



# Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

## *Review of decisions made by Accountant in Bankruptcy*

### **38 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.”, and
  - (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—

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*Status: This is the original version (as it was originally enacted).*

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- “(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 acting 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)”.