



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 4

#### TRUSTEES AND COMMISSIONERS

##### *Interim trustees*

#### **53 Functions of interim trustee**

- (1) An interim trustee's general function is to safeguard the debtor's estate pending the determination of the petition for sequestration.
- (2) An interim trustee, whether or not still acting in the sequestration, must supply AiB with such information as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.

#### **54 Appointment of interim trustee**

- (1) Where a petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, the sheriff may appoint an interim trustee before sequestration is awarded if—
  - (a) the debtor consents, or
  - (b) the trustee acting under the trust deed or any creditor shows cause.
- (2) For the purposes of the appointment of an interim trustee under subsection (1)—
  - (a) where a person is nominated as mentioned in subsection (1)(a) of section 51 and the provisions of that subsection apply, the sheriff may appoint that person, and
  - (b) where such a person is not appointed, the sheriff must appoint AiB.
- (3) Where an interim trustee is appointed under subsection (1), the appointee is, as soon as practicable, to notify the debtor of the appointment.
- (4) The interim trustee must, at the same time as notifying the debtor under subsection (3), send to the debtor for signature by the debtor a statement of undertakings in the form prescribed.

**55 Removal, resignation etc. of interim trustee**

- (1) This section applies where—
  - (a) an interim trustee is appointed under section 54(1), and
  - (b) the petition for sequestration has not been determined.
- (2) Where, under section 200(4) the sheriff removes an interim trustee from office the sheriff must, on the application of AiB, appoint a new interim trustee.
- (3) Without prejudice to that section or to subsection (2), where the sheriff is satisfied—
  - (a) that the interim trustee is unable to act—
    - (i) for a reason mentioned in subsection (4), or
    - (ii) by, under or by virtue of any other provision of this Act, or
  - (b) that the interim trustee's conduct has been such that the interim trustee should no longer continue to act in the sequestration,then, on the application of the debtor, a creditor or AiB, the sheriff must remove the interim trustee from office and appoint a new interim trustee.
- (4) The reasons are—
  - (a) that the interim trustee is incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000), or
  - (b) that the interim trustee has some incapacity by virtue of which the interim trustee is unable to act as interim trustee.
- (5) An interim trustee (not being AiB) may apply to the sheriff for authority to resign office; and if the sheriff is, in respect of the applicant, satisfied as is mentioned in subsection (3), the sheriff must grant the application.
- (6) Where, following an application under subsection (5) the interim trustee resigns office, the sheriff must appoint a new interim trustee.
- (7) Where the interim trustee dies, the sheriff must, on the application of the debtor, a creditor or AiB, appoint a new interim trustee.
- (8) A person (other than AiB) may not be appointed to act as interim trustee in a sequestration if the person is ineligible, by virtue of section 49(3), for election as a replacement trustee.
- (9) An interim trustee who, by virtue of subsection (8), is prohibited from acting as such must forthwith make an application under subsection (5).
- (10) Subsections (1) to (3) of section 51 apply as regards the appointment of an interim trustee under this section as if, for any reference—
  - (a) to the sheriff awarding sequestration of the debtor's estate, there were substituted a reference to the sheriff appointing a new interim trustee, and
  - (b) to the petition for sequestration, there were substituted a reference to the application under this section for the appointment of a new interim trustee.

**56 Termination of interim trustee's functions where not appointed trustee**

- (1) This section applies where an interim trustee (not being AiB) is appointed under section 54(1) and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under subsection (5) or (7) of section 51, or

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- (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee in the sequestration, the interim trustee—
- (a) must hand over to the other person everything in the interim trustee's possession which relates to the sequestration, and
  - (b) on that being done, must cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of the interim trustee as may be appropriate.
- (4) Within 3 months after the sheriff awards, or refuses to award, sequestration the interim trustee must—
- (a) submit to AiB—
    - (i) the interim trustee's accounts for intromissions (if any) with the debtor's estate,
    - (ii) a claim for outlays reasonably incurred by the interim trustee, and
    - (iii) a claim for remuneration for work reasonably undertaken by the interim trustee, and
  - (b) send a copy of the interim trustee's accounts and claims to—
    - (i) the debtor,
    - (ii) the petitioner, and
    - (iii) in a case where sequestration is awarded, the trustee and all creditors known to the interim trustee.
- (5) On a submission being made under subsection (4)(a), AiB must—
- (a) audit the accounts,
  - (b) issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee,
  - (c) send a copy of the determination to—
    - (i) the interim trustee, and
    - (ii) the persons mentioned in subsection (4)(b), and
  - (d) where a trustee (not being AiB) is appointed in the sequestration, send a copy of the audited accounts and of the determination to the trustee.
- (6) On receiving a copy of the determination sent under subsection (5)(c)(i), the interim trustee may apply to AiB for a certificate of discharge.
- (7) The grant of a certificate of discharge under this section by AiB has the effect of discharging the interim trustee from all liability (other than any liability arising from fraud)—
- (a) to the debtor,
  - (b) to the petitioner, or
  - (c) to the creditors,
- in respect of any act or omission of the interim trustee in exercising the functions conferred on the interim trustee by this Act.

**57 Appeal or review by virtue of section 56**

- (1) The interim trustee, or any person mentioned in subsection (4)(b) of section 56 may, within 14 days after the issuing of the determination under subsection (5)(b) of that section, appeal to the sheriff against the determination.
- (2) The decision of the sheriff on an appeal under subsection (1) is final.
- (3) The interim trustee must send to the persons mentioned in subsection (4)(b) of section 56 notice of any application under subsection (6) of that section and must inform them—
  - (a) that they may make written representations relating to it to AiB within 14 days after such notification, and
  - (b) of the effect mentioned in subsection (7) of that section.
- (4) On the expiry of the 14 days mentioned in subsection (3)(a) AiB must, after considering any representations made to AiB—
  - (a) grant or refuse to grant the certificate of discharge, and
  - (b) notify accordingly the persons mentioned in section 56(4)(b).
- (5) The interim trustee or any person mentioned in section 56(4)(b) may apply to AiB for a review of a determination under subsection (4).
- (6) Any application under subsection (5) must be made within 14 days after the determination is issued.
- (7) If an application under subsection (5) 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, amend or revoke the determination within 28 days beginning with that day.
- (8) The interim trustee, or any person mentioned in subsection (4)(b) of section 56, may, within 14 days after a decision under subsection (7)(b), appeal to the sheriff against the decision.
- (9) If, following an appeal under subsection (8), the sheriff determines that a certificate of discharge—
  - (a) which has been refused should be granted under section 56, the sheriff must order AiB to grant it,
  - (b) which has been granted should have been refused, the sheriff must revoke the certificate.
- (10) Following any appeal under subsection (8), the sheriff clerk must send a copy of the decree of the sheriff to AiB.
- (11) The decision of the sheriff on an appeal under subsection (8) is final.

**58 Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed trustee**

- (1) This section applies where AiB is appointed as interim trustee under section 54(1) and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under section 51(5), or

- (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee in the sequestration, AiB—
  - (a) must hand over to the other person everything in AiB’s possession which relates to the sequestration, and
  - (b) on that being done, must cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of AiB as may be appropriate.
- (4) Within 3 months after the sheriff awards, or refuses to award, sequestration AiB must—
  - (a) send to the debtor and the petitioner—
    - (i) AiB’s accounts for intromissions (if any) with the debtor’s estate,
    - (ii) a determination of AiB’s fees and outlays, calculated in accordance with regulations made under section 205, and
    - (iii) the notice mentioned in subsection (5), and
  - (b) in a case where sequestration is awarded, send a copy of those accounts, that determination and that notice to all creditors known to AiB.
- (5) The notice is a notice in writing stating—
  - (a) that AiB has commenced procedure under this Act leading to discharge in respect of AiB’s actings as interim trustee,
  - (b) that an application for a review may be made under section 59(1),
  - (c) that an appeal may be made to the sheriff under section 59(4), and
  - (d) that, in the circumstances mentioned in subsection (6), AiB is discharged from any liability incurred while acting as interim trustee.
- (6) Subsection (7) applies where—
  - (a) the requirements of this section have been complied with, and
  - (b) either no appeal is made under section 59(4) or any such appeal is refused as regards the discharge of AiB.
- (7) AiB is discharged from all liability (other than any liability arising from fraud)—
  - (a) to the debtor,
  - (b) to the petitioner, or
  - (c) to the creditors,in respect of any act or omission of AiB in exercising the functions of interim trustee conferred on AiB by this Act.

## **59 Review or appeal by virtue of section 58**

- (1) The debtor, the petitioner or any creditor may apply to AiB for a review of the discharge of AiB in respect of AiB’s actings as interim trustee.
- (2) Any application under subsection (1) must be made within 14 days beginning with the day on which notice is sent under section 58(4)(a)(iii) or (b).
- (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

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- (b) confirm or revoke the discharge within 28 days beginning with that day.
- (4) The debtor, the petitioner or any creditor may appeal to the sheriff within 14 days beginning with—
  - (a) the day on which notice is sent under section 58(4)(a)(iii) or (b), against the determination mentioned in section 58(4)(a)(ii), or
  - (b) the day of a decision by AiB under subsection (3)(b), against that decision.
- (5) The sheriff clerk must, following an appeal under subsection (4), send a copy of the decree to AiB.
- (6) The decision of the sheriff on an appeal under subsection (4) is final.