

SCHEDULES

SCHEDULE 4

Section 56.

DISCHARGE ON COMPOSITION

- 1 (1) At any time after the sheriff clerk issues the act and warrant to the permanent trustee, an offer of composition may be made by or on behalf of the debtor, in respect of his debts, to the permanent trustee.
- 2 (2) Any offer of composition shall specify caution or other security to be provided for its implementation.
- 2 The permanent trustee shall submit the offer of composition along with a report thereon to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy.
- 3 The commissioners or, if there are no commissioners, the Accountant in Bankruptcy—
 - (a) if they consider (or he considers) that the offer of composition will be timeously implemented and that, if the rules set out in section 51 of, and Schedule 1 to, this Act were applicable, its implementation would secure payment of a dividend of at least 25p in the £ in respect of the ordinary debts ; and
 - (b) if satisfied with the caution or other security specified in the offer, shall recommend that the offer should be placed before the creditors.
- 4 Where a recommendation is made that the offer of composition should be placed before the creditors, the permanent trustee shall—
 - (a) intimate the recommendation to the debtor and record it in the sederunt book;
 - (b) publish in the Edinburgh Gazette a notice stating that an offer of composition has been made and where its terms may be inspected ;
 - (c) invite every creditor known to him to accept or reject the offer by completing a prescribed form sent by the permanent trustee with the invitation and returning the completed form to him ; and
 - (d) send along with the prescribed form a report—
 - (i) summarising the offer and the present state of the debtor's affairs and the progress in realising his estate ; and
 - (ii) estimating, if the offer is accepted, the expenses to be met in concluding the sequestration proceedings and the dividend which would be payable in respect of the ordinary debts if the rules set out in section 51 of, and Schedule 1 to, this Act were applied.
- 5 (1) The permanent trustee shall determine from the completed prescribed forms duly received by him that the offer of composition has been accepted by the creditors, if a majority in number and not less than two-thirds in value of the creditors known to him have accepted it, and otherwise shall determine that they have rejected it.

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- (2) For the purposes of this paragraph, a prescribed form shall be deemed to be duly received by the permanent trustee if it is received by him not later than 14 days after the date on which it was sent to the creditor.
- (3) The permanent trustee shall intimate in writing his determination under this paragraph to the debtor and any other person by whom the offer of composition was made and shall insert his determination in the sederunt book.
- 6 Where the permanent trustee determines that the creditors have accepted the offer of composition, he shall submit to the sheriff—
- (a) a statement that he has so determined ;
 - (b) a copy of the report mentioned in paragraph 4(d) of this Schedule; and
 - (c) a declaration by the debtor as to the matters mentioned in sub-paragraphs (i) and (ii) of section 54(4)(b) of this Act.
- 7 (1) The sheriff shall, on the receipt by him of the documents mentioned in paragraph 6 of this Schedule, fix a date and time for a hearing to consider whether or not to approve the offer of composition.
- (2) The permanent trustee shall then send to every creditor known to him a notice in writing stating—
- (a) that he has determined that the creditors have accepted the offer of composition ;
 - (b) that a hearing has been fixed by the sheriff to consider whether or not to approve the offer ;
 - (c) the place, date and time of the hearing ; and
 - (d) that the recipient of the notice may make representations at the hearing as to whether or not the offer of composition should be approved.
- 8 (1) At the hearing the sheriff shall examine the documents and hear any representations and thereafter shall make an order—
- (a) if he is satisfied that a majority in number and not less than two-thirds in value of the creditors known to the permanent trustee have accepted the offer of composition and that the terms of the offer are reasonable, approving the offer; and
 - (b) if he is not so satisfied, refusing to approve the offer of composition.
- (2) The sheriff may make an order approving the offer of composition, notwithstanding that there has been a failure to comply with any provision of this Schedule.
- (3) The debtor or any creditor may within 14 days of the order being made appeal against an order approving or refusing to approve the offer of composition.
- 9 (1) Where the offer of composition is approved, the permanent trustee shall—
- (a) submit to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy, his accounts of his intromissions with the debtor's estate for audit and 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 ;
 - (b) take all reasonable steps to ensure that the interim trustee (where he is a different person) has submitted, or submits, to the Accountant in Bankruptcy his accounts and his claim for his outlays and remuneration.

- (2) Subsections (3), (4), (6) and (10) of section 53 of this Act shall apply, subject to any necessary modifications, in respect of the accounts and claim submitted under subparagraph (1)(a) above as they apply in respect of the accounts and claim submitted under section 53(1) of this Act.
- 10 As soon as the procedure under paragraph 9 of this Schedule has been completed, there shall be lodged with the sheriff clerk—
- (a) by the permanent trustee, a declaration that all necessary charges in connection with the sequestration have been paid or that satisfactory provision has been made in respect of the payment of such charges ;
 - (b) by or on behalf of the debtor, the bond of caution or other security for payment of the composition.
- 11 Once the documents have been lodged under paragraph 10 of this Schedule, the sheriff shall make an order discharging the debtor and the permanent trustee; and subsection (7) of section 54 of this Act shall apply in relation to an order under this paragraph as it applies in relation to an order under subsection (6) of that section.
- 12 An order under paragraph 11 of this Schedule discharging the permanent trustee shall have the effect of discharging him from all liability (other than any liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of the permanent trustee in exercising the functions conferred on him by this Act
- 13 Notwithstanding that an offer of composition has been made, the sequestration shall proceed as if no such offer of composition has been made until the discharge of the debtor becomes effective; and the sequestration shall thereupon cease.
- 14 A creditor who has not submitted a claim under section 48 of this Act before the sheriff makes an order approving an offer of composition shall not be entitled to make any demand against a person offering the composition on behalf of the debtor or against a cautioner in the offer; but this paragraph is without prejudice to any right of such a creditor to a dividend out of the debtor's estate equal to the dividend which creditors of the same class are entitled to receive under the composition.
- 15 A debtor may make two, but no more than two, offers of composition in the course of a sequestration.
- 16 On an order under paragraph 11 of this Schedule discharging the debtor becoming effective—
- (a) the debtor shall be re-invested in his estate as existing at the date of the order ;
 - (b) the debtor shall, subject to paragraph 14 of this Schedule, be discharged of all debts for which he was liable at the date of sequestration (other than any debts mentioned in section 55(2) of this Act); and
 - (c) the claims of creditors in the sequestration shall be converted into claims for their respective shares in the composition.
- 17 (1) Without prejudice to any rule of law relating to the reduction of court decrees, the Court of Session, on the application of any creditor, may recall the order of the sheriff approving the offer of composition and discharging the debtor and the permanent trustee where it is satisfied—
- (a) that there has been, or is likely to be, default in payment of the composition or of any instalment thereof ; or
 - (b) that for any reason the composition cannot be proceeded with or cannot be proceeded with without undue delay or without injustice, to the creditors. ∴ /

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- (2) The effect of a decree of recall under this paragraph where the debtor has already been discharged shall be to revive the sequestration:
- Provided that the revival of the sequestration shall not affect the validity of any transaction which has been entered into by the debtor since his discharge with a person who has given value and has acted in good faith.
- (3) Where the permanent trustee has been discharged, the Court may, on pronouncing a decree of recall under this paragraph, appoint a judicial factor to administer the debtor's estate, and give the judicial factor such order as it thinks fit as to that administration.
- (4) The clerk of court shall send a copy of a decree of recall under this paragraph to the permanent trustee or judicial factor for insertion in the sederunt book.
- 18 (1) Without prejudice to any rule of law relating to the reduction of court decrees, the Court of Session, on the application of any creditor, may reduce an order under paragraph 11 of this Schedule discharging a debtor where it is satisfied that a payment was made or a preference granted or that a payment or preference was promised for the purpose of facilitating the obtaining of the debtor's discharge.
- (2) The Court may, whether or not it pronounces a decree of reduction under this paragraph, order a creditor who has received a payment or preference in connection with the debtor's discharge to surrender the payment or the value of the preference to the debtor's estate.
- (3) Where the permanent trustee has been discharged, the Court may, on pronouncing a decree of reduction under this paragraph, appoint a judicial factor to administer the debtor's estate,, and give the judicial factor such order as it thinks fit as to that administration.
- (4) The clerk of court shall send a copy of a decree of reduction under this paragraph to the permanent trustee or judicial factor for insertion in the sederunt book.