



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Replacement of permanent trustee

28 Resignation and death of permanent trustee.

- [^{F1}(1) The permanent trustee may apply to the sheriff for authority to resign office and, where the sheriff is satisfied that either of the grounds mentioned in paragraphs (a) and (b) of section 13(2) of this Act applies to the permanent trustee, he shall grant the application.
- (1A) The sheriff may make the granting of an application under subsection (1) above subject to the election of a new permanent trustee and to such conditions as he thinks appropriate in all the circumstances of the case.]
- (2) Where the sheriff grants an application under ^{F2} . . . subsection (1) above—
- (a) except where paragraph (b) below applies, the commissioners, or if there are no commissioners, the Accountant in Bankruptcy, shall call a meeting of the creditors, to be held not more than 28 days after the permanent trustee has resigned, for the election by them of a new permanent trustee;
 - (b) if the application has been granted subject to the election of a new permanent trustee, the resigning permanent trustee shall himself call a meeting of the creditors, to be held not more than 28 days after the granting of the application, for the purpose referred to in paragraph (a) above.
- (3) Where the commissioners become, or if there are no commissioners the Accountant in Bankruptcy becomes, aware that the permanent trustee has died, they or as the case may be the Accountant in Bankruptcy shall as soon as practicable after becoming so aware call a meeting of creditors for the election by the creditors of a new permanent trustee.
- (4) The foregoing provisions of this Act relating to the election and confirmation in office of the permanent trustee shall, subject to any necessary modifications, apply in relation to the election and confirmation in office of a new permanent trustee in pursuance of subsection (1), [^{F3}(1A),] (2) or (3) above.

Status: Point in time view as at 01/08/1998. This version of this provision has been superseded.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Section 28 is up to date with all changes known to be in force on or before 05 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F4}(5) Where no new permanent trustee is elected in pursuance of subsection (2) or (3) above, the provisions of section 25A of this Act shall apply.]

(6) The new permanent trustee may require—

- (a) delivery to him of all documents relating to the sequestration in the possession of the former trustee or his representatives, except the former trustee's accounts of which he shall be entitled to delivery of only a copy;
- (b) the former trustee or his representatives to submit the trustee's accounts for audit to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy, and the commissioners or the Accountant in Bankruptcy shall issue a determination fixing the amount of the outlays and remuneration payable to the trustee or representatives in accordance with section 53 of this Act.

(7) The former trustee or his representatives, the new permanent trustee, the debtor or any creditor may appeal against a determination issued under subsection (6)(b) above within 14 days after it is issued—

- (a) where it is a determination of the commissioners, to the Accountant in Bankruptcy; and
 - (b) where it is a determination of the Accountant in Bankruptcy, to the sheriff;
- and the determination of the Accountant in Bankruptcy under paragraph (a) above shall be appealable to the sheriff.

[^{F3}(8) The decision of the sheriff on an appeal under subsection (7) above shall be final.]

Textual Amendments

- F1** S. 28(1)(1A) substituted for s. 28(1) (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. 17(2)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F2** Words in s. 28(2) repealed (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(4), **Sch.2** (with s. 12(6)); S.I. 1993/438, **art.3**
- F3** Word in s. 28(4) 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. 17(3)** (with s. 12(6)); S.I. 1993/438, **art.3**
S. 28(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. 17(5)** (with s. 12(6)); S.I. 1993/438, **art.3**
- F4** S. 28(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. 17(4)** (with s. 12(6)); S.I. 1993/438, **art.3**

Status:

Point in time view as at 01/08/1998. This version of this provision has been superseded.

Changes to legislation:

Bankruptcy (Scotland) Act 1985 (repealed), Section 28 is up to date with all changes known to be in force on or before 05 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.