

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 2024.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)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE A1

(introduced by section 5(2ZE))

#### DEBTOR TO WHOM SECTION 5(2ZA) APPLIES: APPLICATION OF ACT

##### Textual Amendments

- F1** Sch. A1 inserted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), [sch. 1](#); [S.S.I. 2014/172](#), art. 2, [sch.](#); [S.S.I. 2014/261](#), art. 3 (with arts. 4-7, 12) (as amended by [S.S.I. 2015/54](#), art. 2)

##### Modification of certain provisions of Act

- 1 (1) Where section 5(2ZA) applies in relation to a debtor, this Act applies subject to the modifications mentioned in sub-paragraphs (2) to (6).
- (2) Section 3(1) applies as if paragraphs (e) and (f) were omitted.
- (3) Section 20 applies as if for subsection (1) there were substituted—
- “(1) This section applies where the Accountant in Bankruptcy receives by virtue of section 5(6A) the statement of assets and liabilities in relation to a debtor to whom section 5(2ZA) applies.
- (1A) As soon as practicable, the Accountant in Bankruptcy must prepare a statement of the debtor’s affairs so far as within the knowledge of the Accountant in Bankruptcy stating that, because section 5(2ZA) applies to the debtor, no claims may be submitted by creditors under section 22 or 48.
- (1B) The Accountant in Bankruptcy must send a copy of the statement prepared under subsection (1A) to every known creditor of the debtor.”.
- (4) Section 43A applies as if for subsection (2) there were substituted—
- “(2) The Accountant in Bankruptcy 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 58A applies as if—
- (a) subsections (3) to (4C) and (7)(a) were omitted, and
- (b) for subsection (5) there were substituted—
- “(5) The debtor or any creditor may, before the expiry of the period of 14 days beginning with the day on which the debtor is discharged under section 54C(1), appeal to the sheriff against the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s acting as trustee.”.
- (6) Sections 21A, 22, 23, 24, 25, 26 to 27, 48, 52 and 62(2A) do not apply.

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*Accountant in Bankruptcy's duty to consider whether paragraph 1 should cease to apply*

- 2 (1) This paragraph applies where paragraph 1 applies in relation to a debtor.
- (2) If the Accountant in Bankruptcy considers that the circumstances mentioned in any of sub-paragraphs (3) to (6) apply in relation to the debtor, the Accountant in Bankruptcy must consider whether paragraph 1 should cease to apply in relation to the debtor.
- (3) The circumstances are—
  - (a) the Accountant in Bankruptcy becomes aware that the debtor application submitted under section 5 contains an error, and
  - (b) the nature of the error is such that the debtor was not at that time a debtor to whom section 5(2ZA) applies.
- (4) The circumstances are—
  - (a) the Accountant in Bankruptcy becomes aware that the debtor application submitted under section 5 deliberately misrepresents or fails to state a fact that was the case at the time of the 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 5(2ZA) 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 would not vest in a trustee under section 33(1)) exceeds £5000 (or such other amount as may be prescribed), or
  - (b) the Accountant in Bankruptcy 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) the Accountant in Bankruptcy is not satisfied that the debtor has co-operated with the trustee, and
  - (b) the Accountant in Bankruptcy considers that it would be of financial benefit to the estate of the debtor and in the interests of the creditors if paragraph 1 were to cease to have effect.
- (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 paragraph (a).

*Procedure where Accountant in Bankruptcy considers paragraph 1 should cease to apply*

- 3 (1) If the Accountant in Bankruptcy considers under paragraph 2(2) that paragraph 1 should cease to apply in relation to a debtor, the Accountant in Bankruptcy must notify the debtor of that fact and the matters mentioned in sub-paragraph (2).
- (2) The matters are—
  - (a) the circumstances mentioned in paragraph 2 which the Accountant in Bankruptcy considers apply in relation to the debtor, and
  - (b) that the debtor may make representations to the Accountant in Bankruptcy within the period of 14 days beginning with the giving of notification under sub-paragraph (1).

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- (3) On the expiry of the period mentioned in sub-paragraph (2)(b) and after having taken into account any representations made by the debtor under that sub-paragraph, the Accountant in Bankruptcy must decide whether paragraph 1 should cease to apply in relation to the debtor.
- (4) If the Accountant in Bankruptcy decides that paragraph 1 should cease to apply in relation to the debtor, the Accountant in Bankruptcy must, as soon as practicable after reaching that decision, give notice in writing to the debtor of the decision and the effect of it.

*Debtor's right of appeal against decision under paragraph 3*

- 4 (1) This paragraph applies where the Accountant in Bankruptcy gives notice to a debtor under paragraph 3(4).
- (2) The debtor may appeal to the sheriff against the decision.
- (3) An appeal must be lodged not later than 14 days after the day on which notice is given.
- (4) If the sheriff grants the appeal, paragraph 1 continues to apply in relation to the debtor.
- (5) If the sheriff refuses the appeal or if it is abandoned or withdrawn, paragraph 1 ceases to apply 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, before the expiry of the period of 7 days beginning with the expiry of the period during which an appeal may be made under that paragraph,
  - (b) where an appeal is refused or, as the case may be, abandoned or withdrawn, before the expiry of the period of 7 days beginning with the day on which notice is given of the outcome of the appeal or, as the case may be, its abandonment or withdrawal.
- (3) Section 21A applies as if in subsection (2), for “sequestration is awarded” there were substituted “paragraph 1 of Schedule A1 ceases to have effect in relation to the debtor”.
- (4) Section 43A applies as if for subsection (2) there were substituted—
  - “(2) The trustee 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) before the expiry of the period of 60 days beginning with the day on which paragraph 1 of Schedule A1 ceases to have effect in relation to the debtor,
    - (b) on the expiry of the period of 6 months beginning with the day on which the account is given under paragraph (a), and
    - (c) on the expiry of each subsequent period of 6 months.”.]

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## SCHEDULE 1

Sections 5(5) and 22(9).

### DETERMINATION OF AMOUNT OF CREDITOR’S CLAIM

#### **Modifications etc. (not altering text)**

- C1** Sch. 1 applied with modifications by [S.I. 1986/1915](#), [Rules 4.16\(1\)\(f\)](#), [7.9\(5\)](#) and by [Rule 2.41\(2\)](#) (as substituted (15.9.2003) by [The Insolvency \(Scotland\) Amendment Rules 2003 \(S.I. 2003/2111\)](#)), [Rule 3](#), {Sch. 1, Pt. 1}) (as amended (20.12.2008) by [S.S.I. 2008/393](#) art. 3)
- C2** Sch. 1 applied in part (with modifications) (14.11.2011) by [The Investment Bank Special Administration \(Scotland\) Rules 2011 \(S. I. 2011/2262\)](#), [rule 127](#)

#### *Amount which may be claimed generally*

- 1 (1) Subject to the provisions of this Schedule, the amount in respect of which a creditor shall be entitled to claim shall be the accumulated sum of principal and any interest which is due on the debt as at the date of sequestration.
- (2) If a debt does not depend on a contingency but would not be payable but for the sequestration until after the date of sequestration, the amount of the claim shall be calculated as if the debt were payable on the date of sequestration but subject to the deduction of interest at the rate specified in section 51(7) of this Act from the said date until the date for payment of the debt.
- (3) In calculating the amount of his claim, a creditor shall deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the debtor or by the usage of trade.

#### *Claims for aliment and periodical allowance on divorce*

- 2 (1) A person entitled to aliment, however arising, from a living debtor as at the date of sequestration, or from a deceased debtor immediately before his death, shall not be entitled to include in the amount of his claim—
- (a) any unpaid aliment for any period before the date of sequestration unless the amount of the aliment has been quantified by court decree or by any legally binding obligation which is supported by evidence in writing, and,
- [<sup>F2</sup>(i)] in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses)[<sup>F3</sup>, or
- (ii) in the case of civil partners (or, where the aliment is payable to a former civil partner in respect of a child after dissolution of a civil partnership, former civil partners),]
- they were living apart during that period;
- (b) any aliment for any period after the date of sequestration.
- (2) Sub-paragraph (1) above shall apply to a periodical allowance payable on divorce [<sup>F4</sup>or on dissolution of a civil partnership]—
- (a) by virtue of a court order; or
- (b) under any legally binding obligation which is supported by evidence in writing,
- as it applies to aliment and as if for the words from “in the case” to “they” there were substituted the words “the payer and payee”.

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#### Textual Amendments

- F2** Words in Sch. 1 para. 2(1)(a) renumbered (5.12.2005) as Sch. 1 para. 2(1)(a)(i) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 41\(2\)](#); S.S.I. 2005/604, [art. 2\(c\)](#)
- F3** Sch. 1 para. 2(1)(a)(ii) and word inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 41\(3\)](#); S.S.I. 2005/604, [art. 2\(c\)](#)
- F4** Words in Sch. 1 para. 2(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 41\(4\)](#); S.S.I. 2005/604, [art. 2\(c\)](#)

#### *Debts depending on contingency*

- 3 (1) Subject to sub-paragraph (2) below, the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.
- (2) On an application by the creditor—
- (a) to the <sup>F5</sup> . . . trustee; or
- (b) if there is no <sup>F5</sup> . . . trustee, to the sheriff,
- the <sup>F5</sup> . . . trustee or sheriff shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more; and, where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.
- (3) Any interested person may appeal to the sheriff against a valuation under sub-paragraph (2) above by the <sup>F5</sup> . . . trustee, and the sheriff may affirm or vary that valuation.

#### Textual Amendments

- F5** Words in Sch. 1 para. 3 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

#### *Debts due under composition contracts*

- 4 Where in the course of a sequestration the debtor is discharged following approval by the sheriff of a composition offered by the debtor but the sequestration is subsequently revived, the amount in respect of which a creditor shall be entitled to claim shall be the same amount as if the composition had not been so approved less any payment already made to him under the composition contract.

#### *Secured debts*

- 5 (1) In calculating the amount of his claim, a secured creditor shall deduct the value of any security as estimated by him:
- Provided that if he surrenders, or undertakes in writing to surrender, a security for the benefit of the debtor's estate, he shall not be required to make a deduction of the value of that security.

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- (2) The <sup>F6</sup> . . . trustee may, at any time after the expiry of 12 weeks from the date of sequestration, require a secured creditor at the expense of the debtor's estate to discharge the security or convey or assign it to the <sup>F6</sup> . . . trustee on payment to the creditor of the value specified by the creditor; and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of his debt remaining after receipt of such payment.
- (3) In calculating the amount of his claim, a creditor whose security has been realised shall deduct the amount (less the expenses of realisation) which he has received, or is entitled to receive, from the realisation.

#### Textual Amendments

- F6** Words in Sch. 1 para. 5 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

#### *Valuation of claims against partners for debts of the partnership*

- 6 Where a creditor claims in respect of a debt of a partnership, against the estate of one of its partners, the creditor shall estimate the value of—
- (a) the debt to the creditor from the firm's estate where that estate has not been sequestered; or
  - (b) the creditor's claim against that estate where it has been sequestered,
- and deduct that value from his claim against the partner's estate; and the amount in respect of which he shall be entitled to claim on the partner's estate shall be the balance remaining after that deduction has been made.

#### <sup>F7</sup>SCHEDULE 2

#### Textual Amendments

- F7** Sch. 2 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 11(6), 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))

#### <sup>F17</sup><sup>F17</sup>[SCHEDULE 2A

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**Textual Amendments**

- F17** Sch. 2A repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 28\(3\), 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](#)))

SCHEDULE 3

PREFERRED DEBTS

PART I

LIST OF PREFERRED DEBTS

**Modifications etc. (not altering text)**

- C3** Sch. 3 Pt. I applied (7.2.1994) by [1993 c. 48](#), [s. 128](#), [Sch. 4 para. 4\(1\)\(b\)](#); [S.I. 1994/86](#), [art. 2](#)

*Debts to Inland Revenue*

1 **F23** .....

**Textual Amendments**

- F23** Sch. 3 para. 1 repealed (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 251\(2\)\(a\), 278, 279](#), [Sch. 26](#); [S.I. 2003/2093](#), [art. 2](#), [Sch. 1](#) (with transitional provisions in [arts. 3-8](#))

*Debts due to Customs and Excise*

2 **F24** .....

**Textual Amendments**

- F24** Sch. 3 para. 2 repealed (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 251\(2\)\(b\), 278, 279](#), [Sch. 26](#); [S.I. 2003/2093](#), [art. 2](#), [Sch. 1](#) (with transitional provisions in [arts. 3-8](#))

*Social Security contributions*

3 **F25** .....

**Textual Amendments**

- F25** Sch. 3 para. 3 repealed (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 251\(2\)\(c\), 278, 279](#), [Sch. 26](#); [S.I. 2003/2093](#), [art. 2](#), [Sch. 1](#) (with transitional provisions in [arts. 3-8](#))

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*Contributions to occupational pension schemes, etc.*

- 4 Any sum which is owed by the debtor and is a sum to which [<sup>F26</sup>Schedule 4 to the <sup>M1</sup>Pension Schemes Act 1993] (contributions to occupational pension scheme and state scheme premiums) applies.

**Textual Amendments**

**F26** Words in Sch. 3 para. 4 substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 8 para.17**; S.I. 1994/86, **art. 2**

**Marginal Citations**

**M1** 1993 c. 48.

*Remuneration of employees, etc.*

- 5 (1) So much of any amount which—
- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
  - (b) is payable by way of remuneration in respect of the whole or any part of the period of four months next before the relevant date,
- as does not exceed the prescribed amount.
- (2) An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.
- (3) So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within sub-paragraph (1) or (2) above.
- 6 So much of any amount which—
- (a) is ordered, whether before or after the relevant date, to be paid by the debtor under the <sup>M2</sup>Reserve Forces (Safeguard of Employment) Act 1985; and
  - (b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,
- as does not exceed such amount as may be prescribed.

**Marginal Citations**

**M2** 1985 c. 17.

*[<sup>F27</sup> Levies on coal and steel production*

**Textual Amendments**

**F27** Sch. 3 Pt. I para. 6A inserted by S.I. 1987/2093, **reg. 3(1)(2)**

- 6A Any sums due at the relevant date from the debtor in respect of—
- (a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty, or

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- (b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.]

*[<sup>F28</sup>Deposits covered by Financial Services Compensation Scheme*

**Textual Amendments**

**F28** Sch. 3 para. 6B and cross-heading inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 13(3)**, 148(5); S.I. 2014/3160, art. 2(1)(a)

- 6B So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.]

**PART II**

INTERPRETATION OF PART I

*Meaning of “the relevant date”*

- 7 In Part I of this Schedule “the relevant date” means—
- (a) in relation to a debtor (other than a deceased debtor), the date of sequestration; and
- (b) in relation to a deceased debtor, the date of his death.

*Periods to which value added tax referable*

- 8 <sup>F29</sup> .....

**Textual Amendments**

**F29** Sch. 3 para. 8 repealed (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 278, 279**, **Sch. 26**; S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (with transitional provisions in **arts. 3-8**)

*[<sup>F30</sup>Periods to which insurance premium tax referable*

**Textual Amendments**

**F30** Sch. 3 Pt. II para. 8A and crossheading inserted (3.5.1994) by [1994 c. 9](#), **s. 64**, **Sch. 7 Pt. III para. 7(5)**

- 8A <sup>F31</sup> .....

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**Textual Amendments**

**F31** Sch. 3 para. 8A repealed (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 26**; S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (with transitional provisions in **arts. 3-8**)

*[<sup>F32</sup> Periods to which landfill tax referable*

**Textual Amendments**

**F32** Sch. 3 Pt. II para. 8B and crossheading inserted (29.4.1996) by 1996 c. 8, s. 60, **Sch. 5 Pt. III para. 12(4)**

8B <sup>F33</sup> .....

**Textual Amendments**

**F33** Sch. 3 para. 8B repealed (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 26**; S.I. 2003/2093, **art. 2**, **Sch. 1** (with transitional provisions in **arts. 3-8**)

*[<sup>F34</sup> Periods to which climate change levy referable*

**Textual Amendments**

**F34** Sch. 3 Pt. II para. 8C and preceding cross-heading inserted (28.7.2000) by 2000 c. 17, s. 30, **Sch. 7 para. 2(2)**

8C <sup>F35</sup> .....

**Textual Amendments**

**F35** Sch. 3 para. 8C repealed (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 26**; S.I. 2003/2093, **art. 2**, **Sch. 1** (with transitional provisions in **arts. 3-8**)

*Periods to which aggregates levy referable*

<sup>F36</sup>8D (1) For the purpose of paragraph 2(1D) of Part 1 of this Schedule—

- (a) where the whole of the accounting period to which any aggregates levy is attributable falls within the period of six months next before the relevant date ('the relevant period'), the whole amount of that levy shall be referable to the relevant period; and
- (b) in any other case the amount of any aggregates levy which shall be referable to the relevant period shall be the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

(2) In sub-paragraph (1) above 'accounting period' shall be construed in accordance with Part 2 of the Finance Act 2001.]

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**Textual Amendments**

**F36** Sch. 3 Pt. II para. 8D inserted (11.5.2001) by 2001 c. 9, s. 27, **Sch. 5 para. 18(2)**

*Amounts payable by way of remuneration*

- 9 (1) For the purposes of paragraph 5 of Part I of this Schedule a sum is payable by the debtor to a person by way of remuneration in respect of any period if—
- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period; or
  - (b) it is an amount falling within sub-paragraph (2) below and is payable by the debtor in respect of that period.
- (2) An amount falls within this sub-paragraph if it is—
- (a) a guarantee payment under section 12(1) of the <sup>M3</sup>Employment Protection (Consolidation) Act 1978 (employee without work to do for a day or part of a day),
  - (b) remuneration on suspension on medical grounds under section 19 of that Act,
  - (c) any payment for the time off under section 27(3) (trade-union duties), 31(3) (looking for work, etc.) or 31A(4) (antenatal care) of that Act,
  - (d) .....
  - (e) remuneration under a protective award made by an [<sup>F37</sup>employment tribunal] under section 101 of the <sup>M4</sup>Employment Protection Act 1975 (redundancy dismissal with compensation).
- (3) For the purposes of paragraph 5(2) of Part I of this Schedule, holiday remuneration shall be deemed, in the case of a person whose employment has been terminated by or in consequence of the award of sequestration of his employer's estate, to have accrued to that person in respect of any period of employment if, by virtue of that person's contract of employment or of any enactment (including an order made or direction given under any enactment), that remuneration would have accrued in respect of that period if that person's employment had continued until he became entitled to be allowed the holiday.
- (4) Without prejudice to the preceding provisions of this paragraph—
- (a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or, as the case may be, salary in respect of services rendered to the debtor in that period; and
  - (b) references in this paragraph to remuneration in respect of a period of holiday include references to any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social services as earnings in respect of that period.

**Textual Amendments**

**F37** Sch. 3 Pt. I para. 9(2)(d) repealed by Social Security Act 1986 (c. 50, SIF 113:1), ss. 86, 88(1), Sch. 10 para. 80, **Sch. 11**

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

**F38** Words in Sch. 3 Pt. II para. 9(2)(e) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

#### Marginal Citations

**M3** 1978 c. 44.

**M4** 1975 c. 44.

### *[<sup>F39</sup>Meaning of eligible deposit*

#### Textual Amendments

**F39** Sch. 3 para. 9A and cross-heading inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 13(4)**, 148(5); S.I. 2014/3160, art. 2(1)(a)

- 9A (1) In paragraph 6B “eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.
- (2) For this purpose a “deposit” means rights of the kind described in paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000 (deposits).]

### *Transitional Provisions*

- 10 Regulations under paragraph 5 or 6 of Part I of this Schedule may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

## SCHEDULE 4

Section 56.

### DISCHARGE ON COMPOSITION

- 1 (1) At any time after the sheriff clerk issues the act and warrant to the permanent trustee, an offer of composition may be made by or on behalf of the debtor, in respect of his debts, to the <sup>F40</sup> . . . trustee.
- (2) Any offer of composition shall specify caution or other security to be provided for its implementation.

#### Textual Amendments

**F40** Word in Sch. 4 para. 1 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 226**, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 2 The <sup>F41</sup> . . . trustee [<sup>F42</sup>, where he is not the Accountant in Bankruptcy,] shall submit the offer of composition along with a report thereon to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy.

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

#### Textual Amendments

- F41** Word in Sch. 4 para. 2 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F42** Words in Sch. 4 para. 2 inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 31\(2\)](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)

- 3 The commissioners or, if there are no commissioners, the Accountant in Bankruptcy—
- (a) if they consider (or he considers) that the offer of composition will be timeously implemented and that, if the rules set out in section 51 of, and Schedule 1 to, this Act were applicable, its implementation would secure payment of a dividend of at least 25p in the £ in respect of the ordinary debts; and
  - (b) if satisfied with the caution or other security specified in the offer, shall recommend that the offer should be placed before the creditors.
- 4 Where a recommendation is made that the offer of composition should be placed before the creditors, the <sup>F43</sup> . . . trustee shall—
- (a) intimate the recommendation to the debtor and record it in the sederunt book;
  - (b) publish in the Edinburgh Gazette a notice stating that an offer of composition has been made and where its terms may be inspected;
  - <sup>F44</sup>(c) not later than 1 week after the date of publication of such notice, send to every creditor known to him—
    - (i) a copy of the terms of offer; and
    - (ii) such other information as may be prescribed.]

#### Textual Amendments

- F43** Word in Sch. 4 para. 4 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F44** Sch. 4 para. 4(c) substituted (1.4.2008 for certain purposes, otherwise prosp.) for Sch. 4 paras. 4(c)(d) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 21(3), 227(3) (with s. 223); S.S.I. 2008/115, {art. 3(4)}, Sch. 3 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- <sup>F45</sup> The notice mentioned in paragraph 4(b) of this Schedule shall be in the prescribed form and shall contain such information as may be prescribed.]

#### Textual Amendments

- F45** Sch. 4 paras. 5-8B substituted for paras. 5-8 (1.4.2008 in relation to paras. 5 and 8A) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 21(4), 227(3) (with s. 223); S.S.I. 2008/115, {art. 3(4)}, Sch. 3 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 6 Where the permanent trustee determines that the creditors have accepted the offer of composition, he shall submit to the sheriff—

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

- (a) a statement that he has so determined;
  - (b) a copy of the report mentioned in paragraph 4(d) of this Schedule; and
  - (c) a declaration by the debtor as to the matters mentioned in sub-paragraphs (i) and (ii) of section 54(4)(b) of this Act.
- 7 (1) The sheriff shall, on the receipt by him of the documents mentioned in paragraph 6 of this Schedule, fix a date and time for a hearing to consider whether or not to approve the offer of composition.
- (2) The permanent trustee shall then send to every creditor known to him a notice in writing stating—
- (a) that he has determined that the creditors have accepted the offer of composition;
  - (b) that a hearing has been fixed by the sheriff to consider whether or not to approve the offer;
  - (c) the place, date and time of the hearing; and
  - (d) that the recipient of the notice may make representations at the hearing as to whether or not the offer of composition should be approved.
- 8 (1) At the hearing the sheriff shall examine the documents and hear any representations and thereafter shall make an order—
- (a) if he is satisfied that a majority in number and not less than two-thirds in value of the creditors known to the permanent trustee have accepted the offer of composition and that the terms of the offer are reasonable, approving the offer; and
  - (b) if he is not so satisfied, refusing to approve the offer of composition.
- (2) The sheriff may make an order approving the offer of composition, notwithstanding that there has been a failure to comply with any provision of this Schedule.
- (3) The debtor or any creditor may within 14 days of the order being made appeal against an order approving or refusing to approve the offer of composition.
- [<sup>F46</sup>8A (1) The Scottish Ministers may by regulations amend paragraphs 4 to 8 of this Schedule by replacing them, varying them or adding to or deleting anything from them.
- (2) Regulations made under sub-paragraph (1) above may contain such amendments of this Act as appear to the Scottish Ministers to be necessary in consequence of any amendment made by the regulations to the said paragraphs 4 to 8.]

#### Textual Amendments

**F46** Sch. 4 paras. 5-8B substituted for paras. 5-8 (1.4.2008 in relation to paras. 5 and 8A) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 21(4), 227(3)** (with [s. 223](#)); S.S.I. 2008/115, {art. 3(4)}, Sch. 3 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), [art. 5](#)))

- 9 (1) Where the offer of composition is approved, the <sup>F47</sup>. . . trustee [<sup>F48</sup>, where he is not the Accountant in Bankruptcy,] shall—
- (a) submit to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy, his accounts of his intromissions with the debtor's estate for audit and a claim for the outlays reasonably incurred by him and for his remuneration; and where the said documents are submitted

*Status: Point in time view as at 31/12/2014.*

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to the commissioners, he shall send a copy of them to the Accountant in Bankruptcy;

- (b) take all reasonable steps to ensure that the interim trustee (where he is a different person) has submitted, or submits, to the Accountant in Bankruptcy his accounts and his claim for his outlays and remuneration.

<sup>F49</sup>[(1A) Where the offer of composition is approved and the <sup>F47</sup>. . . trustee is the Accountant in Bankruptcy, the <sup>F47</sup>. . . trustee shall prepare accounts of his intromissions with the debtor's estate and he shall make a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act.]

- (2) Subsections (3), (4), (6) and (10) of section 53 of this Act shall apply, subject to any necessary modifications, in respect of the accounts and claim submitted under subparagraph (1)(a) above as they apply in respect of the accounts and claim submitted under section 53(1) of this Act.

<sup>F49</sup>[(3) Subsections (2), (3), (4), (5) and (10) of section 53 of this Act as adapted by paragraph 9(2) and (3) of Schedule 2 to this Act shall apply, subject to any necessary modifications, in respect of the accounts and determination prepared under subparagraph (1A) above as they apply in respect of the accounts and determination prepared under the said section 53 as so adapted.]

#### Textual Amendments

**F47** Words in Sch. 4 para. 9(1)(1A) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

**F48** Words in Sch. 4 para. 9(1) inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 31\(3\)\(a\)](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)

**F49** Sch. 4 para. 9(1A) inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 31\(3\)\(b\)](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)  
Sch. 4 para. 9(3) inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 31\(3\)\(c\)](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)

10 As soon as the procedure under paragraph 9 of this Schedule has been completed, there shall be lodged with the sheriff clerk—

- (a) by the permanent trustee, a declaration that all necessary charges in connection with the sequestration have been paid or that satisfactory provision has been made in respect of the payment of such charges;
- (b) by or on behalf of the debtor, the bond of caution or other security for payment of the composition.

<sup>F50</sup>11 (1) Where the documents have been sent to the Accountant in Bankruptcy under paragraph 10 of this Schedule and either—

- (a) the period mentioned in paragraph 8B(1) of this Schedule has expired; or
- (b) the Accountant in Bankruptcy, in determining an appeal under said paragraph 8B(1), has approved the offer of composition,

the Accountant in Bankruptcy shall grant the certificates of discharge referred to in subparagraph (2) below.

(2) Those certificates are—

- (a) a certificate discharging the debtor; and
- (b) a certificate discharging the trustee.

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

- (3) A certificate granted under sub-paragraph (1) above shall be in the prescribed form.
- (4) The Accountant in Bankruptcy shall—
- (a) send a certified copy of the certificate discharging the debtor to the keeper of the register of inhibitions for recording in that register; and
  - (b) send a copy of that certificate to the trustee who shall insert it in the sederunt book or, where the Accountant in Bankruptcy is the trustee, insert a copy of that certificate in the sederunt book.]

#### Textual Amendments

**F50** Sch. 4 para. 11 substituted (1.4.2008 for specified purposes, otherwise prosp.) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 21\(7\), 227\(3\)](#), (with s. 223); S.S.I. 2008/115, {art. 3(4)}, Sch. 3 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31, art. 5](#)))

- 12 An order under paragraph 11 of this Schedule discharging the<sup>F51</sup> . . . trustee shall have the effect of discharging him from all liability (other than any liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of the<sup>F51</sup> . . . trustee in exercising the functions conferred on him by this Act.

#### Textual Amendments

**F51** Words in Sch. 4 para. 12 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 226, 227\(3\), Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31, art. 5](#)))

- 13 Notwithstanding that an offer of composition has been made, the sequestration shall proceed as if no such offer of composition has been made until the discharge of the debtor becomes effective; and the sequestration shall thereupon cease.
- 14 A creditor who has not submitted a claim under section 48 of this Act before the sheriff makes an order approving an offer of composition shall not be entitled to make any demand against a person offering the composition on behalf of the debtor or against a cautioner in the offer; but this paragraph is without prejudice to any right of such a creditor to a dividend out of the debtor's estate equal to the dividend which creditors of the same class are entitled to receive under the composition.
- 15 A debtor may make two, but no more than two, offers of composition in the course of a sequestration.
- 16<sup>F52</sup>(1) On an order under paragraph 11 of this Schedule discharging the debtor becoming effective—
- (a) the debtor shall be re-invested in his estate as existing at the date of the order;
  - (b) the debtor shall, subject to paragraph 14 of this Schedule, be discharged of all debts for which he was liable at the date of sequestration (other than any debts mentioned in section 55(2) of this Act); and
  - (c) the claims of creditors in the sequestration shall be converted into claims for their respective shares in the composition.
- <sup>F52</sup>(2) The discharge of the debtor by virtue of an order under paragraph 11 above shall not affect any right of a secured creditor—

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

- (a) for a debt in respect of which the debtor has been discharged to enforce his security for payment of the debt and any interest due and payable on the debt until the debt is paid in full; or
- (b) for an obligation in respect of which the debtor has been discharged to enforce his security in respect of the obligation.]

#### Textual Amendments

**F52** Sch. 4 para. 16 renumbered (as para. 16(1)) and para. 16(2) inserted (*retrospectively*) by 1993 c. 6, s. 11(3), Sch. 1 para. 31(4)(5)

- 17 (1) Without prejudice to any rule of law relating to the reduction of court decrees, the Court of Session, on the application of any creditor, may recall the order of the sheriff approving the offer of composition and discharging the debtor and the <sup>F53</sup> . . . trustee where it is satisfied—
- (a) that there has been, or is likely to be, default in payment of the composition or of any instalment thereof; or
  - (b) that for any reason the composition cannot be proceeded with or cannot be proceeded with without undue delay or without injustice to the creditors.

- (2) The effect of a decree of recall under this paragraph where the debtor has already been discharged shall be to revive the sequestration:

Provided that the revival of the sequestration shall not affect the validity of any transaction which has been entered into by the debtor since his discharge with a person who has given value and has acted in good faith.

- (3) Where the <sup>F53</sup> . . . trustee has been discharged, the Court may, on pronouncing a decree of recall under this paragraph, appoint a judicial factor to administer the debtor's estate, and give the judicial factor such order as it thinks fit as to that administration.
- (4) The clerk of court shall send a copy of a decree of recall under this paragraph to the <sup>F53</sup> . . . trustee or judicial factor for insertion in the sederunt book.

#### Textual Amendments

**F53** Words in Sch. 4 para. 17(1)(3)(4) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), Sch. 6 Pt. 1 (with s. 223); S.S.I. 2008/115, art. 3(2)(3), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 18 (1) Without prejudice to any rule of law relating to the reduction of court decrees, the Court of Session, on the application of any creditor, may reduce an order under paragraph 11 of this Schedule discharging a debtor where it is satisfied that a payment was made or a preference granted or that a payment or preference was promised for the purpose of facilitating the obtaining of the debtor's discharge.
- (2) The Court may, whether or not it pronounces a decree of reduction under this paragraph, order a creditor who has received a payment or preference in connection with the debtor's discharge to surrender the payment or the value of the preference to the debtor's estate.

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

- (3) Where the <sup>F54</sup> . . . trustee has been discharged, the Court may, on pronouncing a decree of reduction under this paragraph, appoint a judicial factor to administer the debtor's estate, and give the judicial factor such order as it thinks fit as to that administration.
- (4) The clerk of court shall send a copy of a decree of reduction under this paragraph to the <sup>F54</sup> . . . trustee or judicial factor for insertion in the sederunt book.

**Textual Amendments**

**F54** Words in Sch. 4 para. 18(3)(4) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

SCHEDULE 5

Section 59.

VOLUNTARY TRUST DEEDS FOR CREDITORS

**Modifications etc. (not altering text)**

**C4** Sch. 5 modified (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004 \(S.I. 2004/353\)](#), reg. 33(7) (as amended by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), [reg. 40\(11\)](#))

*Remuneration of trustee*

- 1 Whether or not provision is made in the trust deed for auditing the trustee's accounts and for determining the method of fixing the trustee's remuneration or whether or not the trustee and the creditors have agreed on such auditing and the method of fixing the remuneration, the debtor, the trustee or any creditor may, at any time before the final distribution of the debtor's estate among the creditors, have the trustee's accounts audited by and his remuneration fixed by the Accountant in Bankruptcy.

<sup>F55</sup> *Accountant in Bankruptcy's power to carry out audit*

**Textual Amendments**

**F55** Sch. 5 para. 1A and preceding cross-heading inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 23(1), 227(3) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 1A The Accountant in Bankruptcy may, at any time, audit the trustee's accounts and fix his remuneration.]

*Registration of notice of inhibition*

- 2 (1) The trustee, from time to time after the trust deed has been delivered to him, may cause a notice in such form as shall be prescribed by the Court of Session by act

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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 sederunt to be recorded in the register of inhibitions and adjudications; and such recording shall have the same effect as the recording in that register of letters of inhibition against the debtor.

- (2) The trustee, after the debtor’s estate has been finally distributed among his creditors or the trust deed has otherwise ceased to be operative, shall cause to be so recorded a notice in such form as shall be prescribed as aforesaid recalling the notice recorded under sub-paragraph (1) above.

*Lodging of claim to bar effect of limitation of actions*

- 3 The submission of a claim by a creditor to the trustee acting under a trust deed shall bar the effect of any enactment or rule of law relating to limitation of actions in any part of the United Kingdom.

*Valuation of claims*

- 4 Unless the trust deed otherwise provides, Schedule 1 to this Act shall apply in relation to a trust deed as it applies in relation to a sequestration but subject to the following modifications—
- (a) in paragraphs 1, 2 and 5 for the word “sequestration” wherever it occurs there shall be substituted the words “granting of the trust deed”;
  - (b) in paragraph 3—
    - (i) in sub-paragraph (2), for the words from the beginning of paragraph (a) to “or sheriff” there shall be substituted the words “the trustee”; and
    - (ii) <sup>F56</sup> .....
  - (c) paragraph 4 shall be omitted; and
  - (d) <sup>F57</sup> .....

**Textual Amendments**

**F56** Sch. 5 para. 4(b)(ii) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

**F57** Sch. 5 para. 4(d) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

*Protected trust deeds*

- <sup>F585</sup> (1) The Scottish Ministers may by regulations make provision as to—
- (a) the conditions which require to be fulfilled in order for a trust deed to be granted the status of a protected trust deed;
  - (b) the consequences of a trust deed being granted that status;
  - (c) the rights of any creditor who does not accede to a trust deed which is granted protected status;
  - (d) the extent to which a debtor may be discharged, by virtue of a protected trust deed, from his liabilities or from such liabilities or class of liabilities as may be prescribed in the regulations;

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

- (e) the circumstances in which a debtor may bring to an end the operation of a trust deed in respect of which the conditions provided for under subparagraph (a) above are not fulfilled;
- (f) the administration of the trust under a protected trust deed (including provision about the remuneration payable to the trustee).

(2) Regulations under this paragraph may—

- (a) make provision enabling applications to be made to the court;

<sup>F59</sup> [ ..... ]

<sup>F60</sup>(aa)

- (b) contain such amendments of this Act as appear to the Scottish Ministers to be necessary in consequence of any other provision of the regulations.]

**Textual Amendments**

**F58** Sch. 5 para. 5 substituted (19.2.2008) for Sch. 5 paras. 5-13 by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 20(1), 227(3)** (with s. 223); S.S.I. 2008/45, art. 2 (with art. 3)

**F59** Sch. 5 para. 5(2)(aa) repealed (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), **sch. 4**; S.S.I. 2014/172, art. 2, sch.

**F60** Sch. 5 para. 5(2)(aa) inserted (7.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), **ss. 13(4), 17(3)(4)** (with s. 14); S.S.I. 2010/314, art. 5 (subject to transitional provisions and savings in S.S.I. 2010/316, arts 4-7)

**Modifications etc. (not altering text)**

**C5** Sch. 5 para. 5 amendment to transitional provisions in earlier commencing S.S.I. 2008/115, arts. 5, 6 (4.10.2014) by [The Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(Commencement No. 9 and Savings Amendment\) Order 2014 \(S.S.I. 2014/173\)](#), arts. 1(2), **3**

- 6 ..... ]
- 7 ..... ]
- 8 ..... ]
- 9 ..... ]
- 10 ..... ]

*Creditors not acceding to protected trust deed*

..... ]

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

## SCHEDULE 6

### MEETINGS OF CREDITORS AND COMMISSIONERS

#### PART I

##### MEETINGS OF CREDITORS OTHER THAN THE STATUTORY MEETING

###### *Calling of meeting*

- 1 The <sup>F75</sup> . . . trustee shall call a meeting of creditors if required to do so by—
- (a) order of the [<sup>F76</sup>sheriff] ;
  - (b) one-tenth in number or one-third in value of the creditors;
  - (c) a commissioner; or
  - (d) the Accountant in Bankruptcy.

#### Textual Amendments

- F75** Word in Sch. 6 para. 1 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F76** Word in Sch. 6 para. 1 substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 61\(a\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 2 A meeting called under paragraph 1 above shall be held not later than 28 days after the issuing of the order of the [<sup>F77</sup>sheriff] under sub-paragraph (a) of that paragraph or the receipt by the <sup>F78</sup> . . . trustee of the requirement under sub-paragraph (b), (c) or (d) thereof.

#### Textual Amendments

- F77** Word in Sch. 6 para. 2 substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 61\(a\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F78** Word in Sch. 6 para. 2 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 3 The <sup>F79</sup> . . . trustee or a commissioner who has given written notice to him may at any time call a meeting of creditors.

#### Textual Amendments

- F79** Word in Sch. 6 para. 3 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

*Status: Point in time view as at 31/12/2014.*

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- 4 The <sup>F80</sup> . . . trustee or a commissioner calling a meeting under paragraph 1 or 3 above shall, not less than 7 days before the date fixed for the meeting, notify—
- (a) every creditor known to him; and
  - (b) the Accountant in Bankruptcy,
- of the date, time and place fixed for the holding of the meeting and its purpose.

#### Textual Amendments

**F80** Word in Sch. 6 para. 4 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 5 (1) Where a requirement has been made under paragraph 1 above but no meeting has been called by the <sup>F81</sup> . . . trustee, the Accountant in Bankruptcy may, of his own accord or on the application of any creditor, call a meeting of creditors.
- (2) The Accountant in Bankruptcy calling a meeting under this paragraph shall, not less than 7 days before the date fixed for the meeting, take reasonable steps to notify the creditors of the date, time and place fixed for the holding of the meeting and its purpose.

#### Textual Amendments

**F81** Word in Sch. 6 para. 5 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 6 It shall not be necessary to notify under paragraph 4 or 5 of this Schedule any creditor whose accepted claim is less than £50 or such sum as may be prescribed, unless the creditor has requested in writing such notification.

#### *Role of <sup>F82</sup> . . . trustee at meeting*

#### Textual Amendments

**F82** Words in cross-heading preceding Sch. 6 para. 7 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 7 (1) At the commencement of a meeting, the chairman shall be the <sup>F83</sup> . . . trustee who as chairman shall, after carrying out his duty under section 49(1) of this Act, invite the creditors to elect one of their number as chairman in his place and shall preside over the election.
- (2) If a chairman is not elected in pursuance of this paragraph, the <sup>F83</sup> . . . trustee shall remain the chairman throughout the meeting.
- (3) The <sup>F83</sup> . . . trustee shall arrange for a record to be made of the proceedings at the meeting and he shall insert the minutes of the meeting in the sederunt book.

*Status: Point in time view as at 31/12/2014.*

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#### Textual Amendments

**F83** Words in Sch. 6 para. 7 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

#### *Appeals*

- 8 The <sup>F84</sup> . . . trustee, a creditor or any other person having an interest may, within 14 days after the date of a meeting called under paragraph 1 or 3 above, appeal to the sheriff against a resolution of the creditors at the meeting.

#### Textual Amendments

**F84** Word in Sch. 6 para. 8 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

## PART II

### ALL MEETINGS OF CREDITORS

#### *Validity of proceedings*

- 9 No proceedings at a meeting shall be invalidated by reason only that any notice or other document relating to the calling of the meeting which is required to be sent or given under any provision of this Act has not been received by, or come to the attention of, any creditor before the meeting.

#### *Locus of meeting*

- 10 Every meeting shall be held in such place (whether or not in the sheriffdom) as is, in the opinion of the person calling the meeting, the most convenient for the majority of the creditors.

#### *Mandatories*

- 11 (1) A creditor may authorise in writing any person to represent him at a meeting.
- (2) A creditor shall lodge any authorisation given under sub-paragraph (1) above with <sup>F85</sup> . . . the <sup>F86</sup> . . . trustee before the commencement of the meeting.
- (3) Any reference in paragraph 7(1) of this Schedule and the following provisions of this Part of this Schedule to a creditor shall include a reference to a person authorised by him under this paragraph.

*Status: Point in time view as at 31/12/2014.*

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#### Textual Amendments

- F85** Words in Sch. 6 para. 11(2) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F86** Word in Sch. 6 para. 11 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

#### *Quorum*

- 12 The quorum at any meeting shall be one creditor.

#### *Voting at meeting*

- 13 Any question at a meeting shall be determined by a majority in value of the creditors who vote on that question.

#### *Objections by creditors*

- 14 (1) The chairman at any meeting may allow or disallow any objection by a creditor, other than (if the chairman is not the <sup>F87</sup>. . . trustee) an objection relating to a creditor's claim.
- (2) Any person aggrieved by the determination of the chairman in respect of an objection may appeal therefrom to the sheriff.
- (3) If the chairman is in doubt whether to allow or disallow an objection, the meeting shall proceed as if no objection had been made, except that for the purposes of appeal the objection shall be deemed to have been disallowed.

#### Textual Amendments

- F87** Word in Sch. 6 para. 14 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

#### *Adjournment of meeting*

- 15 (1) If no creditor has appeared at a meeting at the expiry of a period of half an hour after the time appointed for the commencement of the meeting, the chairman [<sup>F88</sup>may] adjourn the meeting to such other day as the chairman [<sup>F88</sup>may] appoint, being not less than 7 nor more than 21 days after the day on which the meeting was adjourned.
- (2) The chairman may, with the consent of a majority in value of the creditors who vote on the matter, adjourn a meeting.
- (3) Any adjourned meeting shall be held at the same time and place as the original meeting, unless in the resolution for the adjournment of the meeting another time or place is specified.

*Status: Point in time view as at 31/12/2014.*

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#### Textual Amendments

- F88** Words in Sch. 6 para. 15(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 61\(b\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

#### *Minutes of meeting*

- 16 The minutes of every meeting shall be signed by the chairman and within 14 days of the meeting a copy of the minutes shall be sent to the Accountant in Bankruptcy.

### PART III

#### MEETINGS OF COMMISSIONERS

- 17 The <sup>F89</sup> . . . trustee may call a meeting of commissioners at any time, and shall call a meeting of commissioners—
- (a) on being required to do so by order of the [<sup>F90</sup>sheriff] ; or
  - (b) on being requested to do so by the Accountant in Bankruptcy or any commissioner.

#### Textual Amendments

- F89** Word in Sch. 6 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F90** Word in Sch. 6 substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 61\(a\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 18 If the <sup>F91</sup> . . . trustee fails to call a meeting of commissioners within 14 days of being required or requested to do so under paragraph 17 of this Schedule, a commissioner may call a meeting of commissioners.

#### Textual Amendments

- F91** Word in Sch. 6 para. 19 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 19 The <sup>F92</sup> . . . trustee shall give the commissioners at least 7 days notice of a meeting called by him, unless the commissioners decide that they do not require such notice.

#### Textual Amendments

- F92** Word in Sch. 6 para. 19 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

*Status: Point in time view as at 31/12/2014.*

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- 20 The <sup>F93</sup> . . . trustee shall act as clerk at meetings and shall insert a record of the deliberations of the commissioners in the sederunt book.

**Textual Amendments**

**F93** Word in Sch. 6 para. 20 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

- 21 If the commissioners are considering the performance of the functions of the <sup>F94</sup> . . . trustee under any provision of this Act, he shall withdraw from the meeting if requested to do so by the commissioners; and in such a case a commissioner shall act as clerk, shall transmit a record of the deliberations of the commissioners to the <sup>F95</sup> . . . trustee for insertion in the sederunt book and shall authenticate the insertion when made.

**Textual Amendments**

**F94** Word in Sch. 6 para. 21 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

**F95** Word in Sch. 6 para. 21 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(h\)\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10) (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5)

- 22 The quorum at a meeting of commissioners shall be one commissioner and the commissioners may act by a majority of the commissioners present at the meeting.
- 23 Any matter may be agreed by the commissioners without a meeting if such agreement is unanimous and is subsequently recorded in a minute signed by the commissioners; and that minute shall be inserted by the <sup>F96</sup> . . . trustee in the sederunt book.

**Textual Amendments**

**F96** Word in Sch. 6 para. 23 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt.1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

## SCHEDULE 7

### PART I

#### CONSEQUENTIAL AMENDMENTS

##### *The Judicial Factors (Scotland) Act 1880 (c.4)*

- 1 In section 3 (interpretation), for the words “section 14 or 163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “section 11A of the <sup>M5</sup>Judicial Factors (Scotland) Act 1889”.

#### Marginal Citations

M5 1889 c. 39.

- 2 ..... F97

#### Textual Amendments

F97 Sch. 7 para. 2 repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. I

##### *The Judicial Factors (Scotland) Act 1889 (c.39)*

- 3 In section 2, at the beginning there shall be inserted the words “Without prejudice to section 1(2) of the Bankruptcy (Scotland) Act 1985 (Accountant of Court to be Accountant in Bankruptcy),”.
- 4 After section 11 there shall be inserted the following sections—

#### **“11A Application for judicial factor on estate of person deceased.**

- (1) It shall be competent to one or more creditors of parties deceased, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting, to apply by summary petition to the Court of Session or to the sheriff of the sheriffdom within which the deceased resided or carried on business during the year immediately preceding the date of the petition, or within which heritage belonging to the deceased at the time of his death is situated, for the appointment of a judicial factor.
- (2) After such intimation of the petition to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the Court or sheriff may appoint such factor, who shall administer the estate subject to the supervision of the accountant in accordance with this Act and the Judicial Factors (Scotland) Act 1880 and relative acts of sederunt; and, if the deceased’s estate is absolutely insolvent within the meaning of section 73(2) of the Bankruptcy (Scotland) Act 1985, section 51 of, and Schedule 1 to, that Act shall apply as if for references to—

*Status: Point in time view as at 31/12/2014.*

*Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) is up to date with all changes known to be in force on or before 31 May 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)*

- (a) the interim trustee or permanent trustee there were substituted references to the judicial factor; and
- (b) the date of sequestration there were substituted references to the date of the judicial factor’s appointment.

### **11B Judicial factor’s duties to be regulated by act of sederunt.**

The Court of Session shall have full power to regulate by act of sederunt—

- (a) the caution to be found by a factor appointed under section 11A above;
- (b) the mode in which he shall proceed in realising and dividing the funds, and otherwise in the discharge of his duties; and
- (c) any other matter which they may deem necessary.”.

#### *The Conveyancing (Scotland) Act 1924 (c. 27)*

5 In section 44(4)(c) (limitation of effect of entries in the register of inhibitions and adjudications)—

- (a) after the words “Bankruptcy (Scotland) Act 1913” there shall be inserted the words “or the Bankruptcy (Scotland) Act 1985”;
- (b) after the words “effect of recording” there shall be inserted “(a)” and after the words “as aforesaid” there shall be inserted the words “; or (b) under subsection (1)(a) of section 14 of the Bankruptcy (Scotland) Act 1985 the certified copy of an order shall have expired by virtue of subsection (3) of that section”; and
- (c) for the words “in terms of paragraph (b) of this subsection”, there shall be substituted the words “in the form provided by Schedule O to this Act”.

#### *The Third Parties (Rights Against Insurers) Act 1930 (c.25)*

6 (1) In section 1(2) (rights of third parties against insurers on bankruptcy of insured), after the words “provable in bankruptcy” there shall be inserted the words “(in Scotland, any claim accepted in the sequestration)”.

(2) In section 4 (application to Scotland)—

- (a) paragraph (a) shall be omitted; and
- (b) in paragraph (b), for the words “one hundred and sixty-three of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

7

F98

#### **Textual Amendments**

**F98** Sch. 7 para. 7 repealed by [Finance Act 1987 \(c. 16, SIF 99:6\)](#), s. 72, [Sch. 16 Pt. XI](#)

*Status: Point in time view as at 31/12/2014.*

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*The Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)*

- 8 In paragraph 9(2)(b) of Schedule 3 (“insolvent” for purposes of standard condition as to default), for the words “163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

*The Superannuation Act 1972 (c.11)*

- 9 In section 5(2) (benefits under civil service superannuation schemes not negotiable), for the words “148” and “1913” there shall be substituted respectively, the words “32(2) and (4)” and “1985”.

- 10 ..... F99

**Textual Amendments**

**F99** Sch. 7 para. 10 repealed by [Road Traffic \(Consequential Provisions\) Act 1988 \(c.54, SIF 107:1\), ss. 3, 5, Sch. 1 Pt. I, Sch. 4 paras. 1, 2](#)

*The Prescription and Limitation (Scotland) Act 1973 (c.52)*

- 11 In section 9(1), for paragraph (b) there shall be substituted the following paragraphs—
- “(b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 48 of the Bankruptcy (Scotland) Act 1985 (or those sections as applied by section 613 of the Companies Act 1985); or
  - (c) by a creditor to the trustee acting under a trust deed as defined in section 5(2)(c) of the Bankruptcy (Scotland) Act 1985;”.

*The Local Government (Scotland) Act 1973 (c.65)*

- 12 In section 31(2) (disqualifications regarding members of local authority), for paragraph (b) there shall be substituted the following paragraph—
- “(b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.”.

*The Social Security Pensions Act 1975 (c.60)*

- F100 13 .....

**Textual Amendments**

**F100** Sch. 7 para. 13 repealed (7.2.1994) by [1993 c. 48, s. 188, Sch. 5 Pt.I \(with s. 6\(8\)\); S.I. 1994/86, art. 2](#)

*The Employment Protection (Consolidation) Act 1978 (c.44)*

- 14 F101(1) .....
- F101(2) .....

*Status: Point in time view as at 31/12/2014.*

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- (3) ..... F102
- F101(4) .....

**Textual Amendments**

**F101** Sch. 7 Pt. I para. 14(1)(2)(4) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 7 Pt. I** (with ss. 191-195, 202)

**F102** Sch. 7 para. 14(3) repealed by **Employment Act 1989** (c. 38, SIF 43:1), s. 29(4), **Sch. 7 Pt. II**

*The Land Registration (Scotland) Act 1979 (c.33)*

- F103 15 .....

**Textual Amendments**

**F103** Sch. 7 para. 15 repealed (8.12.2014) by **Land Registration etc. (Scotland) Act 2012** (asp 5), ss. 122, 123, **sch. 5 para. 28(3)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

*The Banking Act 1979 (c.37)*

- 16 In section 28 (payments to depositors on institution’s insolvency)—
  - (a) in subsection (6)—
    - (i) in paragraph (a), after the word “proved” there shall be inserted the words “or whose claim has been accepted in the sequestration”; and
    - (ii) in paragraph (b)(iii), for the words “72” and “1913” there shall be substituted, respectively, the words “30” and “1985”; and
  - (b) in subsection (7)(c)—
    - (i) the words from “where” to “court,” shall cease to have effect; and
    - (ii) for the words “deed of arrangement or other settlement or arrangement by way” there shall be substituted the words “trust deed, contract of composition or offer”.

*The Estate Agents Act 1979 (c.38)*

- 17 In section 23(2) (bankrupts not to engage in estate agency work), in paragraph (a) after the word “recalled” there shall be inserted the words “or reduced”.

*The Value Added Tax Act 1983 (c.55)*

- 18 In section 22(4)(a)(ii) (“insolvency” for purposes of refund of tax in cases of bad debts), for the words “163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

- 19—22. .... F104

*Status: Point in time view as at 31/12/2014.*

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### Textual Amendments

**F104** Sch. 7 paras. 19–22 repealed by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), ss. 438, 443, [Sch. 12](#)

### *The Family Law (Scotland) Act 1985 (c.37)*

- 23 In section 14(5)(b) for the words from “sections 30” to “1913” there shall be substituted the words “section 41 of the Bankruptcy (Scotland) Act 1985”.

## PART II

### RE-ENACTMENT OF CERTAIN PROVISIONS OF BANKRUPTCY (SCOTLAND) ACT 1913 (C. 20)

#### *Arrestments and Poidings*

- 24 (1) Subject to sub-paragraph (2) below, all arrestments and [<sup>F105</sup>attachments] which have been executed within 60 days prior to the constitution of the apparent insolvency of the debtor, or within four months thereafter, shall be ranked *pari passu* as if they had all been executed on the same date.
- (2) Any such arrestment which is executed on the dependence of an action shall be followed up without undue delay.
- (3) Any creditor judicially producing in a process relative to the subject of such arrestment or [<sup>F106</sup>attachment] liquid grounds of debt or decree of payment within the 60 days or four months referred to in sub-paragraph (1) above shall be entitled to rank as if he had executed an arrestment or [<sup>F107</sup>an attachment] ; and if the first or any subsequent arrester obtains in the meantime a decree of furthcoming, and recovers payment, or [<sup>F108</sup>an attaching] creditor carries through [<sup>F109</sup>an auction][<sup>F110</sup>or receives payment in respect of [<sup>F111</sup>attached] article upon its redemption], he shall be accountable for the sum recovered to those who, by virtue of this Act, may be eventually found to have a right to a ranking *pari passu* thereon, and shall be liable in an action at their instance for payment to them proportionately, after allowing out of the fund the expense of such recovery.
- (4) Arrestments executed for attaching the same effects of the debtor after the period of four months subsequent to the constitution of his apparent insolvency shall not compete with those within the said periods prior or subsequent thereto, but may rank with each other on any reversion of the fund attached in accordance with any enactment or rule of law relating thereto.
- (5) Any reference in the foregoing provisions of this paragraph to a debtor shall be construed as including a reference to an entity whose apparent insolvency may, by virtue of subsection [<sup>F112</sup>(4)] of section 7 of this Act, be constituted under subsection (1) of that section.
- (6) This paragraph shall apply in respect of arrestments and poidings which have been executed either before or after the coming into force of this paragraph.
- (7) The repeal of the Bankruptcy (Scotland) Act 1913 shall not affect the equalisation of arrestments and poidings (whether executed before or after the coming into force of

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this paragraph) in consequence of the constitution of notour bankruptcy under that Act.

[<sup>F113</sup>(8) Nothing in this paragraph shall apply to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.]

#### Textual Amendments

- F105** Word in Sch. 7 para. 24(1) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp. 17), s. 61, **Sch. 3 Pt. 1 para. 15(5)(a)**
- F106** Word in Sch. 7 para. 24(3) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp. 17), s. 61, **Sch. 3 Pt. 1 para. 15(5)(b)(i)**
- F107** Words in Sch. 7 para. 24(3) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp. 17), s. 61, **Sch. 3 Pt. 1 para. 15(5)(b)(ii)**
- F108** Words in Sch. 7 para. 24(3) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp. 17), s. 61, **Sch. 3 Pt. 1 para. 15(5)(b)(iii)**
- F109** Words in Sch. 7 para. 24(3) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp. 17), s. 61, **Sch. 3 Pt. 1 para. 15(5)(b)(iv)**
- F110** Words inserted by Debtors (Scotland) Act 1987 (c.18, SIF 45:2), s. 108(1)(2), Sch. 6 para. 28(a), Sch. 7 paras. 5, **9(1)**
- F111** Words in Sch. 7 para. 24(3) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp. 17), s. 61, **Sch. 3 Pt. 1 para. 15(5)(b)(v)**
- F112** Word in Sch. 7 para. 24(5) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 62** (with s. 223); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F113** Words added by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108(1)(2), Sch. 6 para. 28(b), Sch. 7 paras. 5, **9(1)**

#### Modifications etc. (not altering text)

- C6** Sch. 7 para. 24 excluded by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 67, 108(2), Sch. 7 paras. 5, **9(1)**

#### *Exemptions from stamp or other duties for conveyances, deeds etc. relating to sequestrated estates*

25

Any—

- (a) conveyance, assignation, instrument, discharge, writing, or deed relating solely to the estate of a debtor which has been or may be sequestrated, either under this or any former Act, being estate which after the execution of such conveyance, assignation, instrument, discharge, writing, or deed, shall be and remain the property of such debtor, for the benefit of his creditors, or the <sup>F114</sup> . . . trustee appointed or chosen under or by virtue of such sequestration,
- (b) discharge to such debtor,
- (c) deed, assignation, instrument, or writing for reinvesting the debtor in the estate,
- (d) article of roup or sale, or submission,
- (e) other instrument or writing whatsoever relating solely to the estate of any such debtor; and
- (f) other deed or writing forming part of the proceedings ordered under such sequestration,

shall be exempt from all stamp duties or other Government duty.

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### Textual Amendments

**F114** Words in Sch. 7 para. 25(a) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#) (asp 3), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

## SCHEDULE 8

Section 75(2)

### REPEALS

Chapter	Short title	Extent of repeal
1621 c. 18.	The Bankruptcy Act 1621.	The whole Act.
1696 c. 5.	The Bankruptcy Act 1696.	The whole Act.
31 & 32 Vict. c. 101.	The Titles to Land Consolidation (Scotland) Act 1868.	Section 148.
44 & 45 Vict. c. 21.	The Married Women's Property (Scotland) Act 1881.	Section 1(4).
52 & 53 Vict. c. 39.	The Judicial Factors (Scotland) Act 1889.	In section 5, the words “, and of the Bankruptcy Acts and Cessio Acts,” and the words “and accountant in bankruptcy respectively,”. In section 14, the proviso. Sections 15 and 16. Section 22.
57 & 58 Vict. c. 60.	The Merchant Shipping Act 1894.	Section 36.
3 & 4 Geo. 5 c. 20.	The Bankruptcy (Scotland) Act 1913.	The whole Act.
10 & 11 Geo. 5 c. 64.	The Married Woman's Property (Scotland) Act 1920.	In section 5, the proviso.
14 & 15 Geo. 5 c. 27.	The Conveyancing (Scotland) Act 1924.	In section 44, in subsection (4) paragraphs (a) and (b); and in subsection (6) the words “and section 44 of the Bankruptcy (Scotland) Act 1913”.
20 & 21 Geo. 5 c. 25.	The Third Parties (Rights Against Insurers) Act 1930.	In section 4, paragraph (a).

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10 & 11 Geo. 6 c. 47.	The Companies Act 1947.	Sections 91 and 115.
11 & 12 Geo. 6 c. 39.	The Industrial Assurance and Friendly Societies Act 1948.	In section 2(4), the words “where the receiving order or the award of sequestration of his estate was made after the passing of this Act”.
15 & 16 Geo. 6 & 1 Eliz. 2, c. 33.	The Finance Act 1952.	In section 30, subsections (4) and (6).
1965 c. 25.	The Finance Act 1965.	In Schedule 10, paragraph 15(1).
1969 c. 48.	The Post Office Act 1969.	In Schedule 4, paragraph 22.
1970 c. 10.	The Income and Corporation Taxes Act 1970.	In Part II of Schedule 15, the entry relating to the Finance Act 1952.
Chapter	Short title	Extent of repeal
1972 c. 20.	The Road Traffic Act 1972.	In section 150(2), the words “‘company’ includes a limited partnership, and”.
1974 c. 46.	The Friendly Societies Act 1974.	In section 59, in subsection (1)(a) the words “or bankruptcy”; in subsection (2) the words “or trustee in bankruptcy”; and subsections (3) and (4).
1975 c. 14.	The Social Security Act 1975.	In Schedule 18, paragraph 1(1)(b) and (2)(b).
1975 c. 18.	The Social Security (Consequential Provisions) Act 1975.	In Schedule 2, paragraph 1.
1975 c. 45.	The Finance (No. 2) Act 1975.	In section 71(6), the words “section 30 of the Finance Act 1952”.
1975 c. 60.	The Social Security Pensions Act 1975.	In Schedule 4, paragraph 1.
1976 c. 24.	The Development Land Tax Act 1976.	In section 42, subsection (1), so far as it relates to bankruptcy in Scotland; and subsection (4)(a).
1976 c. 60.	The Insolvency Act 1976.	In section 5, subsections (3) and (4).  In Schedule 1, in Part I, the entries relating to the Bankruptcy (Scotland) Act 1913; and, in Part II,

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		paragraphs 1(a), 2(a), 4 and 5(b).
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	Section 121(1)(b).
1979 c. 37.	The Banking Act 1979.	In section 28(7)(c) the words “where the sequestration is declared at an end by a competent court”.
1979 c. 54.	The Sale of Goods Act 1979.	In section 61(4), the words “, and whether he has become a notour bankrupt or not”.
1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	Section 12.
1981 c. 59.	The Matrimonial Homes (Family Protection) (Scotland) Act 1981.	Section 10.
1981 c. 63.	The Betting and Gaming Duties Act 1981.	In section 30, subsections (1) and (2).
1983 c. 53.	The Car Tax Act 1983.	In Schedule 1, paragraph 4.
1983 c. 55.	The Value Added Tax Act 1983.	In Schedule 7, paragraph 12.
1985 c. 6.	The Companies Act 1985.	In section 665, the words “(whether limited or not)”; and in paragraph (d) the words “registered in England and Wales or Northern Ireland”.
Chapter	Short title	Extent of repeal
1985 c. 17.	The Reserve Forces (Safeguard of Employment) Act 1985.	In section 13, the word “—(a)”; the words from “or, (b)” to “estate,”; the word “—(i)”; and the words from “or, (ii)” to “1913,”.

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