



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

[^{F1}Discharge of trustee]

Textual Amendments

- F1** Cross-heading preceding s. 57 substituted (1.4.2008) by virtue of [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 48](#) (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))

57 [^{F2}Discharge of trustee]

- (1) After the ^{F3} . . . trustee has made a final division of the debtor's estate and has inserted his final audited accounts in the sederunt book, he—
- shall deposit any unclaimed dividends and any unapplied balances in an appropriate bank or institution;
 - shall thereafter send to the Accountant in Bankruptcy the sederunt book [^{F4}in the format specified by subsection (1A) and], a copy of the audited accounts and a receipt for the deposit of the unclaimed dividends and unapplied balances; and
 - may at the same time as sending the said documents apply to the Accountant in Bankruptcy for a certificate of discharge.

[^{F5}(1A) The trustee must send an electronic version of the sederunt book in such format as the Accountant in Bankruptcy may from time to time direct.]

- (2) The ^{F3} . . . trustee shall send notice of an application under subsection (1)(c) above to the debtor and to all the creditors known to the ^{F3} . . . trustee and shall inform the debtor and such creditors—
- that they may make written representations relating to the application to the Accountant in Bankruptcy within a period of 14 days after such notification;

Status: Point in time view as at 31/12/2014.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Discharge of trustee is up to date with all changes known to be in force on or before 16 August 2024.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)

- (b) that the sederunt book is available for inspection [^{F6}following a request made to the Accountant in Bankruptcy] and contains the audited accounts of, and scheme of division in, the sequestration; and
 - (c) of the effect mentioned in subsection (5) below.
- (3) On the expiry of the period mentioned in subsection (2)(a) above, the Accountant in Bankruptcy, after examining the documents sent to him and considering any representations duly made to him, shall—
- (a) grant or refuse to grant the certificate of discharge; and
 - (b) notify (in addition to the ^{F3} . . . trustee) the debtor and all creditors who have made such representations accordingly.
- (4) The ^{F3} . . . trustee, the debtor or any creditor who has made representations under subsection (2)(a) above, may within 14 days after the issuing of the determination under subsection (3) above, appeal therefrom to the sheriff and if the sheriff determines that a certificate of discharge which has been refused should be granted he shall order the Accountant in Bankruptcy to grant it; and the sheriff clerk shall send a copy of the decree of the sheriff to the Accountant in Bankruptcy.
- ^{F7}[(4A) The decision of the sheriff on an appeal under subsection (4) above shall be final.]
- (5) The grant of a certificate of discharge under this section by the Accountant in Bankruptcy shall have the effect of discharging the ^{F3} . . . trustee 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 ^{F3} . . . trustee in exercising the functions conferred on him by this Act including, where he was also the interim trustee, the functions conferred on him as interim trustee.
- (6) Where a certificate of discharge is granted under this section, the Accountant in Bankruptcy shall make an appropriate entry in the register of insolvencies and in the sederunt book.
- (7) Where the ^{F3} . . . trustee has died, resigned office or been removed from office, the provisions of this section shall, subject to any necessary modifications, apply in relation to that ^{F3} . . . trustee or, if he has died, to his executor as they apply to a ^{F3} . . . trustee who has made a final division of the debtor's estate in accordance with the foregoing provisions of this Act.
- ^{F7}[(8) This section does not apply in any case where the Accountant in Bankruptcy is the ^{F3} . . . trustee.]

Textual Amendments

- F2** S. 57 heading substituted (1.4.2008) by virtue of [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 49](#) (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))
- F3** Words in s. 57 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), [Sch. 2](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F4** Words in s. 57(1)(b) 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. 23\(1\)\(a\)](#), 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)

Status: Point in time view as at 31/12/2014.

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- F5** S. 57(1A) 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. 23(1)(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)
- F6** Words in s. 57(2)(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. 23(1)(c), 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)
- F7** S. 57(4A) 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. 24(2)** (with s. 12(6)); S.I. 1993/438, **art.3**
S. 57(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. 24(3)** (with s. 12(6)); S.I. 1993/438, **art.3**

58 Unclaimed dividends.

- (1) Any person, producing evidence of his right, may apply to the Accountant in Bankruptcy to receive a dividend deposited under section 57(1)(a) [^{F8}or 58A(3)] of this Act, if the application is made not later than 7 years after the date of such deposit.
- (2) If the Accountant in Bankruptcy is satisfied of the applicant's right to the dividend, he shall authorise the appropriate bank or institution to pay to the applicant the amount of that dividend and of any interest which has accrued thereon.
- (3) The Accountant in Bankruptcy shall, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 57(1)(a) [^{F8}or 58A(3)] of this Act, hand over the deposit receipt or other voucher relating to such dividend or balance to the Secretary of State, who shall thereupon be entitled to payment of the amount due, principal and interest, from the bank or institution in which the deposit was made.

Textual Amendments

- F8** Words in s. 58(1)(3) 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.25** (with s. 12(6)); S.I. 1993/438, **art.3**

Modifications etc. (not altering text)

- C1** S. 58 applied with modifications by S.I. 1986/1915, **Rule 4.68** and by Rule 2.41(2) (as substituted (15.9.2003) by S.I. 2003/2111, **Rule 3**, {Sch. 1Pt. 1})
- C2** S. 58 applied with modifications by Insolvency Act 1986 (c. 45, SIF 66), **ss. 193(3), 443**
- C3** S. 58 extended with modifications by Companies Act 1985 (c. 6, SIF 27), **s. 430(14)** (as substituted by Financial Services Act 1986 (c. 60, SIF 69), s. 172, **Sch. 12**)
- C4** S. 58 applied (6.4.2007) by Companies Act 2006 (c. 46), **ss. 982(8), 1300**; S.I. 2007/1093, **art. 2(1)(b)** (with saving in art. 11(1))
- C5** S. 58 applied (with modifications) (20.5.2006) by The Takeovers Directive (Interim Implementation) Regulations 2006 (S.I. 2006/1183), reg. 30, **Sch. 2 para. 3(15)**
- C6** S. 58 applied (with modifications) (14.11.2011) by The Investment Bank Special Administration (Scotland) Rules 2011 (S. I. 2011/2262), rules 127(2), **132**

[58A] ^{F9}Discharge of Accountant in Bankruptcy

- (1) This section applies where the Accountant in Bankruptcy has acted as the ^{F10}... trustee in any sequestration.

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- (2) After the Accountant in Bankruptcy has made a final division of the debtor's estate, he shall insert in the sederunt book—
- (a) his final accounts of his intromissions (if any) with the debtor's estate;
 - (b) the scheme of division (if any); and
 - (c) a determination of his fees and outlays calculated in accordance with regulations made under section 69A of this Act.
- (3) The Accountant in Bankruptcy shall deposit any unclaimed dividends and any unapplied balances in an appropriate bank or institution.
- (4) The Accountant in Bankruptcy shall send to the debtor and to all creditors known to him—
- (a) a copy of the determination mentioned in subsection (2)(c) above; and
 - (b) a notice in writing stating—
 - (i) that the Accountant in Bankruptcy has commenced the procedure under this Act leading to discharge in respect of his actings as ^{F10} . . . trustee;
 - (ii) that the sederunt book relating to the sequestration is available for inspection at such address as the Accountant in Bankruptcy may determine;
 - (iii) that an appeal may be made to the sheriff under subsection (5) below; and
 - (iv) the effect of subsection (7) below.
- (5) The debtor and any creditor may appeal to the sheriff against—
- (a) the determination of the Accountant in Bankruptcy mentioned in subsection (2)(c) above;
 - (b) the discharge of the Accountant in Bankruptcy in respect of his actings as ^{F10} . . . trustee; or
 - (c) both such determination and discharge.
- (6) An appeal under subsection (5) above shall be made not more than 14 days after the issue of the notice mentioned in subsection (4)(b) above; and the decision of the sheriff on such an appeal shall be final.
- (7) Where—
- (a) the requirements of this section have been complied with; and
 - (b) no appeal to the sheriff is made under subsection (5) above or such an appeal is made but is refused as regards the discharge of the Accountant in Bankruptcy,
- the Accountant in Bankruptcy shall be discharged 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 Accountant in Bankruptcy in exercising the functions of ^{F10} . . . trustee in the sequestration [^{F11}including, where the Accountant in Bankruptcy was the interim trustee, the functions of the interim trustee] .
- (8) Where the Accountant in Bankruptcy is discharged from all liability as mentioned in subsection (7) above, he shall make an entry in the sederunt book recording such discharge.
- (9) ^{F12}]

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Textual Amendments

- F9** S. 58A 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.26** (with s. 12(6)); S.I. 1993/438, **art.3**
- F10** Words in s. 58A repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(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))
- F11** Words in s. 58A(7) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 50** (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))
- F12** S. 58A(9) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(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))

[^{F13} 58B Assets discovered after trustee discharge: appointment of trustee

- (1) This section applies where, after the trustee's discharge under section 57 or 58A but before the expiry of the period of 5 years from the date of sequestration, the trustee or the Accountant in Bankruptcy becomes aware of any newly identified estate with a value of not less than £1000 (or such other sum as may be prescribed).
- (2) In this section, "newly identified estate" means any part of the debtor's estate which—
 - (a) vested in the trustee in accordance with section 31 or 32, and
 - (b) was not, before the trustee was discharged, known to the trustee.
- (3) The Accountant in Bankruptcy may—
 - (a) in the case where the trustee was discharged under section 57—
 - (i) on the application of the trustee who was discharged, reappoint that person as trustee on the debtor's estate, or
 - (ii) appoint the Accountant in Bankruptcy as trustee on the debtor's estate,
 - (b) in the case where the Accountant in Bankruptcy was discharged under section 58A, reappoint the Accountant in Bankruptcy as trustee on the debtor's estate.
- (4) The Accountant in Bankruptcy may make an appointment or reappointment under subsection (3) only if, in the opinion of the Accountant in Bankruptcy, the value of the newly identified estate is likely to exceed the costs of—
 - (a) the appointment or reappointment, and
 - (b) the recovery, management, realisation and distribution of the newly identified estate.
- (5) Where the trustee was discharged under section 57 and applies for reappointment under subsection (3)(a)(i), the discharged trustee must provide to the Accountant in Bankruptcy the information mentioned in subsection (8)(a) to (c).
- (6) Where the trustee was discharged under section 57 and does not apply for reappointment under subsection (3)(a)(i), the discharged trustee must—
 - (a) provide to the Accountant in Bankruptcy details of any newly identified estate that the discharged trustee becomes aware of, where that estate has a value which is not less than the value mentioned in subsection (1), and

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- (b) if requested by the Accountant in Bankruptcy, provide to the Accountant in Bankruptcy the information mentioned in subsection (8)(b) and (c).
- (7) Where the Accountant in Bankruptcy was discharged under section 58A, the Accountant in Bankruptcy must record and consider the information mentioned in subsection (8).
- (8) The information is—
 - (a) the estimated value of the newly identified estate,
 - (b) the reason why the newly identified estate forms part of the debtor's estate,
 - (c) the reason why the newly identified estate was not recovered,
 - (d) the estimated outlays and remuneration of the trustee following an appointment or reappointment under subsection (3), and
 - (e) the likely distribution under section 51 following an appointment or reappointment under subsection (3).
- (9) This section is without prejudice to any other right to take action following the discharge of the trustee.

Textual Amendments

F13 Ss. 58B-58D inserted (30.6.2014 for specified purposes) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), ss. 21, 57(2); S.S.I. 2014/172, art. 2, sch.

58C Assets discovered after trustee discharge: notice

- (1) The Accountant in Bankruptcy must notify the debtor and any other person the Accountant in Bankruptcy considers to have an interest—
 - (a) where an application is made under section 58B(3)(a)(i), and
 - (b) where the Accountant in Bankruptcy proposes to make an appointment or reappointment under section 58B(3)(a)(ii) or (b).
- (2) A notice under subsection (1) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed appointment or reappointment before the expiry of the period of 14 days beginning with the day on which the notice is given.
- (3) Before making an appointment or reappointment under section 58B, the Accountant in Bankruptcy must take into account any representations made by an interested person.
- (4) If the Accountant in Bankruptcy makes an appointment or reappointment under section 58B, the Accountant in Bankruptcy must as soon as is practicable notify the debtor of the appointment or reappointment.
- (5) A notice under subsection (4) must include information in relation to the debtor's duties to co-operate with the trustee under section 64.

Textual Amendments

F13 Ss. 58B-58D inserted (30.6.2014 for specified purposes) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), ss. 21, 57(2); S.S.I. 2014/172, art. 2, sch.

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58D Assets discovered after trustee discharge: appeal

Where the Accountant in Bankruptcy makes or refuses to make an order under section 58B, an interested person may, no later than 14 days after the date of the decision, appeal to the sheriff.]

Textual Amendments

F13 Ss. 58B-58D inserted (30.6.2014 for specified purposes) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), ss. 21, 57(2); S.S.I. 2014/172, art. 2, sch.

Status:

Point in time view as at 31/12/2014.

Changes to legislation:

Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Discharge of trustee is up to date with all changes known to be in force on or before 16 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.