



# Bankruptcy (Scotland) Act 1985 (repealed)

## 1985 CHAPTER 66

### *Replacement of permanent trustee*

#### **28 Resignation and death of permanent trustee.**

- (1) The permanent trustee may resign office if—
  - (a) the creditors, at a meeting called for the purpose, accept his resignation and thereupon elect a new permanent trustee; or
  - (b) on an application by the permanent trustee, the sheriff is satisfied that he should be permitted to resign; but the sheriff may make the granting of an application under this paragraph subject to the election of a new permanent trustee and to such conditions as he thinks appropriate in all the circumstances of the case.
- (2) Where the sheriff grants an application under paragraph (b) of subsection (1) above—
  - (a) except where paragraph (b) below applies, the commissioners, or if there are no commissioners, the Accountant in Bankruptcy, shall call a meeting of the creditors, to be held not more than 28 days after the permanent trustee has resigned, for the election by them of a new permanent trustee;
  - (b) if the application has been granted subject to the election of a new permanent trustee, the resigning permanent trustee shall himself call a meeting of the creditors, to be held not more than 28 days after the granting of the application, for the purpose referred to in paragraph (a) above.
- (3) Where the commissioners become, or if there are no commissioners the Accountant in Bankruptcy becomes, aware that the permanent trustee has died, they or as the case may be the Accountant in Bankruptcy shall as soon as practicable after becoming so aware call a meeting of creditors for the election by the creditors of a new permanent trustee.
- (4) The foregoing provisions of this Act relating to the election and confirmation in office of the permanent trustee shall, subject to any necessary modifications, apply in relation

*Status: Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Replacement of permanent trustee is up to date with all changes known to be in force on or before 02 June 2024.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)*

to the election and confirmation in office of a new permanent trustee in pursuance of subsection (1), (2) or (3) above.

- (5) Where no new permanent trustee is elected in pursuance of subsection (2) or (3) above, a person nominated by the Accountant in Bankruptcy from the list of interim trustees, not being a person ineligible for election as permanent trustee under section 24(2) of this Act, shall forthwith apply to the sheriff for appointment as permanent trustee, and the sheriff shall thereupon so appoint him; and the provisions of this Act shall have effect as regards the sequestration subject to such modifications and with such further provisions as are set out in Schedule 2 to this Act.
- (6) The new permanent trustee may require—
- (a) delivery to him of all documents relating to the sequestration in the possession of the former trustee or his representatives, except the former trustee's accounts of which he shall be entitled to delivery of only a copy;
  - (b) the former trustee or his representatives to submit the trustee's accounts for audit to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy, and the commissioners or the Accountant in Bankruptcy shall issue a determination fixing the amount of the outlays and remuneration payable to the trustee or representatives in accordance with section 53 of this Act.
- (7) The former trustee or his representatives, the new permanent trustee, the debtor or any creditor may appeal against a determination issued under subsection (6)(b) above within 14 days after it is issued—
- (a) where it is a determination of the commissioners, to the Accountant in Bankruptcy; and
  - (b) where it is a determination of the Accountant in Bankruptcy, to the sheriff;
- and the determination of the Accountant in Bankruptcy under paragraph (a) above shall be appealable to the sheriff.

VALID FROM 01/04/2008

#### **[<sup>F1</sup>28A Replacement of trustee acting in more than one sequestration**

- (1) This section applies where a trustee acting as such in two or more sequestrations—
- (a) dies; or
  - (b) ceases to be qualified to continue to act as trustee by virtue of section 24(2) of this Act.
- (2) The Accountant in Bankruptcy may, by a single petition to the Court of Session, apply—
- (a) in a case where subsection (1)(b) above applies, for the removal of the trustee from office in each sequestration in which he has so ceased to be qualified; and
  - (b) for the appointment of—
    - (i) the Accountant in Bankruptcy; or
    - (ii) such person as may be nominated by the Accountant in Bankruptcy (being a person who is not ineligible for election as replacement trustee under section 24(2) of this Act) if that person consents to the nomination,

*Status: Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Replacement of permanent trustee is up to date with all changes known to be in force on or before 02 June 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)*

as the trustee in each sequestration in which the trustee was acting.

- (3) The procedure in a petition under subsection (2) above shall be as the Court of Session may, by act of sederunt, prescribe.
- (4) An act of sederunt made under subsection (3) above may, in particular, make provision as to the intimation to each sheriff who awarded sequestration or to whom sequestration was transferred under section 15(2) of this Act of the appointment by the Court of Session of a trustee in that sequestration.]

#### Textual Amendments

- F1** S. 28A inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 12, 227\(3\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(a\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

## 29 Removal of permanent trustee and trustee not acting.

- (1) The permanent trustee may be removed from office—
  - (a) by the creditors (other than any such person as is mentioned in section 24(3) of this Act) at a meeting called for the purpose if they also elect forthwith a new permanent trustee; or
  - (b) without prejudice to section 1(3) of this Act, by order of the sheriff, on the application of—
    - (i) the Accountant in Bankruptcy;
    - (ii) the commissioners; or
    - (iii) a person representing not less than one quarter in value of the creditors,if the sheriff is satisfied that cause has been shown on the basis of circumstances other than those to which subsection (9) below applies.
- (2) The sheriff shall order any application under subsection (1)(b) above to be served on the permanent trustee and intimated in the Edinburgh Gazette, and before disposing of the application shall give the permanent trustee an opportunity of being heard.
- (3) On an application under subsection (1)(b) above, the sheriff may, in ordering the removal of the permanent trustee from office, make such further order as he thinks fit or may, instead of removing the permanent trustee from office, make such other order as he thinks fit.
- (4) The permanent trustee, the Accountant in Bankruptcy, the commissioners or any creditor may appeal against the decision of the sheriff on an application under subsection (1)(b) above within 14 days after the date of that decision.
- (5) If the permanent trustee has been removed from office under subsection (1)(b) above or under section 1(3) of this Act or following an appeal under subsection (4) above, the commissioners or, if there are no commissioners, the Accountant in Bankruptcy shall call a meeting of creditors, to be held not more than 28 days after such removal, for the election by them of a new permanent trustee.
- (6) Without prejudice to section 1(3) of this Act, where the sheriff is satisfied of any of the circumstances to which subsection (9) below applies he may, on the application

---

*Status: Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Replacement of permanent trustee is up to date with all changes known to be in force on or before 02 June 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)*

---

of a commissioner, the debtor, a creditor or the Accountant in Bankruptcy, and after such intimation as the sheriff considers necessary—

- (a) declare the office of permanent trustee to have become or to be vacant; and
- (b) make any necessary order to enable the sequestration to proceed or to safeguard the estate pending the election of a new permanent trustee;

and thereafter the commissioners or, if there are no commissioners, the Accountant in Bankruptcy shall call a meeting of creditors, to be held not more than 28 days after such declaration, for the election by them of a new permanent trustee.

- (7) The foregoing provisions of this Act relating to the election and confirmation in office of the permanent trustee shall, subject to any necessary modifications, apply in relation to the election and confirmation in office of a new permanent trustee in pursuance of subsection (5) or (6) above.
- (8) Subsections (5) to (7) of section 28 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.
- (9) The circumstances to which this subsection applies are that the permanent trustee—
  - (a) is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever other than death); or
  - (b) has so conducted himself that he should no longer continue to act in the sequestration.

**Status:**

Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Replacement of permanent trustee is up to date with all changes known to be in force on or before 02 June 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.