



Bankruptcy (Scotland) Act 1985

1985 CHAPTER 66

Administration of bankruptcy

1 Accountant in Bankruptcy

- (1) The Accountant in Bankruptcy shall have the following general functions in the administration of sequestration and personal insolvency—
 - (a) the supervision of the performance by interim trustees, permanent trustees and commissioners of the functions conferred on them by this Act and the investigation of any complaints made against them ;
 - (b) the maintenance of a list of persons (in this Act referred to as the " list of interim trustees ") from which interim trustees shall be appointed ;
 - (c) the maintenance of a register (in this Act referred to as the " register of insolvencies "), in a form prescribed by the Court of Session by act of sederunt, which shall contain particulars of—
 - (i) estates which have been sequestrated ; and
 - (ii) trust deeds which have been sent to him for registration under paragraph 5(d) of Schedule 5 to this Act; and
 - (d) the preparation of an annual report which shall be presented to the Court of Session and the Secretary of State and shall contain—
 - (i) statistical information relating to the state of all sequestrations of which particulars have been registered in the register of insolvencies during the year to which the report relates ;
 - (ii) particulars of trust deeds registered as protected trust deeds in that year ; and
 - (iii) particulars of the performance of the Accountant in Bankruptcy's functions under this Act.
- (2) The Accountant of Court shall be the Accountant in Bankruptcy.
- (3) If it appears to the Accountant in Bankruptcy that an interim trustee, permanent trustee or commissioner has failed without reasonable excuse to perform a duty imposed on him by any provision of this Act, he shall report the matter to the court which, after hearing the interim trustee, permanent trustee or commissioner on the matter, may

remove him from office or censure him or make such other order as the circumstances of the case may require.

- (4) If the Accountant in Bankruptcy has reasonable grounds to suspect that an interim trustee, permanent trustee or commissioner has committed an offence in the performance of his functions under this Act, or that an offence has been committed in relation to a sequestration—
- (a) by the debtor, in respect of his assets, his dealings with them or his conduct in relation to his business or financial affairs; or
 - (b) by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the permanent trustee in respect of the debtor's assets, business or financial affairs,
- he shall report the matter to the Lord Advocate.
- (5) The Accountant in Bankruptcy shall—
- (a) make the register of insolvencies, at all reasonable times, available for inspection; and
 - (b) provide any person, on request, with a certified copy of any entry in the register.
- (6) The power of the Secretary of State to regulate fees under section 2 of the Courts of Law Fees (Scotland) Act 1895 shall include power to prescribe the fees payable in respect of any matter relating to the functions of the Accountant in Bankruptcy.

2 Interim trustee

- (1) In every sequestration there shall be appointed under section 13 of this Act an interim trustee whose general functions shall be—
- (a) to safeguard the debtor's estate pending the appointment of a permanent trustee under this Act;
 - (b) to ascertain the reasons for the debtor's insolvency and the circumstances surrounding it;
 - (c) to ascertain the state of the debtor's liabilities and assets;
 - (d) to administer the sequestration process pending the appointment of a permanent trustee ; and
 - (e) whether or not he is still acting in the sequestration, to supply the Accountant in Bankruptcy with such information as the Accountant in Bankruptcy considers necessary to enable him to discharge his functions under this Act.
- (2) A person shall be entitled to have his name included in the list of interim trustees if, but only if, he—
- (a) resides within the jurisdiction of the Court of Session; and
 - (b) is qualified to act as an insolvency practitioner.
- (3) The Accountant in Bankruptcy shall remove a person's name from the list of interim trustees—
- (a) at the person's own request;
 - (b) if it appears to the Accountant in Bankruptcy that the person has ceased to meet either of the requirements mentioned in subsection (2) above ; or
 - (c) if, on an application by the Accountant in Bankruptcy to the sheriff for the sheriffdom in which the person is habitually resident or his principal place

of business is, or was last, situated, the sheriff is satisfied that the person is physically or mentally incapacitated from acting as interim trustee :

Provided that removal of a person's name in pursuance of paragraph (a) above shall not absolve that person, if he is acting as an interim or permanent trustee in a particular case, from continuing so to act until he has completed his duties in relation to that case:

Provided also that, until the coming into force of section 2 of the Insolvency Act 1985 (qualifications of insolvency practitioners), paragraph (b) above shall have effect as if at the end were added the words " or is not a fit and proper person to act as an interim trustee ".

- (4) Any person aggrieved by the exclusion or removal of his name from the list of interim trustees may appeal against that exclusion or removal to the Court of Session.

3 Permanent trustee

- (1) In every sequestration there shall be a permanent trustee whose general functions shall be—
- (a) to recover, manage and realise the debtor's estate, 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 a sederunt book during his term of office for the purpose of providing an accurate record of the sequestration process;
 - (f) to keep regular accounts of his intromissions with the debtor's estate, such accounts being available for inspection at all reasonable times by the commissioners (if any), the creditors and the debtor; and
 - (g) whether or not he is still acting in the sequestration, to supply the Accountant in Bankruptcy with such information as the Accountant in Bankruptcy considers necessary to enable him to discharge his functions under this Act.
- (2) A permanent trustee in performing his functions under this Act shall have regard to advice offered to him by the commissioners (if any).
- (3) If the permanent trustee has reasonable grounds to suspect that an offence has been committed in relation to a sequestration—
- (a) by the debtor in respect of his assets, his dealings with them or his conduct in relation to his business or financial affairs ; or
 - (b) by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the permanent trustee in respect of the debtor's assets, business or financial affairs,
- he shall report the matter to the Accountant in Bankruptcy.
- (4) A report under subsection (3) above shall be absolutely privileged.

4 Commissioners

In any sequestration (other than one to which Schedule 2 to this Act applies) commissioners, whose general functions shall be to supervise the intromissions of the

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

permanent trustee with the sequestrated estate and to advise him, may be elected in accordance with section 30 of this Act.