



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Administration of bankruptcy

[^{F1}1 Accountant in Bankruptcy.

(1) The Accountant in Bankruptcy shall be appointed by the Scottish Ministers.

[The Accountant in Bankruptcy shall be an officer of the court.]
^{F2}(1A)

(2) The Scottish Ministers may appoint a member of the staff of the Accountant in Bankruptcy to be Depute Accountant in Bankruptcy to exercise all of the functions of the Accountant in Bankruptcy at any time when the Accountant in Bankruptcy is unable to do so.]

Textual Amendments

- F1** S. 1 and sidenote substituted (1.7.1999) by 1998 c. 46, s. 125(1), **Sch. 8 para. 22** (with s. 126(3)-(11)); S.I. 1998/3178, **art. 2(1)**
- F2** S. 1(1A) inserted (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, **ss. 22, 227(3)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

1A ^{F3}Supervisory functions of the 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—
- (i) interim trustees (not being the Accountant in Bankruptcy);
 - (ii) [^{F4}trustees (not being the Accountant in Bankruptcy)]; and
- [^{F5}(ia) trustees under protected trust deeds;]

Status: Point in time view as at 01/04/2015.

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- (iii) commissioners, of the functions conferred on them by this Act or any other enactment (including an enactment contained in subordinate legislation) or any rule of law and the investigation of any complaints made against them;
 - [^{F6}(aa) the determination of debtor applications;]
 - (b) the maintenance of a register (in this Act referred to as the “register of insolvencies”), in such form as may be prescribed by [^{F7}regulations made by the Scottish Ministers], which shall contain particulars of—
 - [^{F8}(ai) persons who are the subject of notices under section 4A(1) and 4B(1),]
 - (i) estates which have been sequestrated; [^{F9} . . .
 - (ii) trust deeds which have been sent to him for registration [^{F10} . . . ;
 - [^{F11}(iia) bankruptcy restrictions orders, [^{F12}and interim bankruptcy restrictions orders];][^{F13}and
 - (iii) the winding up and receivership of business associations which the Court of Session has jurisdiction to wind up][^{F14}, and
 - (iv) any other document as may be specified in regulations made under this subsection or any other enactment.]
 - (c) the preparation of an annual report which shall be presented to the Secretary of State and the Court of Session and shall contain—
 - (i) statistical information relating to the state of all sequestrations [^{F15}and the winding up and receivership of business associations]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; [^{F16} . . .
 - (d) such other functions as may from time to time be conferred on him by the Secretary of State; [^{F17} and
 - (e) in this subsection “business association” has the meaning given in Section C2 of Part II of Schedule 5 to the Scotland Act 1998.]
- (2) If it appears to the Accountant in Bankruptcy that a person mentioned in paragraph (a) of subsection (1) above has failed without reasonable excuse to perform a duty imposed on him by any provision of this Act or by any other enactment (including an enactment contained in subordinate legislation) or by any rule of law, he shall report the matter to the [^{F18}sheriff who] , after hearing that person on the matter, may remove him from office or censure him or make such other order as the circumstances of the case may require.
- (3) Where the Accountant in Bankruptcy has reasonable grounds to suspect that an offence has been committed—
- (a) by a person mentioned in paragraph (a) of subsection (1) above in the performance of his functions under this Act or any other enactment (including an enactment contained in subordinate legislation) or any rule of law; or
 - (b) in relation to a sequestration, by the debtor in respect of his assets, his dealings with them or his conduct in relation to his business or financial affairs; or

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- (c) in relation to a sequestration, by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the ^{F19}. . . trustee in respect of the debtor's assets, business or financial affairs,
he shall report the matter to the Lord Advocate.
- (4) 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.
- [^{F20}(5) Regulations under subsection (1)(b) may in particular prescribe circumstances where information need not be included in the register of insolvencies, if in the opinion of the Accountant in Bankruptcy inclusion of the information would be likely to jeopardise the safety or welfare of any person.]

Textual Amendments

- F3** Ss. 1-1C substituted for s. 1 (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. **1(1)** (with s. 12(6)); S.I. 1993/438, **art. 3**
- F4** Words in s. 1A(1)(a)(ii) substituted (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, ss. 36, 227(3), **Sch. 1 para. 2(a)** (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))
- F5** S. 1A(1)(a)(iia) inserted (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, ss. **23(2)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F6** S. 1A(1)(aa) inserted (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, ss. **14(1)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F7** Words in s. 1A(1)(b) substituted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by *Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11)*, ss. **22(a)(i)**, 57(2); S.S.I. 2014/172, **art. 2, sch.**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F8** S. 1A(1)(ai)(b) inserted (1.4.2015) by *Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11)*, s. 57(2), **sch. 3 para. 3(a)**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F9** Word after s. 1A(1)(b)(i) omitted (1.7.1999) by virtue of S.I. 1999/1820, **art. 4, Sch. 2 Pt. I para. 82(2)(a)** (with art. 5)
- F10** Words in s. 1A(1)(b)(ii) repealed (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, ss. 226, 227(3), **Sch. 6** (with s. 223); S.S.I. 2008/115, **art. 3(1)(h)(i)(2)(3)**, **Sch. 2** (with arts. 4-6, 10) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F11** S. 1A(1)(b)(iia) inserted (1.4.2008) by *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, ss. **2(2)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F12** Words in s. 1A(1)(b)(iia) substituted (1.4.2015) by *Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11)*, s. 57(2), **sch. 3 para. 3(b)**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F13** Word and s. 1A(1)(b)(iii) inserted (1.7.1999) by S.I. 1999/1820, **art. 4, Sch. 2 Pt. I para. 82(2)(a)** (with art. 5)
- F14** S. 1A(1)(b)(iv) and word inserted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by *Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11)*, ss. **22(a)(ii)**, 57(2); S.S.I. 2014/172, **art. 2, sch.**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

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- F15** Words in s. 1A(1)(c)(i) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 82(2)(b)** (with art. 5)
- F16** Word after s. 1A(1)(c) omitted (1.7.1999) by virtue of S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 82(2)(c)** (with art. 5)
- F17** Word and s. 1A(1)(e) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 82(2)(c)** (with art. 5)
- F18** Words in s. 1A(2) substituted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 2(b)** (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))
- F19** Word in s. 1A(3)(c) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6** (with s. 223); S.S.I. 2008/115, **art. 3(1)(h)(i)(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F20** S. 1A(5) inserted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), **ss. 22(b)**, 57(2); S.S.I. 2014/172, art. 2, sch.; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

1B ^{F21}**Performance of certain functions of the Accountant in Bankruptcy.**

- (1) The functions of the Accountant in Bankruptcy, other than functions conferred by section 1A of this Act, may be carried out on his behalf by any member of his staff authorised by him to do so.
- (2) Without prejudice to subsection (1) above, the Accountant in Bankruptcy may appoint on such terms and conditions as he considers appropriate such persons as he considers fit to perform on his behalf any of his functions in respect of the sequestration of the estate of any debtor.
- (3) A person appointed under subsection (2) above shall comply with such general or specific directions as the Accountant in Bankruptcy may from time to time give to such person as to the performance of his functions in relation to any sequestration.
- (4) The Accountant in Bankruptcy may pay to a person appointed under subsection (2) above such fee as he may consider appropriate.

Textual Amendments

- F21** Ss. 1-1C substituted for s. 1 (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, **s. 1(1)** (with s. 12(6)); S.I. 1993/438, **art.3**

1C ^{F22}**Directions.**

- (1) The Secretary of State may, after consultation with the Lord President of the Court of Session, give to the Accountant in Bankruptcy general directions as to the performance of his functions under this Act.
- (2) Directions under this section may be given in respect of all cases or any class or description of cases, but may not be given in respect of any particular case.
- (3) The Accountant in Bankruptcy shall comply with any directions given to him under this section.

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Textual Amendments

F22 Ss. 1-1C substituted for s. 1 (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 1(1) (with s. 12(6)); S.I. 1993/438, art.3

[^{F23}1D Conduct of proceedings in the sheriff court

- (1) A person authorised by the Accountant in Bankruptcy may conduct civil proceedings in the sheriff court in relation to a function of the Accountant in Bankruptcy (including the functions listed in section 1A).
- (2) In subsection (1), “civil proceedings” are proceedings which are not in respect of an offence.]

Textual Amendments

F23 S. 1D inserted (30.6.2014) by *Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11)*, ss. 44, 57(2); S.S.I. 2014/172, art. 2, sch.

[2 ^{F24}^{F25}Appointment and functions of the trustee in the sequestration]

- (1) Where the [^{F26}sheriff] awards sequestration of the debtor’s estate and the petition for the sequestration—
 - (a) nominates a person to be [^{F27}the] trustee;
 - (b) states that the person satisfies the conditions mentioned in subsection (3) below; and
 - (c) has annexed to it a copy of the undertaking mentioned in subsection (3)(c) below,the [^{F26}sheriff] may, if it appears to the [^{F26}sheriff] that the person satisfies those conditions and if no interim trustee has been appointed in pursuance of subsection (5) below, appoint that person to be [^{F27}the] trustee in the sequestration.

[Subject to subsection [^{F29}(1D)] below, where the Accountant in Bankruptcy awards ^{F28}(1A) sequestration of the debtor's estate and the debtor application—

- (a) nominates a person to be the trustee;
- (b) states that the person satisfies the conditions mentioned in subsection (3) below; and
- (c) has annexed to it a copy of the undertaking mentioned in subsection (3)(c) below,

the Accountant in Bankruptcy may, if it appears to him that the person satisfies those conditions, appoint that person to be the trustee in the sequestration.

- (1B) Where the Accountant in Bankruptcy awards sequestration of the debtor's estate and does not appoint a person to be the trustee in pursuance of subsection (1A) above, the Accountant in Bankruptcy shall be deemed to be appointed to be the trustee in the sequestration.

^{F30}(1C)]

[The Accountant in Bankruptcy is not to make an appointment under subsection (1A) ^{F31}(1D) where—

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- (a) the debtor application is made by a debtor to whom section 5(2ZA) applies, and
 - (b) the Accountant in Bankruptcy awards sequestration of the debtor's estate.]
- (2) Where the [^{F26}sheriff] awards sequestration of the debtor's estate and—
- (a) [^{F32}he] does not appoint a person to be [^{F33}the] trustee in pursuance of subsection (1) above; and
 - (b) no interim trustee has been appointed in pursuance of subsection (5) below, the [^{F26}sheriff] shall appoint the Accountant in Bankruptcy to be [^{F33}the] trustee in the sequestration.
- [Where the sheriff awards sequestration of the debtor's estate and an interim trustee has
- ^{F34}(2A) been appointed in pursuance of subsection (5) below, the sheriff may appoint—
- (a) the interim trustee; or
 - (b) subject to subsection (2B) below, such other person as may be nominated by the petitioner,
- to be the trustee in the sequestration.
- (2B) A person nominated under subsection (2A)(b) above may be appointed to be the trustee in the sequestration only if—
- (a) it appears to the sheriff that the person satisfies the conditions mentioned in subsection (3) below; and
 - (b) a copy of the undertaking mentioned in subsection (3)(c) below has been lodged with the sheriff.
- (2C) Where the sheriff does not appoint a person to be trustee in pursuance of subsection (2A) above, the sheriff shall appoint the Accountant in Bankruptcy to be the trustee in the sequestration.]
- (3) The conditions referred to in subsection (1) above are that the person—
- (a) ^{F35} . . .
 - (b) is qualified to act as an insolvency practitioner; and
 - (c) has given an undertaking, in writing, that he will act^{F36} as the trustee] in the sequestration .
- (4) ^{F37}
- (5) Where a petition for sequestration is presented by a creditor or a trustee acting under a trust deed, the [^{F26}sheriff] may appoint an interim trustee before sequestration is awarded—
- (a) if the debtor consents; or
 - (b) if the trustee acting under the trust deed or any creditor shows cause.
- (6) For the purposes of the appointment of an interim trustee under subsection (5) above—
- (a) where a person is nominated as mentioned in subsection (1)(a) above and the provisions of that subsection apply, the [^{F26}sheriff] may appoint that person; and
 - (b) where such a person is not appointed, the [^{F26}sheriff] shall appoint the Accountant in Bankruptcy.
- [The interim trustee's general function shall be to safeguard the debtor's estate pending
- ^{F38}(6A) the determination of the petition for sequestration.

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- (6B) Whether or not the interim trustee is still acting in the sequestration, the interim trustee shall 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.]
- (7) Where
- [^{F39}(a) a trustee is appointed in a sequestration where the petition was presented by a creditor or the trustee acting under a trust deed; or
- (b) an interim trustee is appointed in pursuance of subsection (5) above, he] shall, as soon as practicable, notify the debtor of his appointment.]
- [^{F40}(8) The trustee must at the same time as notifying the debtor under subsection (7)(a) or (b), send to the debtor, for signature by the debtor, a statement of undertakings in the form prescribed.]

Textual Amendments

- F24** S. 2 substituted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s.2 (with s. 12(6)); S.I. 1993/438, **art.3**
- F25** S. 2 heading substituted (1.4.2008) by virtue of [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 6(1)(c)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F26** Words in s. 2 substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#), ss. 36, 227(3), {Sch. 1 para. 3(2)} (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F27** Words in s. 2(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 3(3)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F28** S. 2(1A)-(1C) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 14(2)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10) (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5)
- F29** Word in s. 2(1A) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 6(a)**, 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F30** S. 2(1C) repealed (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), **sch. 4**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F31** S. 2(1D) inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 6(b)**, 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F32** Word in s. 2(2) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 3(4)(a)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F33** Words in s. 2(2) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), **Sch. 1 para. 3(4)(b)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F34** S. 2(2A)-(2C) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 6(1)(a)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F35** S. 2(3)(a) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 7(1)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F36** Words in s. 2(3)(c) substituted for s. 2(3)(c)(i)(ii) (1.4.2008) by the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#) ss. 36, 227(3), {Sch. 1 para. 3(5)} (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)(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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- F37** S. 2(4) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(h\)\(i\)\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F38** S. 2(6A)(6B) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 6\(1\)\(b\)](#), 227(3) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(a\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F39** Words in s. 2(7) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 36](#), 227(3), [Sch. 1 para. 3\(6\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(a\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F40** S. 2(8) inserted (30.6.2014 for specified purposes, 1.4.2015 in so far as not already in force) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), [ss. 9\(1\)](#), 57(2); S.S.I. 2014/172, [art. 2](#), [sch.](#); S.S.I. 2014/261, [art. 3](#) (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

Modifications etc. (not altering text)

- C1** S. 2(3)(a) amendment to transitional provisions in earlier commencing S.S.I. 2008/115, arts. 5, 6 (4.10.2014) by [The Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(Commencement No. 9 and Savings Amendment\) Order 2014 \(S.S.I. 2014/173\)](#), arts. 1(2), 3
- C2** S. 2(5) applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, [19\(2\)\(b\)\(i\)](#) (with reg. 24)
- C3** S. 2(7) applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, [19\(2\)\(b\)\(i\)](#) (with reg. 24)

3 [F41]Functions of the trustee]

- (1) In every sequestration there shall be a ^{F42}. . . 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 ^{F42}. . . trustee in performing his functions under this Act shall have regard to advice offered to him by the commissioners (if any).
- (3) If the ^{F42}. . . 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 ^{F42}. . . trustee in respect of the debtor's assets, business or financial affairs,

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he shall report the matter to the Accountant in Bankruptcy.

[^{F43}(3A) If the trustee has reasonable grounds to believe that any behaviour on the part of the debtor is of a kind that would result in a sheriff granting, under section 56B(1) of this Act, an application for a bankruptcy restrictions order, he shall report the matter to the Accountant in Bankruptcy.]

(4) A report under subsection (3) [^{F44}or (3A)] above shall be absolutely privileged.

[^{F45}(5) Paragraph (g) of subsection (1) above and [^{F46}subsections (3) and (3A)] above shall not apply in any case where the ^{F42}. . . trustee is the Accountant in Bankruptcy.

(6) [^{F47}Where the Accountant in Bankruptcy is the trustee, the Accountant in Bankruptcy] may apply to the sheriff for directions in relation to any particular matter arising in the sequestration.

(7) Where the debtor, a creditor or any other person having an interest is dissatisfied with any act, omission or decision of the ^{F42}. . . trustee, he may apply to the sheriff and, on such an application being made, the sheriff may confirm, annul or modify any act or decision of the ^{F42}. . . trustee or may give him directions or make such order as he thinks fit.]

[^{F48}(8) The trustee shall comply with the requirements of subsections (1)(a) to (d) and (2) above only in so far as, in his view, it would be of financial benefit to the estate of the debtor and in the interests of the creditors to do so.]

Textual Amendments

- F41** S. 3: heading substituted (1.4.2008) by virtue of [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 6(2)**, 227 (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F42** Words in s. 3 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 226**, 227(3), **Sch. 6** (with s. 223); S.S.I. 2008/115, **art. 3(1)(h)(i)(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F43** S. 3(3A) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 8(1)(a)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F44** Words in S. 3(4) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 8(1)(b)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F45** S. 3(5)-(7) added (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.1** (with s. 12(6)); S.I. 1993/438, **art.3**
- F46** Words in s. 3(5) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 8(1)(c)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F47** Words in s. 3(6) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 25(1)**, 57(2); S.S.I. 2014/261, **art. 3** (with arts. 4-7, 9, 12) (as amended by S.S.I. 2015/54, art. 2)
- F48** S. 3(8) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 8(1)(d)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

[^{F49}3A Application to Accountant in Bankruptcy for a direction

(1) This section applies where the Accountant in Bankruptcy is not the trustee.

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- (2) The trustee may apply to the Accountant in Bankruptcy for a direction in relation to any particular matter arising in the sequestration.
- (3) The Accountant in Bankruptcy may, before giving a direction on any particular matter under this section, refer the matter to the sheriff by making an application for a direction in relation to that matter.
- (4) The trustee may apply to the Accountant in Bankruptcy for a review of a direction given by the Accountant in Bankruptcy under this section.
- (5) An application for a review under subsection (4) may not be made—
 - (a) by an interim trustee,
 - (b) after the expiry of the period of 14 days beginning with the day on which notice of the direction by the Accountant in Bankruptcy is given to the trustee, or
 - (c) in relation to a matter on which the Accountant in Bankruptcy has applied to the sheriff for a direction under subsection (3).
- (6) If an application for a review under subsection (4) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by the trustee, the debtor, any creditor and any other person having an interest 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 before the expiry of the period of 28 days beginning with the day on which the application is made.
- (7) The trustee may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (6)(b) before the expiry of the period of 14 days beginning with the day of the decision.]

Textual Amendments

F49 S. 3A inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), ss. **25(2)**, **57(2)**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 9, 12) (as amended by S.S.I. 2015/54, art. 2)

4 Commissioners.

In any sequestration ^{F50} . . . commissioners, whose general functions shall be to supervise the intromissions of the ^{F50} . . . trustee with the sequestered estate and to advise him, may be elected in accordance with section 30 of this Act.

Textual Amendments

F50 Words in s. 4 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), **Sch. 6** (with s. 223); S.S.I. 2008/115, art. **3(1)(h)(i)(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

Status:

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