



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 4

#### TRUSTEES AND COMMISSIONERS

##### *Trustees*

#### **50 Functions of trustee**

- (1) In every sequestration there is to be a trustee, whose general functions are—
  - (a) to recover, manage and realise the estate of the debtor, whether situated in Scotland or elsewhere,
  - (b) to distribute the estate among the debtor's creditors according to their respective entitlements,
  - (c) to ascertain the reasons for the debtor's insolvency and the circumstances surrounding it,
  - (d) to ascertain the state of the debtor's liabilities and assets,
  - (e) to maintain, for the purpose of providing an accurate record of the sequestration process, a sederunt book during the trustee's term of office,
  - (f) to keep regular accounts of the trustee's intromissions with the debtor's estate, such accounts being available for inspection at all reasonable times by the commissioners, if there are any, the creditors and the debtor, and
  - (g) whether or not the trustee is still acting in the sequestration, to supply AiB with such information as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.
- (2) The trustee, in performing the trustee's functions under this Act, must have regard to advice offered to the trustee by the commissioners, if there are any.
- (3) Where the trustee has reasonable grounds—
  - (a) to suspect that an offence has been committed in relation to a sequestration—
    - (i) by the debtor in respect of the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or

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- (ii) by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the trustee in respect of the debtor's assets, business or financial affairs, or
  - (b) to believe that any behaviour on the part of the debtor is of a kind that would result in a sheriff granting, under section 156(1), an application for a bankruptcy restrictions order,
- the trustee must report the matter to AiB.
- (4) A report under subsection (3) is absolutely privileged.
  - (5) Subsections (1)(g) and (3) do not apply in any case where AiB is the trustee.
  - (6) Where AiB is the trustee, AiB may apply to the sheriff for directions in relation to any particular matter arising in the sequestration.
  - (7) The debtor, a creditor or any other person having an interest may, if dissatisfied with any act, omission or decision of the trustee, apply to the sheriff in that regard.
  - (8) On an application under subsection (7), the sheriff may confirm, revoke, or modify the decision in question, confirm or annul the act in question, give the trustee directions or make such order as the sheriff thinks fit.
  - (9) The trustee must comply with the requirements of subsections (1)(a) to (d) and (2) only in so far as, in the trustee's view, to do so would be—
    - (a) of financial benefit to the debtor's estate, and
    - (b) in the interests of the creditors.

#### Commencement Information

**II** S. 50 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## 51 Appointment of trustee

- (1) Subsection (2) applies where the sheriff awards sequestration of the debtor's estate and the petition for the sequestration—
  - (a) nominates a person to be the trustee in the sequestration,
  - (b) states that the person—
    - (i) is qualified to act as an insolvency practitioner, and
    - (ii) has given an undertaking to act as the trustee in the sequestration, and
  - (c) has, annexed to it, a copy of the undertaking.
- (2) The sheriff may, if—
  - (a) it appears to the sheriff that the person is so qualified and has given the undertaking, and
  - (b) no interim trustee is appointed under section 54(1),
 appoint the person to be the trustee in the sequestration.
- (3) Where the sheriff—
  - (a) awards sequestration of the debtor's estate,
  - (b) does not, under subsection (2), appoint a person to be the trustee in the sequestration, and
  - (c) no interim trustee is appointed under section 54(1),

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the sheriff must appoint AiB to be the trustee in the sequestration.

- (4) Subsections (5) and (7) apply where the sheriff—
  - (a) awards sequestration of the debtor's estate, and
  - (b) an interim trustee is appointed under section 54(1).
- (5) The sheriff may appoint—
  - (a) the interim trustee, or
  - (b) subject to subsection (6), such other person as may be nominated by the petitioner,  
to be the trustee in the sequestration.
- (6) A person nominated under subsection (5)(b) may be appointed to be the trustee in the sequestration only if—
  - (a) it appears to the sheriff that the person is qualified to act as an insolvency practitioner and has given an undertaking to act as the trustee in the sequestration, and
  - (b) a copy of the undertaking has been lodged with the sheriff.
- (7) Where the sheriff does not, under subsection (5), appoint a person to be the trustee in the sequestration, the sheriff must appoint AiB to be the trustee in the sequestration.
- (8) Subsection (9) applies where AiB awards sequestration of the debtor's estate and the debtor application—
  - (a) nominates a person to be the trustee in the sequestration,
  - (b) states that the person—
    - (i) is qualified to act as an insolvency practitioner, and
    - (ii) has given an undertaking to act as the trustee in the sequestration, and
  - (c) has, annexed to it, a copy of the undertaking.
- (9) AiB may, if it appears to AiB that the person is so qualified and has given that undertaking, appoint the person to be the trustee in the sequestration.
- (10) But subsection (9) is subject to subsection (11).
- (11) AiB is not to make an appointment under subsection (9) where—
  - (a) the debtor application is made by a debtor to whom section 2(2) applies, and
  - (b) AiB awards sequestration of the debtor's estate.
- (12) Where AiB—
  - (a) awards sequestration of the debtor's estate, and
  - (b) does not, under subsection (9), appoint a person to be the trustee in the sequestration,  
AiB is deemed to be appointed the trustee in the sequestration.
- (13) Where a trustee is appointed in a sequestration for which the petition is presented by a creditor, or by a trustee acting under a trust deed, the appointee must, as soon as practicable, notify the debtor of the appointment.
- (14) The trustee must, at the same time as notifying the debtor under subsection (13), send to the debtor for signature by the debtor a statement of undertakings in the form prescribed.

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#### Commencement Information

**I2** S. 51 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 52 Application to Accountant in Bankruptcy by trustee for a direction

- (1) This section applies where AiB is not the trustee in the sequestration.
- (2) The trustee may apply to AiB for a direction in relation to any particular matter arising in the sequestration.
- (3) Before giving any such direction, AiB may refer the matter to the sheriff by making an application for a direction in relation to the matter.
- (4) The trustee may apply to AiB for a review of a direction given by AiB under this section.
- (5) An application for a review under subsection (4) may not be made—
  - (a) by an interim trustee,
  - (b) after the expiry of 14 days beginning with the day on which notice of the direction by AiB is given to the trustee, or
  - (c) in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (3).
- (6) If an application for a review under subsection (4) is made, AiB must—
  - (a) take into account any representations made by the trustee, the debtor, any creditor or any other person having an interest, within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the direction within 28 days beginning with that day.
- (7) The trustee may, within 14 days beginning with the day of a decision of AiB under subsection (6)(b), appeal to the sheriff against that decision.

#### Commencement Information

**I3** S. 52 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

#### *Interim trustees*

### 53 Functions of interim trustee

- (1) An interim trustee's general function is to safeguard the debtor's estate pending the determination of the petition for sequestration.
- (2) An interim trustee, whether or not still acting in the sequestration, must supply AiB with such information as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.

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#### Commencement Information

**I4** S. 53 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 54 Appointment of interim trustee

- (1) Where a petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, the sheriff may appoint an interim trustee before sequestration is awarded if—
  - (a) the debtor consents, or
  - (b) the trustee acting under the trust deed or any creditor shows cause.
- (2) For the purposes of the appointment of an interim trustee under subsection (1)—
  - (a) where a person is nominated as mentioned in subsection (1)(a) of section 51 and the provisions of that subsection apply, the sheriff may appoint that person, and
  - (b) where such a person is not appointed, the sheriff must appoint AiB.
- (3) Where an interim trustee is appointed under subsection (1), the appointee is, as soon as practicable, to notify the debtor of the appointment.
- (4) The interim trustee must, at the same time as notifying the debtor under subsection (3), send to the debtor for signature by the debtor a statement of undertakings in the form prescribed.

#### Commencement Information

**I5** S. 54 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 55 Removal, resignation etc. of interim trustee

- (1) This section applies where—
  - (a) an interim trustee is appointed under section 54(1), and
  - (b) the petition for sequestration has not been determined.
- (2) Where, under section 200(4) the sheriff removes an interim trustee from office the sheriff must, on the application of AiB, appoint a new interim trustee.
- (3) Without prejudice to that section or to subsection (2), where the sheriff is satisfied—
  - (a) that the interim trustee is unable to act—
    - (i) for a reason mentioned in subsection (4), or
    - (ii) by, under or by virtue of any other provision of this Act, or
  - (b) that the interim trustee's conduct has been such that the interim trustee should no longer continue to act in the sequestration,then, on the application of the debtor, a creditor or AiB, the sheriff must remove the interim trustee from office and appoint a new interim trustee.
- (4) The reasons are—
  - (a) that the interim trustee is incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000), or

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- (b) that the interim trustee has some incapacity by virtue of which the interim trustee is unable to act as interim trustee.
- (5) An interim trustee (not being AiB) may apply to the sheriff for authority to resign office; and if the sheriff is, in respect of the applicant, satisfied as is mentioned in subsection (3), the sheriff must grant the application.
- (6) Where, following an application under subsection (5) the interim trustee resigns office, the sheriff must appoint a new interim trustee.
- (7) Where the interim trustee dies, the sheriff must, on the application of the debtor, a creditor or AiB, appoint a new interim trustee.
- (8) A person (other than AiB) may not be appointed to act as interim trustee in a sequestration if the person is ineligible, by virtue of section 49(3), for election as a replacement trustee.
- (9) An interim trustee who, by virtue of subsection (8), is prohibited from acting as such must forthwith make an application under subsection (5).
- (10) Subsections (1) to (3) of section 51 apply as regards the appointment of an interim trustee under this section as if, for any reference—
  - (a) to the sheriff awarding sequestration of the debtor's estate, there were substituted a reference to the sheriff appointing a new interim trustee, and
  - (b) to the petition for sequestration, there were substituted a reference to the application under this section for the appointment of a new interim trustee.

#### Commencement Information

**16** S. 55 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## 56 Termination of interim trustee's functions where not appointed trustee

- (1) This section applies where an interim trustee (not being AiB) is appointed under section 54(1) and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under subsection (5) or (7) of section 51, or
  - (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee in the sequestration, the interim trustee—
  - (a) must hand over to the other person everything in the interim trustee's possession which relates to the sequestration, and
  - (b) on that being done, must cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of the interim trustee as may be appropriate.
- (4) Within 3 months after the sheriff awards, or refuses to award, sequestration the interim trustee must—
  - (a) submit to AiB—
    - (i) the interim trustee's accounts for intromissions (if any) with the debtor's estate,

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- (ii) a claim for outlays reasonably incurred by the interim trustee, and
    - (iii) a claim for remuneration for work reasonably undertaken by the interim trustee, and
  - (b) send a copy of the interim trustee's accounts and claims to—
    - (i) the debtor,
    - (ii) the petitioner, and
    - (iii) in a case where sequestration is awarded, the trustee and all creditors known to the interim trustee.
- (5) On a submission being made under subsection (4)(a), AiB must—
  - (a) audit the accounts,
  - (b) issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee,
  - (c) send a copy of the determination to—
    - (i) the interim trustee, and
    - (ii) the persons mentioned in subsection (4)(b), and
  - (d) where a trustee (not being AiB) is appointed in the sequestration, send a copy of the audited accounts and of the determination to the trustee.
- (6) On receiving a copy of the determination sent under subsection (5)(c)(i), the interim trustee may apply to AiB for a certificate of discharge.
- (7) The grant of a certificate of discharge under this section by AiB has the effect of discharging the interim trustee from all liability (other than any liability arising from fraud)—
  - (a) to the debtor,
  - (b) to the petitioner, or
  - (c) to the creditors,in respect of any act or omission of the interim trustee in exercising the functions conferred on the interim trustee by this Act.

#### Commencement Information

I7 S. 56 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## 57 Appeal or review by virtue of section 56

- (1) The interim trustee, or any person mentioned in subsection (4)(b) of section 56 may, within 14 days after the issuing of the determination under subsection (5)(b) of that section, appeal to the sheriff against the determination.
- (2) The decision of the sheriff on an appeal under subsection (1) is final.
- (3) The interim trustee must send to the persons mentioned in subsection (4)(b) of section 56 notice of any application under subsection (6) of that section and must inform them—
  - (a) that they may make written representations relating to it to AiB within 14 days after such notification, and
  - (b) of the effect mentioned in subsection (7) of that section.

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- (4) On the expiry of the 14 days mentioned in subsection (3)(a) AiB must, after considering any representations made to AiB—
  - (a) grant or refuse to grant the certificate of discharge, and
  - (b) notify accordingly the persons mentioned in section 56(4)(b).
- (5) The interim trustee or any person mentioned in section 56(4)(b) may apply to AiB for a review of a determination under subsection (4).
- (6) Any application under subsection (5) must be made within 14 days after the determination is issued.
- (7) If an application under subsection (5) is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the determination within 28 days beginning with that day.
- (8) The interim trustee, or any person mentioned in subsection (4)(b) of section 56, may, within 14 days after a decision under subsection (7)(b), appeal to the sheriff against the decision.
- (9) If, following an appeal under subsection (8), the sheriff determines that a certificate of discharge—
  - (a) which has been refused should be granted under section 56, the sheriff must order AiB to grant it,
  - (b) which has been granted should have been refused, the sheriff must revoke the certificate.
- (10) Following any appeal under subsection (8), the sheriff clerk must send a copy of the decree of the sheriff to AiB.
- (11) The decision of the sheriff on an appeal under subsection (8) is final.

#### Commencement Information

**I8** [S. 57](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

## 58 Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed trustee

- (1) This section applies where AiB is appointed as interim trustee under section 54(1) and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under section 51(5), or
  - (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee in the sequestration, AiB—
  - (a) must hand over to the other person everything in AiB's possession which relates to the sequestration, and
  - (b) on that being done, must cease to act in the sequestration.



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- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of AiB as may be appropriate.
- (4) Within 3 months after the sheriff awards, or refuses to award, sequestration AiB must—
  - (a) send to the debtor and the petitioner—
    - (i) AiB's accounts for intromissions (if any) with the debtor's estate,
    - (ii) a determination of AiB's fees and outlays, calculated in accordance with regulations made under section 205, and
    - (iii) the notice mentioned in subsection (5), and
  - (b) in a case where sequestration is awarded, send a copy of those accounts, that determination and that notice to all creditors known to AiB.
- (5) The notice is a notice in writing stating—
  - (a) that AiB has commenced procedure under this Act leading to discharge in respect of AiB's actings as interim trustee,
  - (b) that an application for a review may be made under section 59(1),
  - (c) that an appeal may be made to the sheriff under section 59(4), and
  - (d) that, in the circumstances mentioned in subsection (6), AiB is discharged from any liability incurred while acting as interim trustee.
- (6) Subsection (7) applies where—
  - (a) the requirements of this section have been complied with, and
  - (b) either no appeal is made under section 59(4) or any such appeal is refused as regards the discharge of AiB.
- (7) AiB is discharged from all liability (other than any liability arising from fraud)—
  - (a) to the debtor,
  - (b) to the petitioner, or
  - (c) to the creditors,in respect of any act or omission of AiB in exercising the functions of interim trustee conferred on AiB by this Act.

#### **Commencement Information**

**19** S. 58 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### **59 Review or appeal by virtue of section 58**

- (1) The debtor, the petitioner or any creditor may apply to AiB for a review of the discharge of AiB in respect of AiB's actings as interim trustee.
- (2) Any application under subsection (1) must be made within 14 days beginning with the day on which notice is sent under section 58(4)(a)(iii) or (b).
- (3) If an application for a review under subsection (1) is made, AiB must—
  - (a) take into account any representations made, within 21 days beginning with the day on which the application is made, by an interested person, and
  - (b) confirm or revoke the discharge within 28 days beginning with that day.

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- (4) The debtor, the petitioner or any creditor may appeal to the sheriff within 14 days beginning with—
  - (a) the day on which notice is sent under section 58(4)(a)(iii) or (b), against the determination mentioned in section 58(4)(a)(ii), or
  - (b) the day of a decision by AiB under subsection (3)(b), against that decision.
- (5) The sheriff clerk must, following an appeal under subsection (4), send a copy of the decree to AiB.
- (6) The decision of the sheriff on an appeal under subsection (4) is final.

#### Commencement Information

**I10** S. 59 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### *Replacement trustees*

#### **60 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 AiB, to AiB, or
  - (b) where the original trustee was AiB, to the sheriff.
- (3) The debtor, a creditor, the original trustee, the replacement trustee or AiB may object to any matter connected with the election—
  - (a) in the case of an objection by a person other than AiB, by applying to AiB,
  - (b) in the case of an objection by AiB, by application to the sheriff.
- (4) Any objection under subsection (3) must—
  - (a) specify the grounds on which the objection is taken, and
  - (b) be made within 4 days beginning with the day of the statutory meeting.
- (5) If there is no timeous objection under subsection (3), AiB 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.

#### Commencement Information

**I11** S. 60 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

#### **61 Procedure in application to Accountant in Bankruptcy under section 60**

- (1) This section applies where an application is made to AiB under section 60(3)(a).
- (2) AiB must—

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- (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 AiB decides—
- (a) to reject the objection in the application, AiB must without delay declare the elected person to be the trustee in the sequestration,
  - (b) to sustain the objection in the application, AiB must order the original trustee to arrange a new meeting at which a new trustee vote must be held.
- (4) Sections 48, 49, 60 and 62, and this section, 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 party may apply to AiB for a review of a decision under subsection (2)(b).
- (6) Any application under subsection (5) must be made within 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, AiB must—
- (a) take into account any representations made by an interested party within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the decision within 28 days beginning with that day.
- (8) The trustee, the objector or any other interested party may, within 14 days beginning with the day of a decision of AiB under subsection (7)(b), appeal to the sheriff against that decision.
- (9) No expense in objecting under this section is to fall on the debtor's estate.

#### **Commencement Information**

**I12** S. 61 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## **62 Procedure in application under section 60, or appeal under section 61, to sheriff**

- (1) This section applies where there is—
- (a) an application by AiB under section 60(3)(b), or
  - (b) an appeal under section 61(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, or
  - (b) to sustain such an objection, the sheriff must order the original trustee to arrange a new meeting at which a new trustee vote must be held.

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(4) Sections 48, 49, 60, 61 and this section, 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.

#### Commencement Information

**I13** S. 62 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 63 Termination of original trustee's functions

- (1) This section applies where—
  - (a) a replacement trustee is appointed under section 60, and
  - (b) the original trustee is not AiB.
- (2) On the appointment of the replacement trustee, the original trustee—
  - (a) must hand over to the replacement trustee everything in the original trustee's possession which relates to the sequestration, including—
    - (i) the statement of assets and liabilities,
    - (ii) a copy of the statement of the debtor's affairs prepared under section 42(1)(a) (as revised under section 48(4)(f) if so revised), and
    - (iii) a copy of the written comments sent under section 42(2)), and
  - (b) on that being done, must cease to act in the sequestration.
- (3) Within 3 months after the appointment of the replacement trustee, the original trustee must—
  - (a) submit to AiB—
    - (i) the original trustee's accounts for intromissions (if any) with the debtor's estate,
    - (ii) a claim for outlays reasonably incurred, and for remuneration for work reasonably undertaken, by the original trustee, and
  - (b) send to the replacement trustee a copy of what is submitted under paragraph (a).
- (4) Where the original trustee was appointed under section 54(1) as the interim trustee in the sequestration, the original trustee's accounts and the claim referred to in subsection (3)(a)(ii) must include accounts and a claim for the period of the original trustee's appointment as interim trustee.
- (5) On a submission being made under subsection (3)(a), AiB must—
  - (a) audit the accounts,
  - (b) issue a determination fixing the amount of the outlays and remuneration payable to the original trustee, and
  - (c) send a copy of—
    - (i) the determination to the original trustee, and
    - (ii) the audited accounts and the determination to the replacement trustee.
- (6) The original trustee, the replacement trustee, the debtor or any creditor may appeal to the sheriff against the determination within 14 days after it is issued.
- (7) The decision of the sheriff on an appeal under subsection (6) is final.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 4 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**114** S. 63 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 64 Accountant in Bankruptcy's intromissions in capacity of original trustee

- (1) This section applies where AiB was the original trustee and some other person is appointed as replacement trustee under section 60.
- (2) On the appointment of the replacement trustee AiB—
  - (a) must hand over to that person everything in AiB's possession—
    - (i) which relates to the sequestration, and
    - (ii) which AiB obtained in the capacity of original trustee (including the statement of assets and liabilities), and
  - (b) on that being done, must cease to act as trustee.
- (3) AiB must, within 3 months after the appointment of the replacement trustee, supply to that person—
  - (a) AiB's accounts of AiB's intromissions (if any) as original trustee with the debtor's estate,
  - (b) a determination of AiB's fees and outlays calculated in accordance with regulations under section 205, and
  - (c) a copy of the notice mentioned in subsection (4)(b).
- (4) AiB must send to the debtor and to all creditors known to AiB—
  - (a) a copy of the determination mentioned in subsection (3)(b), and
  - (b) a notice in writing stating—
    - (i) that AiB has commenced procedure under this Act leading to discharge in respect of AiB's actings as trustee,
    - (ii) that the accounts of AiB's intromissions (if any) with the debtor's estate are available for inspection at such address as AiB may determine,
    - (iii) that an application for a review may be made under subsection (5),
    - (iv) that an appeal may be made to the sheriff under subsection (8), and
    - (v) the effect of subsections (10) and (11).
- (5) The replacement trustee, the debtor or any creditor may apply to AiB for a review of the discharge of AiB in respect of AiB's actings as trustee.
- (6) Any application under subsection (5) must be made within 14 days beginning with the day on which notice is sent under subsection (4)(b).
- (7) If an application under subsection (5) is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm or revoke the discharge within 28 days beginning with that day.
- (8) The replacement trustee, the debtor or any creditor may appeal to the sheriff within 14 days beginning with—
  - (a) the day on which notice is sent under subsection (4)(b), against the determination mentioned in subsection (3)(b), or

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 4 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the day of a decision of AiB under subsection (7)(b), against that decision.
- (9) The decision of the sheriff on an appeal under subsection (8) is final.
- (10) Subsection (11) applies where—
  - (a) the requirements of this section have been complied with, and
  - (b) either no appeal is made under subsection (8) or any such appeal is refused as regards the discharge of AiB.
- (11) AiB is discharged from all liability (other than liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of AiB in exercising the functions of trustee in the sequestration.

#### Commencement Information

**I15** S. 64 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## 65 Discharge of original trustee

- (1) On receiving a copy of the determination of AiB sent under section 63(5)(c)(i) the original trustee may apply to AiB for a certificate of discharge.
- (2) The original trustee must send notice of the application to the debtor, to all creditors known to the original trustee and to the replacement trustee and must inform the debtor—
  - (a) that the debtor, the replacement trustee or any creditor may, in relation to the application, make written representations to AiB within 14 days after such notification,
  - (b) that the audited accounts of the original trustee's intromissions (if any) with the debtor's estate are available for inspection at the original trustee's office and that a copy of those accounts has been sent to the replacement trustee, and
  - (c) of the effect mentioned in subsection (11).
- (3) On the expiry of the 14 days mentioned in subsection (2)(a) AiB must, after considering any representations duly made to AiB—
  - (a) grant or refuse to grant the certificate of discharge, and
  - (b) notify accordingly (in addition to the original trustee) the debtor, the replacement trustee and all creditors who have made such representations.
- (4) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may apply to AiB for a review of a determination under subsection (3).
- (5) Any application under subsection (4) must be made within 14 days beginning with the day on which that determination is issued.
- (6) If an application under subsection (4) is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the determination (whether or not granting a certificate of discharge) within 28 days beginning with that day.

*Status: Point in time view as at 31/12/2020.*

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- (7) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may, within 14 days after a decision under subsection (6)(b), appeal to the sheriff against that decision.
- (8) If, on such appeal, the sheriff determines that a certificate of discharge which has been refused should be granted the sheriff must order AiB to grant it.
- (9) The sheriff clerk must send a copy of the sheriff's decree to AiB.
- (10) The decision of the sheriff on an appeal under subsection (7) is final.
- (11) The grant of a certificate of discharge under this section by AiB has the effect of discharging the original trustee from all liability (other than liability arising from fraud) to the creditors, or to the debtor, in respect of any act or omission of the original trustee in exercising the functions conferred on the original trustee by this Act.
- (12) This section does not apply where AiB is the original trustee.

#### **Commencement Information**

**116** S. 65 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## **66 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,
  - (b) ceases, by virtue of section 49(4), to be qualified to continue to act as trustee, or
  - (c) becomes subject to the circumstances mentioned in subsection (2).
- (2) The circumstances are that there is—
  - (a) a conflict of interest affecting the trustee, or
  - (b) a change in the personal circumstances of the trustee,which prevents the trustee from carrying out the trustee's functions, or makes it impracticable for the trustee to carry out those functions.
- (3) AiB may, in a case where subsection (1)(b) or (c) applies, determine that the trustee is removed from office in each sequestration in which the trustee has ceased to be qualified.
- (4) AiB may appoint as the trustee in each sequestration in which the former trustee was acting a person—
  - (a) determined by AiB, and
  - (b) who consents to the appointment.
- (5) A person may not be appointed under subsection (4) if the person is ineligible, by virtue of section 49(3), for election as a replacement trustee.
- (6) If, in relation to any sequestration, AiB determines that no person is to be appointed under subsection (4), AiB is deemed to be the trustee in that sequestration.
- (7) A determination or appointment under this section may be made—
  - (a) on the application of any person having an interest, or



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- (b) without an application, where AiB proposes to make a determination or appointment of AiB's own accord.
- (8) The applicant must notify all interested persons where an application is made under subsection (7)(a).
- (9) AiB must notify all interested persons where AiB proposes to make a determination or appointment by virtue of subsection (7)(b).
- (10) A notice under subsection (8) or (9) must inform the recipient that the recipient has a right to make representations to AiB, in relation to the application or to the proposed determination or appointment, within 14 days beginning with the day on which the notice is given.

#### Commencement Information

I17 S. 66 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 67 Further provision as regards replacement under section 66

- (1) Before making a determination or appointment under section 66, AIB must take into account any representations made by an interested person.
- (2) AiB must notify any determination or appointment under section 66 to—
  - (a) the former trustee (or, where the former trustee has died, the former trustee's representatives),
  - (b) the debtor,
  - (c) the trustee appointed under section 66 (where the trustee appointed is not AiB), and
  - (d) each sheriff who awarded sequestration or to whom sequestration was transferred under section 27(1).
- (3) The trustee appointed under section 66—
  - (a) must notify the determination or appointment under that section to every creditor known to the trustee,
  - (b) may require—
    - (i) delivery of all documents (other than the former trustee's accounts) relating to each sequestration in which the former trustee was acting and in the possession of the former trustee or of the former trustee's representatives,
    - (ii) delivery of a copy of the former trustee's accounts, and
    - (iii) the former trustee, or the former trustee's representatives, to submit the trustee's accounts for audit to the commissioners or, if there are no commissioners, to AiB.
- (4) Where the trustee appointed under section 66 requires submission in accordance with subsection (3)(b)(iii), the commissioners or, as the case may be, AiB must issue a determination fixing the amount of the outlays and remuneration payable to the former trustee, or the former trustee's representatives, in accordance with section 132.



*Status: Point in time view as at 31/12/2020.*

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#### Commencement Information

**118** S. 67 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 68 Review of determination or appointment under section 66

- (1) A person mentioned in section 67(2)(a) or (b) or (3)(a) may apply to AiB for a review of any determination or appointment under that section.
- (2) Any application under subsection (1) must be made within 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, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the determination or appointment within 28 days beginning with that day.
- (4) A person mentioned in section 67(2)(a) or (b) or (3)(a) may, within 14 days beginning with the day of a decision of AiB under subsection (3)(b), appeal to the sheriff against that decision.
- (5) AiB may refer a case to the court for a direction before—
  - (a) making any determination or appointment under section 66,
  - (b) issuing any determination under section 67(4), or
  - (c) undertaking any review under this section.
- (6) Any appeal under subsection (4) or 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 15, in different sheriffdoms, and
  - (b) in any other case, to the sheriff.

#### Commencement Information

**119** S. 68 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### *Resignation or death of trustee*

### 69 Resignation or death of trustee

- (1) The trustee in the sequestration (in this section referred to as “T”) may apply to AiB for authority to resign office and AiB must grant the application where satisfied that—
  - (a) T is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause), or
  - (b) T's conduct has been such that T should no longer continue to act in the sequestration.
- (2) AiB may make the granting of an application under subsection (1) subject—
  - (a) to the election of a new trustee, and

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*Status: Point in time view as at 31/12/2020.*

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- (b) to such other conditions as AiB thinks appropriate in all the circumstances of the case.
- (3) Where AiB grants an application under subsection (1), then—
- (a) except where paragraph (b) applies, the commissioners, or if there are no commissioners AiB, must call a meeting of the creditors, to be held within 28 days after T resigns, for the election by the creditors of a new trustee, and
  - (b) if the application is granted subject to the election of a new trustee, T must call a meeting of the creditors, to be held within 28 days after the granting of the application, for such an election.
- (4) Where the commissioners become, or if there are no commissioners AiB becomes, aware that T has died, they or as the case may be AiB are, as soon as practicable after becoming so aware, to call a meeting of creditors for the election by the creditors of a new trustee.
- (5) The preceding provisions of this Part in relation to the election of a replacement trustee and the appointment of that trustee also apply, subject to any necessary modifications, in relation to the election and appointment of a new trustee in pursuance of subsections (1) to (3) or subsection (4).
- (6) Where no new trustee is elected in pursuance of subsection (3) or (4), AiB may appoint as the new trustee in the sequestration—
- (a) a person who applies to AiB within 14 days beginning with the day of the meeting arranged under subsection (3) or (4), or
  - (b) any other person as may be determined by AiB and who consents to the appointment.
- (7) A person may not be appointed under subsection (6) if the person is ineligible, by virtue of section 49(3), for election as a replacement trustee.
- (8) If, after the expiry of the days mentioned in subsection (6)(a), AiB determines that no person is to be appointed under subsection (6), AiB is deemed to be the new trustee in the sequestration.
- (9) The new trustee (in this subsection and in subsection (11) referred to as “NT”) may require—
- (a) delivery to NT of all documents relating to the sequestration and in the possession of T or T's representatives (except that, in the case of T's accounts, NT is entitled to delivery only of a copy),
  - (b) T or T's representatives to submit T's accounts for audit to the commissioners or, if there are no commissioners, to AiB.
- (10) The commissioners are, or if there are no commissioners AiB is, to issue a determination fixing the amount of the outlays and remuneration payable to T or T's representatives in accordance with section 133.
- (11) T or T's representatives, NT, the debtor or any creditor may within 14 days after a determination under subsection (10) is issued—
- (a) by the commissioners, appeal against it to AiB,
  - (b) by AiB, appeal against it to the sheriff.
- (12) A decision of AiB under subsection (11)(a) is appealable to the sheriff.
- (13) The decision of the sheriff on an appeal under subsection (11)(b) or (12) is final.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 4 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Commencement Information**

**I20** S. 69 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

*Removal of trustee and appointment of new trustee*

**70** **Removal of trustee other than where trustee is unable to act or should no longer continue to act: general**

- (1) The trustee in the sequestration (in this section and in sections 71 to 73 referred to as “T”) may be removed from office—
  - (a) by the creditors at a meeting called for the purpose if they also forthwith elect a new trustee, or
  - (b) by order made by AiB if AiB is satisfied that, on the basis of circumstances other than those mentioned in section 72(2), there are reasons to remove T from office.
- (2) An order removing T 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  $\frac{1}{4}$  in value of the creditors, or
  - (b) in any other case where AiB is satisfied as mentioned in that subsection.
- (3) “Creditors”, in subsection (1)(a), does not include—
  - (a) anyone who, other than by succession, acquires after the date of sequestration a debt due by the debtor, or
  - (b) any creditor to the extent that the creditor's debt is a postponed debt.
- (4) AiB must—
  - (a) order any application by a person mentioned in subsection (2)(a) to be served on T,
  - (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 T the opportunity to make representations.
- (5) AiB may—
  - (a) in ordering, or
  - (b) instead of ordering,the removal of T from office under subsection (1)(b), make such further or other order as AiB thinks fit.
- (6) This section and sections 71 to 75 do not apply where AiB is the trustee in the sequestration.
- (7) This section is without prejudice to section 200(4).

**Commencement Information**

**I21** S. 70 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

*Status: Point in time view as at 31/12/2020.*

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## **71 Removal of trustee other than where trustee is unable to act or should no longer continue to act: review, appeal and election of new trustee**

- (1) T, the commissioners or any creditor may apply to AiB for a review of any decision of AiB under section 70(1)(b) or (5).
- (2) Any application under subsection (1) must be made within 14 days beginning with the day on which the decision is given.
- (3) If an application under subsection (1) for a review is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the decision within 28 days beginning with that day.
- (4) T, the commissioners or any creditor may, within 14 days beginning with the day on which a decision of AiB under subsection (3)(b) is given, appeal to the sheriff against that decision.
- (5) Subsection (6) applies where T has been removed from office—
  - (a) under section 70(1)(b),
  - (b) under section 200(4),
  - (c) following a review under subsection (1), or
  - (d) following an appeal under subsection (4).
- (6) The commissioners (or if there are no commissioners AiB) must call a meeting of creditors, to be held within 28 days after the removal, for the election by the creditors of a new trustee.
- (7) AiB may refer a case to the sheriff for a direction before—
  - (a) making an order under section 70(1)(b) or (5), or
  - (b) undertaking any review under this section.
- (8) An application for a review under subsection (1) may not be made in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (7).

### **Commencement Information**

**I22** S. 71 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

## **72 Removal of trustee where trustee is unable to act or should no longer continue to act: general**

- (1) If AiB is satisfied that any of the circumstances mentioned in subsection (2) apply, AiB may—
  - (a) declare the office of trustee to have become, or to be, vacant, and
  - (b) make any necessary order—
    - (i) to enable the sequestration of the estate to proceed, or
    - (ii) to safeguard the estate pending the election of a new trustee.
- (2) The circumstances are that—
  - (a) T is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever other than death), or

*Status: Point in time view as at 31/12/2020.*

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- (b) T's conduct has been such that T should no longer continue to act in the sequestration.
- (3) The declaration under subsection (1)(a), and any order under subsection (1)(b), may be made—
  - (a) on the application of the commissioners, of the debtor or of a creditor, or
  - (b) in any other case where AiB is satisfied as mentioned in subsection (1).
- (4) AiB must order such intimation of an application by a person mentioned in subsection (3)(a) as AiB considers necessary.
- (5) This section is without prejudice to section 200(4).

#### Commencement Information

**I23** S. 72 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

### **73 Removal of trustee where trustee is unable to act or should no longer continue to act: review, appeal and election of new trustee**

- (1) If AiB makes a declaration under section 72(1)(a), the commissioners (or if there are no commissioners AiB) must call a meeting of creditors, to be held within 28 days beginning with the day of the declaration, for the election of a new trustee by the creditors.
- (2) T, the commissioners, the debtor or any creditor may apply to AiB for a review of any declaration made under section 72(1)(a) or of any order made under section 72(1)(b).
- (3) Any application under subsection (2) must be made within 14 days beginning with the day of the declaration.
- (4) If an application under subsection (2) is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the declaration or order within 28 days beginning with that day.
- (5) T, the commissioners, the debtor or any creditor may, within 14 days beginning with the day of any decision of AiB under subsection (4)(b), appeal to the sheriff against that decision.
- (6) AiB may refer a case to the sheriff for a direction before—
  - (a) making any declaration or any order under section 72(1), or
  - (b) undertaking any review under this section.
- (7) An application for a review under subsection (2) may not be made in relation to a matter on which AiB has applied to the sheriff for a direction under subsection (6).

#### Commencement Information

**I24** S. 73 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

*Status: Point in time view as at 31/12/2020.*

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#### 74 Election or appointment of new trustee by virtue of section 71(6) or 73(1)

The preceding provisions of this Part in relation to the election of a replacement trustee and the appointment of that trustee also apply, subject to any necessary modifications, in relation to the election and appointment of a new trustee by virtue of section 71(6) or 73(1).

##### Commencement Information

**I25** S. 74 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

#### 75 Further provision as regards election or appointment of new trustee

Subsections (6) to (13) of section 69 apply for the purposes of sections 70 to 74 as those subsections apply for the purposes of section 69.

##### Commencement Information

**I26** S. 75 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### Commissioners

#### 76 Commissioners

In any sequestration there may be elected, in accordance with section 77, commissioners, whose general functions are—

- (a) to supervise the intromissions of the trustee in the sequestration with the sequestrated estate, and
- (b) to advise the trustee.

##### Commencement Information

**I27** S. 76 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

#### 77 Election, resignation and removal of commissioners

- (1) At the statutory meeting or at any subsequent meeting of creditors, the creditors (other than any such person as is listed in section 49(7)) may, from among the creditors or their mandatories, elect a commissioner or commissioners (or a new or additional commissioner or new or additional commissioners).
- (2) No more than 5 commissioners are to hold office in any one sequestration at any one time.
- (3) None of the persons listed in subsection (5) is eligible for election as a commissioner.
- (4) Nor is anyone who becomes a person so listed after being elected as a commissioner entitled to continue to act as a commissioner.
- (5) The persons are—

*Status: Point in time view as at 31/12/2020.*

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- (a) any person listed in paragraph (a) or (d) of section 49(5), and
  - (b) a person who is an associate of the debtor or of the trustee in the sequestration.
- (6) A commissioner may resign office at any time.
- (7) A commissioner may be removed from office—
- (a) if the commissioner is a mandatory of a creditor (see paragraphs 14 to 16 of schedule 6), by the creditor recalling the mandate and intimating in writing to the trustee that it is recalled,
  - (b) by the creditors (other than any such person as is listed in section 49(7)) at a meeting called for the purpose, or
  - (c) by order of the sheriff if the sheriff is satisfied that the commissioner is no longer acting in the interests of the efficient conduct of the sequestration.
- (8) An order under subsection (7)(c) may be made on the application of—
- (a) AiB,
  - (b) a person representing not less than  $\frac{1}{4}$  in value of the creditors, or
  - (c) the trustee.
- (9) The sheriff must—
- (a) order an application by a person mentioned in subsection (8) to be served on the commissioner,
  - (b) order that the application be intimated to every creditor who has given a mandate to the commissioner, and
  - (c) before deciding whether or not to make an order under subsection (7)(c), give the commissioner the opportunity to make representations.
- (10) On an application under subsection (7)(c), the sheriff may—
- (a) in ordering the removal of the commissioner from office, make such further order as the sheriff thinks fit, or
  - (b) instead of removing the commissioner from office, make such other order as the sheriff thinks fit.
- (11) The trustee, AiB, any commissioner or any creditor may, within 14 days after a decision of the sheriff on an application under subsection (7)(c), appeal against that decision.
- (12) Subsection (7) is without prejudice to section 200(4).

**Commencement Information**

**I28** S. 77 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

Bankruptcy (Scotland) Act 2016, PART 4 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.