
Status: This is the original version (as it was originally enacted).

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(2ZE))

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 (6).
 - (2) Section 3(1) applies as if paragraphs (e) and (f) were omitted.
 - (3) Section 20 applies as if for subsection (1) there were substituted—

“(1) This section applies where the Accountant in Bankruptcy receives by virtue of section 5(6A) the statement of assets and liabilities in relation to a debtor to whom section 5(2ZA) applies.
 - (1A) As soon as practicable, the Accountant in Bankruptcy must prepare a statement of the debtor’s affairs so far as within the knowledge of the Accountant in Bankruptcy stating that, because section 5(2ZA) applies to the debtor, no claims may be submitted by creditors under section 22 or 48.
 - (1B) The Accountant in Bankruptcy must send a copy of the statement prepared under subsection (1A) to every known creditor of the debtor.”.
 - (4) Section 43A applies as if for subsection (2) there were substituted—

“(2) The Accountant in Bankruptcy may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor’s current state of affairs.”.
 - (5) Section 58A applies as if—
 - (a) subsections (3) to (4C) and (7)(a) were omitted, and
 - (b) for subsection (5) there were substituted—

“(5) The debtor or any creditor may, before the expiry of the period of 14 days beginning with the day on which the debtor is discharged under section 54C(1), appeal to the sheriff against the discharge of the Accountant in Bankruptcy in respect of the Accountant in Bankruptcy’s acting as trustee.”.
 - (6) Sections 21A, 22, 23, 24, 25, 26 to 27, 48, 52 and 62(2A) do not apply.

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.

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- (2) If the Accountant in Bankruptcy considers that the circumstances mentioned in any of sub-paragraphs (3) to (6) apply in relation to the debtor, the Accountant in Bankruptcy must consider whether paragraph 1 should cease to apply in relation to the debtor.
- (3) The circumstances are—
- (a) the Accountant in Bankruptcy becomes aware that the debtor application submitted under section 5 contains an error, and
 - (b) the nature of the error is such that the debtor was not at that time a debtor to whom section 5(2ZA) applies.
- (4) The circumstances are—
- (a) the Accountant in Bankruptcy becomes aware that the debtor application submitted under section 5 deliberately misrepresents or fails to state a fact that was the case at the time of the application, and
 - (b) the nature of the misrepresentation or the omission of the fact is such that the debtor was not at that time a debtor to whom section 5(2ZA) applies.
- (5) The circumstances are that, at any time after the date on which the debtor application is made—
- (a) the total value of the debtor’s assets (leaving out of account any liabilities and any assets that would not vest in a trustee under section 33(1)) exceeds £5000 (or such other amount as may be prescribed), or
 - (b) the Accountant in Bankruptcy assesses the debtor under the common financial tool as being able to make a contribution.
- (6) The circumstances are that, at any time after the date of sequestration—
- (a) the Accountant in Bankruptcy is not satisfied that the debtor has co-operated with the trustee, and
 - (b) the Accountant in Bankruptcy considers that it would be of financial benefit to the estate of the debtor and in the interests of the creditors if paragraph 1 were to cease to have effect.
- (7) The Scottish Ministers may by regulations modify this paragraph—
- (a) by modifying the circumstances in which paragraph 1 ceases to have effect,
 - (b) in consequence of any modification made under paragraph (a).

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

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

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

Debtor's right of appeal against decision under paragraph 3

- 4 (1) This paragraph applies where the Accountant in Bankruptcy gives notice to a debtor under paragraph 3(4).
- (2) The debtor may appeal to the sheriff against the decision.
- (3) An appeal must be lodged not later than 14 days after the day on which notice is given.
- (4) If the sheriff grants the appeal, paragraph 1 continues to apply in relation to the debtor.
- (5) If the sheriff refuses the appeal or if it is abandoned or withdrawn, paragraph 1 ceases to apply in relation to the debtor.

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

- 5 (1) Where paragraph 1 ceases to have effect in relation to a debtor, this Act applies subject to sub-paragraphs (2) to (4).
- (2) The debtor must send to the trustee a statement of assets and liabilities—
 - (a) where no appeal is taken under paragraph 4, before the expiry of the period of 7 days beginning with the expiry of the period during which an appeal may be made under that paragraph,
 - (b) where an appeal is refused or, as the case may be, abandoned or withdrawn, before the expiry of the period of 7 days beginning with the day on which notice is given of the outcome of the appeal or, as the case may be, its abandonment or withdrawal.
- (3) Section 21A applies as if in subsection (2), for “sequestration is awarded” there were substituted “paragraph 1 of Schedule A1 ceases to have effect in relation to the debtor”.
- (4) Section 43A applies as if for subsection (2) there were substituted—

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

 - (a) before the expiry of the period of 60 days beginning with the day on which paragraph 1 of Schedule A1 ceases to have effect in relation to the debtor,
 - (b) on the expiry of the period of 6 months beginning with the day on which the account is given under paragraph (a), and
 - (c) on the expiry of each subsequent period of 6 months.”.