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SCHEDULES

SCHEDULE 1

Sections 5(5) and 22(9).

DETERMINATION OF AMOUNT OF CREDITOR'S CLAIM

Modifications etc. (not altering text)

- C1** Sch. 1 applied with modifications by S.I. 1986/1915, **Rules 4.16(1)(f)**, 7.9(5) and by Rule 2.41(2) (as substituted (15.9.2003) by **The Insolvency (Scotland) Amendment Rules 2003 (S.I. 2003/2111)**, **Rule 3**, {Sch. 1, Pt. 1}) (as amended (20.12.2008) by S.S.I. 2008/393 art. 3)
- C2** Sch. 1 applied in part (with modifications) (14.11.2011) by **The Investment Bank Special Administration (Scotland) Rules 2011 (S. I. 2011/2262)**, **rule 127**

Amount which may be claimed generally

- 1 (1) Subject to the provisions of this Schedule, the amount in respect of which a creditor shall be entitled to claim shall be the accumulated sum of principal and any interest which is due on the debt as at the date of sequestration.
- (2) If a debt does not depend on a contingency but would not be payable but for the sequestration until after the date of sequestration, the amount of the claim shall be calculated as if the debt were payable on the date of sequestration but subject to the deduction of interest at the rate specified in section 51(7) of this Act from the said date until the date for payment of the debt.
- (3) In calculating the amount of his claim, a creditor shall deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the debtor or by the usage of trade.

Claims for aliment and periodical allowance on divorce

- 2 (1) A person entitled to aliment, however arising, from a living debtor as at the date of sequestration, or from a deceased debtor immediately before his death, shall not be entitled to include in the amount of his claim—
- (a) any unpaid aliment for any period before the date of sequestration unless the amount of the aliment has been quantified by court decree or by any legally binding obligation which is supported by evidence in writing, and, in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses) they were living apart during that period;
- (b) any aliment for any period after the date of sequestration.
- (2) Sub-paragraph (1) above shall apply to a periodical allowance payable on divorce—
- (a) by virtue of a court order; or
- (b) under any legally binding obligation which is supported by evidence in writing,

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as it applies to aliment and as if for the words from “in the case” to “they” there were substituted the words “the payer and payee”.

Debts depending on contingency

- 3 (1) Subject to sub-paragraph (2) below, the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.
- (2) On an application by the creditor—
- (a) to the permanent trustee; or
 - (b) if there is no permanent trustee, to the sheriff,
- the permanent trustee or sheriff shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more; and, where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.
- (3) Any interested person may appeal to the sheriff against a valuation under sub-paragraph (2) above by the permanent trustee, and the sheriff may affirm or vary that valuation.

Debts due under composition contracts

- 4 Where in the course of a sequestration the debtor is discharged following approval by the sheriff of a composition offered by the debtor but the sequestration is subsequently revived, the amount in respect of which a creditor shall be entitled to claim shall be the same amount as if the composition had not been so approved less any payment already made to him under the composition contract.

Secured debts

- 5 (1) In calculating the amount of his claim, a secured creditor shall deduct the value of any security as estimated by him:
- Provided that if he surrenders, or undertakes in writing to surrender, a security for the benefit of the debtor’s estate, he shall not be required to make a deduction of the value of that security.
- (2) The permanent trustee may, at any time after the expiry of 12 weeks from the date of sequestration, require a secured creditor at the expense of the debtor’s estate to discharge the security or convey or assign it to the permanent trustee on payment to the creditor of the value specified by the creditor; and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of his debt remaining after receipt of such payment.
- (3) In calculating the amount of his claim, a creditor whose security has been realised shall deduct the amount (less the expenses of realisation) which he has received, or is entitled to receive, from the realisation.

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- 6 Where a creditor claims in respect of a debt of a partnership, against the estate of one of its partners, the creditor shall estimate the value of—
- (a) the debt to the creditor from the firm's estate where that estate has not been sequestered; or
 - (b) the creditor's claim against that estate where it has been sequestered, and deduct that value from his claim against the partner's estate; and the amount in respect of which he shall be entitled to claim on the partner's estate shall be the balance remaining after that deduction has been made.

SCHEDULE 2

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,

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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.]

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

[^{F10F11}SCHEDULE 2A

MODIFICATION OF DUTIES OF PERMANENT TRUSTEE IN SUMMARY ADMINISTRATION]

Textual Amendments

- F10** Sch. 2A repealed (prosp.) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 28(3), 227(3) (with s. 223)
- F11** Sch. 2A inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 6(2) (with s. 12(6)); S.I. 1993/438, art.3

- ^{F12}₁ The permanent trustee shall comply with the requirements of sections 3 and 39 of this Act 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 creditors to do so.

Textual Amendments

- F12** Sch. 2A inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 6(2) (with s. 12(6)); S.I. 1993/438, art.3

- ^{F13}₂ The permanent trustee shall, until the debtor is discharged under this Act, at the end of—
- (a) the period of 6 months beginning with the date of sequestration; and
 - (b) each subsequent period of 6 months,
- require the debtor to give an account in writing of his current state of affairs.

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Textual Amendments

F13 Sch. 2A inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 6(2) (with s. 12(6)); S.I. 1993/438, art.3

- ^{F143} (1) Where the Accountant in Bankruptcy is not the permanent trustee, the permanent trustee shall comply with any general or specific directions given to him by the Accountant in Bankruptcy.
- (2) Directions given under this paragraph may be given in respect of any particular case, all cases or any class or description of case.

Textual Amendments

F14 Sch. 2A inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 6(2) (with s. 12(6)); S.I. 1993/438, art.3

- ^{F154} (1) The permanent trustee shall, as soon as a certificate for the summary administration of the sequestration of the debtor's estate has been granted, publish in the Edinburgh Gazette a notice stating that such a certificate has been granted and that he has been appointed permanent trustee and, where no notice under section 15(6) of this Act has been published in respect of the sequestration—
- (a) stating that sequestration of the debtor's estate has been awarded; and
- (b) inviting the submission of claims to him.
- (2) A notice under sub-paragraph (1) above shall also contain such additional information as may be prescribed.

Textual Amendments

F15 Sch. 2A inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 6(2) (with s. 12(6)); S.I. 1993/438, art.3

- ^{F165} Except in the case of an application for the grant of a certificate for the summary administration of the sequestration of the debtor's estate under section 25(2A) of this Act, Schedule 2 to this Act shall have effect in respect of a sequestration to which this Schedule applies.

Textual Amendments

F16 Sch. 2A inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 6(2) (with s. 12(6)); S.I. 1993/438, art.3

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SCHEDULE 3

PREFERRED DEBTS

PART I

LIST OF PREFERRED DEBTS

Modifications etc. (not altering text)

C3 Sch. 3 Pt. I applied (7.2.1994) by 1993 c. 48, s. 128, **Sch. 4 para. 4(1)(b)**; S.I. 1994/86, **art. 2**

Debts to Inland Revenue

- 1 (1) Sums due at the relevant date from the debtor on account of deductions of income tax from emoluments paid during the period of twelve months next before that date, being deductions which the debtor was liable to make under section [F17]203 of the Income and Corporation Taxes Act 1988] (pay as you earn), less the amount of the repayments of income tax which the debtor was liable to make during that period.
- (2) Sums due at the relevant date from the debtor in respect of such deductions as are required to be made by the debtor for that period under section [F17]559 of the Income and Corporation Taxes Act 1988] (sub-contractors in the construction industry).

Textual Amendments

F17 Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 29 para. 32](#), [Sch. 30 para. 6\(1\)](#)

Debts due to Customs and Excise

- 2 (1) Any value added tax which is referable to the period of six months next before the relevant date.
- [F18(1A) Any insurance premium tax which is referable to the period of six months next before the relevant date.]
- [F19(1B) Any landfill tax which is referable to the period of six months next before the relevant date.]
- (2) The amount of any car tax which is due at the relevant date from the debtor and which became due within a period of twelve months next before that date.
- (3) Any amount which is due—
- (a) by way of general betting duty [F20], bingo duty or gaming duty] or
 - (b) under section 12(1) of the ^{M1}Betting and Gaming Duties Act 1981 (general betting duty and pool betting duty recoverable from agent collecting stakes),
F21

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^{F22}(c)

from the debtor at the relevant date and which became due within the period of twelve months next before that date.

[^{F23}(4) The amount of any excise duty on beer which is due at the relevant date from the debtor and which became due within a period of 6 months next before that date.]

[^{F24}(5) Any amount which is due by way of lottery duty from the debtor at the relevant date and which became due within the period of 12 months next before that date.]

[^{F25}(6) Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.]

Textual Amendments

- F18** Sch. 3 Pt. I para. 2(1A) inserted (3.5.1994) by 1994 c. 9, s. 64, **Sch. 7 Pt. III para. 7(4)**
F19 Sch. 3 Pt. I para. 1(1B) inserted (29.4.1996) by 1996 c. 8, s. 60, **Sch. 6 Pt. III para. 12(3)**
F20 Words in Sch. 3 Pt. I para. 2(3)(a) substituted (19.3.1997) by 1997 c. 16, ss. 13(2), 15, **Sch. 2 Pt. II para. 6**
F21 Word in Sch. 3 Pt. I para. 2(3) repealed (19.3.1997 with effect as mentioned in note 1 of Sch. 18) by 1997 c. 16, s. 113(1), **Sch. 18 Pt. II**
F22 Sch. 3 Pt. I para. 2(3)(c) repealed (19.3.1997 with effect as mentioned in note 1 of Sch. 18) by 1997 c. 16, s. 113(1), **Sch. 18 Pt. II**
F23 Sch. 3 Pt. I para. 2(4) added (1.6.1993) by Finance Act 1991 (c. 31, SIF 40:1), s. 7(4), **Sch. 2 para. 21**; S.I. 1993/1152, art. 3(2), **Sch. 1 Pt. II**
F24 Sch. 3 Pt. I para. 2(5) added (1.12.1993) by 1993 c. 34, s. 36(3) (with s. 40(2)(3)); S.I. 1993/2842, art. 3(1)
F25 Sch. 3 Pt. I para. 2(6) added (3.5.1994) by 1994 c. 9, s. 40(2), **Sch. 6 para. 13(2)**

Marginal Citations

- M1** 1981 c. 63.

Social Security contributions

- 3 (1) All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under the ^{M2}Social Security Act 1975 or the ^{M3}Social Security (Northern Ireland) Act 1975 and which became due from the debtor in the twelve months next before the relevant date.
- (2) All sums which on the relevant date have been assessed on and are due from the debtor on account of Class 4 contributions under either of the said Acts of 1975, being sums which—
- (a) are due to the Commissioners of Inland Revenue (rather than to the Secretary of State or a Northern Ireland department); and
 - (b) are assessed on the debtor up to 5th April next before the relevant date, but not exceeding, in the whole, any one year's assessment.

Marginal Citations

- M2** 1975 c. 14.
M3 1975 c. 15.

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Contributions to occupational pension schemes, etc.

- 4 Any sum which is owed by the debtor and is a sum to which [^{F26}Schedule 4 to the ^{M4}Pension Schemes Act 1993] (contributions to occupational pension scheme and state scheme premiums) applies.

Textual Amendments

F26 Words in Sch. 3 para. 4 substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 8 para.17**; S.I. 1994/86, **art. 2**

Marginal Citations

M4 1993 c. 48.

Remuneration of employees, etc.

- 5 (1) So much of any amount which—
- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
 - (b) is payable by way of remuneration in respect of the whole or any part of the period of four months next before the relevant date,
- as does not exceed the prescribed amount.
- (2) An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.
- (3) So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within sub-paragraph (1) or (2) above.
- 6 So much of any amount which—
- (a) is ordered, whether before or after the relevant date, to be paid by the debtor under the ^{M5}Reserve Forces (Safeguard of Employment) Act 1985; and
 - (b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,
- as does not exceed such amount as may be prescribed.

Marginal Citations

M5 1985 c. 17.

[^{F27} Levies on coal and steel production

Textual Amendments

F27 Sch. 3 Pt. I para. 6A inserted by S.I. 1987/2093, **reg. 3(1)(2)**

- 6A Any sums due at the relevant date from the debtor in respect of—
- (a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty, or

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- (b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.]

PART II

INTERPRETATION OF PART I

Meaning of “the relevant date”

- 7 In Part I of this Schedule “the relevant date” means—
- (a) in relation to a debtor (other than a deceased debtor), the date of sequestration; and
 - (b) in relation to a deceased debtor, the date of his death.

Periods to which value added tax referable

- 8 (1) For the purpose of paragraph 2(1) of Part I of this Schedule—
- (a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the period of six months next before the relevant date (“the relevant period”), the whole amount of that tax shall be referable to the relevant period; and
 - (b) in any other case the amount of any value added tax which shall be referable to the relevant period shall be the proportion of the tax which is equal to such proportion (if any) of the accounting reference period in question as falls within the relevant period.
- (2) In sub-paragraph (1) above “prescribed accounting period” has the same meaning as in the [^{F28}Value Added Tax Act 1994].

Textual Amendments

F28 Words in [Sch. 3 Pt. II para. 8\(2\)](#) substituted (1.9.1994 with effect as mentioned in s. 101(1)) by [1994 c. 23, ss. 100\(1\), 101\(1\)](#), [Sch. 14 para. 9](#)

[^{F29}Periods to which insurance premium tax referable]

Textual Amendments

F29 [Sch. 3 Pt. II para. 8A](#) and crossheading inserted (3.5.1994) by [1994 c. 9, s. 64](#), [Sch. 7 Pt. III para. 7\(5\)](#)

- ^{F30}8A (1) For the purpose of paragraph 2(1A) of Part I of this Schedule—
- (a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the period of six months next before the relevant date (“the relevant period”), the whole amount of that tax shall be referable to the relevant period; and

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- (b) in any other case the amount of any insurance premium tax which shall be referable to the relevant period shall be the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

- (2) In sub-paragraph (1) above “accounting period” shall be construed in accordance with Part III of the Finance Act 1994.

Textual Amendments

F30 Sch. 3 Pt. II para. 8A inserted (3.5.1994) by 1994 c. 9, s. 64, Sch. 7 Pt. III para. 7(5)

[^{F31} Periods to which landfill tax referable]

Textual Amendments

F31 Sch. 3 Pt. II para. 8B and crossheading inserted (29.4.1996) by 1996 c. 8, s. 60, Sch. 5 Pt. III para. 12(4)

^{F32}8B (1) For the purpose of paragraph 2(1B) of Part I of this Schedule—

- (a) where the whole of the accounting period to which any landfill tax is attributable falls within the period of six months next before the relevant date (“the relevant period”), the whole amount of that tax shall be referable to the relevant period; and
- (b) in any other case the amount of any landfill tax which shall be referable to the relevant period shall be the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

- (2) In sub-paragraph (1) above “accounting period” shall be construed in accordance with Part III of the Finance Act 1996.

Textual Amendments

F32 Sch. 3 Pt. II para. 8B inserted (29.4.1996) by 1996 c. 8, s. 60, Sch. 5 Pt. III para. 12(4)

VALID FROM 28/07/2000

[^{F33} Periods to which climate change levy referable]

Textual Amendments

F33 Sch. 3 Pt. II para. 8C and preceding cross-heading inserted (28.7.2000) by 2000 c. 17, s. 30, Sch. 7 para. 2(2)

^{F34}8C (1) For the purpose of paragraph 2(1C) of Part I of this Schedule—

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

- (a) where the whole of the accounting period to which any climate change levy is attributable falls within the period of six months next before the relevant date (“the relevant period”), the whole amount of that levy shall be referable to the relevant period; and
- (b) in any other case the amount of any climate change levy which shall be referable to the relevant period shall be the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

(2) In sub-paragraph (1) “accounting period” shall be construed in accordance with Schedule 6 to the Finance Act 2000.

Textual Amendments

F34 Sch. 3 Pt. II para. 8C and preceding cross-heading inserted (28.7.2000) by 2000 c. 17, s. 30, Sch. 7 para. 2(2)

Periods to which aggregates levy referable

^{F35}8D (1) For the purpose of paragraph 2(1D) of Part 1 of this Schedule—

- (a) where the whole of the accounting period to which any aggregates levy is attributable falls within the period of six months next before the relevant date (‘the relevant period’), the whole amount of that levy shall be referable to the relevant period; and
- (b) in any other case the amount of any aggregates levy which shall be referable to the relevant period shall be the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

(2) In sub-paragraph (1) above ‘accounting period’ shall be construed in accordance with Part 2 of the Finance Act 2001.]

Textual Amendments

F35 Sch. 3 Pt. II para. 8D inserted (11.5.2001) by 2001 c. 9, s. 27, Sch. 5 para. 18(2)

Amounts payable by way of remuneration

9 (1) For the purposes of paragraph 5 of Part I of this Schedule a sum is payable by the debtor to a person by way of remuneration in respect of any period if—

- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period; or
- (b) it is an amount falling within sub-paragraph (2) below and is payable by the debtor in respect of that period.

(2) An amount falls within this sub-paragraph if it is—

- (a) a guarantee payment under section 12(1) of the ^{M6}Employment Protection (Consolidation) Act 1978 (employee without work to do for a day or part of a day),

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

- (b) remuneration on suspension on medical grounds under section 19 of that Act,
 - (c) any payment for the time off under section 27(3) (trade-union duties), 31(3) (looking for work, etc.) or 31A(4) (antenatal care) of that Act,
 - (d)^{F36}
 - (e) remuneration under a protective award made by an [^{F37}employment tribunal] under section 101 of the ^{M7}Employment Protection Act 1975 (redundancy dismissal with compensation).
- (3) For the purposes of paragraph 5(2) of Part I of this Schedule, holiday remuneration shall be deemed, in the case of a person whose employment has been terminated by or in consequence of the award of sequestration of his employer's estate, to have accrued to that person in respect of any period of employment if, by virtue of that person's contract of employment or of any enactment (including an order made or direction given under any enactment), that remuneration would have accrued in respect of that period if that person's employment had continued until he became entitled to be allowed the holiday.
- (4) Without prejudice to the preceding provisions of this paragraph—
- (a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or, as the case may be, salary in respect of services rendered to the debtor in that period; and
 - (b) references in this paragraph to remuneration in respect of a period of holiday include references to any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social services as earnings in respect of that period.

Textual Amendments

- F36** Sch. 3 Pt. I para. 9(2)(d) repealed by Social Security Act 1986 (c. 50, SIF 113:1), ss. 86, 88(1), Sch. 10 para. 80, **Sch. 11**
- F37** Words in Sch. 3 Pt. II para. 9(2)(e) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Marginal Citations

- M6** 1978 c. 44.
- M7** 1975 c. 44.

Transitional Provisions

- 10 Regulations under paragraph 5 or 6 of Part I of this Schedule may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

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) Any offer of composition shall specify caution or other security to be provided for its implementation.
- 2 The permanent trustee ^{F38}, where he is not the Accountant in Bankruptcy,] 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.

Textual Amendments

F38 Words in [Sch. 4 para. 2](#) 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. 31\(2\)](#) (with [s. 12\(6\)](#)); [S.I. 1993/438, art.3](#)

- 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.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

- 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.
- (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.

VALID FROM 01/04/2008

^{F39}8A (1) The Scottish Ministers may by regulations amend paragraphs 4 to 8 of this Schedule by replacing them, varying them or adding to or deleting anything from them.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

- (2) Regulations made under sub-paragraph (1) above may contain such amendments of this Act as appear to the Scottish Ministers to be necessary in consequence of any amendment made by the regulations to the said paragraphs 4 to 8.]

Textual Amendments

F39 Sch. 4 paras. 5-8B substituted for paras. 5-8 (1.4.2008 in relation to paras. 5 and 8A) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 21(4), 227(3)** (with s. 223); S.S.I 2008/115, {art. 3(4)}, Sch. 3 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31](#), art. 5))

- 9 (1) Where the offer of composition is approved, the permanent trustee [^{F40}, where he is not the Accountant in Bankruptcy,] 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.
- [^{F41}(1A) Where the offer of composition is approved and the permanent trustee is the Accountant in Bankruptcy, the permanent trustee 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) 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 sub-paragraph (1)(a) above as they apply in respect of the accounts and claim submitted under section 53(1) of this Act.
- [^{F41}(3) Subsections (2), (3), (4), (5) and (10) of section 53 of this Act as adapted by paragraph 9(2) and (3) of Schedule 2 to this Act shall apply, subject to any necessary modifications, in respect of the accounts and determination prepared under sub-paragraph (1A) above as they apply in respect of the accounts and determination prepared under the said section 53 as so adapted.]

Textual Amendments

F40 Words in Sch. 4 para. 9(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. 31\(3\)\(a\)](#) (with s. 12(6)); [S.I. 1993/438](#), **art.3**

F41 Sch. 4 para. 9(1A) 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. 31\(3\)\(b\)](#) (with s. 12(6)); [S.I. 1993/438](#), **art.3**
Sch. 4 para. 9(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. 31\(3\)\(c\)](#) (with s. 12(6)); [S.I. 1993/438](#), **art.3**

- 10 As soon as the procedure under paragraph 9 of this Schedule has been completed, there shall be lodged with the sheriff clerk—

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

- (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^[F42](1) 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.
- ^[F42](2) The discharge of the debtor by virtue of an order under paragraph 11 above shall not affect any right of a secured creditor—
- (a) for a debt in respect of which the debtor has been discharged to enforce his security for payment of the debt and any interest due and payable on the debt until the debt is paid in full; or
 - (b) for an obligation in respect of which the debtor has been discharged to enforce his security in respect of the obligation.]

Textual Amendments

F42 Sch. 4 para. 16 renumbered (as para. 16(1)) and para. 16(2) inserted (*retrospectively*) by 1993 c. 6, s. 11(3), Sch. 1 para. 31(4)(5)

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

- 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.
- (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.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

SCHEDULE 5

Section 59.

VOLUNTARY TRUST DEEDS FOR CREDITORS

Modifications etc. (not altering text)

- C4** 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.

VALID FROM 01/04/2008

[^{F43}Accountant in Bankruptcy's power to carry out audit

Textual Amendments

- F43** 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 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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) in sub-paragraph (3), for the reference to the permanent trustee there shall be substituted a reference to the trustee;
 - (c) paragraph 4 shall be omitted; and
 - (d) in paragraph 5(2) for the references to the permanent trustee there shall be substituted references to the trustee.

Protected trust deeds

- [^{F445} (1) Paragraphs 6 and 7 of this Schedule shall apply in respect of a trust deed if—
- (a) the trustee is a person who would not be disqualified under section 24(2) of this Act from acting as the permanent trustee if the debtor’s estate were being sequestrated;
 - (b) after the trust deed has been delivered to him, the trustee publishes in the Edinburgh Gazette the notice specified in sub-paragraph (3) below;
 - (c) not later than one week after the date of publication of such notice, the trustee sends to every creditor known to him—
 - (i) a copy of the trust deed;
 - (ii) a copy of the notice; and
 - (iii) such other information as may be prescribed;
 - (d) within the period of 5 weeks beginning with the date of publication of such notice, the trustee has not received notification in writing from a majority in number or not less than one third in value of the creditors that they object to the trust deed and do not wish to accede to it; and
 - (e) immediately after the expiry of the said period of 5 weeks, the trustee sends to the Accountant in Bankruptcy for registration in the register of insolvencies a copy of the trust deed with a certificate endorsed thereon that it is a true copy and that he has not received notification as mentioned in sub-sub-paragraph (d) above.
- (2) Any creditor who has been sent a copy of the notice referred to in sub-paragraph (1) (b) above and who has not notified the trustee as mentioned in sub-paragraph (1)(d)

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

above that he objects to the trust deed shall be treated for all purposes as if he had acceded to the trust deed; and any reference in this Act to a creditor who has acceded to a trust deed shall include a reference to a creditor who is treated for all purposes as if he had so acceded.

- (3) The notice mentioned in sub-paragraph (1)(b) above shall be in the prescribed form and shall contain such information as may be prescribed.
- (4) The Secretary of State may by regulations amend sub-paragraphs (1) to (3) above by replacing them, varying them or adding to or deleting anything from them.
- (5) Regulations made under sub-paragraph (4) above may contain such amendments of this Act as appear to the Secretary of State to be necessary in consequence of any amendment made by the regulations to the said sub-paragraphs (1) to (3).]

Textual Amendments

F44 Sch. 5 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. 32(2)** (with s. 12(6)); S.I. 1993/438, **art.3**

- ^{F45}6 Where the provisions of paragraph 5 of this Schedule have been fulfilled, then—
- [^{F46}(a) subject to paragraph 7 of this Schedule, a creditor who has—
- (i) not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above; or
 - (ii) notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above,
- shall have no higher right to recover his debt than a creditor who has acceded to the trust deed;]
- (b) the debtor may not petition for the sequestration of his estate while the trust deed subsists.

Textual Amendments

F45 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)

F46 Sch. 5 para. 6(a) 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. 32(3)** (with s. 12(6)); S.I. 1993/438, **art.3**

- ^{F47} (1) A qualified creditor [^{F48}who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above or who has notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above] may present a petition for sequestration of the debtor's estate—
- (a) not later than 6 weeks after the date of publication of the notice under [^{F49}paragraph 5(1)(b)] of this Schedule; but
 - (b) subject to section 8(1)(b) of this Act, at any time if he avers that the provision for distribution of the estate is or is likely to be unduly prejudicial to a creditor or class of creditors.
- (2) The court may award sequestration in pursuance of sub-paragraph (1)(a) above if it considers that to do so would be in the best interests of the creditors.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

- (3) The court shall award sequestration in pursuance of sub-paragraph (1)(b) above if, but only if, it is satisfied that the creditor's said averment is correct.

Textual Amendments

- F47** 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**)
- F48** Words in Sch. 5 para. 7(1) 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. 32(4)(a)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F49** Words in Sch. 5 para. 7(1)(a) 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. 32(4)(b)** (with s. 12(6)); S.I. 1993/438, **art.3**

- ^{F50}8 In this Act a trust deed in respect of which paragraphs 6 and 7 of this Schedule apply is referred to as a “protected trust deed”.

Textual Amendments

- F50** 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**)

- ^{F51}9 Where the trustee under a protected trust deed has made the final distribution of the estate among the creditors, he shall, not more than 28 days after the final distribution, send to the Accountant in Bankruptcy for registration in the register of insolvencies—
- (a) a statement in the prescribed form indicating how the estate was realised and distributed; and
 - (b) a certificate to the effect that the distribution was in accordance with the trust deed.

Textual Amendments

- F51** 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**)

- ^{F52}10 Where the trustee under a protected trust deed has obtained a discharge from the creditors who have acceded to the trust deed he shall forthwith give notice of the discharge—
- (a) by sending the notice by recorded delivery to every creditor known to him [^{F53}who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above or who has notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above]; and
 - (b) by sending the notice to the Accountant in Bankruptcy who shall register the fact of the discharge in the register of insolvencies,
- and, except where the court makes an order under paragraph 12 below, the sending of such notice to a creditor [^{F53}who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above or who has notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above] shall be effective to make the discharge binding upon that creditor.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

Textual Amendments

- F52** 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)
- F53** Words in Sch. 5 para. 10 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. 32(5)** (with s. 12(6)); S.I. 1993/438, **art.3**

F54 Creditors not acceding to protected trust deed

Textual Amendments

- F54** 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)

- F55**¹¹ A creditor [^{F56}who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) above or who has notified the trustee of his objection to the trust deed as mentioned in paragraph 5(1)(d) above] may, not more than 28 days after notice has been sent under paragraph 10 above, apply to the court for an order under paragraph 12 below.

Textual Amendments

- F55** Sch. 5 para. 5 substituted (19.4.2008) 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)
- F56** Words in Sch. 5 para. 11 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. 32(6)** (with s. 12(6)); S.I. 1993/438, **art.3**

- F57**¹² Where, on an application by a creditor under paragraph 11 above, the court is satisfied (on grounds other than those on which a petition under paragraph 7(1)(b) above was or could have been presented by that creditor) that the intromissions of the trustee under the protected trust deed with the estate of the debtor have been so unduly prejudicial to that creditor's claim that he should not be bound by the discharge it may order that he shall not be so bound.

Textual Amendments

- F57** 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)

- F58**¹³ Where the court makes an order under paragraph 12 above, the clerk of court shall send a copy of the order to—
- (a) the trustee; and
 - (b) the Accountant in Bankruptcy who shall register the copy of the order in the register of insolvencies.

Textual Amendments

- F58** 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)

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

SCHEDULE 6

MEETINGS OF CREDITORS AND COMMISSIONERS

PART I

MEETINGS OF CREDITORS OTHER THAN THE STATUTORY MEETING

Calling of meeting

- 1 The permanent trustee shall call a meeting of creditors if required to do so by—
 - (a) order of the court;
 - (b) one-tenth in number or one-third in value of the creditors;
 - (c) a commissioner; or
 - (d) the Accountant in Bankruptcy.
- 2 A meeting called under paragraph 1 above shall be held not later than 28 days after the issuing of the order of the court under sub-paragraph (a) of that paragraph or the receipt by the permanent trustee of the requirement under sub-paragraph (b), (c) or (d) thereof.
- 3 The permanent trustee or a commissioner who has given written notice to him may at any time call a meeting of creditors.
- 4 The permanent trustee or a commissioner calling a meeting under paragraph 1 or 3 above shall, not less than 7 days before the date fixed for the meeting, notify—
 - (a) every creditor known to him; and
 - (b) the Accountant in Bankruptcy,of the date, time and place fixed for the holding of the meeting and its purpose.
- 5 (1) Where a requirement has been made under paragraph 1 above but no meeting has been called by the permanent trustee, the Accountant in Bankruptcy may, of his own accord or on the application of any creditor, call a meeting of creditors.
(2) The Accountant in Bankruptcy calling a meeting under this paragraph shall, not less than 7 days before the date fixed for the meeting, take reasonable steps to notify the creditors of the date, time and place fixed for the holding of the meeting and its purpose.
- 6 It shall not be necessary to notify under paragraph 4 or 5 of this Schedule any creditor whose accepted claim is less than £50 or such sum as may be prescribed, unless the creditor has requested in writing such notification.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

Role of permanent trustee at meeting

- 7
- (1) At the commencement of a meeting, the chairman shall be the permanent trustee who as chairman shall, after carrying out his duty under section 49(1) of this Act, invite the creditors to elect one of their number as chairman in his place and shall preside over the election.
 - (2) If a chairman is not elected in pursuance of this paragraph, the permanent trustee shall remain the chairman throughout the meeting.
 - (3) The permanent trustee shall arrange for a record to be made of the proceedings at the meeting and he shall insert the minutes of the meeting in the sederunt book.

Appeals

- 8
- The permanent trustee, a creditor or any other person having an interest may, within 14 days after the date of a meeting called under paragraph 1 or 3 above, appeal to the sheriff against a resolution of the creditors at the meeting.

PART II

ALL MEETINGS OF CREDITORS

Validity of proceedings

- 9
- No proceedings at a meeting shall be invalidated by reason only that any notice or other document relating to the calling of the meeting which is required to be sent or given under any provision of this Act has not been received by, or come to the attention of, any creditor before the meeting.

Locus of meeting

- 10
- Every meeting shall be held in such place (whether or not in the sheriffdom) as is, in the opinion of the person calling the meeting, the most convenient for the majority of the creditors.

Mandatories

- 11
- (1) A creditor may authorise in writing any person to represent him at a meeting.
 - (2) A creditor shall lodge any authorisation given under sub-paragraph (1) above with the interim trustee or, as the case may be, the permanent trustee before the commencement of the meeting.
 - (3) Any reference in paragraph 7(1) of this Schedule and the following provisions of this Part of this Schedule to a creditor shall include a reference to a person authorised by him under this paragraph.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

Quorum

- 12 The quorum at any meeting shall be one creditor.

Voting at meeting

- 13 Any question at a meeting shall be determined by a majority in value of the creditors who vote on that question.

Objections by creditors

- 14 (1) The chairman at any meeting may allow or disallow any objection by a creditor, other than (if the chairman is not the permanent trustee) an objection relating to a creditor's claim.
- (2) Any person aggrieved by the determination of the chairman in respect of an objection may appeal therefrom to the sheriff.
- (3) If the chairman is in doubt whether to allow or disallow an objection, the meeting shall proceed as if no objection had been made, except that for the purposes of appeal the objection shall be deemed to have been disallowed.

Adjournment of meeting

- 15 (1) If no creditor has appeared at a meeting at the expiry of a period of half an hour after the time appointed for the commencement of the meeting, the chairman shall adjourn the meeting to such other day as the chairman shall appoint, being not less than 7 nor more than 21 days after the day on which the meeting was adjourned.
- (2) The chairman may, with the consent of a majority in value of the creditors who vote on the matter, adjourn a meeting.
- (3) Any adjourned meeting shall be held at the same time and place as the original meeting, unless in the resolution for the adjournment of the meeting another time or place is specified.

Minutes of meeting

- 16 The minutes of every meeting shall be signed by the chairman and within 14 days of the meeting a copy of the minutes shall be sent to the Accountant in Bankruptcy.

PART III

MEETINGS OF COMMISSIONERS

- 17 The permanent trustee may call a meeting of commissioners at any time, and shall call a meeting of commissioners—
- (a) on being required to do so by order of the court; or

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

- (b) on being requested to do so by the Accountant in Bankruptcy or any commissioner.
- 18 If the permanent trustee fails to call a meeting of commissioners within 14 days of being required or requested to do so under paragraph 17 of this Schedule, a commissioner may call a meeting of commissioners.
- 19 The permanent trustee shall give the commissioners at least 7 days notice of a meeting called by him, unless the commissioners decide that they do not require such notice.
- 20 The permanent trustee shall act as clerk at meetings and shall insert a record of the deliberations of the commissioners in the sederunt book.
- 21 If the commissioners are considering the performance of the functions of the permanent trustee under any provision of this Act, he shall withdraw from the meeting if requested to do so by the commissioners; and in such a case a commissioner shall act as clerk, shall transmit a record of the deliberations of the commissioners to the permanent trustee for insertion in the sederunt book and shall authenticate the insertion when made.
- 22 The quorum at a meeting of commissioners shall be one commissioner and the commissioners may act by a majority of the commissioners present at the meeting.
- 23 Any matter may be agreed by the commissioners without a meeting if such agreement is unanimous and is subsequently recorded in a minute signed by the commissioners; and that minute shall be inserted by the permanent trustee in the sederunt book.

SCHEDULE 7

PART I

CONSEQUENTIAL AMENDMENTS

The Judicial Factors (Scotland) Act 1880 (c.4)

- 1 In section 3 (interpretation), for the words “section 14 or 163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “section 11A of the ^{M8}Judicial Factors (Scotland) Act 1889”.

Marginal Citations

M8 1889 c. 39.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

2 F59

Textual Amendments

F59 Sch. 7 para. 2 repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. 1

The Judicial Factors (Scotland) Act 1889 (c.39)

3 In section 2, at the beginning there shall be inserted the words “Without prejudice to section 1(2) of the Bankruptcy (Scotland) Act 1985 (Accountant of Court to be Accountant in Bankruptcy),”.

4 After section 11 there shall be inserted the following sections—

“11A Application for judicial factor on estate of person deceased.

- (1) It shall be competent to one or more creditors of parties deceased, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting, to apply by summary petition to the Court of Session or to the sheriff of the sheriffdom within which the deceased resided or carried on business during the year immediately preceding the date of the petition, or within which heritage belonging to the deceased at the time of his death is situated, for the appointment of a judicial factor.
- (2) After such intimation of the petition to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the Court or sheriff may appoint such factor, who shall administer the estate subject to the supervision of the accountant in accordance with this Act and the Judicial Factors (Scotland) Act 1880 and relative acts of sederunt; and, if the deceased’s estate is absolutely insolvent within the meaning of section 73(2) of the Bankruptcy (Scotland) Act 1985, section 51 of, and Schedule 1 to, that Act shall apply as if for references to—
 - (a) the interim trustee or permanent trustee there were substituted references to the judicial factor; and
 - (b) the date of sequestration there were substituted references to the date of the judicial factor’s appointment.

11B Judicial factor’s duties to be regulated by act of sederunt.

- The Court of Session shall have full power to regulate by act of sederunt—
- (a) the caution to be found by a factor appointed under section 11A above;
 - (b) the mode in which he shall proceed in realising and dividing the funds, and otherwise in the discharge of his duties; and
 - (c) any other matter which they may deem necessary.”.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

The Conveyancing (Scotland) Act 1924 (c. 27)

5 In section 44(4)(c) (limitation of effect of entries in the register of inhibitions and adjudications)—

- (a) after the words “Bankruptcy (Scotland) Act 1913” there shall be inserted the words “or the Bankruptcy (Scotland) Act 1985”;
- (b) after the words “effect of recording” there shall be inserted “(a)” and after the words “as aforesaid” there shall be inserted the words “; or (b) under subsection (1)(a) of section 14 of the Bankruptcy (Scotland) Act 1985 the certified copy of an order shall have expired by virtue of subsection (3) of that section”; and
- (c) for the words “in terms of paragraph (b) of this subsection”, there shall be substituted the words “in the form provided by Schedule O to this Act”.

The Third Parties (Rights Against Insurers) Act 1930 (c.25)

6 (1) In section 1(2) (rights of third parties against insurers on bankruptcy of insured), after the words “provable in bankruptcy” there shall be inserted the words “(in Scotland, any claim accepted in the sequestration)”.

(2) In section 4 (application to Scotland)—

- (a) paragraph (a) shall be omitted; and
- (b) in paragraph (b), for the words “one hundred and sixty-three of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

7 F60

Textual Amendments
F60 Sch. 7 para. 7 repealed by [Finance Act 1987 \(c. 16, SIF 99:6\)](#), s. 72, [Sch. 16 Pt. XI](#)

The Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)

8 In paragraph 9(2)(b) of Schedule 3 (“insolvent” for purposes of standard condition as to default), for the words “163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

The Superannuation Act 1972 (c.11)

9 In section 5(2) (benefits under civil service superannuation schemes not negotiable), for the words “148” and “1913” there shall be substituted respectively, the words “32(2) and (4)” and “1985”.

10 F61

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

Textual Amendments

F61 Sch. 7 para. 10 repealed by [Road Traffic \(Consequential Provisions\) Act 1988 \(c.54, SIF 107:1\)](#), ss. 3, 5, [Sch. 1 Pt. I](#), [Sch. 4 paras. 1, 2](#)

The Prescription and Limitation (Scotland) Act 1973 (c.52)

11 In section 9(1), for paragraph (b) there shall be substituted the following paragraphs—

“(b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 48 of the Bankruptcy (Scotland) Act 1985 (or those sections as applied by section 613 of the Companies Act 1985); or

(c) by a creditor to the trustee acting under a trust deed as defined in section 5(2)(c) of the Bankruptcy (Scotland) Act 1985;”.

The Local Government (Scotland) Act 1973 (c.65)

12 In section 31(2) (disqualifications regarding members of local authority), for paragraph (b) there shall be substituted the following paragraph—

“(b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.”.

The Social Security Pensions Act 1975 (c.60)

^{F62}13

Textual Amendments

F62 Sch. 7 para. 13 repealed (7.2.1994) by [1993 c. 48, s. 188](#), [Sch. 5 Pt.I](#) (with s. 6(8)); [S.I. 1994/86](#), [art. 2](#)

The Employment Protection (Consolidation) Act 1978 (c.44)

14 ^{F63}(1)

^{F63}(2)

(3) ^{F64}

^{F63}(4)

Textual Amendments

F63 Sch. 7 Pt. I para. 14(1)(2)(4) repealed (22.8.1996) by [1996 c. 18, ss. 242, 243](#), [Sch. 7 Pt. I](#) (with ss. 191-195, 202)

F64 Sch. 7 para. 14(3) repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(4), [Sch. 7 Pt. II](#)

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

The Land Registration (Scotland) Act 1979 (c.33)

- 15 In section 12(3)(b) (restriction as regards indemnity in respect of registered interest in land), after the word “reduced”, where it first occurs, there shall be inserted the words “, whether or not under subsection (4) of section 34, or subsection (5) of section 36, of the Bankruptcy (Scotland) Act 1985 (or either of those subsections as applied by sections 615A(4) and 615B of the Companies Act 1985, respectively),”.

The Banking Act 1979 (c.37)

- 16 In section 28 (payments to depositors on institution’s insolvency)—
- (a) in subsection (6)—
 - (i) in paragraph (a), after the word “proved” there shall be inserted the words “or whose claim has been accepted in the sequestration”;
 - and
 - (ii) in paragraph (b)(iii), for the words “72” and “1913” there shall be substituted, respectively, the words “30” and “1985”; and
 - (b) in subsection (7)(c)—
 - (i) the words from “where” to “court,” shall cease to have effect; and
 - (ii) for the words “deed of arrangement or other settlement or arrangement by way” there shall be substituted the words “trust deed, contract of composition or offer”.

The Estate Agents Act 1979 (c.38)

- 17 In section 23(2) (bankrupts not to engage in estate agency work), in paragraph (a) after the word “recalled” there shall be inserted the words “or reduced”.

The Value Added Tax Act 1983 (c.55)

- 18 In section 22(4)(a)(ii) (“insolvency” for purposes of refund of tax in cases of bad debts), for the words “163 of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “11A of the Judicial Factors (Scotland) Act 1889”.

19—22. F65

Textual Amendments

F65 Sch. 7 paras. 19–22 repealed by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), ss. 438, 443, [Sch. 12](#)

The Family Law (Scotland) Act 1985 (c.37)

- 23 In section 14(5)(b) for the words from “sections 30” to “1913” there shall be substituted the words “section 41 of the Bankruptcy (Scotland) Act 1985”.

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

PART II

RE-ENACTMENT OF CERTAIN PROVISIONS OF BANKRUPTCY (SCOTLAND) ACT 1913 (C. 20)

Arrestments and Poidings

- 24 (1) Subject to sub-paragraph (2) below, all arrestments and poidings which have been executed within 60 days prior to the constitution of the apparent insolvency of the debtor, or within four months thereafter, shall be ranked *pari passu* as if they had all been executed on the same date.
- (2) Any such arrestment which is executed on the dependence of an action shall be followed up without undue delay.
- (3) Any creditor judicially producing in a process relative to the subject of such arrestment or poiding liquid grounds of debt or decree of payment within the 60 days or four months referred to in sub-paragraph (1) above shall be entitled to rank as if he had executed an arrestment or a poiding; and if the first or any subsequent arrester obtains in the meantime a decree of furthcoming, and recovers payment, or a poiding creditor carries through a sale [^{F66}or receives payment in respect of a poided article upon its redemption], he shall be accountable for the sum recovered to those who, by virtue of this Act, may be eventually found to have a right to a ranking *pari passu* thereon, and shall be liable in an action at their instance for payment to them proportionately, after allowing out of the fund the expense of such recovery.
- (4) Arrestments executed for attaching the same effects of the debtor after the period of four months subsequent to the constitution of his apparent insolvency shall not compete with those within the said periods prior or subsequent thereto, but may rank with each other on any reversion of the fund attached in accordance with any enactment or rule of law relating thereto.
- (5) Any reference in the foregoing provisions of this paragraph to a debtor shall be construed as including a reference to an entity whose apparent insolvency may, by virtue of subsection (5) of section 7 of this Act, be constituted under subsection (1) of that section.
- (6) This paragraph shall apply in respect of arrestments and poidings which have been executed either before or after the coming into force of this paragraph.
- (7) The repeal of the Bankruptcy (Scotland) Act 1913 shall not affect the equalisation of arrestments and poidings (whether executed before or after the coming into force of this paragraph) in consequence of the constitution of notour bankruptcy under that Act.
- [^{F67}(8) Nothing in this paragraph shall apply to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.]

Textual Amendments

F66 Words inserted by Debtors (Scotland) Act 1987 (c.18, SIF 45:2), s. 108(1)(2), Sch. 6 para. 28(a), Sch. 7 paras. 5, 9(1)

Status: Point in time view as at 29/05/2000.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed) 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)

F67 Words added by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108(1)(2), Sch. 6 para. 28(b), Sch. 7 paras. 5, **9(1)**

Modifications etc. (not altering text)

C5 Sch. 7 para. 24 excluded by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 67, 108(2), Sch. 7 paras. 5, **9(1)**

Exemptions from stamp or other duties for conveyances, deeds etc. relating to sequestrated estates

- 25 Any—
- (a) conveyance, assignation, instrument, discharge, writing, or deed relating solely to the estate of a debtor which has been or may be sequestrated, either under this or any former Act, being estate which after the execution of such conveyance, assignation, instrument, discharge, writing, or deed, shall be and remain the property of such debtor, for the benefit of his creditors, or the interim or permanent trustee appointed or chosen under or by virtue of such sequestration,
 - (b) discharge to such debtor,
 - (c) deed, assignation, instrument, or writing for reinvesting the debtor in the estate,
 - (d) article of roup or sale, or submission,
 - (e) other instrument or writing whatsoever relating solely to the estate of any such debtor; and
 - (f) other deed or writing forming part of the proceedings ordered under such sequestration,
- shall be exempt from all stamp duties or other Government duty.

SCHEDULE 8

Section 75(2)

REPEALS

Chapter	Short title	Extent of repeal
1621 c. 18.	The Bankruptcy Act 1621.	The whole Act.
1696 c. 5.	The Bankruptcy Act 1696.	The whole Act.
31 & 32 Vict. c. 101.	The Titles to Land Consolidation (Scotland) Act 1868.	Section 148.
44 & 45 Vict. c. 21.	The Married Women's Property (Scotland) Act 1881.	Section 1(4).
52 & 53 Vict. c. 39.	The Judicial Factors (Scotland) Act 1889.	In section 5, the words “, and of the Bankruptcy Acts and Cessio Acts,” and the

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		words “and accountant in bankruptcy respectively.”
		In section 14, the proviso.
		Sections 15 and 16.
		Section 22.
57 & 58 Vict. c. 60.	The Merchant Shipping Act 1894.	Section 36.
3 & 4 Geo. 5 c. 20.	The Bankruptcy (Scotland) Act 1913.	The whole Act.
10 & 11 Geo. 5 c. 64.	The Married Woman’s Property (Scotland) Act 1920.	In section 5, the proviso.
14 & 15 Geo. 5 c. 27.	The Conveyancing (Scotland) Act 1924.	In section 44, in subsection (4) paragraphs (a) and (b); and in subsection (6) the words “and section 44 of the Bankruptcy (Scotland) Act 1913”.
20 & 21 Geo. 5 c. 25.	The Third Parties (Rights Against Insurers) Act 1930.	In section 4, paragraph (a).
10 & 11 Geo. 6 c. 47.	The Companies Act 1947.	Sections 91 and 115.
11 & 12 Geo. 6 c. 39.	The Industrial Assurance and Friendly Societies Act 1948.	In section 2(4), the words “where the receiving order or the award of sequestration of his estate was made after the passing of this Act”.
15 & 16 Geo. 6 & 1 Eliz. 2, c. 33.	The Finance Act 1952.	In section 30, subsections (4) and (6).
1965 c. 25.	The Finance Act 1965.	In Schedule 10, paragraph 15(1).
1969 c. 48.	The Post Office Act 1969.	In Schedule 4, paragraph 22.
1970 c. 10.	The Income and Corporation Taxes Act 1970.	In Part II of Schedule 15, the entry relating to the Finance Act 1952.
Chapter	Short title	Extent of repeal
1972 c. 20.	The Road Traffic Act 1972.	In section 150(2), the words “‘company’ includes a limited partnership, and”.
1974 c. 46.	The Friendly Societies Act 1974.	In section 59, in subsection (1)(a) the words “or bankruptcy”; in subsection (2) the words “or trustee in bankruptcy”; and subsections (3) and (4).

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1975 c. 14.	The Social Security Act 1975.	In Schedule 18, paragraph 1(1)(b) and (2)(b).
1975 c. 18.	The Social Security (Consequential Provisions) Act 1975.	In Schedule 2, paragraph 1.
1975 c. 45.	The Finance (No. 2) Act 1975.	In section 71(6), the words “section 30 of the Finance Act 1952”.
1975 c. 60.	The Social Security Pensions Act 1975.	In Schedule 4, paragraph 1.
1976 c. 24.	The Development Land Tax Act 1976.	In section 42, subsection (1), so far as it relates to bankruptcy in Scotland; and subsection (4)(a).
1976 c. 60.	The Insolvency Act 1976.	In section 5, subsections (3) and (4). In Schedule 1, in Part I, the entries relating to the Bankruptcy (Scotland) Act 1913; and, in Part II, paragraphs 1(a), 2(a), 4 and 5(b).
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	Section 121(1)(b).
1979 c. 37.	The Banking Act 1979.	In section 28(7)(c) the words “where the sequestration is declared at an end by a competent court”.
1979 c. 54.	The Sale of Goods Act 1979.	In section 61(4), the words “, and whether he has become a notour bankrupt or not”.
1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	Section 12.
1981 c. 59.	The Matrimonial Homes (Family Protection) (Scotland) Act 1981.	Section 10.
1981 c. 63.	The Betting and Gaming Duties Act 1981.	In section 30, subsections (1) and (2).
1983 c. 53.	The Car Tax Act 1983.	In Schedule 1, paragraph 4.
1983 c. 55.	The Value Added Tax Act 1983.	In Schedule 7, paragraph 12.
1985 c. 6.	The Companies Act 1985.	In section 665, the words “(whether limited or not)”; and in paragraph (d) the

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Chapter	Short title	Extent of repeal
1985 c. 17.	The Reserve Forces (Safeguard of Employment) Act 1985.	words “registered in England and Wales or Northern Ireland”. Extent of repeal In section 13, the word “— (a)”; the words from “or, (b)” to “estate,”; the word “—(i)”; and the words from “or, (ii)” to “1913,”.

Status:

Point in time view as at 29/05/2000.

Changes to legislation:

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