6) Any certificate of discharge granted under subsection (5)—
  - (a) must take effect after the expiry of the 14 days mentioned in section 149(2), and
  - (b) has no effect if an application for review is made under section 149(1).
- (7) The grant of a certificate of discharge under this section has the effect of discharging the trustee from all liability (other than any liability arising from fraud)—
  - (a) to the debtor, or
  - (b) to the creditors,

in respect of any act or omission of the trustee in exercising the functions conferred on the trustee by this Act (including, where the trustee was also the interim trustee, the functions of interim trustee).
- (8) This section and section 149 do not apply in any case where AiB is trustee.

#### **149 Further provision as regards discharge of trustee**

- (1) The trustee, the debtor or any creditor who has made representations under subsection (4)(a) of section 148 may apply to AiB for a review of a determination under subsection (5) of that section.
- (2) Any application under subsection (1) must be made within 14 days beginning with the day of the determination.
- (3) If an application for a review under subsection (1) is made, AiB must—
  - (a) take into account any representations made, within 21 days beginning with the day on which the application is made, by an interested person, and
  - (b) confirm, amend or revoke the determination (whether or not issuing a new certificate of discharge) within 28 days beginning with that day.
- (4) Within 14 days after a decision under subsection (3)(b)—
  - (a) the trustee,
  - (b) the debtor, or
  - (c) any creditor who made representations under section 148(4)(a),

may appeal against the decision to the sheriff.
- (5) If, on an appeal under subsection (4), the sheriff determines that a certificate of discharge which has been refused should be granted the sheriff must order AiB to grant it.
- (6) The sheriff clerk must send AiB a copy of the sheriff's decree.
- (7) The decision of the sheriff on an appeal under subsection (4) is final.
- (8) Where a certificate of discharge is granted under section 148 or by virtue of this section, AiB must make an appropriate entry in—
  - (a) the register of insolvencies, and
  - (b) in the sederunt book.

- (9) The provisions of this section apply (subject to any necessary modifications)—
- (a) where a trustee has died, to the trustee’s executor, or
  - (b) where a trustee has resigned office or been removed from office, to that trustee,
- as they apply to a trustee who has made a final division of the debtor’s estate in accordance with the preceding provisions of this Act.

## **150 Unclaimed dividends**

- (1) Any person producing evidence of that person’s right may apply to AiB to receive a dividend deposited under section 148(3) or 151(2), if the application is made not later than 7 years after the date of deposit.
- (2) If AiB is satisfied of that person’s right to the dividend, AiB must authorise the bank or institution in which the deposit was made to pay to the person the amount of the dividend and of any interest which has accrued on the dividend.
- (3) AiB is, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 148(3) or 151(2), to hand over the deposit receipt or other voucher relating to the dividend or balance to the Scottish Ministers who on that being done are entitled to payment of the amount due (principal and interest) from the bank or institution in which the deposit was made.

## **151 Discharge of Accountant in Bankruptcy**

- (1) This section applies where AiB has acted as the trustee in the sequestration.
- (2) AiB must deposit any unclaimed dividends and any unapplied balances in an appropriate bank or institution.
- (3) AiB must send to the debtor and to all creditors known to AiB—
- (a) a determination of AiB’s fees and outlays calculated in accordance with regulations under section 205,
  - (b) a notice in writing stating—
    - (i) that AiB has commenced the procedure under this Act leading to discharge in respect of AiB’s actings as trustee,
    - (ii) that the sederunt book relating to the sequestration is available for inspection following a request made to AiB,
    - (iii) that an application for review may be made under subsection (4),
    - (iv) that an appeal may be made to the sheriff under subsection (7), and
    - (v) the effect of subsections (9) and (10).
- (4) The debtor or any creditor may apply to AiB for review of the discharge of AiB in respect of AiB’s actings as trustee.
- (5) Any application under subsection (4) must be made within 14 days beginning with the day on which notice is sent under subsection (3)(b).
- (6) If an application under subsection (4) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm or revoke the discharge within 28 days beginning with that day.

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

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- (7) The debtor or any creditor may, within 14 days beginning with the day on which a decision is made by AiB under subsection (6)(b), appeal to the sheriff against that decision.
- (8) The decision of the sheriff on an appeal under subsection (7) is final.
- (9) Subsection (10) applies where—
- (a) the requirements of this section have been complied with, and
  - (b) no appeal is made under subsection (7) or such an appeal is made but is refused as regards the discharge of AiB.
- (10) AiB is discharged from all liability (other than any liability arising from fraud)—
- (a) to the debtor, or
  - (b) to the creditors,
- in respect of any act or omission of AiB in exercising the functions of trustee in the sequestration (including, where the trustee was also the interim trustee, the functions of interim trustee).