



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Distribution of debtor's estate

51 Order of priority in distribution.

- (1) The funds of the debtor's estate shall be distributed by the permanent trustee to meet the following debts in the order in which they are mentioned—
 - (a) the outlays and remuneration of the interim trustee in the administration of the debtor's estate;
 - (b) the outlays and remuneration of the permanent trustee in the administration of the debtor's estate;
 - (c) where the debtor is a deceased debtor, deathbed and funeral expenses reasonably incurred and expenses reasonably incurred in administering the deceased's estate;
 - (d) the expenses reasonably incurred by a creditor who is a petitioner, or concurs in the petition, for sequestration;
 - (e) preferred debts (excluding any interest which has accrued thereon to the date of sequestration);
 - (f) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other paragraph of this subsection;
 - (g) interest at the rate specified in subsection (7) below on—
 - (i) the preferred debts;
 - (ii) the ordinary debts,between the date of sequestration and the date of payment of the debt;
 - (h) any postponed debt.
- (2) In this Act "preferred debt" means a debt listed in Part I of Schedule 3 to this Act; and Part II of that Schedule shall have effect for the interpretation of the said Part I.
- (3) In this Act "postponed debt" means—

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- (a) a loan made to the debtor, in consideration of a share of the profits in his business, which is postponed under section 3 of the ^{M1}Partnership Act 1890 to the claims of other creditors;
 - (b) a loan made to the debtor by the debtor's spouse;
 - (c) a creditor's right to anything vesting in the permanent trustee by virtue of a successful challenge under section 34 of this Act or to the proceeds of sale of such a thing.
- (4) Any debt falling within any of paragraphs (c) to (h) of subsection (1) above shall have the same priority as any other debt falling within the same paragraph and, where the funds of the estate are inadequate to enable the debts mentioned in the paragraph to be paid in full, they shall abate in equal proportions.
- (5) Any surplus remaining, after all the debts mentioned in this section have been paid in full, shall be made over to the debtor or to his successors or assignees; and in this subsection "surplus" includes any kind of estate but does not include any unclaimed dividend.
- (6) Nothing in this section shall affect—
- (a) the right of a secured creditor which is preferable to the rights of the permanent trustee; or
 - (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the permanent trustee in accordance with a requirement under section 38(4) of this Act.
- (7) The rate of interest referred to in paragraph (g) of subsection (1) above shall be whichever is the greater of—
- (a) the prescribed rate at the date of sequestration; and
 - (b) the rate applicable to that debt apart from the sequestration.

Modifications etc. (not altering text)

C1 S. 51 applied (11.12.1999) by [S.I. 1999/2979, reg. 14\(5\)\(b\)](#)

Marginal Citations

M1 1890 c. 39.

52 Estate to be distributed in respect of accounting periods.

- [^{F1}(1) The permanent trustee shall make up accounts of his intromissions with the debtor's estate in respect of each accounting period.
- (2) In this Act "accounting period" shall be construed as follows—
- (a) the first accounting period shall be the period of 6 months beginning with the date of sequestration; and
 - (b) any subsequent accounting period shall be the period of 6 months beginning with the end of the last accounting period; except that—
 - (i) in a case where the Accountant in Bankruptcy is not the permanent trustee, the permanent trustee and the commissioners or, if there are no commissioners, the Accountant in Bankruptcy agree; or
 - (ii) in a case where the Accountant in Bankruptcy is the permanent trustee, he determines,

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that the accounting period shall be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it shall be that other period.

- (2A) An agreement or determination under subsection (2)(b)(i) or (ii) above—
- (a) may be made in respect of one or more than one accounting period;
 - (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, shall not have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended;
 - (c) may provide for different accounting periods to be of different durations, and shall be recorded in the sederunt book by the permanent trustee.]
- (3) Subject to the following provisions of this section, the permanent trustee shall, if the funds of the debtor's estate are sufficient and after making allowance for future contingencies, pay under section 53(7) of this Act a dividend out of the estate to the creditors in respect of each accounting period.
- (4) The permanent trustee may pay—
- (a) the debts mentioned in subsection (1)(a) to (d) of section 51 of this Act, other than his own remuneration, at any time;
 - (b) the preferred debts at any time but only with the consent of the commissioners or, if there are no commissioners, of the Accountant in Bankruptcy.
- (5) If the permanent trustee—
- (a) is not ready to pay a dividend in respect of an accounting period; or
 - (b) considers it would be inappropriate to pay such a dividend because the expense of doing so would be disproportionate to the amount of the dividend,
- he may, with the consent of the commissioners, or if there are no commissioners of the Accountant in Bankruptcy, postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.
- ^{F2}(6)
- (7) Where an appeal is taken under section 49(6)(b) of this Act against the acceptance or rejection of a creditor's claim, the permanent trustee shall, at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.
- (8) Where a creditor—
- (a) has failed to produce evidence in support of his claim earlier than 8 weeks before the end of an accounting period on being required by the permanent trustee to do so under section 48(5) of this Act; and
 - (b) has given a reason for such failure which is acceptable to the permanent trustee,
- the permanent trustee shall set aside, for such time as is reasonable to enable him to produce that evidence or any other evidence that will enable the permanent trustee to be satisfied under the said section 48(5), an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.
- (9) Where a creditor submits a claim to the permanent trustee later than 8 weeks before the end of an accounting period but more than 8 weeks before the end of a subsequent

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accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the permanent trustee shall, if he accepts the claim in whole or in part, pay to the creditor—

- (a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods; and
- (b) whatever dividend may be payable to him in respect of the said subsequent accounting period:

Provided that paragraph (a) above shall be without prejudice to any dividend which has already been paid.

Textual Amendments

- F1** S. 52(1)(2)(2A) substituted for s. 52(1)(2) (1.4.1993, subject to savings in arts. 4,5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), **Sch. 1 para.21** (with s. 12(6)); S.I. 1993/438, **art.3**
- F2** S. 52(6) repealed (1.4.1993, subject to savings in arts. 4,5 of S.I. 1993/438) by 1993 c. 6, s. 11(4), **Sch.2** (with s. 12(6)); S.I. 1993/438, **art.3**

Modifications etc. (not altering text)

- C2** S. 52 applied with modifications by S.I. 1986/1915, **Rule 4.68**

53 Procedure after end of accounting period.

(1) Within 2 weeks after the end of an accounting period, the permanent trustee shall in respect of that period submit to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy—

- (a) his accounts of his intromissions with the debtor's estate for audit and, where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and
- (b) a claim for the outlays reasonably incurred by him and for his remuneration; and, where the said documents are submitted to the commissioners, he shall send a copy of them to the Accountant in Bankruptcy.

[^{F3}(2) Subject to subsection (2A) below, all accounts in respect of legal services incurred by the permanent trustee shall, before payment thereof by him, be submitted for taxation to the auditor of the court before which the sequestration is pending.

(2A) Where—

- (a) any such account has been agreed between the permanent trustee and the person entitled to payment in respect of that account (in this subsection referred to as “the payee”);
- (b) the permanent trustee is not an associate of the payee; and
- (c) the commissioners have not determined that the account should be submitted for taxation,

the permanent trustee may pay such account without submitting it for taxation.]

(3) Within 6 weeks after the end of an accounting period—

- (a) the commissioners or, as the case may be, the Accountant in Bankruptcy ^{F4} . . .

—
(i) [^{F5}may]audit the accounts; and

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- (ii) [^{F5}shall] issue a determination fixing the amount of the outlays and the remuneration payable to the permanent trustee; and
 - (b) the permanent trustee shall make the audited accounts, scheme of division and the said determination available for inspection by the debtor and the creditors.
- (4) The basis for fixing the amount of the remuneration payable to the permanent trustee may be a commission calculated by reference to the value of the debtor's estate which has been realised by the permanent trustee, but there shall in any event be taken into account—
 - (a) the work which, having regard to that value, was reasonably undertaken by him; and
 - (b) the extent of his responsibilities in administering the debtor's estate.
- (5) If fixing the amount of such remuneration in respect of [^{F6}any] accounting period, the commissioners or, as the case may be, the Accountant in Bankruptcy may take into account any adjustment which the commissioners or the Accountant in Bankruptcy may wish to make in the amount of the remuneration fixed in respect of any earlier accounting period.
- (6) Not later than 8 weeks after the end of an accounting period, the permanent trustee, the debtor or any creditor may appeal against a determination issued under subsection (3) (a)(ii) above—
 - (a) where it is a determination of the commissioners, to the Accountant in Bankruptcy; and
 - (b) where it is a determination of the Accountant in Bankruptcy, to the sheriff;and the determination of the Accountant in Bankruptcy under paragraph (a) above shall be appealable to the sheriff [^{F7}; and the decision of the sheriff on such an appeal shall be final.]
- (7) On the expiry of the period within which an appeal may be taken under subsection (6) above or, if an appeal is so taken, on the final determination of the last such appeal, the permanent trustee shall pay to the creditors their dividends in accordance with the scheme of division.
- (8) Any dividend—
 - (a) allocated to a creditor which is not cashed or uplifted; or
 - (b) dependent on a claim in respect of which an amount has been set aside under subsection (7) or (8) of section 52 of this Act,shall be deposited by the permanent trustee in an appropriate bank or institution.
- (9) If a creditor's claim is revalued, the permanent trustee may—
 - (a) in paying any dividend to that creditor, make such adjustment to it as he considers necessary to take account of that revaluation; or
 - (b) require the creditor to repay to him the whole or part of a dividend already paid to him.
- (10) The permanent trustee shall insert in the sederunt book the audited accounts, the scheme of division and the final determination in relation to the permanent trustee's outlays and remuneration.

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Textual Amendments

- F3** S. 53(2)(2A) substituted for s. 53(2) (1.4.1993, subject to savings in arts. 4,5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), **Sch. 1 para. 22(2)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F4** Word "shall" in s. 53(3)(a) repealed (1.4.1993, subject to savings in arts. 4,5 of S.I. 1993/438) by 1993 c. 6, s. 11(4), **Sch.2** (with s. 12(6)); S.I. 1993/438, **art.3**
- F5** Words in s. 53(a)(i)(ii) inserted (1.4.1993, subject to savings in arts. 4,5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), **Sch. 1 para. 22(3)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F6** Words in s. 53(5) substituted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), **Sch. 1 para. 22(4)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F7** Words at the end of s. 53(6) added (18.2.1993) by 1993 c. 6, s. 11(3), **Sch. 1 para. 22(5)**

Modifications etc. (not altering text)

- C3** S. 53 applied with modifications by S.I. 1986/1915, **Rule 4.32.(1)**, 68 and by Rule 2.41(2)-(4) (as substituted (15.9.2003) by S.I. 2003/2111, **Rule 3**, **Sch. 1 Pt. 1**)
- S. 53 modified (18.2.1993) by 1993 c. 6, **s. 9(1)(2)**

VALID FROM 01/04/2008

[^{F8}53A] **Modification of procedure under section 53 where Accountant in Bankruptcy is trustee**

- (1) In any case where the Accountant in Bankruptcy is the trustee, section 53 of this Act shall have effect subject to the following modifications.
- (2) For subsections (1) to (7) of that section, there shall be substituted—
 - “(1) At the end of each accounting period, the Accountant in Bankruptcy shall prepare accounts of his intromissions with the debtor's estate and he shall make a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act.
 - (2) Such accounts and determination shall be available for inspection by the debtor and the creditors not later than 6 weeks after the end of the accounting period to which they relate.
 - (3) In making a determination as mentioned in subsection (1) above, the Accountant in Bankruptcy may take into account any adjustment which he may wish to make in the amount of his remuneration fixed in respect of any earlier accounting period.
 - (4) Not later than 8 weeks after the end of an accounting period, the debtor (subject to subsection (5) below) or any creditor may appeal to the sheriff against the determination of the Accountant in Bankruptcy; and the decision of the sheriff on such an appeal shall be final.
 - (5) A debtor may appeal under subsection (4) above if, and only if, he satisfies the sheriff that he has, or is likely to have, a pecuniary interest in the outcome of the appeal.
 - (6) Before—
 - (a) a debtor; or

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(b) any creditor,

appeals under subsection (4) above, he must give notice to the Accountant in Bankruptcy of his intention to appeal.

(7) On the expiry of the period within which an appeal may be made under subsection (4) above, the Accountant in Bankruptcy shall pay to the creditors their dividends in accordance with the scheme of division.”.

(3) In subsection (10) for the words “the audited” there shall be substituted the word “his ”.]

Textual Amendments

F8 S. 53A inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 46](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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