

Status: Point in time view as at 02/02/2009.

Changes to legislation: Proceeds of Crime Act 2002, SCHEDULE 3 is up to date with all changes known to be in force on or before 23 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 137

ADMINISTRATORS: FURTHER PROVISION

General

- 1 In this Schedule, unless otherwise expressly provided—
- (a) references to an administrator are to an administrator appointed under section 125 or 128(3);
 - (b) references to realisable property are to the realisable property in respect of which the administrator is appointed.

Commencement Information

I1 Sch. 3 para. 1 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Appointment etc

- 2
- (1) If the office of administrator is vacant, for whatever reason, the court must appoint a new administrator.
 - (2) Any property vested in the previous administrator by virtue of paragraph 5(4) vests in the new administrator.
 - (3) Any order under section 125 or 128(7) in relation to the previous administrator applies in relation to the new administrator when he gives written notice of his appointment to the person subject to the order.
 - (4) The administration of property by an administrator must be treated as continuous despite any temporary vacancy in that office.
 - (5) The appointment of an administrator is subject to such conditions as to caution as the accountant of court may impose.
 - (6) The premium of any bond of caution or other security required by such conditions must be treated as part of the administrator's expenses in the exercise of his functions.

Commencement Information

I2 Sch. 3 para. 2 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Functions

- 3
- (1) An administrator—
 - (a) may, if appointed under section 125, and

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- (b) must, if appointed under section 128(3), as soon as practicable take possession of the realisable property and of the documents mentioned in sub-paragraph (2).
- (2) Those documents are any document which—
- (a) is in the possession or control of the person (“A”) in whom the property is vested (or would be vested but for an order made under paragraph 5(4)), and
 - (b) relates to the property or to A’s assets, business or financial affairs.
- (3) An administrator is entitled to have access to, and to copy, any document relating to the property or to A’s assets, business or financial affairs and not falling within sub-paragraph (2)(a).
- (4) An administrator may bring, defend or continue any legal proceedings relating to the property.
- (5) An administrator may borrow money so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property.
- (6) An administrator may, if he considers that it would be beneficial for the management or realisation of the property—
- (a) carry on any business of A;
 - (b) exercise any right of A as holder of securities in a company;
 - (c) grant a lease of the property or take on lease any other property;
 - (d) enter into any contract, or execute any deed, as regards the property or as regards A’s business.
- (7) An administrator may, where any right, option or other power forms part of A’s estate, make payments or incur liabilities with a view to—
- (a) obtaining property which is the subject of, or
 - (b) maintaining,
- the right, option or power.
- (8) An administrator may effect or maintain insurance policies as regards the property on A’s business.
- (9) An administrator may, if appointed under section 128(3), complete any uncompleted title which A has to any heritable estate; but completion of title in A’s name does not validate by accretion any unperfected right in favour of any person other than the administrator.
- (10) An administrator may sell, purchase or exchange property or discharge any security for an obligation due to A; but it is incompetent for the administrator or an associate of his (within the meaning of section 74 of the Bankruptcy (Scotland) Act 1985 (c. 66)) to purchase any of A’s property in pursuance of this sub-paragraph.
- (11) An administrator may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor.
- (12) An administrator may discharge any of his functions through agents or employees, but is personally liable to meet the fees and expenses of any such agent or employee

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out of such remuneration as is payable to the administrator on a determination by the accountant of court.

- (13) An administrator may take such professional advice as he considers necessary in connection with the exercise of his functions.
- (14) An administrator may at any time apply to the court for directions as regards the exercise of his functions.
- (15) An administrator may exercise any power specifically conferred on him by the court, whether conferred on his appointment or subsequently.
- (16) An administrator may—
 - (a) enter any premises;
 - (b) search for or inspect anything authorised by the court;
 - (c) make or obtain a copy, photograph or other record of anything so authorised;
 - (d) remove anything which the administrator is required or authorised to take possession of in pursuance of an order of the court.
- (17) An administrator may do anything incidental to the powers and duties listed in the previous provisions of this paragraph.

Commencement Information

I3 Sch. 3 para. 3 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Consent of accountant of court

- 4 An administrator proposing to exercise any power conferred by paragraph 3(4) to (17) must first obtain the consent of the accountant of court.

Commencement Information

I4 Sch. 3 para. 4 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Dealings in good faith with administrator

- 5 (1) A person dealing with an administrator in good faith and for value is not concerned to enquire whether the administrator is acting within the powers mentioned in paragraph 3.
 - (2) Sub-paragraph (1) does not apply where the administrator or an associate purchases property in contravention of paragraph 3(10).
 - (3) The validity of any title is not challengeable by reason only of the administrator having acted outwith the powers mentioned in paragraph 3.
 - (4) The exercise of a power mentioned in paragraph 3(4) to (11) must be in A's name except where and in so far as an order made by the court under this sub-paragraph vests the property in the administrator (or in a previous administrator).
 - (5) The court may make an order under sub-paragraph (4) on the application of the administrator or on its own motion.

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I5 Sch. 3 para. 5 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Money received by administrator

- 6
- (1) All money received by an administrator in the exercise of his functions must be deposited by him, in the name (unless vested in the administrator by virtue of paragraph 5(4)) of the holder of the property realised, in an appropriate bank or institution.
 - (2) But the administrator may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed by the Scottish Ministers by regulations.
 - (3) In sub-paragraph (1), “appropriate bank or institution” means a bank or institution mentioned in section 3(1) of the Banking Act 1987 (c. 22) or for the time being specified in Schedule 2 to that Act.

Commencement Information

I6 Sch. 3 para. 6 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Effect of appointment of administrator on diligence

- 7
- (1) An arrestment or [^{F1}attachment] of realisable property executed on or after the appointment of an administrator does not create a preference for the arrester or [^{F2}attacher] .
 - (2) Any realisable property so arrested or [^{F3}attached] , or (if the property has been sold) the proceeds of sale, must be handed over to the administrator.
 - (3) A pouncing of the ground in respect of realisable property on or after such appointment is ineffectual in a question with the administrator except for the interest mentioned in sub-paragraph (4).
 - (4) That interest is—
 - (a) interest on the debt of a secured creditor for the current half-yearly term, and
 - (b) arrears of interest on that debt for one year immediately before the commencement of that term.
 - (5) On and after such appointment no other person may raise or insist in an adjudication against realisable property or be confirmed as executor-creditor on that property.
 - (6) An inhibition on realisable property which takes effect on or after such appointment does not create a preference for the inhibitor in a question with the administrator.
 - (7) This paragraph is without prejudice to sections 123 and 124.
 - (8) In this paragraph, the reference to an administrator is to an administrator appointed under section 128(3).

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Textual Amendments

- F1** Words in Sch. 3 para. 7(1) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), Sch. 3 Pt. 1 para. 29(2)(a)(i)
- F2** Words in Sch. 3 para. 7(1) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), Sch. 3 Pt. 1 para. 29(a)(ii)
- F3** Words in Sch. 3 para. 7(2) substituted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), ss. 61, 64(2), Sch. 3 Pt. 1 para. 29(b)

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- I7** Sch. 3 para. 7 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Supervision

- 8 (1) If the accountant of court reports to the court that an administrator has failed to perform any duty imposed on him, the court may, after giving the administrator an opportunity to be heard as regards the matter—
- remove him from office,
 - censure him, or
 - make such other order as it thinks fit.
- (2) Section 6 of the Judicial Factors (Scotland) Act 1889 (c. 39) (supervision of judicial factors) does not apply in relation to an administrator.

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- I8** Sch. 3 para. 8 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Accounts and remuneration

- 9 (1) Not later than two weeks after the issuing of any determination by the accountant of court as to the remuneration and expenses payable to the administrator, the administrator or the Lord Advocate may appeal against it to the court.
- (2) The amount of remuneration payable to the administrator must be determined on the basis of the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.
- (3) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator.

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- I9** Sch. 3 para. 9 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

Discharge of administrator

- 10 (1) After an administrator has lodged his final accounts under paragraph 9(1), he may apply to the accountant of court to be discharged from office.

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- (2) A discharge, if granted, frees the administrator from all liability (other than liability arising from fraud) in respect of any act or omission of his in exercising his functions as administrator.

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I10 Sch. 3 para. 10 in force at 24.3.2003 by S.S.I. 2003/210, art. 2(1)(a)

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