

Status: Point in time view as at 22/08/1996.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), SCHEDULE 2 is up to date with all changes known to be in force on or before 05 August 2024.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)

SCHEDULES

SCHEDULE 2 **S**

Sections 23(4), 24(5) and 28(5).

ADAPTATION OF PROCEDURE ETC. UNDER THIS ACT WHERE PERMANENT TRUSTEE NOT ELECTED

- 1 [F1 Except where the permanent trustee is the Accountant in Bankruptcy,] section 24(2) shall, in so far as it relates to qualifications for continuing to act as permanent trustee, apply to a permanent trustee appointed, as it applies to one elected, under this Act.

Textual Amendments

- F1** Words at the beginning of Sch. 2 para. 1 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. 30(2)** (with s. 12(6)); S.I. 1993/438, **art.3**

- [F2 (1) In place of section 25, sub-paragraph (2) below shall have effect.
(2) The sheriff clerk shall issue to the permanent trustee an act and warrant in such form as shall be prescribed by the Court of Session by act of sederunt.]

Textual Amendments

- F2** Sch. 2 paras. 2, 2A substituted for Sch. 2 para. 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. 30(3)** (with s. 12(6)); S.I. 1993/438, **art.3**

- [F3 (1) In place of subsections (1A) to (5) of section 28, sub-paragraph (2) below shall have effect.
(2) Where the permanent trustee resigns under subsection (1) of section 28 of this Act or dies—
(a) the Accountant in Bankruptcy; or
(b) such person as may be nominated by the Accountant in Bankruptcy (being a person who is not ineligible for election as permanent trustee under section 24(2) of this Act) if that person consents to the nomination,
may apply to the sheriff for appointment as permanent trustee; and, on such an application being made, the sheriff shall appoint the Accountant in Bankruptcy or, as the case may be, the person nominated by him to be the permanent trustee.]

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Textual Amendments

F3 Sch. 2 para. 3 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. 30(4) (with s. 12(6)); S.I. 1993/438, art.3

- [^{F4} (1) Section 29 shall have effect as follows.
- (2) Where the permanent trustee is the Accountant in Bankruptcy, subsections (1) to (6) shall not have effect.
- (3) In any other case—
- (a) subsection (5) shall not have effect but sub-paragraph (2) of paragraph 3 above shall apply where the permanent trustee has been removed from office under subsection (1)(b) of section 29 of this Act or following an appeal under subsection (4) of that section as that sub-paragraph applies where he resigns or dies; and
- (b) subsection (6) shall have effect as if for the words from “(b)” to the end there were substituted the words—
- (”) appoint as permanent trustee—
- (i) the Accountant in Bankruptcy; or
- (ii) such person as may be nominated by the Accountant in Bankruptcy (being a person who is not ineligible for election as permanent trustee under section 24(2) of this Act) if that person consents to the nomination.”
- (4) In every case—
- (a) subsection (7) shall not have effect; and
- (b) subsection (8) shall have effect as if for the word “(5)” there were substituted the word “(6)”.]

Textual Amendments

F4 Sch. 2 para. 4 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. 30(5) (with s. 12(6)); S.I. 1993/438, art.3

- 5 Where an appointment is made under paragraph 3(3), or by virtue of paragraph [^{F5}4(3)(a) or (b)], above the provisions of this Act shall continue to have effect as regards the sequestration subject to such modifications and with such further provisions as are set out in this Schedule.

Textual Amendments

F5 Words in Sch. 2 para. 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. 30(6) (with s. 12(6)); S.I. 1993/438, art.3

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- 6 Section 30 shall not have effect, and, in any sequestration to which this Schedule applies by virtue of section 28(5) of this Act, any commissioners already holding office shall cease to do so.
- 7 In section 39 ^[F6], subsection (1) shall not have effect where the permanent trustee is the Accountant in Bankruptcy and]—
- (a) in subsection (1), the reference to the permanent trustee’s confirmation in office shall be construed as a reference to his receiving the act and warrant issued under paragraph 2(2) of this Schedule;
 - ^[F7](b) in subsection (2) the words “but if there are commissioners only with the consent of the commissioners, the creditors or the court” shall not have effect, and—
 - (i) if the permanent trustee is the Accountant in Bankruptcy, no consent shall be required for the actings mentioned in that subsection; and
 - (ii) in any other case, the consent of the Accountant in Bankruptcy shall be required for such actings.]

Textual Amendments

- F6** Words in *Sch. 2 para. 7* 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. 30(7)(a)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F7** *Sch. 2 para. 7(b)* 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. 30(7)(b)** (with s. 12(6)); S.I. 1993/438, **art.3**

- 8 ^[F8]Except where the permanent trustee is the Accountant in Bankruptcy,]any power under section 44 or 45 to apply to the sheriff for an order requiring attendance shall be exercisable only with the consent of the Accountant in Bankruptcy (unless, in the case of section 45(1), the Accountant in Bankruptcy has requested the application).

Textual Amendments

- F8** Words in *Sch. 2 para. 8* 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. 30(9)(a)** (with s. 12(6)); S.I. 1993/438, **art.3**

- ^[F9] (1) Where the permanent trustee is the Accountant in Bankruptcy, section 53 shall have effect as follows.
- (2) For subsections (1) to (7) there shall be substituted the following subsections—
- (?) 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.

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- (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 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) 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

F9 Sch. 2 para. 9 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. 30(10) (with s. 12(6)); S.I. 1993/438, art.3

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