Bankruptcy and Debt Advice (Scotland) Bill

[AS INTRODUCED]

CONTENTS

Section

Advice and education
1 Sequestration of estate of living debtor: money advice
2 Financial education for debtor

Payments by debtor following sequestration
3 Debtor’s contribution: common financial tool
4 Debtor contribution order

Sequestration where debtor has few assets
5 Debtor application
6 Circumstances where Accountant in Bankruptcy appointed as trustee
7 Discharge, conditions etc.

Moratorium on diligence
8 Moratorium on diligence

Application for sequestration
9 Statement of undertakings
10 Debtor application: incomplete or inappropriate application
11 Sequestration: application by executor
12 Concurrent proceedings for sequestration: recall

Administration of estate
13 Submission of claims to trustee
14 First accounting period
15 Vesting of estate after sequestration

Discharge following sequestration
16 Discharge of debtor
17 Repeal of discharge on composition
18 Deferral of discharge where debtor cannot be traced
19 Unclaimed dividends and unapplied balances
20 Assets discovered after trustee discharge: appointment of trustee

Records
21 Register of insolvencies
22 Sederunt book
23 Abolition of certain requirements in relation to Edinburgh Gazette
Functions of sheriff and Accountant in Bankruptcy in sequestration

24 Application by trustee for direction on matters in sequestration
25 Recall of sequestration by sheriff
26 Recall of sequestration by Accountant in Bankruptcy
27 Appointment of replacement trustee
28 Replacement of trustee acting in more than one sequestration
29 Removal of trustee and trustee not acting
30 Contractual powers of trustee
31 Bankruptcy restrictions order
32 Conversion of protected trust deed into sequestration
33 Power to cure defects in procedure
34 Regulations: applications to Accountant in Bankruptcy etc.
35 Valuation of debts depending on contingency

Review of decisions made by Accountant in Bankruptcy

36 Review of decisions about interim trustee
37 Review of decision not to award sequestration
38 Review of decisions about replacement trustee
39 Review of decisions about adjudication of creditor’s claims
40 Review of decision about discharge of trustee

Miscellaneous amendments

41 Failure to send statements of assets and liabilities
42 Time limits for sequestration of limited partnership
43 Petition for sequestration by trustee under trust deed
44 Effect of sequestration: renewal of period of inhibition etc.
45 Division and sale of debtor’s family home
46 Effect of discharge of debtor
47 Offence of obtaining credit: increase in amount
48 Bankruptcy restrictions undertaking: repeal

General

49 Meaning of “the 1985 Act”
50 Ancillary provision
51 Minor and consequential amendments and repeals
52 Commencement
53 Short title

Schedule 1—Schedule A1 to the 1985 Act
Schedule 2—Information to be included in the sederunt book
Schedule 3—Minor and consequential amendments
Schedule 4—Repeals
Bankruptcy and Debt Advice (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to amend the Bankruptcy (Scotland) Act 1985; and for connected purposes.

Advice and education

1 Sequestration of estate of living debtor: money advice

(1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—
(a) in subsection (2B), after paragraph (b), insert—
“(ba) the debtor has obtained the advice of a money adviser in accordance with section 5C(1),”, and
(b) after subsection (4B), insert—
“(4BA) A debtor application must—
(a) include a declaration by the money adviser who provided the advice referred to in section 5C(1) that such advice has been given, and
(b) specify the name and address of the money adviser.”.

(2) After section 5B of the 1985 Act, insert—

“5C Money advice

(1) An application for the sequestration of a living debtor’s estate may not be made unless the debtor has obtained from a money adviser—
(a) advice on the debtor’s financial circumstances,
(b) advice on the effect of the proposed sequestration of the debtor’s estate,
(c) advice on the preparation of the application, and
(d) advice on such other matters as may be prescribed.

(2) In this Act, “money adviser” means a person who—
(a) is not an associate of the debtor, and
(b) is of a prescribed description or falls within a prescribed class.”.
2 Financial education for debtor

After section 43A of the 1985 Act, insert—

“43B Financial education

(1) The trustee must notify a living debtor that the debtor is required to undertake a prescribed course of financial education (a “financial education course”) specified by the trustee if, in the opinion of the trustee—

(a) any of the circumstances mentioned in subsection (2) apply, and

(b) undertaking the course would be appropriate for the debtor.

(2) The circumstances are—

(a) in the period of 5 years ending on the date on which the sequestration of the debtor’s estate was awarded—

(i) the debtor’s estate was sequestrated,

(ii) the debtor granted a protected trust deed,

(iii) an analogous remedy (within the meaning of section 10(7)) was in force in respect of the debtor, or

(iv) the debtor participated in a debt management programme under which the debtor made regular payments (including in particular a programme approved in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)),

(b) the debtor is subject to, or under investigation with a view to an application being made for, a bankruptcy restrictions order,

(c) the trustee considers that the pattern of the debtor’s behaviour, whether before or after the award of sequestration, is such that the debtor would benefit from a financial education course,

(d) the debtor agrees to undertake a financial education course.

(3) A debtor must not be required to undertake or, as the case may be, complete the financial education course specified by the trustee if, in the opinion of the trustee—

(a) the debtor is unable to participate in the course as a result of the debtor’s health (including by reason of disability or physical or mental illness), or

(b) the debtor has completed a financial education course in the period of 5 years ending on the date on which the sequestration of the debtor’s estate was awarded.

(4) Regulations under subsection (1) may in particular—

(a) prescribe the content, format and method of delivery of a course,

(b) prescribe different courses for different circumstances,

(c) make provision for particular courses to be specified by a trustee where particular circumstances in subsection (2) apply.”.
3 Payments by debtor following sequestration

Debtor’s contribution: common financial tool

(1) After section 5C of the 1985 Act (inserted by section 1(2)), insert—

“5D Assessment of debtor’s contribution

(1) The Scottish Ministers may by regulations specify a method (the “common financial tool”) to be used to assess an appropriate amount of a living debtor’s income to be paid to a trustee after the sequestration of the debtor’s estate (the “debtor’s contribution”).

(2) Regulations under subsection (1) may in particular—

(a) prescribe a method for assessing a debtor’s assets, income, liabilities and expenditure,

(b) prescribe a method for determining a reasonable amount of expenditure for a debtor after the sequestration of the debtor’s estate,

(c) prescribe the proportion of a debtor’s income that is to constitute the debtor’s contribution,

(d) prescribe that a method determined by another person is to be used to assess the amount of a debtor’s contribution.

(3) The common financial tool must ensure that the amount of reasonable expenditure for a debtor is not less than the total amount of any income received by the debtor by way of guaranteed minimum pension (within the meaning of the Pension Schemes Act 1993 (c.48)).

(4) The common financial tool must ensure that an amount is allowed for—

(a) aliment for the debtor,

(b) the debtor’s relevant obligations.

(5) The “debtor’s relevant obligations” are—

(a) any obligation of aliment owed by the debtor (“obligation of aliment” having the same meaning as in the Family Law (Scotland) Act 1985 (c.37)),

(b) any obligation of the debtor to make a periodical allowance to a former spouse or former civil partner, and

(c) any obligation of the debtor to pay child support maintenance under the Child Support Act 1991 (c.48).

(6) The amount allowed for the debtor’s relevant obligations referred to in paragraphs (a) and (b) of subsection (5) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance.”.

(2) In section 7(2) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (debt payment programmes: power to make further provision), after paragraph (bc) insert—

“(bd) the method of assessing the amount of a debtor’s assets, income, liabilities and expenditure in considering applications for the approval, or the variation, of a debt payment programme,”.
4  
**Debtor contribution order**

After section 32 of the 1985 Act, insert—

“32A  
**Debtor contribution order**

(1) The Accountant in Bankruptcy may make an order fixing the debtor’s contribution (a “debtor contribution order”—

(a) in the case of a debtor application, at the same time as awarding sequestration of the debtor’s estate,

(b) in the case of an award of sequestration following a petition under section 5(2)(b), after considering initial proposals for the debtor’s contribution provided by the trustee.

(2) In deciding whether to make a debtor contribution order, the Accountant in Bankruptcy must use the common financial tool to assess the debtor’s contribution.

(3) A debtor contribution order may be made irrespective of sections 11 and 12 of the Welfare Reform and Pensions Act 1999 (c.30).

(4) A debtor contribution order 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.

(5) Where a third person pays a sum of money to the trustee in accordance with subsection (4), the third person is discharged from any liability to the debtor to the extent of the sum so paid.

(6) The Accountant in Bankruptcy must, immediately following the making of a debtor contribution order, give written notice of the order to—

(a) the debtor,

(b) the trustee, and

(c) any third person mentioned in the order.

32B  
**Debtor contribution order: payment period and intervals**

(1) A debtor contribution order must contain provision requiring the debtor to pay the debtor’s contribution—

(a) during the payment period, and

(b) at regular intervals determined by the person making or varying the order.

(2) In subsection (1)(a), “payment period” means—

(a) the period of 48 months beginning with the date of the first payment,

(b) such shorter period as is determined by the person making or varying the order, or

(c) such longer period as is—

(i) determined by the trustee where there is a period during which the debtor did not pay the debtor’s contribution, or

(ii) agreed by the debtor and the trustee.
(3) The person making or varying the order may determine a shorter period under subsection (2)(b) only if, in the opinion of that person, payment of the debtor’s contribution during the shorter period would allow a distribution of the debtor’s estate to meet in full all of the debts mentioned in section 51.

(4) The person making or varying the order is to determine a date on which the first payment is to be made.

32C Effect of debtor contribution order

(1) The debtor must pay to the trustee the debtor’s contribution—

   (a) fixed by the Accountant in Bankruptcy in making the debtor contribution order, or
   
   (b) varied in accordance with section 32E.

(2) The requirement to pay the debtor’s contribution applies irrespective of the debtor’s discharge.

(3) If the value of the debtor’s estate and income when taken possession of by the trustee is sufficient to allow a distribution of the debtor’s estate to meet in full all of the debts mentioned in section 51, any debtor contribution order ceases to have effect.

32D Deductions from debtor’s earnings

(1) Subsections (2) to (4) apply where a debtor is required under a debtor contribution order to pay to the trustee an amount from the debtor’s earnings from employment.

(2) The debtor must give the person by whom the debtor is employed an instruction to make—

   (a) deductions of specified amounts from the debtor’s earnings, and
   
   (b) payments to the trustee of the amounts so deducted.

(3) The trustee may give the person by whom the debtor is employed an instruction of the type mentioned in subsection (2) if—

   (a) the debtor fails to comply with the requirements imposed by that subsection, and
   
   (b) the debtor fails to pay the debtor’s contribution in respect of 2 payment intervals applying by virtue of the debtor contribution order.

(4) The employer must comply with an instruction provided in accordance with subsection (2) or (3).

(5) The Scottish Ministers may by regulations make provision about instructions to be provided under this section, including in particular—

   (a) the form in which an instruction must be made,
   
   (b) the manner in which an instruction provided in accordance with subsection (2) or (3) affects an employer, and
   
   (c) the consequence of any failure of an employer to comply with the duty imposed by subsection (4).
32E Variation and removal of debtor contribution order by trustee

(1) The trustee may vary or quash a debtor contribution order—

(a) on the application of the debtor, following any change in the debtor’s circumstances,

(b) if the trustee considers it to be appropriate, following any change in the debtor’s circumstances, or

(c) if the trustee considers it to be appropriate when—

(i) applying for the discharge of the debtor under section 54(2), or

(ii) granting a discharge under section 54A(2).

(2) In deciding whether to vary or quash a debtor contribution order, the trustee must use the common financial tool to assess the debtor’s contribution.

(3) A decision by the trustee under subsection (1)(b) must not take effect on a day before the end of the period of 14 days beginning with the day on which the decision is made.

(4) The trustee must notify in writing the persons mentioned in subsection (5) immediately following—

(a) any variation or quashing of a debtor contribution order,

(b) any refusal of an application.

(5) The persons are—

(a) the debtor,

(b) the Accountant in Bankruptcy (if the trustee is not the Accountant in Bankruptcy),

(c) any third person required to make a payment under the debtor contribution order, and

(d) any other interested person.

32F Payment break

(1) The trustee may, on the application of the debtor, extend the payment period of a debtor contribution order by granting a payment break.

(2) A “payment break” is a period not exceeding 6 months during which payments of the debtor contribution order are deferred.

(3) A debtor may apply for a payment break if—

(a) there has been a reduction of at least 50% in the debtor’s disposable income (as determined using the common financial tool) as a result of any of the circumstances mentioned in subsection (4) arising in relation to the debtor, and

(b) the debtor has not previously applied for a payment break in relation to a debtor contribution order applying after the sequestration of the debtor’s estate.

(4) The circumstances are—

(a) a period of unemployment or change in employment,
(b) a period of leave from employment because of the birth or adoption of a child or the need to care for a dependant,
(c) a period of illness of the debtor,
(d) a divorce or dissolution of civil partnership,
(e) a separation from a person to whom the debtor is married or is the civil partner,
(f) the death of a person who, along with the debtor, cared for a dependant of the debtor.

(5) An application for a payment break must specify the period during which the debtor wishes payments to be deferred.

(6) If, in the opinion of the trustee, a payment break is fair and reasonable, the trustee may grant a payment break on such conditions and for such period as the trustee thinks fit.

(7) The trustee must notify in writing the grant of a payment break to—
(a) the debtor,
(b) the Accountant in Bankruptcy (if the trustee is not the Accountant in Bankruptcy), and
(c) any third person required to make a payment under the debtor contribution order.

(8) If the trustee decides not to grant a payment break, the trustee must notify the debtor of that decision and of the reasons.

(9) The payment period in a debtor contribution order is deemed to be varied by the addition to the period of any payment break granted under this section.

32G Sections 32E and 32F: review and appeal

(1) The debtor or any other interested person may apply to the Accountant in Bankruptcy for a review of a decision by the trustee under section 32E or 32F.

(2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the decision is made.

(3) If an application under subsection (1) relates to a decision by the trustee under section 32E(1)(b), the decision is suspended until the determination of that review by the Accountant in Bankruptcy.

(4) If an application for a review under subsection (1) is made, the Accountant in Bankruptcy must—
(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
(b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

(5) The trustee or the debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (4)(b) before the expiry of the period of 14 days beginning with the date of the decision.”.
5 Debtor application

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

(a) in subsection (2)(a), after “subsection” insert “(2ZA) or”, and

(b) after subsection (2), insert—

“(2ZA) This subsection applies to the debtor where—

(a) the debtor—

(i) has been assessed by the common financial tool as requiring to make no debtor’s contribution, or

(ii) has been in receipt of a prescribed payment for a period of at least 6 months ending with the day on which the application is made,

(b) the total amount of the debtor’s debts (including interest) at the date the debtor application is made is—

(i) not less than £1500 or such other sum as may be prescribed, and

(ii) no more than £10000 or such other sum as may be prescribed,

(c) 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 £2000 or such other amount as may be prescribed,

(d) the value of a single asset of the debtor does not exceed £1000 or such other amount as may be prescribed,

(e) the debtor does not own land,

(f) within the prescribed period, the debtor has been granted a certificate for sequestration of the debtor’s estate in accordance with section 5B,

(g) in the period of 10 years ending on the day before the day on which the debtor application is made or such other period as may be prescribed no award of sequestration has been made against the debtor in pursuance of an application made by the debtor by virtue of this subsection, and

(h) in the period of 5 years ending on the day before the day on which the debtor application is made no award of sequestration has been made against the debtor in pursuance of—

(i) an application made by the debtor other than by virtue of this subsection, or

(ii) a petition.

(2ZB) For the purposes of subsection (2ZA)(c) and (d)—

(a) any property of the debtor that is of a type mentioned in section 33(1) is not to be regarded as an asset,

(b) if the debtor reasonably requires the use of a vehicle, any vehicle owned by the debtor the value of which does not exceed £3000 or such other amount as may be prescribed is not to be regarded as an asset,

(c) any other property of the debtor that is of a prescribed type is not to be regarded as an asset.
(2ZC) For the purposes of subsection (2ZA)(c) and (d), the Scottish Ministers may by regulations make provision about how the value of the debtor’s assets is to be determined.

(2ZD) The Scottish Ministers may by regulations modify subsection (2ZA).

(2ZE) Schedule A1 to this Act makes further provision about the application of certain provisions of this Act in relation to a debtor to whom subsection (2ZA) applies.”.

(2) Before Schedule 1 to the 1985 Act, insert the Schedule A1 set out in schedule 1 to this Act.

6 Circumstances where Accountant in Bankruptcy appointed as trustee

In section 2 of the 1985 Act (appointment and functions of trustee in sequestration)—

(a) in subsection (1A), for “(1C)” substitute “(1D)”, and

(b) after subsection (1C) insert—

“(1D) The Accountant in Bankruptcy is not to make an appointment under subsection (1A) where—

(a) the debtor application is made by a debtor to whom section 5(2ZA) applies, and

(b) the Accountant in Bankruptcy awards sequestration of the debtor’s estate.”.

7 Discharge, conditions etc.

(1) After section 54B of the 1985 Act (inserted by section 16), insert—

“54C Debtor to whom section 5(2ZA) applies: discharge

(1) Where section 5(2ZA) applies to a debtor, the debtor is discharged on the date which is 6 months after the date on which sequestration is awarded.

(2) A debtor may, following a discharge, apply to the Accountant in Bankruptcy for a certificate of discharge in the prescribed form.”.

(2) After section 55 of the 1985 Act, insert—

“55A Discharge under section 54C: conditions

(1) This section applies where a debtor is discharged under section 54C.

(2) During the relevant period the debtor must comply with the condition in subsection (3) before the debtor, either alone or jointly with another person, obtains credit—

(a) to the extent of £2000 (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 £1000 (or such other sum as may be prescribed) or more.

(3) The condition is that the debtor must inform the person who is providing credit to the debtor (or, as the case may be, jointly to the debtor and another person) that the debtor is required to comply with the conditions in this section.
(4) During the relevant period, the debtor must not engage (whether directly or
indirectly) in a business under a name other than that to which the discharge
relates unless the debtor complies with the condition in subsection (5).

(5) The condition is that the debtor must inform any person with whom the debtor
enters into any business transaction of the name of the business to which the
discharge relates.

(6) In this section, “relevant period” means the period of 6 months beginning with
the date of discharge.

55B Section 55A: sanctions

(1) If a debtor fails to comply with the requirement imposed by subsection (2) or
(4) of section 55A, that section applies in relation to the debtor as if the
relevant period were the period of 12 months beginning with the date of
discharge of the debtor.

(2) If a debtor fails to comply with the requirement imposed by subsection (2) or
(4) of section 55A during the period when the section applies in relation to the
debtor by virtue of subsection (1), the debtor commits an offence.

(3) A debtor who is guilty of an offence under subsection (2) is liable on summary
conviction to—
   (a) a fine not exceeding the statutory maximum,
   (b) imprisonment for—
       (i) a term not exceeding 3 months, or
       (ii) a term not exceeding 6 months, if the person has previously been
            convicted of an offence inferring dishonest appropriation of
            property or an attempt at such appropriation, or
   (c) both such fine and imprisonment.

(4) A debtor who is guilty of an offence under subsection (2) is liable on
conviction on indictment to—
   (a) a fine,
   (b) imprisonment for a term not exceeding 2 years, or
   (c) both such fine and imprisonment.”.

Moratorium on diligence

8 Moratorium on diligence

After section 4 of the 1985 Act, insert—

“Moratorium on diligence

4A Notice of intention to apply: debtor application etc.

(1) A person may give written notice to the Accountant in Bankruptcy of the
person’s intention—
   (a) to make a debtor application for sequestration under section 5,
(b) to seek to fulfil the conditions required in order for a trust deed granted by or on behalf of that person to be granted the status of protected trust deed,

(c) to apply for the approval of a debt payment programme in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17).

(2) A person may not give a notice if that person has given a notice under subsection (1) in the immediately preceding period of 12 months.

(3) The Accountant in Bankruptcy must, without delay after receipt of a notice under subsection (1), enter in the registers mentioned in subsection (4)—

(a) the name of the person who gave the notice, and

(b) such other information as the Accountant in Bankruptcy considers appropriate in relation to that person.

(4) The registers are—

(a) the register of insolvencies, and

(b) the register of debt payment programmes established and maintained in accordance with section 7 of the Debt Arrangement and Attachment (Scotland) Act 2002 (the “DAS register”).

4B Notice of intention to apply: sequestration of estate under section 6

(1) A person may give written notice to the Accountant in Bankruptcy of the person’s intention to make a debtor application under section 6.

(2) A person may not give a notice in respect of an estate mentioned in section 6 if any person has given a notice under subsection (1) in respect of the same estate in the immediately preceding period of 12 months.

(3) The Accountant in Bankruptcy must, without delay after receipt of a notice under subsection (1), enter in the register of insolvencies—

(a) the name of the person who is the subject of the notice, and

(b) such other information as the Accountant in Bankruptcy considers appropriate in relation to that person.

4C Moratorium on diligence

(1) This section applies where a person gives notice to the Accountant in Bankruptcy in accordance with section 4A(1) or 4B(1).

(2) A moratorium on diligence applies in relation to the person who is the subject of the notice for the moratorium period determined in accordance with section 4D.

(3) While a moratorium on diligence applies in relation to the person it is not competent—

(a) to serve a charge for payment in respect of any debt owed by the person,

(b) to commence or execute any diligence to enforce payment of any debt owed by the person,
(c) to found on any debt owed by the person in presenting, or concurring in the presentation of, a petition for sequestration of the person’s estate, or

(d) in the case where an arrestment mentioned in subsection (1) of section 73J of the Debtors (Scotland) Act 1987 (c.18) has been granted in respect of funds due to the person, to release funds to the creditor under subsection (2) of that section.

(4) The moratorium period applying in relation to the person is to be disregarded for the purposes of determining the period mentioned in section 73J(3) of the Debtors (Scotland) Act 1987 (c.18).

4D Period of moratorium

(1) The moratorium period applying in relation to the person is the period which—

(a) begins on the day on which an entry is made in the register of insolvencies under section 4A(3) or 4B(3), and

(b) ends on—

(i) the day which is 6 weeks after that day,

(ii) such earlier day as is mentioned in subsection (2), or

(iii) if subsection (3), (5) or (7) applies, such later day as is determined in accordance with subsection (4), (6) or (8).

(2) The earlier day is the day on which, in relation to the person who is the subject of the moratorium—

(a) an entry is made in the register of insolvencies recording the award of sequestration of the estate,

(b) an entry is made in the register of insolvencies recording that a trust deed granted by the person has been granted or refused protected status,

(c) an entry is made in the DAS register recording the approval of a debt payment programme in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or

(d) written notice is given to the Accountant in Bankruptcy—

(i) by the person withdrawing the notice given under section 4A(1), or

(ii) by or on behalf of the person withdrawing the notice given under section 4B(1).

(3) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—

(a) a person has made a debtor application for sequestration of the estate of the person who is the subject of the moratorium,

(b) the moratorium has not ended in accordance with subsection (2)(a), and

(c) no decision has been made by the Accountant in Bankruptcy under section 15(3C)(b).

(4) Where subsection (3) applies, the moratorium period ends on—

(a) the day on which an entry is made in the register of insolvencies recording the award of sequestration of the estate,
(b) in the case of refusal to award sequestration—

(i) the day of the expiry of the period applying by virtue of section 15(3B) where no application for review is made under section 15(3A), or

(ii) the day on which a decision is made by the Accountant in Bankruptcy under section 15(3C)(b) where an application for review is made, or

(c) the day on which written notice is given to the Accountant in Bankruptcy—

(i) by the person withdrawing the notice given under section 4A(1), or

(ii) by or on behalf of the person withdrawing the notice given under section 4B(1).

(5) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—

(a) an entry has been made in the register of insolvencies recording an application for a trust deed granted by or on behalf of the person who is the subject of the moratorium to be granted the status of protected trust deed, and

(b) the moratorium has not ended in accordance with subsection (2)(b).

(6) Where subsection (5) applies, the moratorium period ends on—

(a) the day on which an entry is made in the register of insolvencies recording that the trust deed granted by or on behalf of the person has been granted the status of protected trust deed,

(b) where such an entry is not made, the day which is 13 weeks after the day on which the moratorium began under subsection (1)(a), or

(c) the day on which written notice is given to the Accountant in Bankruptcy by the person withdrawing the notice given under section 4A(1).

(7) This subsection applies if, on the day which is 6 weeks after the day on which the moratorium began under subsection (1)(a)—

(a) the person who is the subject of the moratorium has applied for approval of a debt payment programme under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002,

(b) the moratorium has not ended in accordance with subsection (2)(c), and

(c) the application has not been determined.

(8) Where subsection (7) applies, the moratorium period ends on—

(a) the day on which an entry is made in the DAS register recording the approval of the debt payment programme in accordance with section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002,

(b) in the case of a rejection of a debt payment programme, the day on which an entry is made in the DAS register recording the rejection, or

(c) the day on which written notice is given to the Accountant in Bankruptcy by the person withdrawing the notice given under section 4A(1).”.
9 **Statement of undertakings**

(1) In section 2 of the 1985 Act (appointment and functions of the trustee in the sequestration), after subsection (7), insert—

“(8) The trustee must at the same time as notifying the debtor under subsection (7), send to the debtor, for signature by the debtor, a statement of undertakings in the form prescribed.”.

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

(a) in subsection (2B), after paragraph (ba) (inserted by section 1(1)(a)), insert—

“(bb) the debtor has given a statement of undertakings (including an undertaking to pay to the trustee after the award of sequestration of the debtor’s estate an amount determined using the common financial tool),”, and

(b) after subsection (6A), insert—

“(6B) In the case of a debtor application, the debtor must send a statement of undertakings to the Accountant in Bankruptcy along with the application.”.

10 **Debtor application: incomplete or inappropriate application**

Before section 12 of the 1985 Act (but after the italic cross-heading immediately preceding it), insert—

“11A **Debtor application: incomplete application**

(1) This section applies where a debtor application is made and the Accountant in Bankruptcy considers that—

(a) the application is incomplete,

(b) further information is required in relation to the application,

(c) further evidence is required to substantiate any fact relevant to the application, or

(d) any fee or charge applicable to the application is outstanding.

(2) The Accountant in Bankruptcy must specify by notice in writing to the debtor—

(a) any further information which is to be provided,

(b) any further evidence which is to be provided, and

(c) any fee or charge to be paid.

(3) Any information, evidence, fee or charge to be provided or paid under subsection (2) must be provided or paid within 21 days or such longer period as may be specified by the Accountant in Bankruptcy.

(4) The Accountant in Bankruptcy may refuse to award sequestration if, after the expiry of the period referred to in subsection (3), the Accountant in Bankruptcy considers that—

(a) the application remains incomplete,
(b) the debtor has provided insufficient information or evidence under subsection (2)(a) or (b), or

(c) any fee or charge applicable to the application remains outstanding.

11B Refusal of debtor application: inappropriate application

(1) This section applies were a debtor application is made and the Accountant in Bankruptcy considers that an award of sequestration may not be appropriate in the circumstances of the case.

(2) The Accountant in Bankruptcy must specify by notice in writing to the debtor—

(a) the reason why the Accountant in Bankruptcy considers the application may not be appropriate, and

(b) any further information which is to be provided within 21 days or such longer period as may be specified by the Accountant in Bankruptcy.

(3) The Accountant in Bankruptcy may refuse to award sequestration if, after the expiry of the period referred to in subsection (2), the Accountant in Bankruptcy remains of the view that an award of sequestration would be inappropriate in the circumstances of the case.”.

11 Sequestration: application by executor

(1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor), for subsection (3), substitute—

“(3) The sequestration of the estate of a deceased debtor is—

(a) by debtor application made by the executor, or a person entitled to be appointed as executor, on the estate,

(b) on the petition of a qualified creditor, or qualified creditors, of the deceased debtor,

(c) on the petition of a temporary administrator,

(d) on the petition of a member State liquidator appointed in main proceedings, or

(e) on the petition of a trustee acting under a trust deed.”.

(2) In section 6B of the 1985 Act (debtor application: provision of information)—

(a) in subsection (1), after “application”, where it first occurs, insert “, other than an application under section 5(3)(a),”;

(b) after subsection (2), insert—

“(2A) Where a debtor application is made by an executor under section 5(3)(a) the executor must—

(a) state in the application whether or not the debtor’s centre of main interests was situated in the United Kingdom or in another member State, and

(b) state in the application whether or not the debtor possessed an establishment in the United Kingdom or in another member State.”.
(3) In section 8A of the 1985 Act (further provisions relating to debtor applications)—
(a) in subsection (1), for “subsection (2)” substitute “subsections (2) and (2A)”, and
(b) after subsection (2), insert—

“(2A) Any intromission by an executor with the deceased debtor’s estate after the
period mentioned in subsection (2B) is deemed an intromission without a title
unless, within that period, the executor—

(a) makes a debtor application under section 5(3)(a), or
(b) petitions for the appointment of a judicial factor to administer the estate.

(2B) The period referred to in subsection (2A) is the period of 12 months following
the day on which the executor knew or ought to have known that the estate was
absolutely insolvent and likely to remain so.”.

(4) In section 12 of the 1985 Act (when sequestration is awarded)—
(a) in subsection (1) after “application”, where it first occurs, insert “, other than an
application under section 5(3)(a),”;
(b) after that subsection, insert—

“(1B) Where a debtor application is made under section 5(3)(a) the Accountant in
Bankruptcy must award sequestration forthwith if the Accountant is satisfied—

(a) that the application has been made in accordance with the provisions of
this Act and any provision made under this Act, and
(b) that the provisions of subsection (6A) of section 5 have been complied
with.”.

12 Concurrent proceedings for sequestration: recall

In section 10A of the 1985 Act (powers in relation to concurrent proceedings for
sequestration or analogous remedy), after subsection (3) insert—

“(3A) The Accountant in Bankruptcy must grant a recall of an award of sequestration
if—

(a) sequestration has been awarded by virtue of a debtor application, and
(b) the sheriff directs the Accountant in Bankruptcy to dismiss the debtor
application.

(3B) The effect of the recall of an award of sequestration is, so far as practicable, to
restore the debtor and any other person affected by the sequestration to the
position the debtor or, as the case may be, the other person would have been in
if the sequestration had not been awarded.

(3C) A recall of an award of sequestration does not—

(a) affect the interruption of prescription caused by—
(i) the presentation of the petition for sequestration,
(ii) the making of the debtor application, or
(iii) the submission of a claim under section 22 or 48,
(b) invalidate any transaction entered into before such recall by the interim
trustee, or by the trustee, with a person acting in good faith, or
(c) affect a bankruptcy restrictions order which has not been annulled under section 56J(1)(a).”.

Administration of estate

13 Submission of claims to trustee

In section 48 of the 1985 Act (submission of claims)—

(a) in subsection (1)—

(i) for “subsection (2)” substitute “subsections (1A) and (2)”, and

(ii) for sub-paragraph (ii) substitute—

“(ii) in accordance with subsection (1A).”, and

(b) after subsection (1), insert—

“(1A) A creditor must, in order to obtain an adjudication as to the creditor’s entitlement (so far as funds are available) to a dividend out of the debtor's estate, submit a claim to the trustee not later than the relevant day.

(1B) The “relevant day”, in relation to a creditor, means—

(a) where a notice is given to the creditor under section 21A(2), the day which is 120 days after the day on which the notice is given, or

(b) where no notice is given to the creditor under that section, the day which is 120 days after the day on which the trustee gives notice to that creditor inviting the submission of claims.

(1C) If a creditor submits a claim to the trustee after the relevant day, the trustee may, in respect of any accounting period, provide an adjudication as to the creditor’s entitlement (so far as funds are available) to a dividend out of the debtor’s estate if—

(a) the claim is submitted not later than 8 weeks before the end of the accounting period, and

(b) the creditor provides a reasonable explanation as to why the claim was not submitted before the relevant day.”.

14 First accounting period

In section 52 of the 1985 Act (estate to be distributed in respect of accounting periods)—

(a) in subsection (2)(a) after “months” insert “or such shorter period as may be agreed or determined in accordance with subsection (2ZB), either period”,

(b) in subsection (2ZA) after “awarded” insert “or such shorter period as may be agreed or determined in accordance with subsection (2ZB)”, and

(c) after subsection (2ZA) insert—

“(2ZB)This subsection applies where the trustee considers that the funds of the debtor’s estate are sufficient to pay a dividend in accordance with subsection (3) in respect of—
in the case where the trustee is the Accountant in Bankruptcy, a shorter period of not less than 6 months determined by the Accountant in Bankruptcy,

(b) in any other case, a shorter period of not less than 6 months agreed—

(i) between the trustee and the commissioners, or

(ii) if there are no commissioners, between the trustee and the Accountant in Bankruptcy.”.

15 Vesting of estate after sequestration

(1) In section 31(5A) of the 1985 Act (reinvestment of non-vested contingent interest), for “on which the debtor’s discharge becomes effective” substitute “which is 4 years after the date of sequestration”.

(2) In section 32(10) of the 1985 Act (meaning of “relevant date” for purposes of vesting etc.), for “on which the debtor’s discharge becomes effective” substitute “which is 4 years after the date of sequestration”.

16 Discharge of debtor

For section 54 of the 1985 Act (automatic discharge of debtor) substitute—

“54 Application for discharge: Accountant in Bankruptcy not the trustee

(1) This section applies where the Accountant in Bankruptcy is not the trustee.

(2) The Accountant in Bankruptcy may, following an application by the trustee, discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded.

(3) An application for discharge—

(a) may be made by the trustee at any time after the date which is 10 months after the date on which sequestration is awarded, and

(b) must be made before sending to the Accountant in Bankruptcy the documentation referred to in section 57(1)(b).

(4) A debtor may request the trustee to make an application—

(a) if the debtor has not made a request to the trustee in the immediately preceding period of 12 months, or

(b) where the debtor has made a request in that period, if exceptional circumstances apply.

(5) If a request is made under subsection (4), the trustee must—

(a) consider, having regard to the matters mentioned in subsections (6) and (7), whether to make an application, and

(b) if the trustee decides not to make an application, notify the debtor of the reasons.

(6) An application must include a report on—

(a) the debtor’s assets, liabilities, financial affairs and business affairs,
(b) the debtor’s conduct in relation to those assets, liabilities, financial affairs and business affairs,

(c) the sequestration, and

(d) the debtor’s conduct in the course of the sequestration.

5 (7) An application must, unless subsection (8) applies, include a declaration by the trustee that, in the opinion of the trustee—

(a) the debtor has—

(i) complied with any debtor contribution order,

(ii) co-operated with the trustee in accordance with section 64,

(iii) complied with the statement of undertakings,

(iv) made a full and fair surrender of the debtor’s estate,

(v) made a full disclosure of all claims which the debtor is entitled to make against other persons, and

(vi) delivered to the trustee every document under the debtor’s control relating to the debtor’s estate, business or financial affairs, and

(b) the trustee has carried out all of the trustee’s functions as at the date of the application, in accordance with section 3.

8 (8) Where the trustee makes the application following a request by the debtor under subsection (4), the trustee may, instead of providing a declaration on the matters mentioned in subsection (7), provide a report on those matters.

9 (9) The trustee must, at the same time as applying to the Accountant in Bankruptcy, give to the debtor and every creditor known to the trustee a notice informing the recipient—

(a) that an application has been made, and

(b) that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application before the expiry of the period of 14 days beginning with the day on which the notice is given.

10 (10) After receiving an application under this section and taking into account any representations received during the period mentioned in subsection (9)(b), the Accountant in Bankruptcy may discharge the debtor by granting a certificate of discharge in the prescribed form.

11 (11) A discharge under subsection (10) must not take effect before the end of the period of 14 days beginning with the day of notification of the decision.

54A Discharge where Accountant in Bankruptcy the trustee

1 (1) This section applies where the Accountant in Bankruptcy is the trustee.

2 (2) The Accountant in Bankruptcy may discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded by granting a certificate of discharge in the prescribed form.

3 (3) The Accountant in Bankruptcy must, as soon as is practicable after the date which is 12 months after the date on which sequestration is awarded—

(a) decide whether to discharge the debtor under subsection (2),
(b) notify the debtor and every creditor known to the Accountant in Bankruptcy of that decision, and
(c) send a report to those persons.

(4) The report must give an account of—
(a) the debtor’s assets, liabilities, financial affairs and business affairs,
(b) the debtor’s conduct in relation to those assets, liabilities, financial affairs and business affairs,
(c) the sequestration, and
(d) the debtor’s conduct in the course of the sequestration, including compliance with the statement of undertakings.

(5) Subsection (6) applies where—
(a) the Accountant in Bankruptcy refuses to discharge the debtor under subsection (2), and
(b) the debtor is not otherwise discharged.

(6) The Accountant in Bankruptcy must, as soon as is practicable after the date which is 12 months after the date of the refusal—
(a) decide whether to discharge or refuse to discharge the debtor under subsection (2),
(b) notify the debtor and every creditor known to the Accountant in Bankruptcy of that decision, and
(c) send a report giving an account of the matters mentioned in subsection (4) to those persons.

(7) A discharge under this section must not take effect before the end of the period of 14 days beginning with the day of notification of the decision.

54B Discharge of debtor: review and appeal

(1) The trustee or the debtor may apply to the Accountant in Bankruptcy for a review of a decision under section 54(10) or 54A(2) to refuse to discharge the debtor.

(2) Any creditor may apply to the Accountant in Bankruptcy for a review of a decision under section 54(10) or 54A(2) to discharge the debtor.

(3) An application under subsection (1) or (2) must be made before the end of the period of 14 days beginning with the day of notification of the decision under section 54(10) or, as the case may be, 54A(2).

(4) If an application for a review under subsection (2) is made, the discharge is suspended until the determination of that review by the Accountant in Bankruptcy.

(5) If an application for a review under subsection (1) or (2) is made, the Accountant in Bankruptcy must—
(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
(b) confirm or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

(6) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (5)(b) before the end of the period of 14 days beginning with the date of the decision.”.

17 **Repeal of discharge on composition**

(1) Section 56 of the 1985 Act (discharge on composition) is repealed.

(2) Section 56K of the 1985 Act (effect of discharge on approval of offer of composition) is repealed.

(3) Schedule 4 to the 1985 Act (discharge on composition) is repealed.

18 **Deferral of discharge where debtor cannot be traced**

After section 54C of the 1985 Act (inserted by section 7(1)), insert—

“54D **Deferral of discharge where debtor cannot be traced**

(1) Subsection (2) applies where—

(a) the trustee, having made reasonable inquiries, is unable to ascertain the whereabouts of the debtor, and

(b) as a result is unable to carry out the trustee’s functions in accordance with section 3.

(2) The trustee must—

(a) notify the debtor by sending to the last known address of the debtor a deferral notice in the prescribed form,

(b) give a deferral notice to every creditor known to the trustee, and

(c) where the trustee is not the Accountant in Bankruptcy, apply in the prescribed form to the Accountant in Bankruptcy for a deferral.

(3) A deferral application under subsection (2)(c) must be made by the trustee—

(a) no earlier than the date which is 8 months after the date on which sequestration is awarded, and

(b) no later than the date which is 10 months after the date on which sequestration is awarded.

(4) After receiving a deferral application, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 14 days beginning with the day on which the application is made, and

(b) if satisfied of the matters mentioned in subsection (5), issue a certificate deferring indefinitely the discharge of the debtor.

(5) The matters are—

(a) that the trustee is unable to ascertain the whereabouts of the debtor, and

(b) it would not be reasonably practicable for the trustee to continue to search for the debtor.
(6) Where the Accountant in Bankruptcy is the trustee and has given a deferral notice in accordance with subsection (2)(b), the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 14 days beginning with the day on which the deferral notice is given, and

(b) if satisfied that it would not be reasonably practicable to continue to search for the debtor, issue a certificate deferring indefinitely the discharge of the debtor.

(7) Where a certificate is issued under subsection (4)(b) or (6)(b), the Accountant in Bankruptcy must make an appropriate entry in the register of insolvencies.

54E Debtor not traced: new trustee

(1) This section applies where a certificate is issued under section 54D(4)(b).

(2) The trustee may apply to the Accountant in Bankruptcy in the prescribed form for authority to resign office.

(3) An application under subsection (2) may not be made—

(a) if after the certificate is issued the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee,

(b) after the date which is 6 months after the date on which the certificate is awarded.

(4) Where an application is made under subsection (2), the Accountant in Bankruptcy must issue to the trustee who made the application a notice in the prescribed form granting the application.

(5) Where a notice is issued under subsection (4)—

(a) the Accountant in Bankruptcy is deemed to be the trustee,

(b) the former trustee must notify every creditor known to the former trustee that the Accountant in Bankruptcy is deemed to be the trustee,

(c) the former trustee is not entitled to recover outlays and remuneration payable in accordance with section 53 other than by a claim in the final distribution of the debtor’s estate, and

(d) subsections (6) to (8) of section 28 apply in relation to the appointment of the Accountant in Bankruptcy as the new trustee as they apply in relation to the appointment of a new trustee under that section.

54F Debtor not traced: subsequent debtor contact

(1) This section applies where—

(a) a certificate is issued under section 54D(4)(b) or (6)(b), and

(b) the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee.

(2) Where the Accountant in Bankruptcy is the trustee, the Accountant in Bankruptcy may discharge the debtor—

(a) at any time after the date which is 12 months after the date on which—
(i) the whereabouts of the debtor were ascertained, or
(ii) the debtor made contact with the trustee, and

(b) if satisfied as to the matters mentioned in subsection (3).

(3) The matters are that, in the opinion of the trustee, the debtor has—

(a) complied with any debtor contribution order,
(b) co-operated with the trustee in accordance with section 64,
(c) complied with the statement of undertakings,
(d) made a full and fair surrender of the debtor’s estate,
(e) made a full disclosure of all claims which the debtor is entitled to make
against other persons, and
(f) delivered to the trustee every document under the debtor’s control
relating to the debtor’s estate, business or financial affairs.

(4) Where the Accountant in Bankruptcy is not the trustee, the trustee must give
the debtor a notice in the prescribed form allowing the debtor to apply for
discharge if the trustee is satisfied as to the matters mentioned in subsection (3).

(5) A notice under subsection (4) may not be given before the date which is 12
months after the date on which—

(a) the whereabouts of the debtor were ascertained by the trustee, or
(b) the debtor made contact with the trustee.

(6) Where a debtor receives a notice under subsection (4), the debtor may apply to
the Accountant in Bankruptcy for the discharge.

(7) The debtor must, at the same time as applying to the Accountant in
Bankruptcy, give to the trustee and every creditor known to the debtor a notice
informing the recipient—

(a) that an application has been made, and
(b) that the person has a right to make representations to the Accountant in
Bankruptcy in relation to the application before the expiry of the period
of 14 days beginning with the day on which the notice is given.

(8) After receiving an application under this section and taking into account any
representations received during the period mentioned in subsection (7)(b), the
Accountant in Bankruptcy may discharge the debtor by granting a certificate of
discharge in the prescribed form.

(9) A discharge under subsection (2) or (8) must not take effect on a date before
the end of the period of 14 days beginning with the day of notification of the
decision.

(10) A discharge under subsection (2) or (8) is deemed for the purposes of section
55 to have been given under section 54(10).

(11) Where a debtor has received a notice under subsection (4) but no application
has been made for discharge, the trustee may make an application for discharge
in accordance with section 54.
Subsequent debtor contact: review and appeal

(1) The debtor may apply to the Accountant in Bankruptcy for a review of a decision under section 54F(2) or (8) to refuse to discharge the debtor.

(2) Any creditor may apply to the Accountant in Bankruptcy for a review of a decision under section 54F(2) or (8) to discharge the debtor.

(3) An application under subsection (1) or (2) must be made before the end of the period of 14 days beginning with the day of notification of the decision under section 54F(2) or, as the case may be, 54F(8).

(4) If an application for a review under subsection (2) is made, the discharge is suspended until the determination of that review by the Accountant in Bankruptcy.

(5) If an application for a review under subsection (1) or (2) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

(6) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (5)(b) before the end of the period of 14 days beginning with the date of the decision.”.

Unclaimed dividends and unapplied balances

In section 57 of the 1985 Act (discharge of trustee)—

(a) in subsection (1)—

(i) for paragraph (a), substitute—

“(a) must pay to the Accountant in Bankruptcy any unclaimed dividends and unapplied balances,”, and

(ii) in paragraph (b), the words “and a receipt for the deposit of the unclaimed dividends and unapplied balances” are repealed, and

(b) after subsection (1A) (inserted by section 22(2)(b)), insert—

“(1B) The Accountant in Bankruptcy must deposit any unclaimed dividends and any unapplied balances paid to the Accountant in Bankruptcy under subsection (1)(a) in an appropriate bank or institution.”.

Assets discovered after trustee discharge: appointment of trustee

After section 58A of the 1985 Act, insert—

“58B Assets discovered after trustee discharge: appointment of trustee

(1) This section applies where, after the trustee’s discharge under section 57 or 58A but before the expiry of the period of 5 years from the date of sequestration, the trustee or the Accountant in Bankruptcy becomes aware of any newly identified estate.
In this section, “newly identified estate” means any part of the debtor’s estate which—

(a) vested in the trustee in accordance with section 31, and
(b) was not, before the trustee was discharged, recovered by the trustee.

(3) The Accountant in Bankruptcy may—

(a) in the case where the trustee was discharged under section 58—

(i) on the application of the trustee who was discharged, reappoint that person as trustee on the debtor’s estate, or

(ii) appoint the Accountant in Bankruptcy as trustee on the debtor’s estate,

(b) in the case where the Accountant in Bankruptcy was discharged under section 58A, reappoint the Accountant in Bankruptcy as trustee on the debtor’s estate.

(4) The Accountant in Bankruptcy may make an appointment or reappointment under subsection (3) only if, in the opinion of the Accountant in Bankruptcy, the value of the newly identified estate—

(a) is not less than £1000 (or such other sum as may be prescribed), and
(b) is likely to exceed the costs of—

(i) the appointment or reappointment, and

(ii) the recovery, management and realisation of the newly identified estate.

(5) Where the trustee was discharged under section 58, the discharged trustee must provide to the Accountant in Bankruptcy the information mentioned in subsection (7).

(6) Where the Accountant in Bankruptcy was discharged under section 58A, the Accountant in Bankruptcy must record and consider the information mentioned in subsection (7).

(7) The information is—

(a) the estimated value of the newly identified estate,

(b) the reason why the newly identified estate forms part of the debtor’s estate,

(c) the reason why the newly identified estate was not recovered,

(d) the estimated outlays and remuneration of the trustee following an appointment or reappointment under subsection (3), and

(e) the likely distribution under section 51 following an appointment or reappointment under subsection (3).

(8) This section is without prejudice to any other right to take action following the discharge of the trustee.

58C Assets discovered after trustee discharge: notice

(1) The Accountant in Bankruptcy must notify the debtor and any other person the Accountant in Bankruptcy considers to have an interest—
(a) where an application is made under section 58B(3)(a)(i), and
(b) where the Accountant in Bankruptcy proposes to make an appointment or reappointment under section 58B(3)(a)(ii) or (b).

(2) A notice under subsection (1) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed appointment or reappointment before the expiry of the period of 14 days beginning with the day on which the notice is given.

(3) Before making an appointment or reappointment under section 58B, the Accountant in Bankruptcy must take into account any representations made by an interested person.

(4) If the Accountant in Bankruptcy makes an appointment or reappointment under section 58B, the Accountant in Bankruptcy must as soon as is practicable notify the debtor of the appointment or reappointment.

(5) A notice under subsection (4) must include information in relation to the debtor’s duties to co-operate with the trustee under section 64.

58D Assets discovered after trustee discharge: appeal

Where the Accountant in Bankruptcy makes or refuses to make an order under section 58B, an interested person may, no later than 14 days after the date of the decision, appeal to the sheriff.”.

Records

21 Register of insolvencies

In section 1A of the 1985 Act (supervisory functions of the Accountant in Bankruptcy)—

(a) in subsection (1)(b), for “the Court of Session by act of sederunt” substitute “regulations made by the Scottish Ministers”, and

(b) after subsection (4), insert—

“(5) Regulations under subsection (1)(b) may in particular prescribe circumstances where information need not be included in the register of insolvencies, if in the opinion of the Accountant in Bankruptcy inclusion of the information would be likely to jeopardise the safety or welfare of any person.”.

22 Sederunt book

(1) In section 1A(1)(b) of the 1985 Act (register of insolvencies), after paragraph (iia) insert—

“(iib) sederunt books sent to the Accountant in Bankruptcy in accordance with section 57(1)(b) or, as the case may be, updated in accordance with paragraph 33 of Schedule 3A,.”.

(2) In section 57 of the 1985 Act (discharge of trustee)—

(a) in subsection (1)(a), after “book” insert “in the format specified by subsection (1A) and”,

(b) after subsection (1), insert—
“(1A) The trustee must send an electronic version of the sederunt book in such format as the Accountant in Bankruptcy may from time to time direct.”.

(c) in subsection (2)(b), for “at the office of the Accountant in Bankruptcy” substitute “as part of the register of insolvencies”.

In section 58A(4)(b)(ii) of the 1985 Act (notice on sederunt book sent on discharge of Accountant in Bankruptcy as trustee), for “at such address as the Accountant in Bankruptcy may determine” substitute “as part of the register of insolvencies”.

In section 62 of the 1985 Act (sederunt book and other documents)—

(a) in subsection (2), for “Court of Session may by act of sederunt” substitute “the Scottish Ministers may by regulations”, and

(b) after that subsection, insert—

“(2A) The trustee must insert in the sederunt book the information listed in Schedule 3A to this Act.

(2B) The Scottish Ministers may by regulations modify Schedule 3A.”.

After Schedule 3 to the 1985 Act insert the Schedule 3A set out in schedule 2 to this Act.

Abolition of certain requirements in relation to Edinburgh Gazette

(1) In section 16 of the 1985 Act (petitions for recall of sequestration), for subsection (3) substitute—

“(3) On service of a copy of the petition under subsection (2), the Accountant in Bankruptcy must enter particulars of the petition in the register of insolvencies.”.

(2) In section 45 of the 1985 Act (public examination)—

(a) in subsection (3)(a), for “publish in the Edinburgh Gazette” substitute “send to the Accountant in Bankruptcy”, and

(b) after subsection (3), insert—

“(3A) The Accountant in Bankruptcy must enter particulars of the notice sent under subsection (3)(a) in the register of insolvencies.”.

(3) Section 71 (Edinburgh Gazette) is repealed.

Functions of sheriff and Accountant in Bankruptcy in sequestration

Application by trustee for direction on matters in sequestration

(1) In section 3(6) of the 1985 Act (trustee application to the sheriff for directions in relation to any particular matter), for “A trustee” substitute “Where the Accountant in Bankruptcy is the trustee, the Accountant in Bankruptcy”.

(2) After section 3 of the 1985 Act, insert—

“3A Application to Accountant in Bankruptcy for a direction

(1) This section applies where the Accountant in Bankruptcy is not the trustee.

(2) The trustee may apply to the Accountant in Bankruptcy for a direction in relation to any particular matter arising in the sequestration.”
(3) The Accountant in Bankruptcy may, before giving a direction on any particular matter under this section, refer the matter to the sheriff by making an application for a direction in relation to that matter.

(4) The trustee may apply to the Accountant in Bankruptcy for a review of a direction given by the Accountant in Bankruptcy under this section.

(5) An application for a review under section (4) may not be made—
   (a) by an interim trustee,
   (b) after the expiry of the period of 14 days beginning with the day on which notice of the direction by the Accountant in Bankruptcy is given to the trustee, or
   (c) in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under subsection (3).

(6) If an application for a review under subsection (4) is made, the Accountant in Bankruptcy must—
   (a) take into account any representations made by the trustee, the debtor, any creditor and any other person having an interest before the expiry of the period of 21 days beginning with the day on which the application is made, and
   (b) confirm, amend or revoke the direction before the expiry of the period of 28 days beginning with the day on which the application is made.

(7) The trustee may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (6)(b) before the expiry of the period of 14 days beginning with the day of the decision.”.

Recall of sequestration by sheriff

(1) In section 16 of the 1985 Act (petitions for recall of sequestration)—
   (a) after subsection (1), insert—
      “(1A) A petition for recall of an award of sequestration may not be presented to the sheriff if the only ground is that the debtor has paid or is able to pay the debtor’s debts in full.

   (1B) Subsection (1A) does not apply where—
      (a) sequestration was awarded following a petition of a qualified creditor or qualified creditors, and
      (b) a petition for recall of the award of sequestration includes the ground that the debtor was not apparently insolvent.”, and

(2) The title of section 17 of the 1985 Act becomes “Recall of sequestration by sheriff”.

(3) In section 17 of the 1985 Act—
   (a) in subsection (1)(a), the words “or has given sufficient security for their payment” are repealed,
(b) after subsection (3), insert—

“(3A) If an order recalling an award directs that a payment under subsection (3)(a) or (b) is to be made from the debtor’s estate the award of recall does not have effect before the trustee notifies the sheriff that the payment has been made.”,” and

(c) in subsection (8), after “any”, in both places where it occurs, insert “interim or final”.

26 Recall of sequestration by Accountant in Bankruptcy

After section 17 of the 1985 Act, insert—

17A Application to Accountant in Bankruptcy for recall of sequestration

(1) An application for recall of an award of sequestration may be made to the Accountant in Bankruptcy on the ground that the debtor has paid or is able to pay the debtor’s debts in full.

(2) An application may be made by—

(a) the debtor,

(b) any creditor,

(c) the trustee (where the Accountant in Bankruptcy is not the trustee), or

(d) any other person having an interest (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration).

(3) The person making an application must, at the same time as applying to the Accountant in Bankruptcy, give to the persons mentioned in subsection (4)—

(a) a copy of the application, and

(b) a notice informing the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application before the expiry of the period of 21 days beginning with the day on which the notice is given.

(4) The persons are—

(a) the debtor,

(b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration,

(c) the trustee.

(5) Despite an application being made, the proceedings in the sequestration are to continue as if the application had not been made until a recall of an award of sequestration is granted under section 17E(1) (subject to any conditions imposed under section 17C(5) or 17E(4)).

(6) Where the applicant withdraws the application or dies, the Accountant in Bankruptcy may continue the application by substituting any person mentioned in subsection (2) for the applicant.

17B Application under section 17A: further procedure

(1) This section applies where an application is made under section 17A.
(2) The trustee must submit to the Accountant in Bankruptcy—
(a) a statement on the debtor’s assets and liabilities, so far as within the knowledge of the trustee,
(b) a statement on the debtor’s affairs, so far as within the knowledge of the trustee.

(3) The statements must be submitted—
(a) at the same time as the trustee makes the application under section 17A, or
(b) where the application is made by another person, before the expiry of the period of 21 days beginning with the day on which the notice is given under section 17A(3)(b).

(4) The statement under subsection (2)(a) must—
(a) include the trustee’s claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee,
(b) be updated and resubmitted by the trustee if any creditor submits a claim in accordance with subsection (8).

(5) The statement under subsection (2)(b) must indicate whether, in the opinion of the trustee, the debtor’s assets have paid or are likely to be sufficient to pay the debtor’s debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee).

(6) The trustee must notify every creditor known to the trustee that an application has been made—
(a) where the application is made by the trustee, before the expiry of the period of 7 days beginning with the day on which the application is made,
(b) where the application is made by another person, before the expiry of the period of 7 days beginning with the day on which the notice is given under section 17A(3)(b).

(7) If a creditor has not previously submitted a claim under section 22 or 48, the creditor must, in order to obtain an adjudication as to the creditor’s entitlement (so far as funds are available) to a dividend out of the debtor’s estate, submit a claim.

(8) A claim must be submitted—
(a) in accordance with section 22(2) and (3), and
(b) before the expiry of the period of 14 days beginning with the day on which notice is given under subsection (6).

17C Interim recall of sequestration by Accountant in Bankruptcy

(1) The Accountant in Bankruptcy may, after receiving an application under section 17A, grant an interim recall of an award of sequestration if the Accountant in Bankruptcy is satisfied that—
(a) the debtor has paid or is able to pay the debtor’s debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee), and
(b) in all the circumstances of the case, it is appropriate to do so.

(2) In deciding whether to grant an interim recall of an award of sequestration, the Accountant in Bankruptcy must take into account—

(a) the information in the application,

(b) any representations received during the period mentioned in section 17A(3)(b) made by the persons mentioned in section 17A(4) and by any other person having an interest,

(c) the statements supplied by the trustee under section 17B(2).

(3) The Accountant in Bankruptcy may when granting an interim recall of an award of sequestration—

(a) issue a determination fixing the amount of the outlays and the remuneration payable to the trustee,

(b) determine the expenses reasonably incurred by a creditor who was a petitioner or, as the case may be, concurred in a debtor application for sequestration,

(c) require any person who was a party to the petition for sequestration or, as the case may be, the debtor application, to pay the whole or any part of the outlays and remuneration of the interim trustee and the trustee.

(4) Subsections (4) and (5) of section 54 apply to the Accountant in Bankruptcy for the purpose of making a determination in accordance with subsection (3)(a) as they apply to the commissioners or the Accountant in Bankruptcy for the purpose of fixing an amount under that section.

(5) If the Accountant in Bankruptcy does not grant an interim recall of an award of sequestration, the sequestration is to continue but is to be subject to such conditions as the Accountant in Bankruptcy thinks fit.

17D Procedure following grant of interim recall of sequestration

(1) If the Accountant in Bankruptcy grants an interim recall of an award of sequestration, the trustee must—

(a) distribute the debtor’s estate in accordance with section 51, and

(b) notify the Accountant in Bankruptcy as to—

(i) amounts that have been paid in accordance with paragraph (a), and

(ii) whether the total payments from the debtor’s estate were sufficient to pay the debtor’s debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee).

(2) The trustee must comply with the requirements imposed by subsection (1)—

(a) before the expiry of the period of 6 weeks beginning with the day on which the interim recall is granted (or such other period as may be prescribed), or

(b) before the expiry of any extension of that period.

(3) The Accountant in Bankruptcy may, on the application of the trustee, grant an extension of no longer than 4 weeks (or such other period as may be prescribed) to the period applying by virtue of subsection (2)(a).
(4) The trustee must pay to the Accountant in Bankruptcy any unclaimed dividends and unapplied balances which remain following the period applying by virtue of subsection (2).

17E Recall of sequestration by Accountant in Bankruptcy

(1) The Accountant in Bankruptcy may grant a recall of an award of sequestration if—

(a) the trustee has notified the Accountant in Bankruptcy under section 17D(1)(b)(ii) that the debtor’s debts have been paid in full (including the payment of the outlays and remuneration of the interim trustee and the trustee), and

(b) the Accountant in Bankruptcy is satisfied that in all the circumstances of the case, it is appropriate to do so.

(2) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor or, as the case may be, the other person would have been in if the sequestration had not been awarded.

(3) A recall of an award of sequestration is not to—

(a) affect the interruption of prescription caused by—

(i) the presentation of the petition for sequestration,

(ii) the making of the debtor application, or

(iii) the submission of a claim under section 22 or 48,

(b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee, with a person acting in good faith, or

(c) affect a bankruptcy restrictions order which has not been annulled under section 56J(1)(a).

(4) If the Accountant in Bankruptcy does not grant a recall of an award of sequestration under subsection (1) the sequestration is to continue but is to be subject to such conditions as the Accountant in Bankruptcy thinks fit.

17F Recall where Accountant in Bankruptcy the trustee

(1) This section applies where the Accountant in Bankruptcy—

(a) is the trustee, and

(b) considers that recall of an award of sequestration should be granted on the ground that the debtor has paid or is able to pay the debtor’s debts in full (including the payment of the outlays and remuneration of the interim trustee and the trustee).

(2) The Accountant in Bankruptcy must notify the debtor and every creditor known to the Accountant in Bankruptcy that the Accountant in Bankruptcy considers that subsection (1) applies.

(3) If a creditor has not previously submitted a claim under section 22 or 48, the creditor must, in order to obtain an adjudication as to the creditor’s entitlement to a dividend out of the debtor’s estate, submit a claim.
(4) A claim must be submitted—
   (a) in accordance with section 22(2) and (3), and
   (b) before the expiry of the period of 14 days beginning with the day on
       which notice is given under subsection (2).

(5) Before granting an interim recall of an award of sequestration the Accountant
    in Bankruptcy must—
   (a) take into account any representations made by an interested person
       before the expiry of the period of 21 days beginning with the day on
       which the notice is given under subsection (2), and
   (b) make a determination of the Accountant in Bankruptcy’s fees and
       outlays calculated in accordance with regulations made under section
       69A.

(6) The Accountant in Bankruptcy may grant an interim recall of an award of
    sequestration if the Accountant in Bankruptcy is satisfied that—
   (a) the debtor has paid or is able to pay the debtor’s debts in full (including
       the payment of the outlays and remuneration of the interim trustee and
       the trustee), and
   (b) in all the circumstances of the case, it is appropriate to do so.

(7) If the Accountant in Bankruptcy grants an interim recall of an award of
    sequestration, the Accountant in Bankruptcy must distribute the debtor’s estate
    in accordance with section 51—
   (a) before the expiry of the period of 6 weeks beginning with the day on
       which the interim recall is granted (or such other period as may be
       prescribed), or
   (b) before the expiry of any extension of that period of no longer than 4
       weeks (or such other period as may be prescribed) determined by the
       Accountant in Bankruptcy.

(8) Despite the granting of an interim recall of an award of sequestration, the
    proceedings in the sequestration are to continue as if the interim recall had not
    been made until a recall of the award of sequestration is granted under
    subsection (9).

(9) The Accountant in Bankruptcy may grant a recall of an award of sequestration
    if the Accountant in Bankruptcy is satisfied that—
   (a) the debtor has paid the debtor’s debts in full (including the payment of
       the outlays and remuneration of the interim trustee and the trustee), and
   (b) in all the circumstances of the case, it is appropriate to do so.

(10) Subsections (2) and (3) of section 17E apply in relation to a recall of an award
    of sequestration granted under subsection (9) as they apply in relation to a
    recall of an award of sequestration granted under that section.

17G Reference to sheriff

(1) The Accountant in Bankruptcy may, at any time before deciding under section
    17E(1) whether to grant an application for recall of an award of sequestration,
    remit to the sheriff an application made under section 17A.
(2) The Accountant in Bankruptcy may, at any time before deciding under section 17F(9) whether to grant a recall of an award of sequestration, remit the case to the sheriff.

(3) If an application is remitted to the sheriff under subsection (1) or (2), the sheriff may dispose of the application or the case in accordance with section 17 as if it were a petition presented by the Accountant in Bankruptcy under section 16.

17H Recall of sequestration by Accountant in Bankruptcy: review and appeal

(1) A person mentioned in subsection (2) may apply to the Accountant in Bankruptcy for a review of—

   (a) a decision of the Accountant in Bankruptcy under section 17C(1) or 17F(6) to grant or refuse to grant an interim recall of an award of sequestration,

   (b) a decision of the Accountant in Bankruptcy under section 17E(1) or 17F(9) to grant or refuse to grant a recall of an award of sequestration,

   (c) a determination of the Accountant in Bankruptcy under section 17C(3)(b),

   (d) a requirement of the Accountant in Bankruptcy under section 17C(3)(c).

(2) The persons are—

   (a) the debtor,

   (b) any creditor,

   (c) the trustee,

   (d) any other person having an interest.

(3) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the decision or, as the case may be, the determination or requirement is made.

(4) If an application under subsection (1) is made, the Accountant in Bankruptcy must—

   (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

   (b) confirm, amend or revoke the decision, determination or requirement before the expiry of the period of 28 days beginning with the day on which the application is made.

(5) A person mentioned in subsection (2) may, before the expiry of the period of 14 days beginning with the day on which the decision, determination or requirement is made, appeal to the sheriff against—

   (a) a determination of the Accountant in Bankruptcy under section 17C(3)(a) or 17F(5)(b),

   (b) a decision of the Accountant in Bankruptcy under subsection (4)(b),

(6) Any decision of the sheriff on an appeal relating to a determination of the Accountant in Bankruptcy under section 17C(3)(a) or 17F(5)(b) is final.
(7) In upholding an appeal relating to a decision under section 17C(1) or 17F(6) the sheriff may quash the decision of the Accountant in Bankruptcy and remit the case, together with reasons for the sheriff’s decision, to the Accountant in Bankruptcy.”.

27 Appointment of replacement trustee

(1) For section 25 of the 1985 Act, substitute—

“25 Appointment of replacement trustee

(1) This section applies where a replacement trustee is elected by virtue of a trustee vote.

(2) On the election of the replacement trustee, the original trustee must immediately make a report of the proceedings at the statutory meeting—

(a) where the original trustee was not the Accountant in Bankruptcy, to the Accountant in Bankruptcy,

(b) where the original trustee was the Accountant in Bankruptcy, to the sheriff.

(3) The debtor, a creditor, the original trustee, the replacement trustee or the Accountant in Bankruptcy may object to any matter connected with the election—

(a) in the case of an objection by a person other than the Accountant in Bankruptcy, by applying to the Accountant in Bankruptcy, or

(b) in the case of an objection by the Accountant in Bankruptcy, by making a summary application to the sheriff.

(4) An objection under subsection (3) must—

(a) specify the grounds on which the objection is taken, and

(b) be made before the expiry of the period of 4 days beginning with the day of the statutory meeting.

(5) If there is no timeous objection under subsection (3), the Accountant in Bankruptcy must without delay declare the elected person to be the trustee in the sequestration.

(6) No expense in objecting under this section is to fall on the debtor’s estate.

25A Applications to Accountant in Bankruptcy: procedure

(1) This section applies where an application is made to the Accountant in Bankruptcy under section 25(3)(a).

(2) The Accountant in Bankruptcy must—

(a) without delay give the original trustee, the replacement trustee, the objector and any other interested person an opportunity to make written submissions on the application, and

(b) make a decision.

(3) If the Accountant in Bankruptcy decides—
(a) to reject the objection in the application, the Accountant in Bankruptcy must without delay declare the elected person to be the trustee in the sequestration,
(b) to sustain the objection in the application, the Accountant in Bankruptcy must order the original trustee to arrange a new meeting at which a new trustee vote must be held.

(4) Sections 23 to 25B apply in relation to a meeting arranged by virtue of subsection (3)(b).

(5) The original trustee, the replacement trustee, the objector and any other interested person may apply to the Accountant in Bankruptcy for a review of a decision under subsection (2)(b).

(6) An application under subsection (5) must be made before the expiry of the period of 14 days beginning with the day on which notice of the decision is given.

(7) If an application for a review under subsection (5) is made, the Accountant in Bankruptcy must—
(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
(b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

(8) The trustee, the objector and any other interested person may by summary application appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (7)(b), before the expiry of the period of 14 days beginning with the day of the decision.

(9) No expense in objecting under this section is to fall on the debtor’s estate.

25B Applications and appeals to sheriff: procedure

(1) This section applies where there is—
(a) an application by the Accountant in Bankruptcy under section 25(3)(b), or
(b) an appeal under section 25A(8).

(2) The sheriff must—
(a) without delay give the parties an opportunity to be heard on the application, and
(b) make a decision.

(3) If the sheriff decides—
(a) to reject an objection to the appointment of an elected person, the sheriff must without delay declare the elected person to be the trustee in the sequestration and make an order appointing the elected person to be the trustee in the sequestration,
(b) to sustain an objection to the appointment of an elected person, the sheriff must order the original trustee to arrange a new meeting at which a new trustee vote must be held.
(4) Sections 23 to 25B apply in relation to a meeting arranged by virtue of subsection (3)(b).

(5) Any declaration, appointment or decision of the sheriff under this section is final.”.

(2) In section 28 of the 1985 Act (resignation and death of trustee), for subsection (5), substitute—

“(5) Where no new trustee is elected in pursuance of subsection (2) or (3) the Accountant in Bankruptcy may appoint as the trustee in the sequestration—

(a) a person who applies to the Accountant in Bankruptcy within the period of 14 days beginning with the day of the meeting arranged under subsection (2) or (3), or

(b) any other person as may be determined by the Accountant in Bankruptcy and who consents to the appointment.

(5A) A person may not be appointed under subsection (5) if the person is ineligible for election as a replacement trustee under section 24(2).

(5B) If, after the expiry of the period mentioned in subsection (5)(a), the Accountant in Bankruptcy determines that no person is to be appointed under subsection (5), the Accountant in Bankruptcy is deemed to be the trustee in the sequestration.”.

28 Replacement of trustee acting in more than one sequestration

For section 28A of the 1985 Act, substitute—

“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).

(2) The Accountant in Bankruptcy may in a case where subsection (1)(b) applies, determine that the trustee is removed from office in each sequestration in which the trustee has ceased to be qualified.

(3) The Accountant in Bankruptcy may appoint as the trustee in each sequestration in which the former trustee was acting a person—

(a) determined by the Accountant in Bankruptcy, and

(b) who consents to the appointment.

(4) A person may not be appointed under subsection (3) if the person is ineligible for election as a replacement trustee under section 24(2).

(5) If, in relation to any sequestration, the Accountant in Bankruptcy determines that no person is to be appointed under subsection (3), the Accountant in Bankruptcy is deemed to be the trustee in that sequestration.

(6) The Accountant in Bankruptcy must notify any determination or appointment under this section to—

(a) the former trustee,
(b) the debtor,
(c) every creditor known to the Accountant in Bankruptcy, and
(d) each sheriff who awarded sequestration or to whom sequestration was transferred under section 15(2) of this Act.

28B Determination etc. under section 28A: review

(1) The persons mentioned in subsection (6)(a) to (c) of section 28A may apply to the Accountant in Bankruptcy for a review by the Accountant in Bankruptcy of any determination or appointment under that section.

(2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which notice of the determination or appointment is given.

(3) If an application under subsection (1) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
(b) confirm, amend or revoke the determination or appointment before the expiry of the period of 28 days beginning with the day on which the application is made.

(4) The persons mentioned in subsection (6)(a) to (c) of section 28A may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (3)(b) before the expiry of the period of 14 days beginning with the day of the decision.

(5) The Accountant in Bankruptcy may refer a case to the court for a direction before—

(a) making any determination or appointment under section 28A, or
(b) undertaking any review under this section.

(6) An appeal under subsection (4) and a referral under subsection (5) must be made—

(a) by a single petition to the Court of Session, where the appeal relates to two or more sequestrations and the sequestrations are, by virtue of section 9, in different sheriffdoms, and
(b) in any other case to the sheriff.”.

29 Removal of trustee and trustee not acting

In section 29 of the 1985 Act (removal of trustee and trustee not acting)—

(a) in subsection (1), for paragraph (b), substitute—

“(b) by order made by the Accountant in Bankruptcy, if the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of circumstances other than those mentioned in subsection (9),”,

(b) after subsection (1), insert—
“(1A) An order removing a trustee in accordance with subsection (1)(b) may be made—

(a) on the application of—

(i) the commissioners, or

(ii) a person representing not less than one quarter in value of the creditors, or

(b) in any other case, where the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of circumstances other than those mentioned in subsection (9).”;

(c) for subsection (2), substitute—

“(2) The Accountant in Bankruptcy must—

(a) order an application by a person mentioned in subsection (1A)(a) to be served on the trustee,

(b) enter particulars of the application in the register of insolvencies, and

(c) before deciding whether or not to make an order under subsection (1)(b), give the trustee the opportunity to make representations.”;

(d) for subsection (3), substitute—

“(3) The Accountant in Bankruptcy may in ordering, or instead of ordering, the removal of the trustee from office under subsection (1)(b), make such further or other order as the Accountant in Bankruptcy thinks fit.

(3A) The trustee, the commissioners or any creditor may apply to the Accountant in Bankruptcy for a review of any decision of the Accountant in Bankruptcy under subsection (1)(b) or (3).

(3B) An application under subsection (3A) must be made before the expiry of the period of 14 days beginning with the day on which the decision is given.

(3C) If an application for a review under subsection (3A) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.”;

(e) for subsection (4), substitute—

“(4) The trustee, the commissioners or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (3C)(b) before the end of the period of 14 days beginning with the date of the decision.”;

(f) in subsection (5), after “following” insert “a review under subsection (3A) or”,

(g) for subsection (6), substitute—

“(6) If the Accountant in Bankruptcy is satisfied that any of the circumstances mentioned in subsection (9) apply, the Accountant in Bankruptcy may—

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

(6A) The declaration of the office of trustee as vacant and any necessary order in accordance with subsection (6) may be made—

(a) on the application of—

(i) the commissioners, or

(ii) a creditor, or

(b) in any other case, where the Accountant in Bankruptcy is satisfied that there are reasons to do so on the basis of the circumstances mentioned in subsection (9).

(6B) The Accountant in Bankruptcy must order such intimation of an application by a person mentioned in subsection (6A)(a) as the Accountant in Bankruptcy considers necessary.

(6C) If the Accountant in Bankruptcy makes a declaration under subsection (6A), the commissioners, or if there are no commissioners the Accountant in Bankruptcy, must call a meeting of creditors for the election of a new trustee by the creditors.

(6D) A meeting called under subsection (6C) must be held before the end of the period of 28 days beginning with the date of the declaration under subsection (6A).

(6E) The trustee, the commissioners or any creditor may apply to the Accountant in Bankruptcy for a review of any declaration or any order made by the Accountant in Bankruptcy under subsection (6).

(6F) An application under subsection (6E) must be made before the expiry of the period of 14 days beginning with the day on which the declaration is made.

(6G) If an application for a review under subsection (6E) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the declaration or order before the expiry of the period of 28 days beginning with the day on which the application is made.

(6H) The trustee, the commissioners or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (6G)(b) before the end of the period of 14 days beginning with the date of the decision.”,

(h) in subsection (7), for “(6)” substitute “(6C)”, and

(i) in subsection (10), after “trustee” insert “and is without prejudice to the powers under section 1A(2)”.

30 Contractual powers of trustee

In section 42 of the 1985 Act (contractual powers of trustee), for subsection (2) substitute—
“(2) The trustee must, within 28 days from the receipt by the trustee of a request in writing from any party to a contract entered into by the debtor, adopt or refuse to adopt the contract.

(2A) The period mentioned in subsection (2) may be extended—

(a) in a case where the Accountant in Bankruptcy is the trustee, by the sheriff on the application of the Accountant in Bankruptcy,

(b) in any other case, by the Accountant in Bankruptcy on the application of the trustee.

(2B) The trustee may, before the expiry of the period of 14 days beginning with the day of the decision, apply to the Accountant in Bankruptcy for a review of a decision of the Accountant in Bankruptcy under subsection (2A)(b).

(2C) If an application for a review under subsection (2B) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

(2D) The trustee may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (2C)(b), before the expiry of the period of 14 days beginning with the day of the decision.”.

31 Bankruptcy restrictions order

(1) For section 56A of the 1985 Act, substitute—

“56A Bankruptcy restrictions order

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

(2) The Accountant in Bankruptcy must notify the debtor where the Accountant in Bankruptcy proposes to make a bankruptcy restrictions order.

(3) A notice under subsection (2) must inform the debtor that the debtor has a right to make representations to the Accountant in Bankruptcy in relation to the proposed bankruptcy restrictions order.

(4) Before making a bankruptcy restrictions order the Accountant in Bankruptcy must take into account any representations made by the debtor.”.

(2) In section 56B of the 1985 Act (grounds for making order)—

(a) in subsection (1), for the words from “sheriff” to “he” substitute “Accountant in Bankruptcy must make a bankruptcy restrictions order if the Accountant in Bankruptcy”,

(b) in subsection (2)—

(i) for “sheriff”, where it first occurs, substitute “Accountant in Bankruptcy”, and

(ii) after paragraph (b), insert—
“(ba) failing to supply accurate information to an authorised person for the purpose of the granting under section 5B of a certificate for sequestration of the debtor’s estate,”; and

(c) in subsection (3), for “sheriff” substitute “Accountant in Bankruptcy”.

(3) In section 56C(1) of the 1985 Act (application of section 67(9)), for “sheriff”, in both places where it occurs, substitute “Accountant in Bankruptcy”.

(4) The title of section 56D of the 1985 Act becomes “Timing for making an order”.

(5) In section 56D of the 1985 Act—

(a) in subsection (1), the words “An application for” are repealed, and

(b) in subsection (2), for “An application” substitute “A bankruptcy restrictions order”.

(6) In section 56E of the 1985 Act (duration of order and application for annulment)—

(a) in subsection (3), for “the sheriff” substitute “made before the expiry of the period of 28 days beginning with the day on which the order is made, the Accountant in Bankruptcy”, and

(b) after subsection (3), insert—

“(4) The debtor may apply to the Accountant in Bankruptcy for a review of any decision of the Accountant in Bankruptcy under subsection (3).

(5) An application under subsection (4) must be made before the end of the period of 14 days beginning with the day of the decision.

(6) If an application under subsection (4) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

(7) The debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (6)(b) before the end of the period of 14 days beginning with the date of the decision.”.

(7) In section 56F of the 1985 Act (interim bankruptcy restrictions order)—

(a) for subsections (1) and (2), substitute—

“(1) This section applies at any time—

(a) after the Accountant in Bankruptcy notifies the debtor under section 56A(2) that the Accountant in Bankruptcy proposes to make a bankruptcy restrictions order, and

(b) before the Accountant in Bankruptcy decides whether to make the order.

(2) The Accountant in Bankruptcy may make an interim bankruptcy restrictions order if the Accountant in Bankruptcy thinks that—

(a) there are prima facie grounds to suggest that a bankruptcy restrictions order will be made, and
(b) it is in the public interest to make an interim bankruptcy restrictions order.”,

(b) subsection (3) is repealed, and

(c) in subsection (5)—

(i) in paragraph (a), for “determination of the application for the” substitute “Accountant in Bankruptcy deciding whether or not to make a”,

(ii) paragraph (b) is repealed, and

(iii) in paragraph (c), the words “of the Accountant in Bankruptcy or” are repealed.

(8) In section 56J of the 1985 Act (effect of recall of sequestration), after subsection (3) insert—

“(4) Where an award of sequestration of a debtor’s estate is recalled under section 17E(1) or 17F(9)—

(a) the Accountant in Bankruptcy may annul any bankruptcy restrictions order or interim bankruptcy restrictions order which is in force in respect of the debtor, and

(b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.

(5) Where the Accountant in Bankruptcy refuses to annul a bankruptcy restrictions order or interim bankruptcy restrictions order under subsection (4) the debtor may apply to the Accountant in Bankruptcy for a review of such a refusal.

(6) An application under subsection (5) must be made before the end of the period of 14 days beginning with the day on which the award of sequestration is recalled.

(7) If an application under subsection (5) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm the refusal or annul the order before the expiry of the period of 28 days beginning with the day on which the application is made.

(8) The debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (7)(b) before the end of the period of 14 days beginning with the date of the decision.

(9) The decision of the sheriff on an appeal under subsection (8) is final.”.

Conversion of protected trust deed into sequestration

(1) The title of section 59A of the 1985 Act becomes “Application for conversion to sequestration”.

(2) In section 59A of the 1985 Act—

(a) in subsection (1)—

(i) for “petition the sheriff” substitute “apply to the Accountant in Bankruptcy”, and
(ii) for “lodged in court in support of the petition” substitute “submitted to the Accountant in Bankruptcy in support of the application”, and
(b) in subsection (2), for “petition” substitute “application”.

(3) In section 59B(1)(c) of the 1985 Act (contents of the affidavit), for “sheriff”, in both places where it occurs, substitute “Accountant in Bankruptcy”.

(4) The title of section 59C of the 1985 Act becomes “Power of Accountant in Bankruptcy”.

(5) In section 59C of the 1985 Act—
(a) for subsection (1), substitute—
“(1) The Accountant in Bankruptcy may, after considering an application for conversion of a protected trust deed into a sequestration, make such order as the Accountant in Bankruptcy thinks fit.”, and
(b) in subsections (2), (2A) and (3), for “sheriff”, in each place where it occurs, substitute “Accountant in Bankruptcy”.

33 Power to cure defects in procedure

(1) The title of section 63 of the 1985 Act becomes “Power of court to cure defects in procedure”.

(2) In section 63 of the 1985 Act—
(a) after subsection (1), insert—
“(1A) An order under subsection (1) may waive a failure to comply with a requirement mentioned in section 63A(1)(a) or (b) only if the failure relates to—
(a) a document to be lodged with the sheriff,
(b) a document issued by the sheriff, or
(c) a time limit specified in relation to proceedings before the sheriff or a document relating to those proceedings.”, and
(b) in subsection (2)(b) after “estate” insert “the Accountant in Bankruptcy or”.

(3) After section 63 of the 1985 Act, insert—
“63A Power of Accountant in Bankruptcy to cure defects in procedure

(1) The Accountant in Bankruptcy may make an order waiving—
(a) a clerical or incidental error in a document required by or under this Act, or
(b) a failure to comply with a time limit—
(i) which is specified by or under this Act, and
(ii) for which no provision is made by or under this Act.

(2) An order under subsection (1) may be made—
(a) on the application of any person having an interest, or
(b) without an application if the Accountant in Bankruptcy proposes to waive a matter mentioned in subsection (1).
(3) The applicant must notify all interested persons where an application is made under subsection (2)(a).

(4) The Accountant in Bankruptcy must notify all interested persons where the Accountant in Bankruptcy proposes to make an order by virtue of subsection (2)(b).

(5) A notice under subsection (3) or (4) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed order before the expiry of the period of 14 days beginning with the day on which the notice is given.

(6) Before making an order under subsection (1), the Accountant in Bankruptcy must take into account any representations made by an interested person.

(7) An order under subsection (1) may—
(a) so far as practicable, restore any person prejudiced by the error or failure to the position that person would have been in but for the error or failure,
(b) impose such conditions, including conditions as to expenses, as the Accountant in Bankruptcy thinks fit.

63B Decision under section 63A: review

(1) An interested person may apply to the Accountant in Bankruptcy for a review of a decision of the Accountant in Bankruptcy to make, or refuse to make, an order under section 63A(1).

(2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day of the decision.

(3) If an application under subsection (1) is made, the Accountant in Bankruptcy must—
(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
(b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

(4) An interested person may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (3)(b) before the expiry of the period of 14 days beginning with the day of the decision.

(5) The decision of the sheriff on an appeal under subsection (4) is final.”.

34 Regulations: applications to Accountant in Bankruptcy etc.

After section 71B of the 1985 Act, insert—

“71C Regulations: applications to Accountant in Bankruptcy etc.

(1) The Scottish Ministers may, by regulations, make provision in relation to the procedure to be followed in relation to—
(a) an application to the Accountant in Bankruptcy under this Act,
(b) an application to the Accountant in Bankruptcy for a review under this Act,
(c) any other decision made by the Accountant in Bankruptcy under this Act.

(2) In this section “decision” includes any appointment, determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation made by the Accountant in Bankruptcy.

(3) Regulations under subsection (1) may in particular make provision for or in connection with—
(a) the procedure to be followed by the person making an application,
(b) the form of any document that may be required for the purposes of an application or a decision,
(c) the form of a statement of undertakings that must be given by the debtor when making a debtor application,
(d) time limits applying in relation to the procedure,
(e) the procedure to be followed in connection with the production and recovery of documents relating to an application or a decision,
(f) the procedure to be followed (including provision about those entitled to participate) in determining an application or making a decision, and
(g) the procedure to be followed after an application is determined or a decision is made.

(4) Regulations under subsection (1) may—
(a) include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate,
(b) modify any enactment (including this Act).

35 Valuation of debts depending on contingency

In paragraph 3 of Schedule 1 to the 1985 Act (debts depending on contingency)—

(a) in sub-paragraph (2), for “sheriff”, in both places where it occurs, substitute “Accountant in Bankruptcy”, and
(b) for sub-paragraph (3), substitute—

“(3) An interested person may apply to the Accountant in Bankruptcy for a review of a valuation under sub-paragraph (2) by the trustee.

(4) An application under sub-paragraph (3) must be made before the expiry of the period of 14 days beginning with the day of the valuation.

(5) If an application under subsection (3) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
(b) confirm or vary the valuation before the expiry of the period of 28 days beginning with the day on which the application is made.
An interested person may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (5)(b) before the expiry of the period of 14 days beginning with the day of the decision.”.

Review of decisions made by Accountant in Bankruptcy

36 Review of decisions about interim trustee

(1) In section 13A of the 1985 Act (termination of interim trustee’s functions when interim trustee is not appointed as trustee)—

(a) after subsection (10), insert—

“(10A) The interim trustee or any person mentioned in subsection (4)(b) may apply to the Accountant in Bankruptcy for a review of a determination under subsection (10).

(10B) An application under subsection (10A) must be made before the expiry of the period of 14 days beginning with the day on which the determination is issued under subsection (10).

(10C) If an application under subsection (10A) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the determination under subsection (10) before the expiry of the period of 28 days beginning with the day on which the application is made.”.

(b) for subsection (11), substitute—

“(11) The interim trustee or any person mentioned in subsection (4)(b) may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (10C)(b) before the expiry of the period of 14 days beginning with the day of the decision.”.

(2) In section 13B of the 1985 Act (termination of Accountant in Bankruptcy’s functions as interim trustee where not appointed as trustee)—

(a) in subsection (5), after paragraph (a) insert—

“(aa) that an application for a review may be made under subsection (6A)”,

(b) after subsection (6), insert—

“(6A) The debtor, the petitioner or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s actings as interim trustee.

(6B) An application under subsection (6A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(a)(iii) or (b).

(6C) If an application for a review under subsection (6A) is made, the Accountant in Bankruptcy must—
(a) take into account any representations made by an interested person
before the expiry of the period of 21 days beginning with the day on
which the application is made, and
(b) confirm or revoke the discharge before the expiry of the period of 28
days beginning with the day on which the application is made.”,

(c) for subsection (7), substitute—

“(7) The debtor, the petitioner or any creditor may appeal to the sheriff against—

(a) the determination of the Accountant in Bankruptcy mentioned in
subsection (4)(a)(ii) before the expiry of the period of 14 days beginning
with the day on which notice is sent under subsection (4)(a)(iii) or (b),
(b) a decision by the Accountant in Bankruptcy under subsection (6C)(b)
before the expiry of the period of 14 days beginning with the day of the
decision.

(7A) The sheriff clerk must, following an appeal, send a copy of the decree to the
Accountant in Bankruptcy.”.

(3) In section 18 of the 1985 Act (interim preservation of estate)—

(a) after subsection (3), insert—

“(3A) Where the Accountant in Bankruptcy is the interim trustee, the debtor may
apply to the Accountant in Bankruptcy for a review of a direction under
subsection (1) on the ground that the direction is unreasonable.

(3B) If an application under subsection (3A) is made, the Accountant in Bankruptcy
must—

(a) take into account any representations made by an interested person
before the expiry of the period of 21 days beginning with the day on
which the application is made, and
(b) confirm, amend or revoke the direction (whether or not substituting a
new direction) before the expiry of the period of 28 days beginning with
the day on which the application is made.

(3C) The sheriff may, on an application by the debtor made before the expiry of the
period of 14 days beginning with the day on which the Accountant in
Bankruptcy makes a decision under subsection (3B)(b)—

(a) set aside a direction under subsection (1) or (3B)(b) if the sheriff
considers it to be unreasonable, and
(b) in any event, give such directions to the debtor regarding the
management of the debtor’s estate as the sheriff considers appropriate.

(3D) The debtor must comply with a direction—

(a) under subsection (1) pending a decision by the Accountant in
Bankruptcy under subsection (3B)(b),
(b) under subsection (3B)(b) pending the final determination of any appeal
(subject to any interim order of the sheriff),”,

(b) in subsection (4), at the beginning insert “Where the Accountant in Bankruptcy is
not the interim trustee,”, and

(c) in subsection (5)(a)(i), after ““(1)” insert “, (3B)(b), (3C)(b)”.
37  **Review of decision not to award sequestration**

In section 15 of the 1985 Act (further provisions relating to award of sequestration), for subsection (3A) substitute—

“(3A) If, following a debtor application, the Accountant in Bankruptcy refuses to award sequestration, the debtor or a creditor concurring in the application may apply to the Accountant in Bankruptcy for a review of the refusal.

(3B) An application under subsection (3A) must be made before the expiry of the period of 14 days beginning with the day on which the Accountant in Bankruptcy refuses to award sequestration.

(3C) If an application under subsection (3A) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm the refusal or award sequestration before the expiry of the period of 28 days beginning with the day on which the application is made.

(3D) If the Accountant in Bankruptcy confirms the refusal to award sequestration under subsection (3C)(b), the debtor or a creditor concurring in the application may, before the expiry of the period of 14 days beginning with the day of that confirmation, appeal to the sheriff.”.

38  **Review of decisions about replacement trustee**

(1) In section 26A of the 1985 Act (Accountant in Bankruptcy to account for intromissions)—

(a) in subsection (4)(b), after paragraph (ii) insert—

“(iiia) that an application for a review may be made under subsection (4A)”,

(b) after subsection (4), insert—

“(4A) The replacement trustee, the debtor or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s actings as trustee.

(4B) An application under subsection (4A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b).

(4C) If an application under subsection (4A) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm or revoke the discharge before the expiry of the period of 28 days beginning with the day on which the application is made.”,

(c) for subsection (5), substitute—

“(5) The replacement trustee, the debtor or any creditor may appeal to the sheriff against—
(a) the determination of the Accountant in Bankruptcy mentioned in subsection (3)(b) before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b),

(b) a decision by the Accountant in Bankruptcy under subsection (4C)(b) before the expiry of the period of 14 days beginning with the day on which the decision is made.”.

(d) for subsection (6), substitute—

“(6) The decision of the sheriff on an appeal under subsection (5) is final.”.

(2) In section 27 of the 1985 Act (discharge of original trustee)—

(a) after subsection (3), insert—

“(3A) The original trustee, the replacement trustee, the debtor or any creditor who has made representations may apply to the Accountant in Bankruptcy for a review of a determination under subsection (3).

(3B) An application under subsection (3A) must be made before the expiry of the period of 14 days beginning with the day on which the determination is issued under subsection (3).

(3C) If an application under subsection (3A) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the determination under subsection (3) (whether or not granting a certificate of discharge) before the expiry of the period of 28 days beginning with the day on which the application is made.”.

(b) in subsection (4), for “issuing of the determination under subsection (3) above” substitute “day of the decision under subsection (3C)(b)”.

39 Review of decisions about adjudication of creditor’s claims

In section 49 of the 1985 Act (adjudication of claims)—

(a) for subsection (6), substitute—

“(6) The debtor or any creditor may apply to the Accountant in Bankruptcy for a review of—

(a) the acceptance or rejection of any claim, or

(b) a decision in respect of any matter requiring to be specified under subsection (5)(a) or (b).”,

(b) for subsection (6A), substitute—

“(6A) The debtor may make an application under subsection (6) only if the debtor satisfies the Accountant in Bankruptcy that the debtor has, or is likely to have, a pecuniary interest in the outcome of the review.

(6B) An application under subsection (6) must be made—
Review of decision about discharge of trustee

(1) In section 57 of the 1985 Act (discharge of trustee)—

(a) after subsection (3), insert—

“(3A) A certificate of discharge granted under subsection (3)—

(a) must take effect after the expiry of the period mentioned in subsection (3C), and

(b) has no effect if an application for review is made under subsection (3B).

(3B) The trustee, the debtor or any creditor who has made representations under subsection (2)(a) may apply to the Accountant in Bankruptcy for a review of a determination under subsection (3).

(3C) An application under subsection (3B) must be made before the expiry of the period of 14 days beginning with the day of the determination.

(3D) If an application for a review under subsection (3B) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the determination (whether or not issuing a new certificate of discharge) before the expiry of the period of 28 days beginning with the day on which the application is made.”; and

(b) in subsection (4), for “the issuing of the determination under subsection (3) above” substitute “a decision by the Accountant in Bankruptcy under subsection (3D)(b)”.

(2) In section 58A of the 1985 Act (discharge of Accountant in Bankruptcy)—
(a) in subsection (4), after paragraph (ii) insert—

“(iia) that an application for a review may be made under subsection (4A)”,

(b) after subsection (4), insert—

“(4A) The debtor or any creditor may apply to the Accountant in Bankruptcy for a review of the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s acting as trustee.

(4B) An application under subsection (4A) must be made before the expiry of the period of 14 days beginning with the day on which notice is sent under subsection (4)(b).

(4C) If an application under subsection (4A) is made, the Accountant in Bankruptcy must—

(a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and

(b) confirm or revoke the discharge before the expiry of the period of 28 days beginning with the day on which the application is made.”,

(c) for subsection (5), substitute—

“(5) The debtor or any creditor may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (4C)(b) before the expiry of the period of 14 days beginning with the day on which the decision is made.”, and

(d) for subsection (6), substitute—

“(6) The decision of the sheriff on an appeal under subsection (5) is final.”.

Miscellaneous amendments

41 Failure to send statements of assets and liabilities

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

(a) in subsection (9)—

(i) paragraph (a) and the word “or” immediately following it are repealed, and

(ii) in paragraph (b), for “such statement of assets and liabilities” substitute “a statement of assets and liabilities sent to the Accountant in Bankruptcy in accordance with subsection (6A)”, and

(b) in subsection (10), paragraph (a) and the word “or” immediately following it are repealed.

(2) In section 19 of the 1985 Act (statement of assets and liabilities etc.)—

(a) in subsection (3)—

(i) paragraph (a) is repealed, and

(ii) in paragraph (b), for “such statement of assets and liabilities” substitute “a statement of assets and liabilities sent to the trustee in accordance with subsection (1) or (2)”, and

(b) in subsection (4), paragraph (a) and the word “or” immediately following it are repealed.
42  **Time limits for sequestration of limited partnership**

(1) In section 8 of the 1985 Act (further provisions relating to presentation of petitions), for subsection (2) substitute—

“(2) A petition for the sequestration of the estate of a limited partnership may be presented—

(a) by a qualified creditor or qualified creditors only if the apparent insolvency founded on in the petition was constituted within 4 months (or such other period as may be prescribed) before the date of presentation of the petition, or

(b) at any time by—

(i) a temporary administrator,

(ii) a member State liquidator appointed in main proceedings, or

(iii) a trustee acting under a trust deed.”.

(2) In section 8A of the 1985 Act (further provisions relating to debtor applications), for subsection (2) substitute—

“(2) A debtor application made in relation to the estate of a limited partnership may be made—

(a) at any time, or

(b) within such time as may be prescribed.”.

43  **Petition for sequestration by trustee under trust deed**

In section 12(3) of the 1985 Act (conditions for sheriff to award sequestration), for paragraph (e) substitute—

“(e) that, in the case of a petition by a trustee—

(i) one or more of the conditions in section 5(2C)(a) applies, or

(ii) the petition includes an averment in accordance with section 5(2C)(b).”.

44  **Effect of sequestration: renewal of period of inhibition etc.**

In section 14 of the 1985 Act (registration of warrant or determination of debtor application), for subsection (4) substitute—

“(4) The trustee may, if not discharged, send a memorandum in a form prescribed by the Court of Session by act of sederunt to the Keeper of the Register of Inhibitions for recording in that register before the expiry of—

(a) the period of 3 years mentioned in subsection (3)(b), or

(b) a period for which the effect mentioned in subsection (2) has been renewed by virtue of subsection (4A).

(4A) The recording of a memorandum sent in accordance with subsection (4) renews the effect mentioned in subsection (2) for a period of 3 years beginning with the expiry of—

(a) the period mentioned in subsection (3)(b), or
(b) as the case may be, the period mentioned in subsection (4)(b).”.

45 Division and sale of debtor’s family home

In section 40 of the 1985 Act (power of trustee in relation to the debtor’s family home)—

(a) in subsection (1)(b), after “subsection (2)” insert “or, as the case may be, subsection (3)”, and

(b) in subsection (3A), for “subsection (1)(b)” substitute “subsection (2) or (3)”.

46 Effect of discharge of debtor

In section 55 of the 1985 Act (effect of discharge under section 54 or 54A), after subsection (3) insert—

“(4) Nothing in this section affects regulations in relation to which section 73B of the Education (Scotland) Act 1980 (c.44) (regulations relating to student loans) applies.”.

47 Offence of obtaining credit: increase in amount

In section 67(9)(a) of the 1985 Act (offence of obtaining credit above certain amount without giving information as to status etc.), for “£500” substitute “£2000”.

48 Bankruptcy restrictions undertaking: repeal

Section 56G of the 1985 Act (which makes provision about bankruptcy restrictions undertakings) is repealed.

General

49 Meaning of “the 1985 Act”

In this Act, “the 1985 Act” means the Bankruptcy (Scotland) Act 1985 (c.66).

50 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.

(2) The power of Scottish Ministers to make an order under subsection (1) includes power to make different provision for different purposes.

(3) An order under subsection (1) may modify any enactment (including this Act).

(4) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

(5) Otherwise, an order under subsection (1) is subject to the negative procedure.
Minor and consequential amendments and repeals

(1) Schedule 3 contains minor amendments and amendments consequential on the provisions of this Act.

(2) The enactments mentioned in the first column of schedule 4 (which include enactments that are spent) are repealed to the extent set out in the second column.

Commencement

(1) This section and sections 49, 50 and 53 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may contain transitory or transitional provision or savings.

Short title

The short title of this Act is the Bankruptcy and Debt Advice (Scotland) Act 2014.
SCHEDULE 1
(introduced by section 5(2))

SCHEDULE A1 TO THE 1985 ACT

This is the Schedule that is to be inserted as Schedule A1 to the 1985 Act—

“SCHEDULE A1
(introduced by section 5(2ZF))

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

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 (5).

(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) Sections 21A, 22, 23, 24, 25, 26 to 27, 48, 52 and 62(2A) do not apply.

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

(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).

(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

(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

(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.”.”.
### Schedule 2
*(introduced by section 22(5))*

**Information to be included in the sederunt book**

This is the Schedule that is to be inserted as Schedule 3A to the 1985 Act—

**“Schedule 3A
(introduced by section 62(2A))**

**Information to be included in the sederunt book**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>A copy of a debtor application made under section 5(2)(a).</td>
</tr>
<tr>
<td>2</td>
<td>A copy of a petition presented under section 5(2)(b).</td>
</tr>
<tr>
<td>3</td>
<td>Where the trustee is the Accountant in Bankruptcy, a copy of a statement of assets and liabilities sent to the Accountant in Bankruptcy in accordance with section 5(6A).</td>
</tr>
<tr>
<td>4</td>
<td>A copy of an award of sequestration granted under section 12(1) or (3).</td>
</tr>
<tr>
<td>5</td>
<td>A copy of a warrant to cite the debtor granted under section 12(2).</td>
</tr>
<tr>
<td>6</td>
<td>Where the trustee is not the Accountant in Bankruptcy—</td>
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<tr>
<td></td>
<td>(a) the audited accounts sent to the trustee by the Accountant in Bankruptcy in accordance with section 13A(5)(d), and</td>
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<tr>
<td></td>
<td>(b) the determination fixing the amount of the outlays and remuneration payable to the interim trustee sent to the trustee by the Accountant in Bankruptcy in accordance with section 13A(5)(d).</td>
</tr>
<tr>
<td>7</td>
<td>Where the trustee is the Accountant in Bankruptcy—</td>
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<td>(a) the accounts audited by the Accountant in Bankruptcy in accordance with section 13A(5)(a), and</td>
</tr>
<tr>
<td></td>
<td>(b) the determination fixing the amount of the outlays and remuneration payable to the interim trustee issued in accordance with section 13A(5)(b).</td>
</tr>
<tr>
<td>8</td>
<td>Where the Accountant in Bankruptcy is appointed as interim trustee and the sheriff awards sequestration in accordance with section 13B(1)(a)—</td>
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<td></td>
<td>(a) the accounts of the Accountant in Bankruptcy’s intromissions (if any) with the debtor's estate; and</td>
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<tr>
<td></td>
<td>(b) the determination of the Accountant in Bankruptcy’s fees and outlays calculated in accordance with regulations made under section 69A.</td>
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<tr>
<td>9</td>
<td>A copy of any—</td>
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<tr>
<td></td>
<td>(a) order recalling or refusing to recall an award of sequestration by the sheriff under section 17 and sent to the trustee under section 17(8)(b)(ii),</td>
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<tr>
<td></td>
<td>(b) grant or refusal to grant an interim recall of an award of sequestration under section 17C(1), 17F(6) or 17H,</td>
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<tr>
<td></td>
<td>(c) grant or refusal to grant a recall of an award of sequestration under section 17E(1), 17F(9) or 17H.</td>
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<td>Information to be included in the sederunt book</td>
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<tr>
<td>10</td>
<td>A copy of any order under section 41(1)(b)(ii) or 41A(1)(b)(ii) sent to the trustee under section 17(8)(b).</td>
</tr>
</tbody>
</table>
| 11 | Where the trustee is a replacement trustee appointed under section 25 and the Accountant in Bankruptcy was not the original trustee—  
   (a) a copy of any determination fixing the amount of the outlays and remuneration payable to the original trustee and of the original trustee’s audited accounts which is sent to the trustee under section 26(3)(b)(ii),  
   (b) upon appointment, such information as is appropriate to provide a record of the sequestration process before the trustee’s appointment as replacement trustee (except that no entry is to be made in relation to any written comments made by the original trustee under section 20(2)), and  
   (c) an entry recording any certificate of discharge issued to the original trustee under section 27. |
| 12 | Where the trustee is not the Accountant in Bankruptcy, a copy of a statement of assets and liabilities sent to the trustee under section 19(1) or (2). |
| 13 | A copy of a notice given under section 21A(2). |
| 14 | Where the trustee is not the Accountant in Bankruptcy, a copy of a report made under section 21B(1)(a). |
| 15 | Where the trustee is a replacement trustee appointed under section 25 and the Accountant in Bankruptcy was the original trustee, upon appointment, such information as is appropriate to provide a record of the sequestration process before the trustee’s appointment as replacement trustee. |
| 16 | A copy of any initial proposal for the debtor’s contribution provided by the trustee under section 32A(1)(b). |
| 17 | A copy of a debtor contribution order applying to the debtor. |
| 18 | A copy of any decree issued under section 34 affecting the sequestrated estate. |
| 19 | A copy of any decree of recall issued following an application under section 35(2). |
| 20 | A copy of any decree issued under section 36 affecting the sequestrated estate. |
| 21 | The inventory and valuation of the estate made up and maintained in accordance with section 38(1)(b). |
| 22 | A copy of an account given by the debtor under section 43A(2). |
| 23 | The debtor’s deposition at an examination subscribed under section 47(5). |
| 24 | A copy of the record of an examination sent to the Accountant in Bankruptcy under section 47(6). |
| 25 | An appropriate entry in relation to the production of any document to the trustee in accordance with section 48(7), stating the date when it was produced to the trustee. |
| 26 | Where the trustee accepts or rejects a claim under section 49, the decision on the claim, specifying—  
   (a) the amount of the claim accepted by the trustee, |
(b) the category of debt, and the value of any security, as decided by the trustee, and
(c) if the claim is rejected, the reasons.

27 A copy of a decision of the Accountant in Bankruptcy under section 49(6C)(b) and of the sheriff under section 49(6D).

28 An agreement or determination in respect of the accounting period under section 52(2)(b)(i) or (ii).

29 Where the trustee is not the Accountant in Bankruptcy, the audited accounts, the scheme of division and the final determination in relation to the trustee’s outlays and remuneration, as mentioned in section 53.

30 A copy the certificate of discharge given to the debtor under section 54(10) or 54A(2) or 54F.

31 A copy the certificate deferring discharge where the debtor cannot be traced issued under section 54D(4)(b) or (6)(b).

32 Where the Accountant in Bankruptcy has acted as trustee, after making the final division of the debtor’s estate—
(a) the Accountant in Bankruptcy’s final accounts of the Accountant in Bankruptcy’s intromissions (if any) with the debtor’s estate,
(b) the scheme of division (if any), and
(c) a determination of the Accountant in Bankruptcy’s fees and outlays calculated in accordance with regulations made under section 69A.

33 Where the Accountant in Bankruptcy has acted as trustee and is discharged from all liability as mentioned in section 58A(7), an appropriate entry in relation to such discharge.

34 A decision of the court under section 63 and of the Accountant in Bankruptcy under section 63A.

35 A copy of a decree arbitral or, as the case may be, an appropriate entry recording the compromise referred to in section 65.

36 The minutes of the meeting mentioned in paragraph 7 of Schedule 6.

37 A copy of the minutes of any meeting sent to the Accountant in Bankruptcy in accordance with paragraph 16 of Schedule 6.

38 Where a meeting of commissioners is called in accordance with paragraph 17 of Schedule 6—
(a) a record of the deliberations of the commissioners at the meeting,
(b) where the trustee is not clerk in accordance with paragraph 21 of Schedule 6, a record of the deliberations of the commissioners transmitted by the commissioner acting as clerk, such commissioner to authenticate the insertion when made, and
(c) in relation to any matter agreed without a meeting, the minute recording that agreement signed in accordance with paragraph 23 of Schedule 6.”.

39 A copy of any decision (including any determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation) relating to the sequestration which is—
(a) issued by the Accountant in Bankruptcy, and
(b) not otherwise mentioned in this Schedule.

40 A copy of any decree, interlocutory decree, direction or order relating to the sequestration which is—

(a) granted by the court, and
(b) not otherwise mentioned in this Schedule.”.

SCHEDULE 3
(introduced by section 51(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

Bankruptcy (Scotland) Act 1985 (c.66)

1 The Bankruptcy (Scotland) Act 1985 Act is amended as follows.

2 In section 1A(1)(b) (register of insolvencies)—
   (a) before sub-paragraph (i) insert—
      “(ai) persons who are the subject of notices under section 4A(1) and 4B(1),”;
   and
   (b) in sub-paragraph (iiia), for the words from “interim” to the end substitute “and interim bankruptcy restrictions orders”.

3 In section 5(2B)(c), after sub-paragraph (ib), insert “or”.

4 In section 5B (certificate for sequestration), in each of subsections (1), (3) and (5)(b), for “an authorised person”, wherever it occurs, substitute “a money adviser”.

5 In section 6(2) (sequestration of other estates), after paragraph (a) insert—
   “(aa) a limited liability partnership,”.

6 In section 7 (meaning of “apparent insolvency”)—
   (a) in subsection (1), for paragraph (c), substitute—
      “(c) the debtor grants a trust deed,
      (ca) following the service on the debtor of a duly executed charge for payment of a debt, the days of charge expire without payment (unless the circumstances are shown to be such as are mentioned in subsection (1A)),
      (cb) a decree of adjudication of any part of the debtor’s estate is granted, either for payment or in security (unless the circumstances are shown to be such as are mentioned in subsection (1A)),
      (cc) a debt constituted by a decree or document of debt (as defined in section 10 of the Debt Arrangement and Attachment (Scotland) Act 2002) is being paid by the debtor under a debt payment programme under Part 1 of that Act and the programme is revoked (unless the circumstances are shown to be such as are mentioned in subsection (1A)),”;
   (b) after subsection (1), insert—
      “(1A) The circumstances are—
(a) that, at the time of the occurrence, the debtor was able and willing to pay the debtor’s debts as they became due, or

(b) that, but for the debtor’s property being affected by a restraint order or being subject to a confiscation order or charging order, the debtor would at that time have been able to pay those debts as they became due.”,

c) in subsection (3), in each of paragraphs (a) and (b), after “constituted” insert “(or, as the case may be, again constituted)”.

7 In section 9(1A) (jurisdiction), after “living” insert “or deceased”.

8 In section 12 (when sequestration is awarded)—

(a) in subsection (1), after “made” insert “and sections 11A and 11B do not apply”, and

(b) in subsection (4)(b), after “deed” insert “and sequestration is awarded”.

9 In section 13B (termination of Accountant in Bankruptcy’s functions as interim trustee where not appointed as trustee)—

(a) in subsection (4)(b), for “claim” substitute “determination”, and

(b) in subsection (5), for paragraph (c) substitute—

“(c) that, in the circumstances mentioned in subsection (9), the Accountant in Bankruptcy is discharged from any liability incurred while acting as interim trustee.”.

10 In section 14(1) (registration of warrant or determination of debtor application: duties of sheriff clerk)—

(a) for “date of sequestration” substitute “sheriff grants warrant under section 12(2)”, and

(b) for “section 12(2) of this Act” substitute “that section”.

11 In section 15(4), for “16 and 17” substitute “10A(3A), 16, 17, 17E and 17F”.

12 In section 17 (recall of sequestration)—

(a) in subsection (2), after “more” insert “other”,

(b) in subsection (3), in paragraph (a), for “the”, where it third occurs, substitute “any”, and

(c) in subsection (8)(b), in sub-paragraph (ii), for “the trustee (if any)” substitute “if the Accountant in Bankruptcy is not the trustee in the sequestration, the trustee in the sequestration”.

13 In section 20(1) (trustee’s duties on receipt of list of assets and liabilities)—

(a) for the words from “shall”, where it second occurs, to “whether” substitute “if”, and

(b) at the end add “the trustee is so to indicate in the statement of the debtor’s affairs”.

14 In section 23(3) (proceedings at statutory meeting before trustee vote), for paragraph (c) substitute—

“(c) after considering any such representations as are mentioned in paragraph (b), shall, if in the interim trustee’s opinion the debtor’s assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in paragraphs (e) to (h) of section 51(1), so indicate,”.
In section 26(1) (provisions relating to termination of original trustee’s functions), for the words “prepared under section 23(3)(d)” substitute “of the debtor’s affairs prepared under section 20(1) (as revised under section 23(3)(d) if so revised)”.

In section 27(4) (discharge of original trustee: appeal etc.) for “under”, where it first occurs, substitute “by virtue of”.

In section 29(8) (removal of trustee and trustee not acting: application of certain provisions of section 28), for “(7)” substitute “(8)”.

In section 32 (vesting of estate of debtor after sequestration)—

(a) in subsection (1), for “subsections (2) and (4B)” substitute “sections 32A to 32G”,

(b) in subsection (5), after “54” insert “, 54A or 54C”.

In section 39A(3) (debtor’s home ceasing to form part of sequestrated estate: exceptions), in paragraph (d), for the words from “registers” to “title” substitute “completes title in the Land Register of Scotland or, as the case may be, the Register of Sasines”.

In section 47 of the 1985 Act (conduct of examination), for subsection (6) substitute—

“(6) The trustee must send a copy of the record of the examination to the Accountant in Bankruptcy.”.

In section 48 of the 1985 Act (submission of claims to trustee), for subsection (7)(b) substitute—

“(b) in subsection (7) the words “and keep a record of it stating the date when it was produced to him” were repealed.”.

In section 53 (procedure after end of accounting period)—

(a) in subsection (6), for “such an appeal” substitute “an appeal against a determination under paragraph (a) or, as the case may be, an appeal under paragraph (b)”, and

(b) in subsection (6A), for “(6)” substitute “(6)(a) or (b)”.

The title of section 55 becomes “Effect of discharge under section 54, 54A or 54C”.

In section 55—

(a) in subsection (1), after “54” insert “, 54A or 54C”,

(b) in subsection (2), in paragraph (aa), for “district court” substitute “justice of the peace court (or a district court)”, and

(c) in subsection (3), after “54” insert “, 54A or 54C”.

In section 56J (effect of recall of sequestration)—

(a) in subsection (1)—

(i) in paragraph (a), for the words from “interim” to “undertaking” substitute “or interim bankruptcy restrictions order”, and

(ii) after paragraph (a), insert “and”, and

(b) in subsection (2), for the words from “interim” to “undertaking” substitute “or interim bankruptcy restrictions order”.

In section 56K (interpretation of ‘effect of recall of sequestration’)—

(a) in subsection (2)(a) substitute “or interim bankruptcy restrictions order”,

(b) in subsection (3)(a) substitute “or interim bankruptcy restrictions order”,

(c) in subsection (5), after “54” insert “, 54A or 54C”.

The title of section 57 becomes “Effect of discharge under section 54, 54A or 54C”.

In section 57—

(a) in subsection (1), after “54” insert “, 54A or 54C”,

(b) in subsection (2), in paragraph (aa), for “district court” substitute “justice of the peace court (or a district court)”, and

(c) in subsection (3), after “54” insert “, 54A or 54C”.

In section 58 (interpretation of ‘effect of discharge under section 54, 54A or 54C’)—

(a) in subsection (2)(a) substitute “or interim bankruptcy restrictions order”,

(b) in subsection (3)(a) substitute “or interim bankruptcy restrictions order”. ""
26  In section 58 (unclaimed dividends), for “57(1)(a)”, in both places where it occurs, substitute “57(1B)”. 

27  In section 60B(2) (trustee’s duty to give notice etc. to member State liquidator), after “shall” insert “also”. 

28  In section 72 (regulations)—

(a) after subsection (1), insert—

“(1A) Regulations under this Act may make different provision for different cases or classes of case.”, and 

(b) in subsection (3)(a)—

(i) after sub-paragraph (i) insert—

“(ia) section 5(2ZC),

(ib) section 5(2ZD),”,”,

(ii) after sub-paragraph (iia) insert—

“(iib) section 5C(2)(b),

(iic) section 5D(1),”,”, and 

(iii) after sub-paragraph (iii), insert—

“(iv) section 71C(1) which contain provisions which add to, replace or omit any part of the text of an Act,

“(v) paragraph 2(7) of Schedule A1.”.

29  In section 73(1) (interpretation)—

(a) in the definition of “commissioner”, for “30(1)” substitute “4”,

(b) after the definition of “commissioner”, insert—

“‘common financial tool’ has the meaning given by section 5D(1),”,”,

(c) after the definition of “creditor” insert—

“‘DAS register” has the meaning given by section 4A(4)(b),”,”,

(d) in the definition of “debtor application”, after “5(2)(a)” insert “or (3)(a)”,

(e) after the definition of “debtor application” insert—

“‘debtor contribution order” has the meaning given by section 32A(1),

“‘debtor’s contribution” has the meaning given by section 5D(1),”,”,

(f) after the definition of “member State liquidator” insert—

“‘money adviser” has the meaning given by section 5C(2),

“statement of undertakings” means the statement of debtor undertakings sent to the debtor under section 2(8) or, in the case of a debtor application, given by the debtor when making the application,”, and 

(g) for the definition of “qualified to act as an insolvency practitioner” (and the proviso to that definition) substitute—

“‘qualified to act as an insolvency practitioner” is to be construed in accordance with section 390 of the Insolvency Act 1986,”.”.
30 In Schedule 1 (determination of amount of creditor’s claim), in paragraph 2(2), after “case”” insert “, where they first occur”.

31 In Part 2 of Schedule 7 (re-enactment of certain provisions of Bankruptcy (Scotland) Act 1913), in paragraph 24(3), for the words from “the”, where it third occurs, to “meantime” substitute “in the meantime the first or any subsequent arrester obtains”.

Fire (Scotland) Act 2005 (asp 5)

32 In paragraph 5(2)(d) of schedule 1A to the Fire (Scotland) Act 2005, for “either of those Acts” substitute “paragraph 7 of Schedule 4A to the Insolvency Act 1986”.

Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)

33 In schedule 6 (repeals), in the entry relating to section 37(8) of the 1985 Act, for “second” substitute “third”.

Housing (Scotland) Act 2010 (asp 17)

34 In section 165 (interpretation), in the definition of “undischarged bankrupt”, in paragraph (c)(ii), for “either of those Acts” substitute “paragraph 7 of Schedule 4A to the Insolvency Act 1986”.

SCHEDULE 4
(introduced by section 51(2))

REPEALS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Government (Scotland) Act 1973 (c.65)</td>
<td>In section 31(3B), paragraph (b).</td>
</tr>
<tr>
<td>Bankruptcy (Scotland) Act 1985 (c.66)</td>
<td>Section 2(1C). In section 5, in subsection (2B)(c), the word “or” immediately after sub-paragraph (i) and sub-paragraph (ia); in subsection (4B), paragraph (b) and the word “and” immediately preceding it; and subsection (4C). Section 5A. In section 5B, subsection (4); and, in subsection (5), paragraph (a). In section 5B(5), paragraph (d). In section 8, in subsection (3)(a), sub-paragraph (i); and subsection (4). In section 12(3A)(b), the words “, or gives or shows that there is sufficient security for the payment of”. In section 13A, in subsection (5)(d), the words “, who shall insert them in the sederunt book”; and subsection (6). Section 13B(6). In section 17(8)(b)(ii), the words “who shall insert</td>
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<td>Enactment</td>
<td>Extent of repeal</td>
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<tr>
<td>Section 26A(8).</td>
<td>It in the sederunt book.</td>
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<tr>
<td>In section 26, in subsection (3)(b)(ii), the words ““, who shall insert the copies in the sederunt book”; and subsection (5).</td>
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<tr>
<td>Section 26A(8).</td>
<td>In section 27, in subsection (2)(b), the words “for insertion in the sederunt book”; and subsection (6).</td>
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<tr>
<td>Section 32(2) to (4L).</td>
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<td>Section 34(9).</td>
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<td>Section 35(3).</td>
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<tr>
<td>Section 36(7).</td>
<td>In section 38(1)(b), the words “which he shall record in the sederunt book”.</td>
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<tr>
<td>In section 39A(6), in paragraph (b), the words “or the Accountant in Bankruptcy”.</td>
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<tr>
<td>In section 47(5), the words “and shall be inserted in the sederunt book”.</td>
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<tr>
<td>In section 49(5), the words “in the sederunt book”.</td>
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<tr>
<td>In section 52(2A), the words “and shall be recorded in the sederunt book by the trustee”.</td>
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<tr>
<td>Section 53(10).</td>
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<tr>
<td>In section 55(3), paragraph (a) and the word “or” immediately following it.</td>
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<tr>
<td>Section 56H.</td>
<td>In section 56J(1), paragraph (c) and the word “and” immediately preceding it.</td>
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<tr>
<td>Section 58A(2) and (8).</td>
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<tr>
<td>In section 60, in subsection (1), paragraph (b) and the word “or” immediately preceding it.</td>
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<td>Section 63(4).</td>
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<tr>
<td>Section 65(3).</td>
<td>In section 71B(8), in the definition of “bankruptcy restrictions order”, paragraph (a).</td>
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<tr>
<td>In section 72, in subsection (1), the words from “and” to the end; and, in subsection (3)(a), subparagraph (ii).</td>
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<tr>
<td>In section 73(1), the definition of “bankruptcy restrictions undertaking”.</td>
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<tr>
<td>In section 74(4), paragraph (b) and the word “and” immediately preceding it.</td>
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<tr>
<td>In Schedule 1, paragraph 4 and the italic cross-heading immediately preceding it.</td>
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<tr>
<td>In Schedule 5, in paragraph 4, sub-paragraph (c); and, in paragraph 5(2), paragraph (aa).</td>
<td>In Schedule 6, in paragraph 7(3), the words “and he shall insert the minutes of the meeting in the sederunt book”; in paragraph 20, the words “and shall insert a record of the deliberations of the commissioners in the sederunt book”; in paragraph 21, the words “for insertion in the sederunt book”</td>
</tr>
</tbody>
</table>
### Enactment | Extent of repeal
---|---
5 | and shall authenticate the insertion when made”; and in paragraph 23, the words “; and that minute shall be inserted by the permanent trustee in the sederunt book”.
Insolvency Act 1986 (c.45) | In section 51(6), in the definition of “bankruptcy restrictions order”, paragraph (b).
Bankruptcy (Scotland) Act 1993 (c.6) | In Schedule 1, paragraph 31 and the italic cross-heading immediately preceding it.
10 | In section 15, in subsection (1), paragraph (b); and subsection (2). Section 21 and the italic cross-heading immediately preceding it. In section 62(2), paragraph (d).
Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) | Section 13(2).
15 | Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) |
Bankruptcy and Debt Advice (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to amend the Bankruptcy (Scotland) Act 1985; and for connected purposes.

Introduced by: John Swinney
Supported by: Fergus Ewing
On: 11 June 2013
Bill type: Government Bill