



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 1

### BANKRUPTCY

#### *Duration of bankruptcy*

#### **1 Discharge of debtor**

- (1) Section 54 of the Bankruptcy (Scotland) Act 1985 (c. 66) (in this Act, the “1985 Act”) (automatic discharge of debtor) is amended as follows.
- (2) In subsection (1), for the words “3 years” substitute “1 year”.
- (3) In subsection (3), the words “2 years and” are repealed.
- (4) The heading to that section becomes “Automatic discharge of debtor”.

#### *Bankruptcy restrictions orders and undertakings*

#### **2 Bankruptcy restrictions orders and undertakings**

- (1) After section 56 of the 1985 Act, insert—

#### *“Bankruptcy restrictions orders and undertakings*

##### **56A Bankruptcy restrictions order**

- (1) Where sequestration of a living debtor’s estate is awarded, an order (known as a “bankruptcy restrictions order”) in respect of the debtor may be made by the sheriff.
- (2) An order may be made only on the application of the Accountant in Bankruptcy.

### 56B Grounds for making order

- (1) The sheriff shall grant an application for a bankruptcy restrictions order if he thinks it appropriate having regard to the conduct of the debtor (whether before or after the date of sequestration).
- (2) The sheriff shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—
  - (a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning 2 years before the date of presentation of the petition for sequestration or, as the case may be, the date the debtor application was made and ending with the date of the application for a bankruptcy restrictions order;
  - (b) failing to produce records of that kind on demand by—
    - (i) the Accountant in Bankruptcy;
    - (ii) the interim trustee; or
    - (iii) the trustee;
  - (c) making a gratuitous alienation or any other alienation for no consideration or for no adequate consideration which a creditor has, under any rule of law, right to challenge;
  - (d) creating an unfair preference or any other preference which a creditor has, under any rule of law, right to challenge;
  - (e) making an excessive pension contribution;
  - (f) failing to supply goods or services which were wholly or partly paid for which gave rise to a claim submitted by a creditor under section 22 or 48 of this Act;
  - (g) trading at a time before the date of sequestration when the debtor knew or ought to have known that he was to be unable to meet his debts;
  - (h) incurring, before the date of sequestration, a debt which the debtor had no reasonable expectation of being able to pay;
  - (j) failing to account satisfactorily to—
    - (i) the sheriff;
    - (ii) the Accountant in Bankruptcy;
    - (iii) the interim trustee; or
    - (iv) the trustee,for a loss of property or for an insufficiency of property to meet his debts;
  - (k) carrying on any gambling, speculation or extravagance which may have materially contributed to or increased the extent of his debts or which took place between the date of presentation of the petition for sequestration or, as the case may be, the date the debtor application was made and the date on which sequestration is awarded;
  - (l) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his debts;
  - (m) fraud or breach of trust;
  - (n) failing to co-operate with—

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- (i) the Accountant in Bankruptcy;
  - (ii) the interim trustee; or
  - (iii) the trustee.
- (3) The sheriff shall also, in particular, consider whether the debtor—
  - (a) has previously been sequestered; and
  - (b) remained undischarged from that sequestration at any time during the period of 5 years ending with the date of the sequestration to which the application relates.
- (4) For the purposes of subsection (2) above—
  - “excessive pension contribution” shall be construed in accordance with section 36A of this Act; and
  - “gratuitous alienation” means an alienation challengeable under section 34(1) of this Act.

#### **56C Application of section 67(9)**

- (1) Where the sheriff thinks it appropriate, the sheriff may specify in the bankruptcy restrictions order that subsection (9) of section 67 of this Act shall apply to the debtor during the period he is subject to the order as if he were a debtor within the meaning of subsection (10)(a) of that section.
- (2) For the purposes of subsection (1) above, section 67(10) of this Act shall have effect as if, for paragraph (c) of that subsection, there were substituted—
  - “(c) the relevant information about the status of the debtor is the information that—
    - (i) he is subject to a bankruptcy restrictions order; or
    - (ii) where his estate has been sequestered and he has not been discharged, that fact.”.

#### **56D Timing of application for order**

- (1) An application for a bankruptcy restrictions order must be made, subject to subsection (2) below, within the period beginning with the date of sequestration and ending with the date on which the debtor’s discharge becomes effective.
- (2) An application may be made after the end of the period referred to in subsection (1) above only with the permission of the sheriff.

#### **56E Duration of order and application for annulment**

- (1) A bankruptcy restrictions order—
  - (a) shall come into force when it is made; and
  - (b) shall cease to have effect at the end of the date specified in the order.
- (2) The date specified in a bankruptcy restrictions order under subsection (1)(b) above must not be—
  - (a) before the end of the period of 2 years beginning with the date on which the order is made; or
  - (b) after the end of the period of 15 years beginning with that date.

- (3) On an application by the debtor the sheriff may—
  - (a) annul a bankruptcy restrictions order; or
  - (b) vary such an order, including providing for such an order to cease to have effect at the end of a date earlier than the date specified in the order under subsection (1)(b) above.

#### **56F Interim bankruptcy restrictions order**

- (1) This section applies at any time between—
  - (a) the making of an application for a bankruptcy restrictions order; and
  - (b) the determination of the application.
- (2) The sheriff may make an interim bankruptcy restrictions order if he thinks that—
  - (a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful; and
  - (b) it is in the public interest to make an interim order.
- (3) An interim order may be made only on the application of the Accountant in Bankruptcy.
- (4) An interim order—
  - (a) shall have the same effect as a bankruptcy restrictions order; and
  - (b) shall come into force when it is made.
- (5) An interim order shall cease to have effect—
  - (a) on the determination of the application for the bankruptcy restrictions order;
  - (b) on the acceptance of a bankruptcy restrictions undertaking made by the debtor; or
  - (c) if the sheriff discharges the interim order on the application of the Accountant in Bankruptcy or of the debtor.
- (6) Where a bankruptcy restrictions order is made in respect of a debtor who is subject to an interim order, section 56E(2) of this Act shall have effect in relation to the bankruptcy restrictions order as if the reference to the date on which the order is made were a reference to the date on which the interim order was made.

#### **56G Bankruptcy restrictions undertaking**

- (1) A living debtor who is not subject to a bankruptcy restrictions order may offer an undertaking (known as a “bankruptcy restrictions undertaking”) to the Accountant in Bankruptcy.
- (2) In determining whether to accept a bankruptcy restrictions undertaking, the Accountant in Bankruptcy shall have regard to the matters specified in section 56B(2) and (3) of this Act.
- (3) A bankruptcy restrictions undertaking—
  - (a) shall take effect on being accepted by the Accountant in Bankruptcy; and

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- (b) shall cease to have effect at the end of the date specified in the undertaking.
- (4) The date specified under subsection (3)(b) above must not be—
  - (a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted; or
  - (b) after the end of the period of 15 years beginning with that date.
- (5) On an application by the debtor the sheriff may—
  - (a) annul a bankruptcy restrictions undertaking; or
  - (b) vary such an undertaking, including providing for a bankruptcy restrictions undertaking to cease to have effect at the end of a date earlier than the date specified in the undertaking under subsection (3)(b) above.

#### **56H Bankruptcy restrictions undertakings: application of section 67(9)**

- (1) A debtor may, with the agreement of the Accountant in Bankruptcy, specify in a bankruptcy restrictions undertaking that subsection (9) of section 67 of this Act shall apply to the debtor during the period the undertaking has effect as if he were a debtor within the meaning of subsection (10)(a) of that section.
- (2) For the purposes of subsection (1) above, section 67(10) of this Act shall have effect as if, for paragraph (c) of that subsection, there were substituted—
  - “(c) the relevant information about the status of the debtor is the information that—
    - (i) he is subject to a bankruptcy restrictions undertaking; or
    - (ii) where his estate has been sequestrated and he has not been discharged, that fact.”.

#### **56J Effect of recall of sequestration**

- (1) Where an award of sequestration of a debtor’s estate is recalled under section 17(1) of this Act—
  - (a) the sheriff may annul any bankruptcy restrictions order, interim bankruptcy restrictions order or bankruptcy restrictions undertaking which is in force in respect of the debtor;
  - (b) no new bankruptcy restrictions order or interim order may be made in respect of the debtor; and
  - (c) no new bankruptcy restrictions undertaking by the debtor may be accepted.
- (2) Where the sheriff refuses to annul a bankruptcy restrictions order, interim bankruptcy restrictions order or bankruptcy restrictions undertaking under subsection (1)(a) above the debtor may, no later than 28 days after the date on which the award of sequestration is recalled, appeal to the sheriff principal against such a refusal.
- (3) The decision of the sheriff principal on an appeal under subsection (2) above is final.

**56K Effect of discharge on approval of offer of composition**

- (1) This section applies where a certificate of discharge is granted under paragraph 11(1) of Schedule 4 to this Act discharging a debtor.
  - (2) Subject to sections 56E(3)(a), 56F(5)(c) and 56G(5)(a) of this Act, the debtor shall remain subject to any bankruptcy restrictions order, interim bankruptcy restrictions order or bankruptcy restrictions undertaking which is in force in respect of him.
  - (3) The sheriff may make a bankruptcy restrictions order in relation to the debtor on an application made before the discharge.
  - (4) The Accountant in Bankruptcy may accept a bankruptcy restrictions undertaking offered before the discharge.
  - (5) No application for a bankruptcy restrictions order or interim order may be made in respect of the debtor.”.
- (2) In section 1A(1)(b) of that Act (duty of the Accountant in Bankruptcy to maintain register of insolvencies), after sub-paragraph (ii) insert—
- “(ia) bankruptcy restrictions orders, interim bankruptcy restrictions orders and bankruptcy restrictions undertakings;”.

*Effect of bankruptcy restrictions orders and undertakings***3 Disqualification from being appointed as receiver**

- (1) Section 51 of the Insolvency Act 1986 (c. 45) (appointment of receiver) is amended as follows.
- (2) In subsection (3), after paragraph (b), insert—
 

“(ba) a person subject to a bankruptcy restrictions order;”.
- (3) In subsection (5), after “bankrupt” insert “or a person subject to a bankruptcy restrictions order”.
- (4) In subsection (6), after “receivers” insert “; and
 

“bankruptcy restrictions order” means—

  - (a) a bankruptcy restrictions order made under section 56A of the Bankruptcy (Scotland) Act 1985 (c. 66);
  - (b) a bankruptcy restrictions undertaking entered into under section 56G of that Act;
  - (c) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to this Act; or
  - (d) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule.”.

#### **4 Disqualification for nomination, election and holding office as member of local authority**

In section 31 of the Local Government (Scotland) Act 1973 (c. 65) (disqualifications for nomination, election and holding office as member of local authority)—

- (a) after subsection (1)(b), insert—
  - “(ba) he is subject to a bankruptcy restrictions order;”;
- (b) after subsection (3A), insert—
  - “(3B) In subsection (1)(ba) above, “bankruptcy restrictions order” means—
    - (a) a bankruptcy restrictions order made under section 56A of the Bankruptcy (Scotland) Act 1985;
    - (b) a bankruptcy restrictions undertaking entered into under section 56G of that Act;
    - (c) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to the Insolvency Act 1986 (c. 45); or
    - (d) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule.”.

#### **5 Orders relating to disqualification**

After section 71A of the 1985 Act, insert—

##### **“71B Disqualification provisions: power to make orders**

- (1) The Scottish Ministers may make an order under this section in relation to a disqualification provision.
- (2) A “disqualification provision” is a provision made by or under any enactment which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a relevant debtor or a class of relevant debtors from—
  - (a) being elected or appointed to an office or position;
  - (b) holding an office or position; or
  - (c) becoming or remaining a member of a body or group.
- (3) In subsection (2) above, the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.
- (4) An order under subsection (1) above may repeal or revoke the disqualification provision.
- (5) An order under subsection (1) above may amend, or modify the effect of, the disqualification provision—
  - (a) so as to reduce the class of relevant debtors to whom the disqualification provision applies;
  - (b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions order;
  - (c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions order;
  - (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.

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- (6) An order by virtue of subsection (5)(d) above may provide for a discretion to be subject to—
- (a) the approval of a specified person or body;
  - (b) appeal to a specified person, body, court or tribunal.
- (7) The Scottish Ministers may be specified for the purposes of subsection (5)(d) or (6)(a) or (b) above.
- (8) In this section—
- “bankruptcy restrictions order” includes—
- (a) a bankruptcy restrictions undertaking;
  - (b) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to the Insolvency Act 1986 (c. 45); and
  - (c) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule;
- “relevant debtor” means a debtor—
- (a) whose estate has been sequestrated;
  - (b) who has granted (or on whose behalf there has been granted) a trust deed;
  - (c) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland; or
  - (d) who, in England and Wales or in Northern Ireland, has made an agreement with his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs or for some other kind of settlement or arrangement.
- (9) An order under this section—
- (a) may make provision generally or for a specified purpose only;
  - (b) may make different provision for different purposes; and
  - (c) may make transitional, consequential or incidental provision.
- (10) An order under this section—
- (a) shall be made by statutory instrument; and
  - (b) shall not be made unless a draft has been laid before and approved by a resolution of the Scottish Parliament.”.

*The trustee in the sequestration*

## 6 Amalgamation of offices of interim trustee and permanent trustee

- (1) In section 2 of the 1985 Act (appointment and functions of interim trustee)—
- (a) after subsection (2), insert—
- “(2A) Where the sheriff awards sequestration of the debtor’s estate and an interim trustee has been appointed in pursuance of subsection (5) below, the sheriff may appoint—
- (a) the interim trustee; or
  - (b) subject to subsection (2B) below, such other person as may be nominated by the petitioner,
- to be the trustee in the sequestration.



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(2B) A person nominated under subsection (2A)(b) above may be appointed to be the trustee in the sequestration only if—

- (a) it appears to the sheriff that the person satisfies the conditions mentioned in subsection (3) below; and
- (b) a copy of the undertaking mentioned in subsection (3)(c) below has been lodged with the sheriff.

(2C) Where the sheriff does not appoint a person to be trustee in pursuance of subsection (2A) above, the sheriff shall appoint the Accountant in Bankruptcy to be the trustee in the sequestration.”;

(b) after subsection (6), insert—

“(6A) The interim trustee’s general function shall be to safeguard the debtor’s estate pending the determination of the petition for sequestration.

(6B) Whether or not the interim trustee is still acting in the sequestration, the interim trustee shall supply the Accountant in Bankruptcy with such information as the Accountant in Bankruptcy considers necessary to enable him to discharge his functions under this Act.”; and

(c) the heading to that section becomes “Appointment and functions of the trustee in the sequestration”.

(2) The heading to section 3 of that Act becomes “Functions of the trustee”.

(3) Unless the context otherwise requires, any reference in any enactment to—

- (a) an “interim trustee”; or
- (b) a “permanent trustee”,

is to be construed as a reference to a trustee in the sequestration.

## **7 Repeal of trustee’s residence requirement**

(1) In section 2(3) of the 1985 Act (conditions to be met by interim trustee), paragraph (a) is repealed.

(2) In section 24(2) of that Act (eligibility for election as permanent trustee), paragraph (d) is repealed.

## **8 Duties of trustee**

(1) In section 3 of the 1985 Act (functions of permanent trustee)—

(a) after subsection (3), insert—

“(3A) If the trustee has reasonable grounds to believe that any behaviour on the part of the debtor is of a kind that would result in a sheriff granting, under section 56B(1) of this Act, an application for a bankruptcy restrictions order, he shall report the matter to the Accountant in Bankruptcy.”;

(b) in subsection (4), after “(3)” insert “or (3A)”;

(c) in subsection (5), for “subsection (3)” substitute “subsections (3) and (3A)”;

and

(d) after subsection (7), insert—

“(8) The trustee shall comply with the requirements of subsections (1)(a) to (d) and (2) above only in so far as, in his view, it would be of financial benefit to the estate of the debtor and in the interests of the creditors to do so.”.

(2) In section 39 of that Act (management and realisation of estate), after subsection (8), insert—

“(9) The trustee—

(a) shall comply with the requirements of subsection (4) of this section; and

(b) may do anything permitted by this section, only in so far as, in his view, it would be of financial benefit to the estate of the debtor and in the interests of the creditors to do so.”.

(3) In section 49 of that Act (adjudication of claims), after subsection (2), insert—

“(2A) On accepting or rejecting, under subsection (2) above, every claim submitted or deemed to have been re-submitted, the trustee shall, as soon as is reasonably practicable, send a list of every claim so accepted or rejected (including the amount of each claim and whether he has accepted or rejected it) to—

(a) the debtor; and

(b) every creditor known to the trustee.”.

## 9 Grounds for resignation or removal of trustee

(1) In section 13 of the 1985 Act (resignation, removal etc. of interim trustee)—

(a) in subsection (2)(a)—

(i) for “(whether” substitute “for any reason mentioned in subsection (2A) below or”;

(ii) for “a” substitute “any other”;

(iii) the words “or from any other cause whatsoever)” are repealed; and

(b) after subsection (2), insert—

“(2A) The reasons referred to in subsection (2)(a) above are that the interim trustee—

(a) is incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4); or

(b) has some other incapacity by virtue of which he is unable to act as interim trustee.”.

(2) In section 28 of that Act (resignation and death of permanent trustee), in subsection (1), for the words from “either” to “he” substitute “the trustee—

(a) is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever); or

(b) has so conducted himself that he should no longer continue to act,

the Accountant in Bankruptcy”.

## 10 Termination of interim trustee's functions

After section 13 of the 1985 Act, insert—

### **“13A Termination of interim trustee's functions where not appointed as trustee**

- (1) This section applies where an interim trustee (not being the Accountant in Bankruptcy) is appointed under section 2(5) of this Act and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under subsection (2A) or (2C) of section 2 of this Act; or
  - (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee, the interim trustee shall hand over to the trustee everything in his possession which relates to the sequestration and shall thereupon cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of the interim trustee as may be appropriate.
- (4) Within 3 months of the sheriff awarding or, as the case may be, refusing to award sequestration, the interim trustee shall—
  - (a) submit to the Accountant in Bankruptcy—
    - (i) his accounts of his intromissions (if any) with the debtor's estate; and
    - (ii) a claim for outlays reasonably incurred, and for remuneration for work reasonably undertaken, by him; and
  - (b) send a copy of his accounts and the claim to—
    - (i) the debtor;
    - (ii) the petitioner; and
    - (iii) in a case where sequestration is awarded, the trustee and all creditors known to the interim trustee.
- (5) On a submission being made to him under subsection (4)(a) above, the Accountant in Bankruptcy shall—
  - (a) audit the accounts;
  - (b) issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee;
  - (c) send a copy of the determination to—
    - (i) the interim trustee; and
    - (ii) the persons mentioned in subsection (4)(b) above; and
  - (d) where a trustee (not being the Accountant in Bankruptcy) has been appointed in the sequestration, send a copy of the audited accounts and of the determination to the trustee, who shall insert them in the sederunt book.
- (6) Where the Accountant in Bankruptcy has been appointed as the trustee in the sequestration, the Accountant in Bankruptcy shall insert a copy of the audited accounts and the determination in the sederunt book.

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- (7) The interim trustee or any person mentioned in subsection (4)(b) above may, within 14 days after the issuing of the determination under subsection (5)(b) above, appeal to the sheriff against the determination.
- (8) On receiving a copy of the Accountant in Bankruptcy's determination sent under subsection (5)(c)(i) above the interim trustee may apply to him for a certificate of discharge.
- (9) The interim trustee shall send notice of an application under subsection (8) above to the persons mentioned in subsection (4)(b) above and shall inform them—
  - (a) that they may make written representations relating to the application to the Accountant in Bankruptcy within the period of 14 days after such notification; and
  - (b) of the effect mentioned in subsection (16) below.
- (10) On the expiry of the period mentioned in subsection (9)(a) above the Accountant in Bankruptcy, after considering any representations duly made to him, shall—
  - (a) grant or refuse to grant the certificate of discharge; and
  - (b) notify the persons mentioned in subsection (4)(b) above accordingly.
- (11) The interim trustee or any person mentioned in subsection (4)(b) above may, within 14 days after the issuing of the determination under subsection (10) above, appeal therefrom to the sheriff.
- (12) If, following an appeal under subsection (11) above, the sheriff determines that a certificate of discharge which has been refused should be granted he shall order the Accountant in Bankruptcy to grant it.
- (13) If, following an appeal under subsection (11) above, the sheriff determines that a certificate of discharge which has been granted should have been refused he shall revoke the certificate.
- (14) The sheriff clerk shall send a copy of the decree of the sheriff following an appeal under subsection (11) above to the Accountant in Bankruptcy.
- (15) The decision of the sheriff in an appeal under subsection (7) or (11) above shall be final.
- (16) The grant of a certificate of discharge under this section by the Accountant in Bankruptcy shall have the effect of discharging the interim trustee from all liability (other than any liability arising from fraud) to the debtor, to the petitioner or to the creditors in respect of any act or omission of the interim trustee in exercising the functions conferred on him by this Act.

### **13B Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee**

- (1) This section applies where the Accountant in Bankruptcy is appointed as interim trustee under section 2(5) of this Act and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under section 2(2A) of this Act; or
  - (b) refuses to award sequestration.

- (2) Where the sheriff awards sequestration and appoints another person as trustee, the Accountant in Bankruptcy shall hand over to the trustee everything in his possession which relates to the sequestration and shall thereupon cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of the Accountant in Bankruptcy as may be appropriate.
- (4) Within 3 months of the sheriff awarding or, as the case may be, refusing to award sequestration, the Accountant in Bankruptcy shall—
  - (a) send to the debtor and the petitioner—
    - (i) his accounts of his intromissions (if any) with the debtor's estate;
    - (ii) a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act; and
    - (iii) the notice mentioned in subsection (5) below; and
  - (b) in a case where sequestration is awarded, send a copy of his accounts, the claim and the notice to all creditors known to him.
- (5) The notice referred to in subsection (4)(a)(iii) above is a notice in writing stating—
  - (a) that the Accountant in Bankruptcy has commenced procedure under this Act leading to discharge in respect of his actings as interim trustee;
  - (b) that an appeal may be made to the sheriff under subsection (7) below; and
  - (c) the effect mentioned in subsection (9) below.
- (6) The Accountant in Bankruptcy shall, unless the sheriff refuses to award sequestration, insert a copy of the accounts and the determination in the sederunt book.
- (7) The debtor, the petitioner and any creditor may, within 14 days after the sending of the notice under subsection (4)(a)(iii) or, as the case may be, subsection (4)(b) above, appeal to the sheriff against—
  - (a) the determination of the Accountant in Bankruptcy mentioned in subsection (4)(a)(ii) above;
  - (b) the discharge of the Accountant in Bankruptcy in respect of his actings as interim trustee;
  - (c) both such determination and discharge,and the sheriff clerk shall send a copy of the decree of the sheriff to the Accountant in Bankruptcy.
- (8) The decision of the sheriff in an appeal under subsection (7) above shall be final.
- (9) Where—
  - (a) the requirements of this section have been complied with; and
  - (b) no appeal is made to the sheriff under subsection (7) above or such an appeal is made but is refused as regards the discharge of the Accountant in Bankruptcy,the Accountant in Bankruptcy shall be discharged from all liability (other than any liability arising from fraud) to the debtor, to the petitioner or to the creditors

in respect of any act or omission of the Accountant in Bankruptcy in exercising the functions of interim trustee conferred on him by this Act.”.

## 11 Statutory meeting and election of trustee

- (1) Section 21 of the 1985 Act (requirement to call statutory meeting) is repealed.
- (2) In section 21A of that Act (calling of statutory meeting where interim trustee is Accountant in Bankruptcy)—
  - (a) in subsection (1), the words from “where” to “Bankruptcy”, are repealed; and
  - (b) the heading to that section becomes “Calling of statutory meeting”.
- (3) The heading to section 23 of that Act becomes “Proceedings at statutory meeting before trustee vote”.
- (4) In section 24 of that Act (election of permanent trustee)—
  - (a) in subsection (1), for the words “the election of the permanent trustee” substitute “a vote at which they shall—
    - (a) confirm the appointment of the trustee appointed under section 2 of this Act (referred to in this section and in sections 25 to 27 of this Act as the “original trustee”); or
    - (b) elect another person as the trustee in the sequestration (referred to in this section and in sections 13 and 25 to 29 of this Act as the “replacement trustee”),

such a vote being referred to in this Act as a “trustee vote”.”; and
  - (b) the heading to that section becomes “Trustee vote”.
- (5) In section 25 of that Act (confirmation of permanent trustee)—
  - (a) before subsection (1) insert—
 

“(A1) This section applies where a replacement trustee is elected by virtue of a trustee vote.”; and
  - (b) the heading to that section becomes “Appointment of replacement trustee”.
- (6) Schedule 2 to that Act (adaptation of procedure etc. where permanent trustee not elected) is repealed.

## 12 Replacement of trustee acting in more than one sequestration

After section 28 of the 1985 Act, insert—

### “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,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.”.

### **13 Requirement to hold money in interest bearing account**

In section 43 of the 1985 Act (money received by permanent trustee) —

- (a) in subsection (1)—
  - (i) for “subsection (2)” substitute “subsections (1A) and (2)”; and
  - (ii) after “an” insert “interest-bearing account in an”; and
- (b) after subsection (1), insert—

“(1A) In any case where the Accountant in Bankruptcy is the trustee, subject to subsection (2) below, all money received by the Accountant in Bankruptcy in the exercise of his functions as trustee shall be deposited by him in an interest bearing account in the name of the debtor’s estate or in the name of the Scottish Ministers in an appropriate bank or institution.”.

#### *Debtor applications*

### **14 Debtor applications**

- (1) In section 1A of the 1985 Act (supervisory functions of the Accountant in Bankruptcy), in subsection (1), after paragraph (a), insert—
- “(aa) the determination of debtor applications;”.
- (2) In section 2 of that Act (appointment and functions of interim trustee), after subsection (1), insert—
- “(1A) Subject to subsection (1C) below, where the Accountant in Bankruptcy awards sequestration of the debtor’s estate and the debtor application—
- (a) nominates a person to be the trustee;
  - (b) states that the person satisfies the conditions mentioned in subsection (3) below; and

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- (c) has annexed to it a copy of the undertaking mentioned in subsection (3)(c) below,  
the Accountant in Bankruptcy may, if it appears to him that the person satisfies those conditions, appoint that person to be the trustee in the sequestration.
- (1B) Where the Accountant in Bankruptcy awards sequestration of the debtor's estate and does not appoint a person to be the trustee in pursuance of subsection (1A) above, the Accountant in Bankruptcy shall be deemed to be appointed to be the trustee in the sequestration.
- (1C) Where—
- (a) the debtor application is made by a debtor to whom section 5(2B)(c) (ia) applies; and
  - (b) the Accountant in Bankruptcy awards sequestration of the debtor's estate,
- the Accountant in Bankruptcy shall be deemed to be appointed as trustee in the sequestration.”.
- (3) In section 5 of that Act (sequestration of the estate of living or deceased debtor)—
- (a) for subsection (2) substitute—
 

“(2) The sequestration of the estate of a living debtor shall be—

    - (a) by debtor application made by the debtor, if either subsection (2A) or (2B) below applies to the debtor; or
    - (b) on the petition of—
      - (i) subject to subsection (2D) below, a qualified creditor or qualified creditors, if the debtor is apparently insolvent;
      - (ii) a temporary administrator;
      - (iii) a member State liquidator appointed in main proceedings; or
      - (iv) the trustee acting under a trust deed if, and only if, one or more of the conditions in subsection (2C) below is satisfied.”; and
  - (b) after subsection (4A), insert—
 

“(4B) A debtor application shall—

    - (a) be made to the Accountant in Bankruptcy; and
    - (b) be in such form as may be prescribed.
- (4C) The Scottish Ministers may, by regulations, make provision—
- (a) in relation to the procedure to be followed in a debtor application (in so far as not provided for in this Act);
  - (b) prescribing the form of any document that may be required for the purposes of making a debtor application; and
  - (c) prescribing the fees and charges which may be levied by the Accountant in Bankruptcy in relation to debtor applications.”.
- (4) In section 6 of that Act (sequestration of other estates)—
- (a) in subsection (3), for the words from “on” to the end of that subsection substitute—



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- “(a) by debtor application made by a majority of trustees, with the concurrence of a qualified creditor or qualified creditors; or
    - (b) on the petition of—
      - (i) a temporary administrator;
      - (ii) a member State liquidator appointed in main proceedings; or
      - (iii) a qualified creditor or qualified creditors, if the trustees as such are apparently insolvent.”;
  - (b) in subsection (4), for the words from “on” to the end of that subsection substitute—
    - “(a) by debtor application made by the partnership with the concurrence of a qualified creditor or qualified creditors; or
    - (b) on the petition of—
      - (i) a temporary administrator;
      - (ii) a member State liquidator appointed in main proceedings;
      - (iii) a trustee acting under a trust deed; or
      - (iv) a qualified creditor or qualified creditors, if the partnership is apparently insolvent.”;
  - (c) in subsection (6), for the words from “on” to the end of that subsection substitute—
    - “(a) by debtor application made by a person authorised to act on behalf of the body, with the concurrence of a qualified creditor or qualified creditors; or
    - (b) on the petition of—
      - (i) a temporary administrator;
      - (ii) a member State liquidator appointed in main proceedings; or
      - (iii) a qualified creditor or qualified creditors, if the body is apparently insolvent.”; and
  - (d) in subsection (8), for “and (8)” substitute “, (6A), (8) and (8A)”.
- (5) After section 6A of that Act, insert—

**“6B Debtor application: provision of information**

- (1) Where a debtor application is made, the debtor shall state in the application—
  - (a) whether or not the debtor’s centre of main interests is situated—
    - (i) in the United Kingdom; or
    - (ii) in another member State; and
  - (b) whether not the debtor possesses an establishment—
    - (i) in the United Kingdom; or
    - (ii) in any other member State.
- (2) If, to the debtor’s knowledge, there is a member State liquidator appointed in main proceedings in relation to the debtor, the debtor shall, as soon as reasonably practicable, send a copy of the debtor application to that member State liquidator.”.

(6) After section 8 of that Act, insert—

**“8A Further provisions relating to debtor applications**

- (1) Subject to subsection (2) below, a debtor application may be made at any time.
- (2) A debtor application made in relation to the estate of a limited partnership may be made within such time as may be prescribed.
- (3) The making of, or the concurring in, a debtor application shall bar the effect of any enactment or rule of law relating to the limitation of actions.
- (4) Where, before sequestration is awarded, it becomes apparent that a creditor concurring in a debtor application was ineligible to so concur the Accountant in Bankruptcy shall withdraw him from the application but another creditor may concur in the place of the ineligible creditor and that other creditor shall notify the Accountant in Bankruptcy of that fact.”.

(7) In section 9 of that Act (jurisdiction)—

- (a) in subsection (1), at the beginning insert “Where a petition is presented for the sequestration of an estate,”;
- (b) after subsection (1), insert—

“(1A) The Accountant in Bankruptcy may determine a debtor application for the sequestration of the estate of a living debtor if the debtor had an established place of business in Scotland, or was habitually resident there, at the relevant time.”;

- (c) in subsection (2), at the beginning insert “Where a petition is presented for the sequestration of an estate,”;
- (d) after subsection (2), insert—

“(2A) The Accountant in Bankruptcy may determine a debtor application for the sequestration of the estate of any entity which may be sequestrated by virtue of section 6 of this Act, if the entity—

- (a) had an established place of business in Scotland at the relevant time; or
- (b) was constituted or formed under Scots law, and at any time carried on business in Scotland.”; and

- (e) after subsection (3), insert—

“(3A) Any proceedings under this Act which—

- (a) relate to—
  - (i) a debtor application; or
  - (ii) the sequestration of a debtor’s estate awarded following such an application; and
- (b) may be brought before a sheriff,

shall be brought before the sheriff who would, under subsection (1) or (2) above, have had jurisdiction in respect of a petition for sequestration of the debtor’s estate.”.

(8) In section 12 of that Act (when sequestration is awarded), in subsection (1), for the words from “petition”, where it first occurs, to the end of paragraph (a), substitute

“debtor application is made, the Accountant in Bankruptcy shall award sequestration forthwith if he is satisfied—

- (a) that the application has been made in accordance with the provisions of this Act and any provisions made under this Act;”.

## **15 Debtor applications by low income, low asset debtors**

(1) In section 5 of the 1985 Act, in subsection (2B)(c)—

- (a) the word “either” is repealed; and
- (b) after sub-paragraph (i) insert—

“(ia) is unable to pay his debts and each of the conditions in section 5A of this Act is met;”.

(2) After section 5 of that Act insert—

### **“5A Debtor applications by low income, low asset debtors**

- (1) The conditions referred to in section 5(2B)(c)(ia) of this Act are as follows.
- (2) The debtor’s weekly income (if any) on the date the debtor application is made does not exceed £100 or such other amount as may be prescribed.
- (3) The debtor does not own any land.
- (4) The total value of the debtor’s assets (leaving out of account any liabilities) on the date the debtor application is made does not exceed £1000 or such other amount as may be prescribed.
- (5) The Scottish Ministers may by regulations—
  - (a) make provision as to how the debtor’s weekly income is to be determined;
  - (b) provide that particular descriptions of income are to be excluded for the purposes of subsection (2) above;
  - (c) make provision as to how the value of the debtor’s assets is to be determined;
  - (d) provide that particular descriptions of asset are to be excluded for the purposes of subsection (4) above;
  - (e) make different provision for different classes or description of debtor;
  - (f) add further conditions which must be met before a debtor application may be made by virtue of section 5(2B)(c)(ia) of this Act; and
  - (g) where such further conditions are added—
    - (i) remove; or
    - (ii) otherwise vary,those conditions.”.

### *Jurisdiction*

## **16 Sequestration proceedings to be competent only before sheriff**

(1) In section 9 of the 1985 Act (jurisdiction)—

- (a) in subsection (1)—

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- (i) for “Court of Session” substitute “sheriff”; and
    - (ii) for “Scotland” substitute “the sheriffdom”;
  - (b) in subsection (2)—
    - (i) for “Court of Session” substitute “sheriff”; and
    - (ii) for “Scotland”, in both places where it occurs, substitute “the sheriffdom”;
  - (c) in subsection (3), for “Court of Session” substitute “sheriff”; and
  - (d) subsection (4) is repealed.
- (2) In section 15 of that Act (further provisions relating to award of sequestration)—
  - (a) subsection (1) is repealed;
  - (b) in subsection (2)—
    - (i) for “Court of Session” substitute “sheriff”;
    - (ii) for “it”, where it first occurs, substitute “him and subject to subsection (2A) below”; and
    - (iii) the words from “from” to “remitted” are repealed;
  - (c) after subsection (2), insert—

“(2A) The debtor may, with leave of the sheriff, appeal to the sheriff principal against a transfer under subsection (2) above.”;
  - (d) in subsection (3), for “court” substitute “sheriff”; and
  - (e) in subsection (5), for “clerk of the court” substitute “sheriff clerk”.
- (3) In section 16 of that Act (petitions for recall), in subsection (1), for “Court of Session” substitute “sheriff”.
- (4) In section 17 of that Act (recall)—
  - (a) in subsection (1)—
    - (i) for “Court of Session” substitute “sheriff”; and
    - (ii) for “it”, in the first and third places where it occurs, substitute “he”;
  - (b) in subsection (2)—
    - (i) for “Court” substitute “sheriff”; and
    - (ii) for “it” substitute “he”;
  - (c) in subsection (3)—
    - (i) for “Court” substitute “sheriff”; and
    - (ii) in paragraph (c), for “it” substitute “he”;
  - (d) in subsection (6)—
    - (i) for “Court” substitute “sheriff”; and
    - (ii) for “it”, in the second and third places where it occurs, substitute “he”;
  - (e) in subsection (7)—
    - (i) for “Court” substitute “sheriff”; and
    - (ii) for “it” substitute “he”;
  - (f) in subsection (8), for “clerk of the court” substitute “sheriff clerk”.

*Vesting of estate and dealings of debtor*

**17 Vesting of estate and dealings of debtor**

- (1) In section 31 of the 1985 Act (vesting of estate in trustee at date of sequestration)—
- (a) after subsection (1) insert—
    - “(1A) It shall not be competent for—
      - (a) the trustee; or
      - (b) any person deriving title from the trustee,to complete title to any heritable estate in Scotland vested in the trustee by virtue of his appointment before the expiry of the period mentioned in subsection (1B) below.
  - (1B) That period is the period of 28 days (or such other period as may be prescribed) beginning with the day on which—
    - (a) the certified copy of the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 14 of this Act; or
    - (b) the certified copy of the determination of the Accountant in Bankruptcy awarding sequestration is recorded under subsection (1A) of that section,in the register of inhibitions.”; and
  - (b) in subsection (8), after paragraph (a) insert—
    - “(aa) any property of the debtor, title to which has not been completed by another person deriving right from the debtor;”.
- (2) In section 32 (vesting of estate, and dealings of debtor, after sequestration)—
- (a) in subsection (8) (dealings with debtor after sequestration to be of no effect), after “under” insert “this section or”;
  - (b) in subsection (9) (circumstances where post-sequestration dealings with debtor remain valid), after paragraph (b)(iii) insert “; or
    - (iv) one which satisfies the conditions mentioned in subsection (9ZA) below;”; and
  - (c) after that subsection insert—
    - “(9ZA) The conditions are that —
      - (a) the dealing constitutes—
        - (i) the transfer of incorporeal moveable property; or
        - (ii) the creation, transfer, variation or extinguishing of a real right in heritable property,for which the person dealing with the debtor has given adequate consideration to the debtor, or is willing to give adequate consideration to the trustee;
      - (b) the dealing requires the delivery of a deed; and
      - (c) the delivery occurs during the period beginning with the date of sequestration and ending on the day which falls 7 days after the day on which—

- (i) the certified copy of the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 14 of this Act; or
- (ii) the certified copy of the determination of the Accountant in Bankruptcy awarding sequestration is recorded under subsection (1A) of that section, in the register of inhibitions.”.

*Income received by debtor after sequestration*

**18 Income received by debtor after sequestration**

- (1) Section 32 of the 1985 Act (vesting of estate and dealings of debtor after sequestration) is amended as follows.
- (2) In subsection (1), for “subsection (2)” substitute “subsections (2) and (4B)”.
- (3) After subsection (2), insert—
  - “(2WA) Subject to subsection (4L) below, no application may be made under subsection (2) above after the date on which the debtor’s discharge becomes effective.
  - (2XA) An order made by the sheriff under subsection (2) above shall specify the period during which it has effect and that period—
    - (a) may end after the date on which the debtor’s discharge becomes effective; and
    - (b) shall end no later than 3 years after the date on which the order is made.
  - (2YA) An order made by the sheriff under subsection (2) above may provide that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.
  - (2ZA) If the debtor fails to comply with an order made under subsection (2) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.”.
- (4) After subsection (4), insert—
  - “(4A) The sheriff clerk shall send a copy of any order made under subsection (2) above (and a copy of any variation or recall of such an order) to the Accountant in Bankruptcy.
  - (4B) Where no order has been made under subsection (2) above, a debtor may enter into an agreement in writing with the trustee which provides—
    - (a) that the debtor is to pay to the trustee an amount equal to a specified part or proportion of his income; or
    - (b) that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.
  - (4C) No agreement under subsection (4B) above may be entered into after the date on which the debtor’s discharge becomes effective.

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- (4D) Subsection (2XA) above applies to agreements entered into under subsection (4B) above as it applies to orders made under subsection (2) above.
- (4E) An agreement entered into under subsection (4B) above may, if subsection (4K) below has been complied with, be enforced, subject to subsection (4F) below, as if it were an order made under subsection (2) above.
- (4F) Subsection (2ZA) above does not apply to an agreement entered into under subsection (4B) above.
- (4G) An agreement entered into under subsection (4B) above may be varied—
- (a) by written agreement between the parties; or
  - (b) by the sheriff, on an application made by the trustee, the debtor or any other interested person.
- (4H) The sheriff—
- (a) may not vary an agreement entered into under subsection (4B) above so as to include provision of a kind which could not be included in an order made under subsection (2) above; and
  - (b) shall grant an application to vary such an agreement if and to the extent that the sheriff thinks variation is necessary to determine a suitable amount to allow for the purposes specified in paragraphs (a) and (b) of subsection (2) above, being an amount which shall not be included in the amount to be paid to the trustee.
- (4J) Where a third person pays a sum of money to the trustee under subsection (2YA) or (4B)(b) above, that person shall be discharged of any liability to the debtor to the extent of the sum of money so paid.
- (4K) The trustee shall (unless he is the Accountant in Bankruptcy) send a copy of any agreement entered into under subsection (4B) above (and a copy of any variation of such an agreement) to the Accountant in Bankruptcy.
- (4L) If the debtor fails to comply with an agreement entered into under subsection (4B) above, the sheriff, on the application of the trustee, may make an order under subsection (2) above—
- (a) ending on the date on which the agreement would, had the debtor continued to comply with it, have ended; and
  - (b) on the same terms as the agreement.”.
- (5) In section 1A of that Act (supervisory functions of the Accountant in Bankruptcy), after subsection (1)(b)(ia) (as inserted by section 2(2) of this Act), insert—
- “(iib) orders made under subsection (2) of section 32 of this Act and agreements made under subsection (4B) of that section;”.

*Debtor’s home and other heritable property*

**19 Debtor’s home and other heritable property**

- (1) After section 32(9) of the 1985 Act (circumstances where dealings with debtor not challengeable by permanent trustee), insert—

“(9A) Where the trustee has abandoned to the debtor any heritable property, notice in such form as may be prescribed given to the debtor by the trustee shall be sufficient evidence that the property is vested in the debtor.

(9B) Where the trustee gives notice under subsection (9A) above, he shall, as soon as reasonably practicable after giving the notice, record a certified copy of it in the register of inhibitions.”.

(2) After section 39 of that Act, insert—

**“39A Debtor’s home ceasing to form part of sequestrated estate**

(1) This section applies where a debtor’s sequestrated estate includes any right or interest in the debtor’s family home.

(2) At the end of the period of 3 years beginning with the date of sequestration the right or interest mentioned in subsection (1) above shall—

- (a) cease to form part of the debtor’s sequestrated estate; and
- (b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).

(3) Subsection (2) above shall not apply if, during the period mentioned in that subsection—

- (a) the trustee disposes of or otherwise realises the right or interest mentioned in subsection (1) above;
- (b) the trustee concludes missives for sale of the right or interest;
- (c) the trustee sends a memorandum to the keeper of the register of inhibitions under section 14(4) of this Act;
- (d) the trustee registers in the Land Register of Scotland or, as the case may be, records in the Register of Sasines a notice of title in relation to the right or interest mentioned in subsection (1) above;
- (e) the trustee commences proceedings—
  - (i) to obtain the authority of the sheriff under section 40(1)(b) of this Act to sell or dispose of the right or interest;
  - (ii) in an action for division and sale of the family home; or
  - (iii) in an action for the purpose of obtaining vacant possession of the family home;
- (f) the trustee and the debtor enter into an agreement such as is mentioned in subsection (5) below.

(4) The Scottish Ministers may, by regulations, modify paragraphs (a) to (f) of subsection (3) above so as to—

- (a) add or remove a matter; or
- (b) vary any such matter,

referred to in that subsection.

(5) The agreement referred to in subsection (3)(f) above is an agreement that the debtor shall incur a specified liability to his estate (with or without interest from the date of the agreement) in consideration of which the right or interest mentioned in subsection (1) above shall—

- (a) cease to form part of the debtor’s sequestrated estate; and



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- (b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (6) If the debtor does not inform the trustee or the Accountant in Bankruptcy of his right or interest in the family home before the end of the period of 3 months beginning with the date of sequestration, the period of 3 years mentioned in subsection (2) above—
  - (a) shall not begin with the date of sequestration; but
  - (b) shall begin with the date on which the trustee or the Accountant in Bankruptcy becomes aware of the debtor’s right or interest.
- (7) The sheriff may, on the application of the trustee, substitute for the period of 3 years mentioned in subsection (2) above a longer period—
  - (a) in prescribed circumstances; and
  - (b) in such other circumstances as the sheriff thinks appropriate.
- (8) The Scottish Ministers may, by regulations—
  - (a) make provision for this section to have effect with the substitution, in such circumstances as the regulations may prescribe, of a shorter period for the period of 3 years mentioned in subsection (2) above;
  - (b) prescribe circumstances in which this section does not apply;
  - (c) prescribe circumstances in which a sheriff may disapply this section;
  - (d) make provision requiring the trustee to give notice that this section applies or does not apply;
  - (e) make provision about compensation;
  - (f) make such provision as they consider necessary or expedient in consequence of regulations made under paragraphs (a) to (e) above.
- (9) In this section, “family home” has the same meaning as in section 40 of this Act.”.

#### *Protected trust deeds*

## **20 Modification of provisions relating to protected trust deeds**

- (1) For paragraphs 5 to 13 of Schedule 5 to the 1985 Act (protected trust deeds) substitute—
  - “5 (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;
    - (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 sub-paragraph (a) above are not fulfilled;

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- (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;
  - (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.”.
- (2) In section 73(1) of that Act (interpretation), for the definition of “protected trust deed” substitute—
- ““protected trust deed” means a trust deed which has been granted protected status in accordance with regulations made under paragraph 5 of Schedule 5 to this Act;”.

*Modification of composition procedure*

## 21 Modification of composition procedure

- (1) Schedule 4 to the 1985 Act (discharge on composition) is amended as follows.
- (2) In paragraph 1(1), for “clerk issues the act and warrant to the permanent” substitute “or, as the case may be, the Accountant in Bankruptcy appoints the”.
- (3) In paragraph 4, for sub-paragraphs (c) and (d) substitute—
- “(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.”.
- (4) For paragraphs 5 to 8, substitute—
- “5 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.
- 6 Where, within the period of 5 weeks beginning with the date of publication of the notice under paragraph 4(b) of this Schedule, the trustee has not received notification in writing from a majority in number or not less than one third in value of the creditors that they reject the offer of composition, the offer of composition shall be approved by the trustee.
- 7 Where the trustee has received notification within the period and to the extent mentioned in paragraph 6 of this Schedule, the offer of composition shall be rejected by the trustee.
- 8 Any creditor who has been sent a copy of the terms of the offer as referred to in paragraph 4(c)(i) of this Schedule and who has not notified the trustee as mentioned in paragraph 6 of this Schedule that he objects to the offer shall be treated for all purposes as if he had accepted the offer.
- 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.
- 8B (1) Where an offer of composition is approved, a creditor who has not been sent a copy of the terms of the offer as mentioned in paragraph 4(c)(i) of this Schedule or who has notified the trustee of his rejection of the offer as mentioned in paragraph 6 of this Schedule may, not more than 28 days after the expiry of the period mentioned in said paragraph 6, appeal to the Accountant in Bankruptcy against such approval.
- (2) In determining an appeal under sub-paragraph (1) above, the Accountant in Bankruptcy may—
- (a) approve or reject the offer of composition; and
  - (b) make such other determination in consequence of that approval or rejection as he thinks fit.”.
- (5) In paragraph 9(3), for “paragraph 9(2) and (3) of Schedule 2 to” substitute “section 53A of”.
- (6) In paragraph 10—
- (a) for “lodged with the sheriff clerk” substitute “sent to the Accountant in Bankruptcy”; and
  - (b) in sub-paragraph (a), for “permanent trustee” substitute “trustee (where he is not the Accountant in Bankruptcy)”.
- (7) For paragraph 11, substitute—
- “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 sub-paragraph (2) below.
- (2) Those certificates are—
- (a) a certificate discharging the debtor; and
  - (b) a certificate discharging the trustee.
- (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.”.

- (8) In paragraph 12, for “An order under paragraph 11” substitute “A certificate granted under paragraph 11(1)”.
- (9) In paragraph 14—
- (a) the words “the sheriff makes an order approving” are repealed; and
  - (b) after “composition”, where it first occurs, insert “is approved”.
- (10) In paragraph 16—
- (a) in sub-paragraph (1), for the words from “an” to “effective” substitute “the granting of a certificate under paragraph 11(1) of this Schedule discharging the debtor”; and
  - (b) in sub-paragraph (2), for “an order under paragraph 11 above” substitute “the granting of a certificate under paragraph 11(1) of this Schedule”.
- (11) In paragraph 17(1)—
- (a) the words from “Without” to “decrees,” are repealed; and
  - (b) for the words from “order” to “and”, where it first occurs, substitute “approval of the offer of composition and the granting of certificates”.
- (12) In paragraph 18(1)—
- (a) the words from “Without” to “decrees,” are repealed; and
  - (b) for “an order under paragraph 11” substitute “a certificate granted under paragraph 11(1)”.
- (13) In paragraph 4 of Schedule 1 to that Act (determination of amount of creditor’s claim), the words “by the sheriff” are repealed.

*Status and powers of Accountant in Bankruptcy*

**22 Status of Accountant in Bankruptcy as officer of the court**

In section 1 of the 1985 Act (Accountant in Bankruptcy), after subsection (1), insert—

“(1A) The Accountant in Bankruptcy shall be an officer of the court.”.

**23 Accountant in Bankruptcy’s power to investigate trustees under protected trust deeds**

- (1) In Schedule 5 to the 1985 Act (voluntary trust deeds for creditors), after paragraph 1, insert—

*“Accountant in Bankruptcy’s power to carry out audit*

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

- (2) In section 1A(1)(a) of that Act (supervision of persons by the Accountant in Bankruptcy), after sub-paragraph (ii), insert—
- “(iia) trustees under protected trust deeds;”.

## Offences

### 24 Modification of offences under section 67 of the 1985 Act

- (1) Section 67 of the 1985 Act (general offences by debtor) is amended as follows.
- (2) In subsection (2), after “conceals” insert “, disposes of”.
- (3) Subsection (8) is repealed.
- (4) In subsection (9), for “to the extent of £100 (or such other sum as may be prescribed) or more” substitute—
  - “(a) to the extent of £500 (or such other sum as may be prescribed) or more; or
  - (b) of any amount, where, at the time of obtaining credit, the debtor has debts amounting to £1,000 (or such other sum as may be prescribed) or more.”
- (5) After subsection (9), insert—

“(9A) For the purposes of calculating an amount of—

  - (a) credit mentioned in subsection (9) above; or
  - (b) debts mentioned in paragraph (b) of that subsection,

no account shall be taken of any credit obtained or, as the case may be, any liability for charges in respect of—

  - (i) any of the supplies mentioned in section 70(4) of this Act; and
  - (ii) any council tax within the meaning of section 99(1) of the Local Government Finance Act 1992 (c. 14).”
  - (6) In subsection (10)(a)—
    - (a) the word “or” after sub-paragraph (i) is repealed;
    - (b) after sub-paragraph (ii) insert “; or
    - (iii) a person subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England or Wales,”; and
    - (c) for “either case” substitute “the case mentioned in sub-paragraph (i) or (ii) above”.
  - (7) For subsection (10)(c) substitute—

“(c) the relevant information about the status of the debtor is the information that—

    - (i) his estate has been sequestrated and that he has not been discharged;
    - (ii) he is an undischarged bankrupt in England and Wales or Northern Ireland; or
    - (iii) he is subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England or Wales,

as the case may be.”
  - (8) After subsection (11) insert—

“(11A) A person shall be guilty of an offence under subsection (1), (2), (4), (5), (6) or (7) above if that person does or, as the case may be, fails to do, in any place in England and Wales or Northern Ireland, anything which would, if done or, as the case may be, not done in Scotland, be an offence under the subsection in question.”.

*Miscellaneous and general*

**25 Debt limits in sequestrations**

In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—

- (a) in subsection (2B)(a), for “£1,500” substitute “£3,000 or such sum as may be prescribed”; and
- (b) in subsection (4), for “£1,500”, in both places where it occurs, substitute “£3,000”.

**26 Creditor to provide debt advice and information package**

In section 5 of the 1985 Act, after subsection (2C), insert—

“(2D) No petition may be presented under subsection (2)(b)(i) above unless the qualified creditor has provided, by such time prior to the presentation of the petition as may be prescribed, the debtor with a debt advice and information package.

(2E) In subsection (2D) above, “debt advice and information package” means the debt advice and information package referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17).”.

**27 Continuation of sequestration proceedings**

(1) Section 12 of the 1985 Act is amended as follows.

(2) In subsection (3), for “subsection (3A)” substitute “subsections (3A) to (3C)”.

(3) After subsection (3A) insert—

“(3B) Where the sheriff is satisfied that the debtor shall, before the expiry of the period of 42 days beginning with the day on which the debtor appears before the sheriff, pay or satisfy—

- (a) the debt in respect of which the debtor became apparently insolvent; and
- (b) any other debt due by the debtor to the petitioner and any creditor concurring in the petition,

the sheriff may continue the petition for a period of no more than 42 days.

(3C) Where the sheriff is satisfied—

- (a) that a debt payment programme (within the meaning of Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)) relating to—

- (i) the debt in respect of which the debtor became apparently insolvent; and

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

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- (ii) any other debt due by the debtor to the petitioner and any creditor concurring in the petition,  
has been applied for and has not yet been approved or rejected; or
- (b) that such a debt payment programme will be applied for,  
the sheriff may continue the petition for such period as he thinks fit.”.

## **28 Abolition of summary administration**

- (1) The following provisions of the 1985 Act are repealed.
- (2) In section 21A of that Act (calling of statutory meeting where interim trustee is Accountant in Bankruptcy), in subsection (3)(b)—
  - (a) sub-paragraph (ii); and
  - (b) the word “and” immediately preceding that sub-paragraph.
- (3) Section 23A of that Act (summary administration) and Schedule 2A to that Act.
- (4) In section 24 of that Act (election of permanent trustee), subsections (3B), (4A) and (5).
- (5) In section 25 of that Act (confirmation of permanent trustee), subsection (2A).

## **29 Non-vested contingent interest reinvested in debtor**

In section 31 of the 1985 Act (vesting of estate at date of sequestration), after subsection (5), insert—

“(5A) Any non-vested contingent interest vested in the trustee by virtue of subsection (5) above shall, where it remains so vested in the trustee on the date on which the debtor’s discharge becomes effective, be reinvested in the debtor as if an assignation of that interest had been executed by the trustee and intimation thereof made at that date.”.

## **30 Debtor’s requirement to give account of state of affairs**

After section 43 of the 1985 Act, insert—

### **“43A Debtor’s requirement to give account of state of affairs**

- (1) This section applies to a debtor who—
  - (a) has not been discharged under this Act; or
  - (b) is subject to—
    - (i) an order made by the sheriff under subsection (2) of section 32 of this Act; or
    - (ii) an agreement entered into under subsection (4B) of that section.
- (2) The trustee shall, at the end of—
  - (a) the period of 6 months beginning with the date of sequestration; and
  - (b) each subsequent period of 6 months,require the debtor to give an account in writing, in such form as may be prescribed, of his current state of affairs.”.

### 31 **Restriction of debtor’s right to appeal under sections 49(6) and 53(6) of the 1985 Act**

- (1) In section 49 of the 1985 Act (adjudication of claims)—
- (a) in subsection (6), after “debtor” insert “(subject to subsection (6A) below)”; and
  - (b) after subsection (6), insert—
 

“(6A) A debtor may appeal under subsection (6) above if, and only if, he satisfies the sheriff that he has, or is likely to have, a pecuniary interest in the outcome of the appeal.”.
- (2) In section 53 of that Act (procedure after end of accounting period)—
- (a) in subsection (6), after “debtor” insert “(subject to subsection (6A) below)”; and
  - (b) after subsection (6), insert—
 

“(6A) A debtor may appeal under subsection (6) above if, and only if, he satisfies the Accountant in Bankruptcy or, as the case may be, the sheriff that he has, or is likely to have, a pecuniary interest in the outcome of the appeal.”.

### 32 **Status of order on petition to convert protected trust deed into sequestration**

After section 59C(2) of the 1985 Act (content of court order converting protected trust deed into sequestration), insert—

- “(2A) The provisions of this Act shall apply to an order made by the sheriff under subsection (1) above as if it was a determination by the Accountant in Bankruptcy of a debtor application under section 12(1) of this Act and in relation to which the member State liquidator was a concurring creditor.”.

### 33 **Power to provide for lay representation in sequestration proceedings**

In section 32(1) of the Sheriff Courts (Scotland) Act 1971 (c. 58) (power of Court of Session to regulate civil procedure in sheriff court), after paragraph (l) insert—

- “(m) permitting a debtor appearing before a sheriff under section 12 of the Bankruptcy (Scotland) Act 1985 (c. 66) (award of sequestration) to be represented, in such circumstances as may be specified in the act of sederunt, by a person who is neither an advocate nor a solicitor.”.

### 34 **Treatment of student loans on sequestration**

- (1) In section 73B(12) of the Education (Scotland) Act 1980 (c. 44) (power to make provision in relation to treatment of student loans upon discharge under the 1985 Act), after “receive,” insert “before, on or”.
- (2) In paragraph 6 of Schedule 2 to the Education (Student Loans) Act 1990 (c. 6) (treatment of student loans on sequestration), which, notwithstanding its repeal by section 44 of and Schedule 4 to the Teaching and Higher Education Act 1998 (c. 30), is saved by virtue of article 3 of the Teaching and Higher Education Act 1998 (Commencement No. 2 and Transitional Provisions) Order 1998 (S.I. 1998 No. 2004)



- (a) after “Where,” insert “before, on or”; and
- (b) after “before” insert “, on”.

### **35 Certain regulations under the 1985 Act: procedure**

In section 72 of the 1985 Act (regulations)—

- (a) the existing words become subsection (1);
- (b) at the beginning insert “Subject to subsection (2) below,”; and
- (c) at the end insert—

“(2) No regulations such as are mentioned in subsection (3) below may be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

(3) The regulations are—

- (a) regulations made under—
  - (i) subsection (2B)(a) and (4) of section 5;
  - (ii) section 5A; and
  - (iii) section 39A(4),of this Act; and
- (b) the first regulations under paragraph 5 of Schedule 5 to this Act made after the commencement of section 20 of the Bankruptcy and Diligence etc. (Scotland) Act [2007 \(asp 3\)](#).”.

### **36 Minor and consequential amendments of the 1985 Act**

Schedule 1 to this Act, which contains minor amendments of the 1985 Act and amendments of that Act consequential on the provisions of this Part, has effect.