



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 4

TRUSTEES AND COMMISSIONERS

Trustees

50 Functions of trustee

- (1) In every sequestration there is to be a trustee, whose general functions are—
 - (a) to recover, manage and realise the estate of the debtor, whether situated in Scotland or elsewhere,
 - (b) to distribute the estate among the debtor's creditors according to their respective entitlements,
 - (c) to ascertain the reasons for the debtor's insolvency and the circumstances surrounding it,
 - (d) to ascertain the state of the debtor's liabilities and assets,
 - (e) to maintain, for the purpose of providing an accurate record of the sequestration process, a sederunt book during the trustee's term of office,
 - (f) to keep regular accounts of the trustee's intromissions with the debtor's estate, such accounts being available for inspection at all reasonable times by the commissioners, if there are any, the creditors and the debtor, and
 - (g) whether or not the trustee is still acting in the sequestration, to supply AiB with such information as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.
- (2) The trustee, in performing the trustee's functions under this Act, must have regard to advice offered to the trustee by the commissioners, if there are any.
- (3) Where the trustee has reasonable grounds—
 - (a) to suspect that an offence has been committed in relation to a sequestration—
 - (i) by the debtor in respect of the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or

Changes to legislation: Bankruptcy (Scotland) Act 2016, Cross Heading: Trustees is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (ii) by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the trustee in respect of the debtor's assets, business or financial affairs, or
- (b) to believe that any behaviour on the part of the debtor is of a kind that would result in a sheriff granting, under section 156(1), an application for a bankruptcy restrictions order,
 the trustee must report the matter to AiB.
- (4) A report under subsection (3) is absolutely privileged.
- (5) Subsections (1)(g) and (3) do not apply in any case where AiB is the trustee.
- (6) Where AiB is the trustee, AiB may apply to the sheriff for directions in relation to any particular matter arising in the sequestration.
- (7) The debtor, a creditor or any other person having an interest may, if dissatisfied with any act, omission or decision of the trustee, apply to the sheriff in that regard.
- (8) On an application under subsection (7), the sheriff may confirm, revoke, or modify the decision in question, confirm or annul the act in question, give the trustee directions or make such order as the sheriff thinks fit.
- (9) The trustee must comply with the requirements of subsections (1)(a) to (d) and (2) only in so far as, in the trustee's view, to do so would be—
 - (a) of financial benefit to the debtor's estate, and
 - (b) in the interests of the creditors.

Commencement Information

II S. 50 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

51 Appointment of trustee

- (1) Subsection (2) applies where the sheriff awards sequestration of the debtor's estate and the petition for the sequestration—
 - (a) nominates a person to be the trustee in the sequestration,
 - (b) states that the person—
 - (i) is qualified to act as an insolvency practitioner, and
 - (ii) has given an undertaking to act as the trustee in the sequestration, and
 - (c) has, annexed to it, a copy of the undertaking.
- (2) The sheriff may, if—
 - (a) it appears to the sheriff that the person is so qualified and has given the undertaking, and
 - (b) no interim trustee is appointed under section 54(1),
 appoint the person to be the trustee in the sequestration.
- (3) Where the sheriff—
 - (a) awards sequestration of the debtor's estate,
 - (b) does not, under subsection (2), appoint a person to be the trustee in the sequestration, and
 - (c) no interim trustee is appointed under section 54(1),

Changes to legislation: Bankruptcy (Scotland) Act 2016, Cross Heading: Trustees is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

the sheriff must appoint AiB to be the trustee in the sequestration.

- (4) Subsections (5) and (7) apply where the sheriff—
 - (a) awards sequestration of the debtor's estate, and
 - (b) an interim trustee is appointed under section 54(1).
- (5) The sheriff may appoint—
 - (a) the interim trustee, or
 - (b) subject to subsection (6), such other person as may be nominated by the petitioner,
to be the trustee in the sequestration.
- (6) A person nominated under subsection (5)(b) may be appointed to be the trustee in the sequestration only if—
 - (a) it appears to the sheriff that the person is qualified to act as an insolvency practitioner and has given an undertaking to act as the trustee in the sequestration, and
 - (b) a copy of the undertaking has been lodged with the sheriff.
- (7) Where the sheriff does not, under subsection (5), appoint a person to be the trustee in the sequestration, the sheriff must appoint AiB to be the trustee in the sequestration.
- (8) Subsection (9) applies where AiB awards sequestration of the debtor's estate and the debtor application—
 - (a) nominates a person to be the trustee in the sequestration,
 - (b) states that the person—
 - (i) is qualified to act as an insolvency practitioner, and
 - (ii) has given an undertaking to act as the trustee in the sequestration, and
 - (c) has, annexed to it, a copy of the undertaking.
- (9) AiB may, if it appears to AiB that the person is so qualified and has given that undertaking, appoint the person to be the trustee in the sequestration.
- (10) But subsection (9) is subject to subsection (11).
- (11) AiB is not to make an appointment under subsection (9) where—
 - (a) the debtor application is made by a debtor to whom section 2(2) applies, and
 - (b) AiB awards sequestration of the debtor's estate.
- (12) Where AiB—
 - (a) awards sequestration of the debtor's estate, and
 - (b) does not, under subsection (9), appoint a person to be the trustee in the sequestration,
AiB is deemed to be appointed the trustee in the sequestration.
- (13) Where a trustee is appointed in a sequestration for which the petition is presented by a creditor, or by a trustee acting under a trust deed, the appointee must, as soon as practicable, notify the debtor of the appointment.
- (14) The trustee must, at the same time as notifying the debtor under subsection (13), send to the debtor for signature by the debtor a statement of undertakings in the form prescribed.

Changes to legislation: Bankruptcy (Scotland) Act 2016, Cross Heading: Trustees is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I2 S. 51 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

52 Application to Accountant in Bankruptcy by trustee for a direction

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

Commencement Information

I3 S. 52 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Changes to legislation:

Bankruptcy (Scotland) Act 2016, Cross Heading: Trustees is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

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\(2\)\(b\)](#)