



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 4

#### TRUSTEES AND COMMISSIONERS

##### *Commissioners*

#### 77 Election, resignation and removal of commissioners

- (1) At the statutory meeting or at any subsequent meeting of creditors, the creditors (other than any such person as is listed in section 49(7)) may, from among the creditors or their mandatories, elect a commissioner or commissioners (or a new or additional commissioner or new or additional commissioners).
- (2) No more than 5 commissioners are to hold office in any one sequestration at any one time.
- (3) None of the persons listed in subsection (5) is eligible for election as a commissioner.
- (4) Nor is anyone who becomes a person so listed after being elected as a commissioner entitled to continue to act as a commissioner.
- (5) The persons are—
  - (a) any person listed in paragraph (a) or (d) of section 49(5), and
  - (b) a person who is an associate of the debtor or of the trustee in the sequestration.
- (6) A commissioner may resign office at any time.
- (7) A commissioner may be removed from office—
  - (a) if the commissioner is a mandatory of a creditor (see paragraphs 14 to 16 of schedule 6), by the creditor recalling the mandate and intimating in writing to the trustee that it is recalled,
  - (b) by the creditors (other than any such person as is listed in section 49(7)) at a meeting called for the purpose, or
  - (c) by order of the sheriff if the sheriff is satisfied that the commissioner is no longer acting in the interests of the efficient conduct of the sequestration.
- (8) An order under subsection (7)(c) may be made on the application of—

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*Status: This is the original version (as it was originally enacted).*

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- (a) AiB,
  - (b) a person representing not less than  $\frac{1}{4}$  in value of the creditors, or
  - (c) the trustee.
- (9) The sheriff must—
- (a) order an application by a person mentioned in subsection (8) to be served on the commissioner,
  - (b) order that the application be intimated to every creditor who has given a mandate to the commissioner, and
  - (c) before deciding whether or not to make an order under subsection (7)(c), give the commissioner the opportunity to make representations.
- (10) On an application under subsection (7)(c), the sheriff may—
- (a) in ordering the removal of the commissioner from office, make such further order as the sheriff thinks fit, or
  - (b) instead of removing the commissioner from office, make such other order as the sheriff thinks fit.
- (11) The trustee, AiB, any commissioner or any creditor may, within 14 days after a decision of the sheriff on an application under subsection (7)(c), appeal against that decision.
- (12) Subsection (7) is without prejudice to section 200(4).