

Status: Point in time view as at 31/12/2014.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), SCHEDULE 5 is up to date with all changes known to be in force on or before 30 May 2024.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 5

Section 59.

VOLUNTARY TRUST DEEDS FOR CREDITORS

Modifications etc. (not altering text)

- C1** Sch. 5 modified (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004 \(S.I. 2004/353\)](#), reg. 33(7) (as amended by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), reg. 40(11))

Remuneration of trustee

- 1 Whether or not provision is made in the trust deed for auditing the trustee's accounts and for determining the method of fixing the trustee's remuneration or whether or not the trustee and the creditors have agreed on such auditing and the method of fixing the remuneration, the debtor, the trustee or any creditor may, at any time before the final distribution of the debtor's estate among the creditors, have the trustee's accounts audited by and his remuneration fixed by the Accountant in Bankruptcy.

[^{F1}Accountant in Bankruptcy's power to carry out audit

Textual Amendments

- F1** Sch. 5 para. 1A and preceding cross-heading inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 23(1), 227(3) (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))

- 1A The Accountant in Bankruptcy may, at any time, audit the trustee's accounts and fix his remuneration.]

Registration of notice of inhibition

- 2 (1) The trustee, from time to time after the trust deed has been delivered to him, may cause a notice in such form as shall be prescribed by the Court of Session by act of sederunt to be recorded in the register of inhibitions and adjudications; and such recording shall have the same effect as the recording in that register of letters of inhibition against the debtor.
- (2) The trustee, after the debtor's estate has been finally distributed among his creditors or the trust deed has otherwise ceased to be operative, shall cause to be so recorded a notice in such form as shall be prescribed as aforesaid recalling the notice recorded under sub-paragraph (1) above.

Status: Point in time view as at 31/12/2014.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), SCHEDULE 5 is up to date with all changes known to be in force on or before 30 May 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)

Lodging of claim to bar effect of limitation of actions

- 3 The submission of a claim by a creditor to the trustee acting under a trust deed shall bar the effect of any enactment or rule of law relating to limitation of actions in any part of the United Kingdom.

Valuation of claims

- 4 Unless the trust deed otherwise provides, Schedule 1 to this Act shall apply in relation to a trust deed as it applies in relation to a sequestration but subject to the following modifications—
 - (a) in paragraphs 1, 2 and 5 for the word “sequestration” wherever it occurs there shall be substituted the words “granting of the trust deed”;
 - (b) in paragraph 3—
 - (i) in sub-paragraph (2), for the words from the beginning of paragraph (a) to “or sheriff” there shall be substituted the words “the trustee”; and
 - (ii) ^{F2}
 - (c) paragraph 4 shall be omitted; and
 - (d) ^{F3}

Textual Amendments

F2 Sch. 5 para. 4(b)(ii) 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))

F3 Sch. 5 para. 4(d) 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))

Protected trust deeds

- [^{F45} (1) The Scottish Ministers may by regulations make provision as to—
 - (a) the conditions which require to be fulfilled in order for a trust deed to be granted the status of a protected trust deed;
 - (b) the consequences of a trust deed being granted that status;
 - (c) the rights of any creditor who does not accede to a trust deed which is granted protected status;
 - (d) the extent to which a debtor may be discharged, by virtue of a protected trust deed, from his liabilities or from such liabilities or class of liabilities as may be prescribed in the regulations;
 - (e) the circumstances in which a debtor may bring to an end the operation of a trust deed in respect of which the conditions provided for under sub-paragraph (a) above are not fulfilled;
 - (f) the administration of the trust under a protected trust deed (including provision about the remuneration payable to the trustee).
- (2) Regulations under this paragraph may—
 - (a) make provision enabling applications to be made to the court;
 - ^{F5} [.....

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

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), SCHEDULE 5 is up to date with all changes known to be in force on or before 30 May 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)

^{F6}(aa)]

- (b) contain such amendments of this Act as appear to the Scottish Ministers to be necessary in consequence of any other provision of the regulations.]

Textual Amendments

- F4** Sch. 5 para. 5 substituted (19.2.2008) for Sch. 5 paras. 5-13 by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 20(1)**, 227(3) (with s. 223); S.S.I. 2008/45, art. 2 (with art. 3)
- F5** Sch. 5 para. 5(2)(aa) repealed (30.6.2014) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), **sch. 4**; S.S.I. 2014/172, art. 2, sch.
- F6** Sch. 5 para. 5(2)(aa) inserted (7.9.2010) by [Home Owner and Debtor Protection \(Scotland\) Act 2010 \(asp 6\)](#), **ss. 13(4)**, 17(3)(4) (with s. 14); S.S.I. 2010/314, art. 5 (subject to transitional provisions and savings in S.S.I. 2010/316, arts 4-7)

Modifications etc. (not altering text)

- C2** Sch. 5 para. 5 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**

6
7
8
9
10

Creditors not acceding to protected trust deed

11
12
13

Status:

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

Changes to legislation:

Bankruptcy (Scotland) Act 1985 (repealed), SCHEDULE 5 is up to date with all changes known to be in force on or before 30 May 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.