

SCHEDULE 1

(introduced by section 2(6))

DEBTOR TO WHOM SECTION 2(2) APPLIES: APPLICATION OF ACT

Modification of certain provisions of Act

- 1 (1) Where section 2(2) applies in relation to a debtor, this Act applies subject to the modifications mentioned in sub-paragraphs (2) to (6).
- (2) Section 42 applies as if for subsection (1) there were substituted—
- “ (1) This section applies where AiB receives by virtue of section 8(3)(a) the statement of assets and liabilities in relation to a debtor to whom section 2(2) applies.
- (1A) As soon as practicable, AiB must prepare a statement of the debtor’s affairs, so far as within the knowledge of AiB, stating that, because 2(2) applies in relation to the debtor, no claims may be submitted by creditors under section 46 or 122.
- (1B) AiB must send a copy of the statement prepared under subsection (1A) to every known creditor of the debtor.”.
- (3) Section 50(1) applies as if paragraphs (e) and (f) were omitted.
- (4) Section 116 applies as if for subsection (2) there were substituted—
- “ (2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor’s current state of affairs.”.
- (5) Section 151 applies as if—
- (a) subsections (2) to (6) and (9)(a) were omitted, and
- (b) for subsection (7) there were substituted—
- “ (7) The debtor or any creditor may, within 14 days beginning with the day on which the debtor is discharged under section 140(1), appeal to the sheriff against the discharge of AiB in respect of AiB’s acting as trustee.”.
- (6) Sections 44, 46, 48, 49, 60, 63 to 65, 122, 131 and 210(3) do not apply.

Accountant in Bankruptcy’s duty to consider whether paragraph 1 should cease to have effect

- 2 (1) This paragraph applies where paragraph 1 applies in relation to a debtor.
- (2) If AiB considers that the circumstances mentioned in any of sub-paragraphs (3) to (6) apply in relation to the debtor, AiB must consider whether paragraph 1 should cease to have effect in relation to the debtor.
- (3) The circumstances are that—
- (a) AiB becomes aware the debtor application submitted under section 2 contains an error, and
- (b) the nature of the error is such that the debtor was not at the time of application a debtor to whom section 2(2) applies.

Status: This is the original version (as it was originally enacted).

- (4) The circumstances are that—
- (a) AiB becomes aware that the debtor application submitted under section 2 deliberately misrepresents, or fails to state, a fact that was the case at the time of application, and
 - (b) the nature of the misrepresentation or the omission of the fact is such that the debtor was not at that time a debtor to whom section 2(2) applies.
- (5) The circumstances are that, at any time after the date on which the debtor application is made—
- (a) the total value of the debtor’s assets (leaving out of account any liabilities and any assets that, under section 88(1), would not vest in a trustee) exceeds £5,000 or such other sum as may be prescribed, or
 - (b) AiB assesses the debtor, under the common financial tool, as being able to make a contribution.
- (6) The circumstances are that, at any time after the date of sequestration—
- (a) AiB is not satisfied that the debtor has co-operated with the trustee, and
 - (b) AiB considers that if paragraph 1 were to cease to have effect it would be—
 - (i) of financial benefit to the estate of the debtor, and
 - (ii) in the interests of the creditors.
- (7) The Scottish Ministers may by regulations modify this paragraph—
- (a) by modifying the circumstances in which paragraph 1 ceases to have effect,
 - (b) in consequence of any modification made under sub-paragraph (7)(a).

Procedure where Accountant in Bankruptcy considers paragraph 1 should cease to have effect

- 3 (1) If AiB considers under paragraph 2(2) that paragraph 1 should cease to have effect in relation to a debtor, AiB must notify the debtor of that fact and of the matters mentioned in sub-paragraph (2).
- (2) The matters are—
- (a) the circumstances mentioned in paragraph 2 which AiB considers apply in relation to the debtor, and
 - (b) that the debtor may make representations to AiB within 14 days beginning with the giving of notification under sub-paragraph (1).
- (3) On the expiry of the 14 days mentioned in sub-paragraph (2)(b) and after having taken into account any representations made by the debtor under that sub-paragraph, AiB must decide whether paragraph 1 should cease to have effect in relation to the debtor.
- (4) If AiB decides that paragraph 1 should cease to have effect in relation to the debtor, AiB must, as soon as practicable after reaching that decision, give notice in writing to the debtor—
- (a) of the decision, and
 - (b) of the effect of the decision.

Debtor’s right of appeal against decision under paragraph 3

- 4 (1) This paragraph applies where AiB gives notice to a debtor under paragraph 3(4).

- (2) The debtor may appeal to the sheriff against the decision.
- (3) Any such appeal must be lodged within 14 days after the day on which the notice is given.
- (4) If the sheriff grants the appeal, paragraph 1 continues to have effect in relation to the debtor.
- (5) If the sheriff refuses the appeal, or if it is abandoned or withdrawn, paragraph 1 ceases to have effect in relation to the debtor.

Decision that paragraph 1 ceases to have effect: modification of certain provisions of Act

- 5 (1) Where paragraph 1 ceases to have effect in relation to a debtor, this Act applies subject to sub-paragraphs (2) to (4).
- (2) The debtor must send to the trustee a statement of assets and liabilities—
 - (a) where no appeal is taken under paragraph 4, within 7 days beginning with the expiry of the period during which an appeal may be made under that paragraph, or
 - (b) where an appeal is refused or, as the case may be, abandoned or withdrawn, within 7 days beginning with—
 - (i) the day on which notice is given of the outcome of the appeal, or
 - (ii) as the case may be, its abandonment or withdrawal.
- (3) Section 44 applies as if, in subsection (3)(a), for the words “sequestration is awarded” there were substituted “paragraph 1 of schedule 1 ceases to have effect in relation to the debtor”.
- (4) Section 116 applies as if for subsection (2) there were substituted—

“(2) The trustee in the sequestration must require the debtor to give an account in writing, in such form as may be prescribed, of the debtor’s current state of affairs—

 - (a) within 60 days beginning with the day on which paragraph 1 of schedule 1 ceases to have effect in relation to the debtor,
 - (b) on the expiry of 6 months beginning with the day on which the account is given under paragraph (a), and
 - (c) on the expiry of each subsequent 6 months.”.