



Scottish Law Commission  
*promoting law reform*

| (SCOT LAW COM No 232)

# Report on the Consolidation of Bankruptcy Legislation in Scotland

report





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Laid before the Scottish Parliament by the Scottish Ministers

May 2013

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## NOTES

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<sup>1</sup> Amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999 (SI 1999/1820).



# SCOTTISH LAW COMMISSION

## **Report on the Consolidation of Bankruptcy Legislation in Scotland**

To: Kenny MacAskill MSP, Cabinet Secretary for Justice

We have the honour to submit to the Scottish Ministers our Report on the Consolidation of Bankruptcy Legislation in Scotland

(Signed)

LYNDA CLARK, *Chairman*

LAURA J DUNLOP

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HECTOR L MACQUEEN

ANDREW J M STEVEN

Malcolm McMillan, *Chief Executive*  
19 April 2013



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Draft section 104 Order

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Tables of Derivations and Destinations

# Chapter 1 Introduction

## Background to the consolidation project

1.1 In our Eighth Programme of Law Reform, published in February 2010, we mentioned that we were undertaking a project to consolidate the legislation relating to bankruptcy in Scotland.<sup>1</sup> The project followed a suggestion by the Accountant in Bankruptcy, which was supported by the Scottish Government. Although most of the law proposed for consolidation is already contained in a single Act, the Bankruptcy (Scotland) Act 1985 (referred to in this report as "the 1985 Act") that Act has been so heavily amended, on so many occasions, that it has lost coherence and rational structure. Many of its provisions (whether sections, subsections or paragraphs) are inordinately long; and numbering has become complex and unwieldy.

1.2 The primary aim of consolidation is to make the legislation on a particular area of law more accessible for practitioners and for those affected by it, thereby saving time and money. Consolidation involves the bringing together of enactments on a subject matter into one statute.

## History of bankruptcy legislation in Scotland

1.3 The 1985 Act gave effect, with some modifications, to this Commission's Report on Bankruptcy and Related Aspects of Insolvency and Liquidation, published in February 1982. The 1985 Act was a major restatement of the law of bankruptcy in Scotland. It repealed the Bankruptcy (Scotland) Act 1913, which had introduced summary sequestration, but otherwise the 1985 Act was a restatement of the Bankruptcy (Scotland) Act 1856. In turn the 1856 Act had been based on the Bankruptcy (Scotland) Act 1839. The 1985 Act also repealed two Acts of the pre-union Scots Parliament, namely the Bankruptcy Acts of 1621 and 1696.

1.4 Although the 1985 Act uses the term "bankruptcy" the long title makes clear that the Act deals mainly with sequestration, the principal procedure in Scots law for resolving personal insolvency. The 1985 Act (except for a very few provisions which have effect throughout the United Kingdom) extends to Scotland only.

1.5 The process of bankruptcy is supervised and administered by the Accountant in Bankruptcy. The Accountant's office is an Executive Agency of the Scottish Government and acts independently and impartially while remaining accountable to Scottish Ministers. The Accountant in Bankruptcy is appointed under section 1 of the 1985 Act.

## Consultation on proposed amendments to the 1985 Act

1.6 In August 2011 we published a Consultation Paper on the Consolidation of the Bankruptcy Legislation in Scotland, inviting views on a number of proposed amendments to

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<sup>1</sup> Eighth Programme of Law Reform, Scot Law Com No 220, (2010), para 1.36.

the 1985 Act which were designed to facilitate consolidation.<sup>2</sup> We also invited consultees to make suggestions as regards other changes that should be made to that Act.

1.7 In addition to the Consultation Paper, we also produced a draft Bankruptcy (Scotland) Bill, a draft of a Consequential Provisions and Modifications Order to be made under section 104 of the Scotland Act 1998 and draft Tables of Destinations and Derivations.<sup>3</sup>

1.8 We received a substantial number of responses which have been of considerable help to us in formulating our final recommendations and in drafting the Bill contained in Appendix 2 to this report. We are grateful to consultees for their comments and suggestions. Some of their suggestions related to matters of a purely policy nature and therefore were not for the Commission to consider as part of the consolidation project. As we mentioned in the Consultation Paper the consolidation cannot be regarded as a vehicle for law reform. For that reason we have passed comments relating to policy to the Accountant in Bankruptcy and the Scottish Government to consider.

### **The Scottish Government consultation on reform of bankruptcy legislation**

1.9 In February 2012 the Scottish Government published its Consultation on Bankruptcy Law Reform setting out proposals for significant reform of bankruptcy legislation.<sup>4</sup> This followed on from an earlier consultation seeking views on ways in which the trust deed process could be made more efficient. The subsequent Report on that consultation exercise entitled "Protected Trust Deeds – Improving the Process" was published in May 2012.

1.10 In its Programme for Government 2012-2013,<sup>5</sup> published in September 2012, the Scottish Government announced its intention to introduce a Bill to modernise bankruptcy law. In the event that a Bill is enacted by the Scottish Parliament to give effect to the Scottish Government's proposals for reform, it would be possible for the recommendations in this report to be implemented as part of that Bill. This approach would enable the Commission's consolidation Bill to be taken forward subsequently as a "straight" consolidation (without amendments to give effect to Commission recommendations).

### **Legislative competence**

1.11 The subject matter of the draft consolidation Bill appended to this report is, for the most part, not reserved to the United Kingdom Parliament in terms of Schedule 5 to the Scotland Act 1998. Subject to what is said in the following paragraph, we consider that it would be competent for the Scottish Parliament to pass a Bill in terms of that draft. In our view any such Bill (including the amendments to the 1985 Act contained in chapter 2 of this report) does not raise any issues relating to compliance with the European Convention on Human Rights.

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<sup>2</sup> The consultation period ended on 30 November 2011. A list of those who responded is contained in Appendix 1 to this report.

<sup>3</sup> The consultation documents are available on the Commission's website at: <http://www.scotlawcom.gov.uk/publications/consultation-papers-and-other-documents/>.

<sup>4</sup> The consultation period ended on 18 May 2012.

<sup>5</sup> The Programme is available at: <http://www.scotland.gov.uk/News/Releases/2012/09/prog-for-gov2012-13>.

## **Application of certain provisions in English law**

1.12 The draft Bill which the Commission recommends would be for the Scottish Parliament to enact. But some of the provisions consolidated would require to have effect outwith Scotland.<sup>6</sup> Therefore an order under section 104 of the 1998 Act would be required to supplement any Consolidation Act resulting from the Bill and complete its restatement of bankruptcy law. (Section 104 provides for subordinate legislation which the person making the legislation considers necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament). The making of an order under section 104 of the 1998 Act would be a matter for UK Ministers and for the UK Parliament. For the purposes of this report we have prepared a draft of such an order which can be found in Appendix 3 to this report. In connection with the draft Bill, the Commission has also prepared Tables of Derivations and Destinations, which are contained in Appendix 4 to this report.

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<sup>6</sup> See paragraph 1.4 above and section 78(5) and (6) of the 1985 Act.

# Chapter 2            Amendments to the Bankruptcy (Scotland) Act 1985

## Introduction

2.1     In this chapter, we recommend amendments to the 1985 Act.

2.2     Those amendments are intended to remove anomalies, to treat like cases in the same way or to omit provisions that are no longer of any practical utility. The amendments are given effect in the Commission's draft consolidation Bill. Considerations of legislative competence and of giving effect to certain provisions in other jurisdictions of the United Kingdom require the various provisions to be divided between a draft Bill of the Scottish Parliament and a draft order of the United Kingdom Parliament under section 104 of the Scotland Act 1998.

2.3     The draft Bill and draft order have been prepared taking account of underlying drafting considerations, such as a preference for gender neutrality, the resolution of ambiguities, modernisation and simplification of language and the breaking up of long provisions into shorter ones.

2.4     Amendments to the 1985 Act provided for in legislation not yet in force have been treated in the draft Bill as if that legislation were in force. For example, the Bankruptcy and Diligence etc. (Scotland) Act 2007 contains provisions which would, if and when commenced, amend the 1985 Act.

## The expression "right or interest"

2.5     The expression "right or interest" occurs at several places in the 1985 Act. With such changes as have been made since devolution to the law of heritable property, the expressions "right in land" and "interest in land" have become virtually synonymous in Scottish enactments. Anything encompassed by the latter expression will also be encompassed by the former (though the converse is not always the case: cf. the exclusion in paragraph (a) of the definition of "interest in land" in section 28(1) of the Land Registration (Scotland) Act 1979 (c.33)).

- 1.     We therefore recommend that wherever the words "right or interest" occur in the 1985 Act the words "or interest" should be omitted.**

2.6     This recommendation is given effect in sections 59(8), 62(7), 63(7), 75(1), (2), (3)(a)(i), (ii), (iv), and (ix), (4) and (5) and 76(1) and (7) of the draft Bill.

## Appointment of the trustee in the sequestration

2.7     Section 2 of the 1985 Act provides, both in subsection (1B) and in subsection (1C), for the Accountant in Bankruptcy to be deemed to be appointed to be the trustee in the sequestration. We consider that this unnecessarily complicates the construction of the

provisions. We also note that were subsection (1C) simply to provide that the Accountant in Bankruptcy is not to appoint a trustee in the circumstances mentioned in that subsection then subsection (1B) would apply anyway and there would be no need for further deeming.

**2. We therefore recommend that subsection (1C) of section 2 be amended accordingly.**

2.8 This recommendation is given effect in section 37(13) of the draft Bill.

### **Debtor applications**

2.9 Subsections (9) and (10) of section 5 of the 1985 Act have effect in situations (among others) where a debtor fails to comply with subsection (6A) of that section. Since subsection (6A) is applied expressly for the purposes of section 6 of the Act it might be thought that subsections (9) and (10) apply consequentially for the purposes of section 6 also. That would not appear to have been the UK Parliament's intention.

**3. We therefore recommend that the non-application of subsections (9) and (10) of section 5, for the purposes of section 6 of the 1985 Act, be put beyond doubt.**

2.10 This recommendation is given effect in section 6(4) of the draft Bill.

### **Sequestration of other estates**

2.11 While limited liability partnerships would appear to come within the generality of paragraph (b) of section 6(2) of the 1985 Act, so too it appears would companies registered under the Companies Act 2006. The latter are mentioned expressly in paragraph (a) of section 6(2), but not the former.

**4. We therefore recommend that for the avoidance of any uncertainty, limited liability partnerships should also be mentioned expressly in section 6.**

2.12 This recommendation is given effect in section 4(2)(b) of the draft Bill.

### **Meaning of apparent insolvency**

2.13 Paragraph (c) of section 7(1) of the 1985 Act includes the words "unless it is shown that at the time when any such circumstance occurred, the debtor was able and willing to pay his debts as they became due or that but for his property being affected by a restraint order or subject to a confiscation, or charging, order he would be able to do so". There are two points to be made as regards that wording. Firstly (as has been pointed out to us by the Law Society of Scotland) the circumstances in question "can clearly apply" to subparagraphs (ii) and (vii) of that paragraph "but not to granting a trust deed which is a voluntary act". And secondly, it seems improbable, notwithstanding the words "be able to do so", that the intention can have been, in considering whether apparent insolvency has been constituted, to shift from the time when any of the circumstances set out in that paragraph occurred to the present. In other words, it appears to us that the tests of being able and willing to pay debts as they became due and of being able so to pay but for the effect of a

restraint, confiscation or charging order should both be referable to the time when a circumstance occurred.

**5. We therefore recommend that paragraph (c) be re-worded accordingly.**

2.14 This recommendation is given effect in section 15(1)(e) to (g) and (2) of the draft Bill.

**Application of section 7 of the 1985 Act to partnerships and unincorporated bodies**

2.15 Given that subsection (1) of section 7 of the 1985 Act refers expressly to constitution anew of apparent insolvency it would seem appropriate to have corresponding reference both in referring to the apparent insolvency of a partnership and in referring to the apparent insolvency of an unincorporated body.

**6. We therefore recommend that subsection (3) of section 7 include such reference.**

2.16 This recommendation is given effect in section 15(4) and (5) of the draft Bill.

**When sequestration is awarded**

2.17 Section 12(4) of the 1985 Act defines, for the Act, the expression "the date of sequestration". Paragraph (b)(i) of that section provides, in certain circumstances, for that date to be the date on which the sheriff grants warrant to cite the debtor to appear before the sheriff to show cause why sequestration should not be awarded. But it is only if the petition for sequestration has led on to an award of sequestration that the granting of the warrant should have any relevance in the context of subsection (4).

2.18 The potential for confusion in employing the expression "the date of sequestration" in circumstances where sequestration may not in fact be granted is exemplified in section 14(1) of the 1985 Act. If, as is the effect of the section as presently drafted (and as read with section 12(4)(b) of the 1985 Act), copies of the order of the sheriff are to be sent off on warrant being granted, whether or not sequestration is subsequently awarded, it would be more straightforward and comprehensible to draft by reference (only) to the granting of the warrant.

**7. We therefore recommend that the wording of paragraph (b) of section 12(4) of the 1985 Act be adjusted by introducing the requirement that sequestration should have been awarded.**

**8. We further recommend that (for clarity and simplicity and also consequentially upon that adjustment) the reference to "the date of sequestration" in section 14(1) of that Act be replaced with a reference to the sheriff granting warrant under section 12(2).**

2.19 Recommendations 7 and 8 are given effect in, respectively, sections 19(8)(b) and 22(1) of the draft Bill.

## **Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee: notice etc. to creditors**

2.20 Section 13B of the 1985 Act would appear largely to have been derived from section 13A of that Act but elements of 13A have been carried over into 13B inappropriately. Thus the occurrence of the word "claim" makes sense in section 13A(4)(b) (subsection (4)(b) following on as it does from (4)(a)(ii) of 13A) but does not make any sense in the analogous section 13B(4)(b). In the latter provision rather than a reference to a claim there should be a reference to a determination (that is to say, to the determination mentioned in section 13B(4)(a)(ii)).

**9. We therefore recommend that section 13B(4)(b) be re-worded accordingly.**

2.21 This recommendation is given effect in section 40(4)(b) of the draft Bill.

## **Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee: further provision as regards such notice**

2.22 Similarly, the reference in paragraph (c) of section 13B(5) to "the effect mentioned in subsection (9) [of that section]" makes no sense since no effect is so mentioned (and in any event there are significant conditions to be satisfied before (9) has any effect whatsoever).

**10. We therefore recommend that the anomaly in section 13B(5) be removed.**

2.23 This recommendation is given effect in section 40(8)(c) of the draft Bill.

## **Registration of warrant or determination of debtor application**

2.24 In an unreported judgement in May 2011, Sheriff William Holligan observed that the wording of subsection (4) of section 14 of the 1985 Act was "slightly curious" in that, read literally as regards the effect of an inhibition and of a citation, it would renew an effect mentioned in subsection (2) of that section –

"for a period of three years from the date of the sequestration. Clearly that is not what was intended, namely that the effect is renewed for a further period of three years from the date of the expiry of the first three year period and so on for a further period of three years."

We agree with that observation.

**11. We therefore recommend that the anomaly in section 14(4) be removed.**

2.25 This recommendation is given effect in section 22(7) of the draft Bill.

## **Recall of sequestration**

2.26 It is anomalous to give the court limited powers of recall under subsection (1) of section 17 of the 1985 Act only to give it unrestricted powers of recall under subsection (2) of that section. It therefore appears that subsection (2) is intended to follow on from paragraph (c) of subsection (1): in other words, that the "one or more awards of sequestration" referred

to in subsection (2) are in fact the "one or more *other* awards of sequestration" referred to in subsection (1)(c).

**12. We therefore recommend that in section 17 of the 1985 Act the relationship between subsections (1) and (2) be clarified accordingly.**

2.27 In subsection (3)(a) of section 17, the reference to "the interim trustee" does not allow for there being no appointment of an interim trustee (cf. section 2(5) of the 1985 Act).

**13. We therefore recommend that in section 17 of the 1985 Act subsection (3)(a) should allow for there being no appointment of an interim trustee.**

2.28 In subsection (8)(b)(ii) of section 17 the words "(if any)" would not seem apt given the terms of section 2(1B) and (2C) of the 1985 Act; and if the Accountant in Bankruptcy is trustee then the duty to insert in the sederunt book a copy of an order should apply to the Accountant just as it does to any other trustee.

**14. We therefore recommend that in section 17 of the 1985 Act the provisions of subsection (8)(b)(ii) be adjusted to remove these anomalies.**

2.29 Recommendations 12, 13 and 14 are given effect in section 25(2), (3), (4), (11) and (12) of the draft Bill.

**Statement as to insufficiency of debtor's assets to pay any dividend whatsoever**

2.30 Both in section 20(1) and in section 23(3) of the 1985 Act there is a requirement for the trustee, in every case, to indicate "whether, in his opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever" in respect of the preferred debts, the ordinary debts, interest on those debts and any postponed debt. We suggest that it is excessive to have a requirement for such an indication in every case. If the requirement were confined to giving an indication only in a case where the trustee was of the opinion that the debtor's assets were unlikely to be sufficient to pay any dividend whatsoever, it would necessarily follow from the absence of any such indication in any *other* case that the trustee was not of that opinion.

**15. We therefore recommend that the indication should only be required in those cases where the trustee has come to the opinion mentioned.**

2.31 This recommendation is given effect in sections 28(1)(b) and 33(4)(d) of the draft Bill.

**Termination of original trustee's functions**

2.32 The wording of section 26(1) of the 1985 Act does not properly take account of the substitution made by paragraph 11(2)(b) of Schedule 1 to the Bankruptcy (Scotland) Act 1993 (in that a statement will be prepared under section 23(3)(d) of the 1985 Act only if the trustee determines that it is necessary to revise a statement prepared under section 20(1) of that Act).

**16. We therefore recommend that section 26(1) be amended to remove this anomaly.**

2.33 This recommendation is given effect in section 42(2) of the draft Bill.

#### **Discharge of original trustee**

2.34 Section 27(3) of the 1985 Act makes no mention of a determination being issued but does provide for various persons being notified. Since subsection (2) has already described a period in terms of days after notification it seems preferable therefore, in subsection (4) also, to provide a description in terms of days after notification rather than of days after the issuing of a determination (or indeed of days after the grant or refusal of the certificate of discharge).

2.35 And further as regards subsection (4), we observe that it would be more accurate to regard a person as being informed under subsection (2)(a) and as making representations by virtue of having been so informed rather than as having made representations under subsection (2)(a).

- 17. We therefore recommend that in relation to both points section 27(4) be amended accordingly.**

2.36 This recommendation is given effect in section 44(4) of the draft Bill.

#### **Appeals in relation to outlays and remuneration payable to a trustee or the representatives of a trustee**

2.37 Provision is made in section 28 of the 1985 Act for appeal to the sheriff as regards certain determinations of the Accountant in Bankruptcy relating to outlays and remuneration payable to a trustee or to the representatives of a trustee. On any such appeal the decision of the sheriff is final. Analogous provision is made in section 29 of that Act (by applying, for the purposes of section 29, certain provisions of section 28) except that the provisions so applied do not include provision for the decision of the sheriff to be final. There would not appear to be any reason for the exception.

- 18. We therefore recommend that the decision of the sheriff on an appeal under section 28(7) as applied for the purposes of section 29 by subsection (8) of section 29 be final, just as it is on any other appeal under section 28(7).**

2.38 This recommendation is given effect in section 47(19) of the draft Bill.

#### **Adjudication for debt**

2.39 The diligence of adjudication for debt being abolished prospectively by section 79 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, provision for the repeal of various references to adjudication in other legislation is made in schedule 6 to that Act. But in identifying, in the schedule, words to be repealed in section 37(8) of the 1985 Act an error appears to have been made by confusing the second occurrence of a word (the word "or") with its third occurrence. In consequence provision is made for the repeal of some only of the words which ought to have been targeted.

- 19. We therefore recommend that section 37(8) of the 1985 Act be amended so as to repeal all reference in it to adjudication.**

2.40 This recommendation is given effect in section 21(13) of the draft Bill.

#### **Debtor's home ceasing to form part of sequestrated estate**

2.41 In section 39A of the 1985 Act, subsection (3)(d) refers to a trustee "register[ing] in the Land Register of Scotland or ..... record[ing] in the Register of Sasines a notice of title" but such wording is not apt. For the Land Register, a trustee in sequestration does not complete title in that way; instead application is made to the Keeper of the Registers of Scotland for the appropriate title sheet to be updated so as to show the trustee as proprietor.

#### **20. We therefore recommend that more general wording be employed in section 39A of the 1985 Act**

2.42 This recommendation is given effect in section 75(3)(a)(iv) of the draft Bill (in wording apt both for completion of title under the Land Registration (Scotland) Act 1979 and for completion of title under its successor, the Land Registration etc. (Scotland) Act 2012

2.43 As regards subsection (6)(b) of section 39A, it may be that the trustee and the Accountant in Bankruptcy will become aware of the debtor's right in the family home each on a different day and no provision is made in the 1985 Act for preferring one date over the other. Nor, if the AiB does become aware of the debtor's interest, is any obligation imposed by the Act to pass this information to the trustee. We consider that these matters could give rise to confusion and uncertainty (except of course in a case in which the AiB is the trustee).

#### **21. We therefore recommend that one date only should be provided for in section 39A(6)(b), being the date on which the trustee becomes aware of the debtor's right.**

2.44 This recommendation is given effect in section 75(5)(b) of the draft Bill.

#### **Procedure on certain appeals after end of accounting period**

2.45 Subsection (6) of section 53 of the 1985 Act might be thought to provide that the sheriff's decision is final only in an appeal against a decision under paragraph (a) of the subsection. But it could also be construed (as we believe Parliament must have intended that it should) as relating both to a decision under paragraph (a) and to a decision under paragraph (b).

#### **22. We therefore recommend that subsection (6) of section 53 of the 1985 Act be clarified and that it be expressly provided that the decision is final in both cases.**

2.46 Subsection (6A) of section 53 of the 1985 Act would appear, in the case of an appeal to the sheriff against a decision of the Accountant in Bankruptcy, to require a debtor who has already satisfied the Accountant as to pecuniary interest to satisfy the sheriff also. This seems to us to be an unnecessary duplication.

#### **23. We therefore recommend that the requirement in subsection (6A) of section 53 of the 1985 Act be confined to an appeal under paragraph (a) or (b) of subsection (6).**

2.47 Recommendations 22 and 23 are given effect in section 95(1) to (4) of the draft Bill.

**Debtor not discharged from liability to pay certain fines etc.**

2.48 Paragraph 33(1) of the schedule to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 provides that in any enactment apart from that Act, references to the district court are to be read as references to the justice of the peace court. (District courts have been replaced with justice of the peace courts by virtue of sections 59 and 64 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)). Notwithstanding paragraph 33(1), we consider that section 55(2)(aa) of the 1985 Act requires to be construed as referring both to fines imposed in a justice of the peace court and to fines imposed in a district court. This is because the liability referred to in that paragraph may, for some considerable time to come, arise in relation to a fine which was imposed in a district court.

- 24. We therefore recommend that, notwithstanding paragraph 33(1) of the schedule to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, the reference in section 55(2)(aa) of the 1985 Act to "a district court" should be construed as relating not only to a justice of the peace court but also to a district court.**

2.49 We also consider that section 55(3) should be simplified and shortened by the omission of paragraph (a). This is because debts (and the payment of interest on any debt) are themselves obligations and therefore fall within the compass of paragraph (b). So too as regards the analogous paragraph 16(2) of Schedule 4 and its sub-paragraph (a).

- 25. We therefore recommend that both paragraph (a) of section 55(3) of, and sub-paragraph (a) of paragraph 16(2) of Schedule 4 to, the 1985 Act be omitted.**

2.50 Recommendations 24 and 25 are given effect in section 100(3)(b), (5) and (7) of, and paragraph 20(1)(b) and (3) of schedule 3 to, the draft Bill.

**Notice to member State liquidator**

2.51 Subsection (2) of section 60B of the 1985 Act imposes an obligation to give notice, or provide a copy document, to a member State liquidator (that is to say, to a person falling within the definition of liquidator in Article 2(b) of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings, being a person appointed in proceedings to which the article applies in a member State other than the United Kingdom) in circumstances where there is an obligation to give notice or provide such a document to the sheriff or to the Accountant in Bankruptcy. We consider that subsection (2) would be more readily construed were it to indicate that notice or provision to the member State liquidator is in addition to (and hence not instead of) notice or provision to the sheriff or Accountant in Bankruptcy.

- 26. We therefore recommend that section 60B of the 1985 Act be amended to indicate that notice or provision to the member State liquidator is in addition to notice or provision to the sheriff or Accountant in Bankruptcy.**

2.52 This recommendation is given effect in section 127(2) of the draft Bill.

## Regulations under the 1985 Act

2.53 The drafting of subsection (1) of section 72 of the 1985 Act seems to allow two possible interpretations. The first is that the words "and the regulations may make different provision for different cases or classes of case" (which we refer to below as "the relevant power") relate to any regulations made under the Act; and the second is that the relevant power relates only to regulations subject to annulment in pursuance of a resolution. The first construction would seem much the more likely were it not for the fact that there are specific subsections and a specific sub-paragraph elsewhere in the Act which relate to making different provision under some of the regulations mentioned in subsection (3) of the section (being regulations requiring to be approved by resolution). From this we take it that it was not intended that the relevant power should relate to any of the regulations mentioned in subsection (3). In particular, we take it first that it was not intended that different provision should be made under section 5(2B)(a) or (4) of the 1985 Act; second that it was intended that such different provision as could be made under section 5A(5)(e) of that Act should be limited to different provision for different classes or description of debtor; and third that it was thought that section 39A(4) of that Act (as read with subsection (8) of the section) provided such flexibility that superimposing the relevant power was unnecessary. However, as regards that third matter, it seems to us to be pointless and potentially confusing to disapply the relevant power to regulations under section 39A(4) (the more so were it to be done expressly in consolidating the provision).

2.54 Section 5B(5)(d) of, and paragraph 5(2)(aa) of Schedule 5 to, the 1985 Act duplicate the wording of the relevant power (and so support the interpretation that the relevant power relates only to regulations subject to annulment in pursuance of a resolution).

2.55 We submit that the second interpretation is accordingly to be preferred but that the existing provisions are far from clear.

- 27. We therefore recommend that the wording of section 72 of the 1985 Act should be adjusted so as to provide certainty as to the scope of the power in regulations under subsection (1) of that section to make different provision for different cases or classes of case; and that the power should apply to regulations under section 39A(4).**

2.56 This recommendation is given effect in section 140(4) and (5) of the draft Bill.

## Insolvency practitioners

2.57 Section 73(1) of the 1985 Act defines "qualified to act as an insolvency practitioner" by reference to section 2 of the Insolvency Act 1985; however section 2 has been repealed by Schedule 12 to the Insolvency Act 1986. Provision equivalent to section 2 is made in section 390 of that Act of 1986.

- 28. We therefore recommend that the definition of "qualified to act as an insolvency practitioner" in section 73(1) of the 1985 Act be by reference to section 390 of the 1986 Act.**

2.58 This recommendation is given effect in section 143(1) of the draft Bill.

## Commissioners

2.59 Section 73(1) of the 1985 Act defines "commissioner" by reference to section 30(1) of that Act. But section 30(1) relates only to the election of a commissioner and it is section 4 of the Act which introduces commissioners and sets out their functions.

**29. We therefore recommend that the definition of "commissioner" in section 73(1) of the 1985 Act be by reference to section 4 of the Act rather than to section 30(1).**

2.60 This recommendation is given effect in section 143(1) of the draft Bill.

## Debt payment programmes

2.61 Regulation 45 of the Debt Arrangement Scheme (Scotland) Regulations 2011<sup>1</sup> provides for the insertion, into section 7(1)(c) of the 1985 Act, of a new sub-paragraph (vii). However, there already is at that place a sub-paragraph (vii) in very similar terms. It was put there by Regulation 46 of the Debt Arrangement Scheme (Scotland) Regulations 2004.<sup>2</sup> Schedule 5 to the 2011 Regulations revokes the 2004 Regulations; but by section 15 of the Interpretation and Legislative Reform (Scotland) Act 2010, the revocation of a Scottish instrument does not affect an amendment of an enactment already made by the revoked instrument. We assume from the fact that the two sub-paragraph (vii)s are in very similar terms that the intention was simply to substitute the new for the old; but what we now have is both an old sub-paragraph (vii) and a new.

2.62 Paragraph 1 of schedule 2 to the 2011 Regulations provides for the insertion, into section 14(1) of the 1985 Act, of a new paragraph (c). However, there already is at that place a paragraph (c) in very similar terms. It was put there by paragraph 1 of schedule 3 to the 2004 Regulations. Again, we assume that the intention was to substitute the new for the old; but what we now have is both an old paragraph (c) and a new.

**30. We therefore recommend**

**(a) that sub-paragraph (vii) of section 7(1)(c) of the 1985 Act, as inserted by Regulation 46 of the Debt Arrangement Scheme (Scotland) Regulations 2004 (and not as inserted by Regulation 45 of the Debt Arrangement Scheme (Scotland) Regulations 2011) be omitted; and**

**(b) that paragraph (c) of section 14(1) of the 1985 Act, as inserted by paragraph 1 of schedule 3 to the Debt Arrangement Scheme (Scotland) Regulations 2004 (and not as inserted by paragraph 1 of schedule 2 to the Debt Arrangement Scheme (Scotland) Regulations 2011), be omitted.**

2.63 This recommendation is given effect in sections 15(1)(e) to (g) and 22(1)(c) and (8) of the draft Bill.

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<sup>1</sup> SSI 2011/141.

<sup>2</sup> SSI 2004/468.

## **Legal status and legal relationships**

2.64 Section 1(1) of the Law Reform (Parent and Child) (Scotland) Act 1986, as amended by section 21(2) of the Family Law (Scotland) Act 2006, provides among other things that "the fact that a person's parents are not or have not been married to each other shall be left out of account in determining the person's legal status or establishing the legal relationship between the person and any other person". It follows that paragraph (b) of section 74(4) of the 1985 Act, with its reference to illegitimacy, is both superfluous and inapt.

**31. We therefore recommend that paragraph (b) of section 74(4) of the 1985 Act be omitted.**

2.65 This recommendation is given effect in section 144(6) of the draft Bill.

## **Extent**

2.66 Section 78(6) of the 1985 Act mentions provisions of the Act which extend to England, Wales and Northern Ireland as well as to Scotland. Among them is listed "paragraph 16(b) of Schedule 4". But paragraph 16 has both a sub-paragraph (1) and a sub-paragraph (2) (and each of the sub-paragraphs has a head (b)). This would seem to have come about because the need for an amendment to section 78(6), consequential upon the insertion of a second sub-paragraph by paragraph 31(4) of Schedule 1 to the Bankruptcy (Scotland) Act 1993, was not noticed. By analogy with section 55(3) of the 1985 Act (which applies to the whole of the United Kingdom), it appears that the reference to paragraph 16(b) of Schedule 4 should be expanded into a reference to paragraph 16(1)(b) and (2) of that Schedule.

**32. We therefore recommend that, in section 78(6) of the 1985 Act, the reference to paragraph 16(b) of Schedule 4 be adjusted so as to constitute a reference to paragraph 16(1)(b) and (2) of Schedule 4 to the Act.**

2.67 This recommendation is given effect in article 7 of the draft Bankruptcy (Scotland) Act 2013 (Consequential Provisions and Modifications) Order 2013.

## **Determination of amount of creditor's claim**

2.68 Special provision is made, in sub-paragraph (2) of paragraph 2 of Schedule 1 to the 1985 Act, for the application of sub-paragraph (1) of that paragraph to a periodical allowance payable on divorce or on the dissolution of a civil partnership. Unfortunately the application provided for in sub-paragraph (2) does not take account of the fact that the words "in the case" (by reference to which a substitution is made) occur twice in sub-paragraph (1). We observe that an intention to refer to the first such occurrence is very much more probable than an intention to refer to the second.

**33. We therefore recommend that sub-paragraph (2) of paragraph 2 of Schedule 1 to the 1985 Act be adjusted so as to be construed accordingly.**

2.69 This recommendation is given effect in paragraph 2(2) of schedule 1 to the draft Bill.

## **Discharge on composition**

2.70 Paragraph 9(3) of Schedule 4 to the 1985 Act refers to provisions being "adapted by paragraph 9(2) and (3) of Schedule 2 to [the Act]"; however Schedule 2 has been repealed by section 11(6) of the Bankruptcy and Diligence etc.(Scotland) Act 2007, with effect from 1 April 2008. New adaptations (now described as "modifications of procedure") are to be found in section 53A of the 1985 Act.

- 34. We therefore recommend that the new adaptations contained in subsections (2) to (4), (7) and (10) of section 53A of the 1985 Act be referred to (as nearest equivalents) instead of those contained in paragraph 9(2) and (3) of Schedule 2.**

2.71 In sub-paragraph (a) of paragraph 16(1) of Schedule 4 to the 1985 Act the reference to "the order" does not take account of the amendments made to the paragraph by section 21(10) of the Bankruptcy and Diligence etc.(Scotland) Act 2007.

- 35. We therefore recommend that sub-paragraph (a) of paragraph 16(1) of Schedule 4 to the 1985 Act be amended to substitute a reference to the date of the granting by the Accountant in Bankruptcy of a certificate discharging the debtor.**

2.72 Recommendations 34 and 35 are given effect in, respectively, paragraphs 11(4) and 20(1)(a) of schedule 3 to the draft Bill.

## **Re-enactment of certain provisions of the Bankruptcy (Scotland) Act 1913**

2.73 The syntax of paragraph 24(3) of Schedule 7 to the 1985 Act is such that the words "in the meantime" qualify the obtaining of a decree of furthcoming but not the carrying through of an auction. There appears to be no practical reason for this distinction.

- 36. We therefore recommend that paragraph 24(3) of Schedule 7 to the 1985 Act be amended to make clear that the words "in the meantime" qualify both the obtaining of a decree of furthcoming and the carrying out of an auction.**

2.74 This recommendation is given effect in paragraph 1(4) of schedule 6 to the draft Bill.

## **Concurrence in a debtor application**

2.75 The amendment, by paragraph 60(3) of schedule 1 to the Bankruptcy and Diligence etc. (Scotland) Act 2007, of section 73(5)(b) of the 1985 Act together with the repeal by schedule 6 to the 2007 Act of the words ", or the concurring in," in section 8(5) of the 1985 Act, resulted in section 73(5)(b) being deprived of any meaning. That is to say, there was then no reference elsewhere in the 1985 Act to "acts by a creditor barring the effect of any enactment or rule of law relating to the limitation of actions in any part of the United Kingdom" and accordingly no reference to which section 73(5)(b) could relate. The 2007 Act did insert a new section 8A(3) which made provision, as regards such acts by a creditor, for Scotland only. No provision has however been made for other parts of the United Kingdom.

- 37. We therefore recommend that it be provided that concurrence in a debtor application bars the effect of any enactment or rule of law relating to the limitation of actions not only in Scotland (as provided for in section 8A(3) of the 1985 Act) but also in any other part of the United Kingdom.**

2.76 This recommendation is given effect in article 6(1)(d) of the draft Bankruptcy (Scotland) Act 2013 (Consequential Provisions and Modifications) Order 2013.

### **Protected Trust Deeds**

2.77 Both the Law Society of Scotland and Mr John St. Clair, solicitor, responded to our Consultation Paper by drawing attention to the fact that much of the legislation which (in the Society's words) is "core to the daily practice of insolvency law" is in subordinate legislation and that this is a "major issue".

2.78 At least in so far as the law concerning Protected Trust Deeds is concerned (that is to say the law presently set out in the Protected Trust Deeds (Scotland) Regulations 2008 as amended by the Protected Trust Deeds (Scotland) Amendment Regulations 2010) we agree with what they say. It is a complex body of law entirely appropriate to primary legislation and in our opinion much too important to be relegated to subordinate legislation. It could readily be accommodated in what is Part 12 of the draft Bill (a Part which relates to voluntary trust deeds for creditors and is derived from sections 59 to 59B of the 1985 Act).

- 38. We therefore recommend that the law concerning protected trust deeds (other than the various forms set out in schedule 1 to the Protected Trust Deeds (Scotland) Regulations 2008) should be enacted in primary legislation and integrated with such provisions so enacted as relate to voluntary trust deeds for creditors.**

2.79 But since it is to be anticipated that, following on from the Scottish Government's Report "Protected Trust Deeds – Improving the Process", mentioned in chapter 1 of this report, the 2008 Regulations may in due course either be amended substantially or superseded entirely we have not attempted to give effect to this recommendation in the draft Bill.

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

2.80 The Law Society of Scotland, in their response to our Consultation Paper, also commented that the wording of paragraph 25(a) and (c) of Schedule 7 to the 1985 Act was difficult to understand and cautioned against simply repeating it in the draft Bill. We agree that the paragraph is unclear and therefore ought to be replaced or restated but we have not made substantive changes to the paragraph either in the draft Bill or in the draft Bankruptcy (Scotland) Act 2013 (Consequential Provisions and Modifications) Order 2013. (cf. paragraph 2 of schedule 6 to the draft Bill). This is because we take the view that the extensive changes needed to make proper sense of paragraph 25(a) and (c) would amount to law reform and accordingly would not be appropriate as part of the consolidation project.

# Appendix 1

## List of those who submitted written comments on the Consultation Paper on the Consolidation of the Bankruptcy Legislation in Scotland

Alan W Adie, insolvency practitioner

Child Maintenance and Enforcement Commission

The Committee of Scottish Clearing Bankers

The Department for Work and Pensions

Faculty of Advocates

HM Revenue and Customs

Sheriff William Holligan

R3 Scottish Technical Committee of the Association of Business Recovery Professionals

Law Society of Scotland

Money Advice Scotland

John St Clair, Solicitor

David Wilson, Solicitor

Scott Wortley, Law School, University of Edinburgh

# Appendix 2

## Bankruptcy (Scotland) Bill 2013 [DRAFT]

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# Bankruptcy (Scotland) Bill 2013

[DRAFT]

An Act of the Scottish Parliament to consolidate the Bankruptcy (Scotland) Act 1985, the Bankruptcy (Scotland) Act 1993, Part 1 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, Part 2 of the Home Owner and Debtor Protection (Scotland) Act 2010 and related enactments.

## PART 1

### APPLICATION OR PETITION FOR SEQUESTRATION

#### *Applications and petitions*

#### **1 Sequestration of estate**

The estate of a debtor may be sequestrated in accordance with the provisions of this Act.

#### **2 Sequestration of estate of living debtor**

- (1) The sequestration of the estate of a living debtor is—
  - (a) by debtor application made by the debtor if subsection (3) applies to the debtor, or
  - (b) on the petition of—
    - (i) a qualified creditor, or qualified creditors, if the debtor is apparently insolvent,
    - (ii) a temporary administrator,
    - (iii) a member State liquidator appointed in main proceedings, or
    - (iv) a trustee acting under a trust deed if a condition mentioned in subsection (2) is satisfied.
- (2) The conditions are—
  - (a) that the debtor has failed to comply—
    - (i) with an obligation imposed on the debtor under the trust deed, being an obligation with which the debtor reasonably could have complied, or
    - (ii) with an instruction reasonably given to, or requirement reasonably made of, the debtor by the trustee for the purposes of the trust deed, or
  - (b) that the trustee avers in the trustee's petition that it would be in the best interests of the creditors that an award of sequestration be made.
- (3) This subsection applies to the debtor where—
  - (a) the total amount of the debtor's debts (including interest) at the date the debtor application is made is not less than £3,000 or such sum as may be prescribed,
  - (b) an award of sequestration has not been made against the debtor in the period of 5 years ending on the day before the date the debtor application is made, and

- (c) the debtor is apparently insolvent,
  - (d) the debtor is unable to pay the debtor's debts and each condition mentioned in section 7 is met,
  - (e) the debtor has, within the prescribed period and in accordance with section 8, been granted a certificate for sequestration of the debtor's estate, or
  - (f) the debtor has granted a trust deed which, by reason of creditors objecting, or not agreeing, to it is not a protected trust deed in accordance with regulations under paragraph 6 of schedule 4.
- (4) For the purposes of subsection (3)(c) to (f), the debtor is not apparently insolvent by reason only of granting a trust deed or of giving notice to creditors as mentioned in section 15(1)(c).
  - (5) No petition may be presented under subsection (1)(b)(i) unless the qualified creditor has, or the qualified creditors have, provided the debtor, by such time prior to the presentation of the petition as may be prescribed, with a debt advice and information package.
  - (6) In subsection (5), "debt advice and information package" means the debt advice and information package referred to in section 10(5) of the 2002 Act.
  - (7) In subsection (3)(e), "the prescribed period" means such period, ending immediately before the date the debtor application is made, as may be prescribed under section 8(4)(c).

- 3 Sequestration of estate of deceased debtor** The sequestration of the estate of a deceased debtor is on the petition of—
- (a) an executor, or a person entitled to be appointed as executor, on the estate,
  - (b) a qualified creditor, or qualified creditors, of the deceased debtor,
  - (c) a temporary administrator,
  - (d) a member State liquidator appointed in main proceedings, or
  - (e) a trustee acting under a trust deed.

**4 Sequestration of other estates**

- (1) The estate belonging to any of the following (or held for or jointly by, as the case may be, the trustees, partners or members of any of the following) may be sequestrated—
  - (a) a trust in respect of debts incurred by it,
  - (b) a partnership (including a dissolved partnership),
  - (c) a body corporate,
  - (d) an unincorporated body,
  - (e) a limited partnership (including a dissolved limited partnership) within the meaning of the Limited Partnerships Act 1907 (c.24).
- (2) But it is not competent to sequestrate the estate of any of the following—
  - (a) a company registered under the Companies Act 2006 (c.46),
  - (b) a limited liability partnership, or

- (c) any other entity if it is an entity in respect of which an enactment provides, expressly or by implication, that sequestration is incompetent.
- (3) The sequestration of a trust estate in respect of debts incurred by the trust is—
  - (a) by debtor application made by a majority of trustees, with the concurrence of a qualified creditor or qualified creditors, or
  - (b) on the petition of—
    - (i) a temporary administrator,
    - (ii) a member State liquidator appointed in main proceedings, or
    - (iii) a qualified creditor or qualified creditors, if the trustees as such are apparently insolvent.
- (4) The sequestration of the estate of a partnership is—
  - (a) by debtor application made by the partnership with the concurrence of a qualified creditor, or
  - (b) on the petition of—
    - (i) a temporary administrator,
    - (ii) a member State liquidator appointed in main proceedings,
    - (iii) a trustee acting under a trust deed, or
    - (iv) a qualified creditor or qualified creditors, if the partnership is apparently insolvent.
- (5) A petition under subsection (4)(b) may be combined with a petition for the sequestration of the estate of any of the partners as an individual natural person where that person is apparently insolvent.
- (6) The sequestration of the estate of a body corporate or of an unincorporated body is—
  - (a) by debtor application made by a person authorised to act on behalf of the body, with the concurrence of a qualified creditor or qualified creditors, or
  - (b) on the petition of—
    - (i) a temporary administrator,
    - (ii) a member State liquidator appointed in main proceedings, or
    - (iii) a qualified creditor or qualified creditors, if the body is apparently insolvent.
- (7) The application of this Act to the sequestration of the estate of a limited partnership is subject to such modifications as may be prescribed.
- (8) Subsection (3) of section 6 applies for the purposes of this section as it applies for the purposes of that section.
- (9) Section 9(3) to (6) applies for the purposes of this section as it applies for the purposes of sections 2, 3 and 6.

## **5 Qualified creditor and qualified creditors**

(1) In this Act—

"qualified creditor" means a creditor who, at the date of the presentation of the petition, or as the case may be at the date the debtor application is made, is a creditor of the debtor in respect of relevant debts which amount (or of one such debt which amounts) to not less than £3,000 or such sum as may be prescribed, and

"qualified creditors" means creditors who, at the date in question, are creditors of the debtor in respect of relevant debts which amount in aggregate to not less than £3,000 or such sum as may be prescribed.

- (2) In the definitions of "qualified creditor" and "qualified creditors" in subsection (1) "relevant debts" means liquid or illiquid debts (other than contingent or future debts or amounts payable under a confiscation order) whether secured or unsecured.
- (3) In subsection (2), "confiscation order" means a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (c.29).
- (4) Paragraphs 1(1) and (3), 2(1)(a) and (2) and 6 of schedule 1 apply in order to ascertain the amount of the debt or debts for the purposes of subsection (1) as those paragraphs apply in order to ascertain the amount which a creditor is entitled to claim but as if for any reference to the date of sequestration there were substituted a reference to the date of presentation of the petition or, as the case may be, the date the debtor application is made.

## **6 Debtor applications: general**

(1) A debtor application—

- (a) is to be made to AiB, and
- (b) is to be in such form as may be prescribed.

(2) The Scottish Ministers may, by regulations, make provision—

- (a) in relation to the procedure to be followed in a debtor application (in so far as not provided for in this Act),
- (b) prescribing the form of any document that may be required for the purposes of making a debtor application, and
- (c) prescribing the fees and charges which may be levied by AiB in relation to a debtor application.

(3) The debtor is to send a statement of assets and liabilities to AiB along with the application.

(4) If the debtor, not being an entity mentioned in section 4(1)—

- (a) fails to send such a statement along with the application,
- (b) fails in such a statement to disclose a material fact, or
- (c) makes in such a statement a material misstatement,

then the debtor commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or both to such fine and such imprisonment.

- (5) In any proceedings for an offence under subsection (4), it is a defence to show that the accused had a reasonable excuse for the failure in question or as the case may be for making the statement in question.

## **7 Debtor applications by low income and low asset debtors**

- (1) The conditions referred to in section 2(3)(d) are—
  - (a) that the debtor does not own any land,
  - (b) that the debtor's weekly income (if any), as at the date the debtor application is made, does not exceed £100 or such other amount as may be prescribed, and
  - (c) that the total value of the debtor's assets (leaving out of account any liabilities) as at that date does not exceed £1,000 or such other amount as may be prescribed.
- (2) The Scottish Ministers may by regulations—
  - (a) make provision as to how a debtor's weekly income is to be determined,
  - (b) provide that particular descriptions of income are to be excluded for the purposes of subsection (1)(b),
  - (c) make provision as to how the value of a debtor's assets is to be determined,
  - (d) provide that particular descriptions of asset are to be excluded for the purposes of subsection (1)(c),
  - (e) make different provision for different categories of debtor,
  - (f) add further conditions which must be met before a debtor application may be made by virtue of section 2(3)(d), and
  - (g) where such further conditions are added, remove or otherwise vary those further conditions.

## **8 Certificate for sequestration**

- (1) A certificate for sequestration of the estate of a debtor is a certificate granted by an authorised person certifying that the debtor is unable to pay debts as they become due.
- (2) A certificate may be granted only on the debtor applying for it.
- (3) An authorised person must grant a certificate if, and only if, the debtor can demonstrate that the debtor is unable to pay debts as they become due.
- (4) The Scottish Ministers may by regulations—
  - (a) prescribe classes of persons authorised to grant a certificate under this section,
  - (b) make provision about certification by an authorised person, including—
    - (i) the form and manner in which a certification must be made,
    - (ii) the fee, if any, which an authorised person is entitled to charge for or in connection with granting a certificate,
  - (c) prescribe a period for the purpose of section 2(3)(e).
- (5) In this section "authorised person" means a person falling within a class prescribed under subsection (4)(a).

## **9 Death or withdrawal**

- (1) Where, after a petition for sequestration is presented but before the sequestration is awarded, the debtor dies then, if the petitioner is a creditor, the proceedings are to continue in accordance with this Act so far as circumstances will permit.
- (2) Where, after a debtor application is made but before the sequestration is awarded, the debtor dies then the application falls.
- (3) Where, after a petition for sequestration is presented but before the sequestration is awarded, a creditor who is the petitioner withdraws or dies, there may be sisted in the place of that creditor any creditor who both was a qualified creditor at the date when the petition was presented and is a qualified creditor at the date of the sist.
- (4) Where, after a petition for sequestration is presented but before the sequestration is awarded, a creditor who has lodged answers to the petition withdraws or dies, there may be sisted in the place of that creditor any other creditor.
- (5) Where, after a debtor application is made but before the sequestration is awarded, a creditor (in this subsection and in subsection (6) referred to as "C") who concurs in the application withdraws or dies, any other creditor (in this subsection and in subsection (6) referred to as "O") may, if the conditions mentioned in subsection (6) are met, notify AiB that the O concurs in the application in place of C.
- (6) The conditions are that O both was a qualified creditor at the date when the debtor application was made and is a qualified creditor at the date of the notification.

## **10 Debtor application: provision of information**

- (1) Where a debtor application is made, the debtor is to state in the application—
  - (a) whether or not the debtor's centre of main interests is situated—
    - (i) in the United Kingdom, or
    - (ii) in another member State, and
  - (b) whether or not the debtor possesses an establishment—
    - (i) in the United Kingdom, or
    - (ii) in another member State.
- (2) If, to the debtor's knowledge, there is a member State liquidator appointed in main proceedings in relation to the debtor, the debtor is, as soon as reasonably practicable, to send a copy of the debtor application to that member State liquidator.

## **11 Petition for sequestration of estate: provision of information**

- (1) A petitioner for sequestration of the estate of a debtor is, in so far as it is within the petitioner's knowledge, to state in the petition—
  - (a) whether or not the debotr's centre of main interests is situated—
    - (i) in the United Kingdom, or
    - (ii) in another member State, and
  - (b) whether or not the debotr possesses an establishment—
    - (i) in the United Kingdom, or
    - (ii) in another member State.

- (2) If, to the petitioner's knowledge, there is a member State liquidator appointed in main proceedings in relation to the debtor, the petitioner is, as soon as reasonably practicable, to send a copy of the petition to that member State liquidator.

## **12 Further provisions relating to presentation of petitions**

- (1) The petitioner is, on the day the petition for sequestration is presented under section 2, 3 or 4, to send a copy of the petition to AiB.
- (2) A petition for the sequestration of the estate of a debtor (other than a limited partnership or a deceased debtor) may be presented—
  - (a) at any time by—
    - (i) a trustee acting under a trust deed,
    - (ii) a temporary administrator, or
    - (iii) a member State liquidator appointed in main proceedings,
  - (b) by a qualified creditor or qualified creditors only if the apparent insolvency founded on in the petition was constituted within 4 months before the petition is presented.
- (3) A petition for the sequestration of the estate of a limited partnership may be presented within such time as may be prescribed.
- (4) A petition for the sequestration of the estate of a deceased debtor may be presented—
  - (a) at any time by—
    - (i) an executor of the estate,
    - (ii) a person entitled to be appointed as executor of the estate,
    - (iii) a trustee acting under a trust deed,
    - (iv) a temporary administrator, or
    - (v) a member State liquidator appointed in main proceedings,
  - (b) by a qualified creditor or qualified creditors—
    - (i) at any time, in a case where the apparent insolvency of the debtor founded on in the petition was constituted within 4 months before the date of death,
    - (ii) not earlier than 6 months after the date of death, in any other case (whether or not apparent insolvency has been constituted).
- (5) If an executor does not petition for sequestration of a deceased debtor's estate, or for the appointment of a judicial factor to administer the estate, within a reasonable period after the executor knew or ought to have known that the estate was absolutely insolvent and likely to remain so, any intromission by the executor with the estate after the expiry of that period is deemed an intromission without a title.
- (6) The presentation of a petition for sequestration bars the effect of any enactment or rule of law relating to the limitation of actions.
- (7) Where, before sequestration is awarded, it becomes apparent that a petitioning creditor was ineligible to petition, that person is to withdraw, or as the case may be withdraw from, the petition; but another creditor may be sisted in that person's place.

### **13 Further provisions relating to debtor applications**

- (1) A debtor application may be made at any time; but this subsection is subject to subsection (2).
- (2) A debtor application made in relation to the estate of a limited partnership may be made within such time as may be prescribed.
- (3) The making of, or concurrence in, a debtor application bars the effect of any enactment or rule of law relating to the limitation of actions.
- (4) Where, before sequestration is awarded, it becomes apparent that a creditor concurring in a debtor application (in this subsection and in subsection (5) referred to as "C") was ineligible to concur AiB is to withdraw C from the application.
- (5) But another creditor (in this subsection referred to as "CC") may concur in place of C; and if CC does concur in place of C, CC is to notify AiB of that fact.

#### *Jurisdiction*

### **14 Petition or debtor application for sequestration: jurisdiction**

- (1) Where a petition is presented for the sequestration of the estate of a debtor (whether living or deceased), the sheriff has jurisdiction if, at the relevant time, the debtor—
  - (a) had an established place of business in the sheriffdom, or
  - (b) was habitually resident in the sheriffdom.
- (2) AiB may determine a debtor application for the sequestration of the estate of a living debtor if, at the relevant time, the debtor—
  - (a) had an established place of business in Scotland, or
  - (b) was habitually resident in Scotland.
- (3) Where a petition is presented for the sequestration of the estate of an entity which may be sequestrated by virtue of section 4, the sheriff has jurisdiction if the entity—
  - (a) had at the relevant time an established place of business in the sheriffdom, or
  - (b) was constituted or formed under Scots law and at any time carried on business in the sheriffdom.
- (4) AiB may determine a debtor application for the sequestration of the estate of such an entity if the entity—
  - (a) had at the relevant time an established place of business in Scotland, or
  - (b) was constituted or formed under Scots law and at any time carried on business in Scotland.
- (5) Even where a person (whether living or deceased) does not fall within subsection (1), the sheriff has jurisdiction in respect of the sequestration of that person's estate if—
  - (a) a petition has been presented for the sequestration of the estate of a firm of which the person is, or was at the relevant time before dying, a partner, and
  - (b) the process of that sequestration is still current.

- (6) Subsection (7) applies as regards any proceedings under this Act which—
  - (a) may be brought before a sheriff, and
  - (b) relate either to a debtor application or to the sequestration of a debtor's estate following any such application.
- (7) The proceedings are to be brought before the sheriff who, under subsection (1) or (3), would have jurisdiction in respect of a petition for sequestration of the debtor's estate.
- (8) References in this section to "the relevant time" are to any time in the year immediately preceding (as the case may be)—
  - (a) the date of presentation of the petition,
  - (b) the date the debtor application is made, or
  - (c) the date of death.
- (9) This section is subject to Article 3 of the EC Regulation.

*Meaning of "apparent insolvency"*

**15 Meaning of "apparent insolvency"**

- (1) The apparent insolvency of a debtor is constituted, or where the debtor is already apparently insolvent again constituted, whenever—
  - (a) the debtor's estate is sequestrated,
  - (b) the debtor is adjudged bankrupt in England and Wales or in Northern Ireland,
  - (c) the debtor gives written notice to the debtor's creditors that the debtor has ceased to pay the debtor's debts in the ordinary course of business (but the debtor must not, at the time notice is so given, be a person whose property—
    - (i) is affected by a restraint order,
    - (ii) is detained under or by virtue of a relevant detention power, or
    - (iii) is subject to a confiscation or charging order),
  - (d) the debtor becomes subject to main proceedings in a member State other than the United Kingdom,
  - (e) the debtor grants a trust deed,
  - (f) following the service on the debtor of a duly executed charge for payment of a debt, the days of charge expire without payment (unless the circumstances are shown to be such as are mentioned in subsection (2)),
  - (g) a debt constituted by a decree or document of debt, as defined in section 10 of the 2002 Act, is being paid by the debtor under a debt payment programme under Part 1 of that Act and the programme is revoked (unless the circumstances are shown to be such as are mentioned in subsection (2)), or
  - (h) a creditor of the debtor, in respect of a liquid debt which amounts to (or liquid debts which in aggregate amount to) not less than £750 or such sum as may be prescribed, serves on the debtor, by personal service by an officer of court, a demand in the prescribed form requiring the debtor either to pay the debt (or debts) or to find security for its (or their) payment and the condition set out in subsection (3) is met.

- (2) The circumstances are—
  - (a) that at the time of the occurrence, the debtor was able and willing to pay the debtor's debts as they became due, or
  - (b) that, but for the debtor's property being affected by a restraint order or being subject to a confiscation order or charging order, the debtor would at that time have been able to pay those debts as they became due.
- (3) The condition is that within 3 weeks after the date of service the debtor does not—
  - (a) comply with the demand, or
  - (b) intimate to the creditor, by recorded delivery, that the debtor—
    - (i) denies that there is a debt, or
    - (ii) denies that the sum claimed by the creditor as the debt is immediately payable.
- (4) The apparent insolvency of a partnership is constituted (or as the case may be again constituted) either—
  - (a) in accordance with subsection (1), or
  - (b) if any of the partners is apparently insolvent for a debt of the partnership.
- (5) The apparent insolvency of an unincorporated body is constituted (or as the case may be again constituted) either—
  - (a) if a person representing the body is apparently insolvent for a debt of the body, or
  - (b) if a person holding property for the body in a fiduciary capacity is apparently insolvent for such a debt.
- (6) Notwithstanding subsection (2) of section 4, the apparent insolvency of an entity such as is mentioned in that subsection may be constituted (or as the case may be again constituted) under subsection (1); and any reference to the debtor in subsections (1) to (3) and (7) is, except where the context otherwise requires, to be construed as including a reference to such an entity.
- (7) The debtor's apparent insolvency continues—
  - (a) if constituted under paragraph (a) or (b) of subsection (1), until the debtor's discharge,
  - (b) if constituted under paragraph (c), (e), (f), (g) or (h) of that subsection, until the debtor becomes able to pay the debtor's debts and pays them as they become due, or
  - (c) if constituted under paragraph (d) of that subsection, until the main proceedings end.
- (8) In this section—

"charging order" means an order made under section 78 of the Criminal Justice Act 1988 (c.33) or under section 27 of the Drug Trafficking Act 1994 (c.37),

"confiscation order" means a confiscation order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (c.29),

"liquid debt" does not include a sum payable under a confiscation order,

"relevant detention power" means section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P of that Act of 2002, and

"restraint order" means a restraint order made under Part 2, 3 or 4 of that Act of 2002.

### *Concurrent proceedings*

## **16 Concurrent proceedings for sequestration or analogous remedy**

- (1) If, in the course of sequestration proceedings (referred to in this section and in section 17 as the "instant proceedings") a person who is a petitioner for sequestration, the debtor, or a creditor concurring in a debtor application is, or becomes, aware of any of the circumstances mentioned in subsection (2), that person is as soon as possible to take the action mentioned in subsection (3).
- (2) The circumstances are that, notwithstanding the instant proceedings—
  - (a) a petition for sequestration of the debtor's estate is before a sheriff,
  - (b) such sequestration has been awarded,
  - (c) a debtor application has been made in relation to the debtor's estate,
  - (d) sequestration has been awarded by virtue of any such application,
  - (e) a petition for the appointment of a judicial factor on the debtor's estate is before a court,
  - (f) such a judicial factor has been appointed,
  - (g) a petition is before a court for the winding up of the debtor under Part 4 or 5 of the Insolvency Act 1986 (c.45) or section 372 of the Financial Services and Markets Act 2000 (c.8),
  - (h) an application for an analogous remedy in respect of the debtor's estate is proceeding, or
  - (i) such an analogous remedy is in force.
- (3) The action is—
  - (a) where the instant proceedings are by petition for sequestration, to notify the sheriff to whom that petition was presented of the circumstances in question,
  - (b) where the instant proceedings are by debtor application, to notify AiB of those circumstances.
- (4) A petitioner who fails to comply with subsection (1) may be made liable for the expenses of presenting the petition for sequestration.
- (5) A debtor who fails so to comply—
  - (a) commits an offence, and
  - (b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A creditor concurring in a debtor application who fails so to comply may be made liable for the expenses of making the debtor application.

- (7) In this section and in section 17, "analogous remedy" means—
- (a) in England and Wales—
    - (i) a bankruptcy order under the Bankruptcy Act 1914 (c.59),
    - (ii) an individual voluntary arrangement or bankruptcy order under the Insolvency Act 1986 (c.45),
    - (iii) an administration order under section 112 of the County Courts Act 1984 (c.28), or
    - (iv) a remedy having the like effect to any of those mentioned in subparagraphs (i) to (iii) or to sequestration, and
  - (b) in Northern Ireland or in any other country, a remedy having the like effect as a remedy mentioned in paragraph (a).

## **17 Powers in relation to concurrent proceedings**

- (1) Where, in the course of instant proceedings (see section 16(1)) which are by petition, any of the circumstances mentioned in paragraphs (a) to (g) of section 16(2) exists, the sheriff to whom the petition in the instant proceedings was presented may, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest—
- (a) allow the petition to proceed,
  - (b) sist it, or
  - (c) dismiss it.
- (2) Without prejudice to subsection (1), where, in the course of such instant proceedings, any of the circumstances mentioned in paragraph (a) (b), (e), (f) or (g) of section 16(2) exists, the Court of Session may, on the Court's own motion or on the application of the debtor, of a creditor or of any other person having an interest—
- (a) direct the sheriff before whom the petition in the instant proceedings is pending or the sheriff before whom the other petition is pending, to sist or dismiss the petition in the instant proceedings or, as the case may be, the other petition, or
  - (b) order the petitions to be heard together.
- (3) Without prejudice to subsection (1), where, in the course of such instant proceedings, any of the circumstances mentioned in paragraph (c) or (d) of section 16(2) exists, the sheriff to whom the petition in the instant proceedings was presented may, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest, direct AiB to dismiss the debtor application.
- (4) Where, in the course of instant proceedings which are by debtor application, any of the circumstances mentioned in paragraphs (a) to (g) of section 16(2) exists, AiB may dismiss the debtor application in the instant proceedings.
- (5) Subsection (6) applies where, in respect of the same estate—
- (a) a petition for sequestration is pending before a sheriff, and
  - (b) an application for an analogous remedy (see section 16(7)) is proceeding or an analogous remedy is in force.

- (6) The sheriff, on the sheriff's own motion or at the instance of the debtor, of a creditor or of any other person having an interest, may allow the petition for sequestration to proceed or may sist or dismiss it.
- (7) Subsection (8) applies where, in respect of the same estate—
  - (a) a debtor application has been made and is not yet determined, and
  - (b) an application for an analogous remedy is proceeding or an analogous remedy is in force.
- (8) AiB may proceed to determine the application or may dismiss it.

*Creditor's oath*

**18 Creditor's oath**

- (1) Every creditor who is—
  - (a) a petitioner for sequestration,
  - (b) a creditor who concurs in a debtor application, or
  - (c) a qualified creditor who becomes sisted under subsection (3) of section 9 (or under that subsection as applied by section 4(8)),
 is to produce an oath, in the prescribed form, made by or on behalf of the creditor.
- (2) The oath may be made—
  - (a) in the United Kingdom, before any person entitled to administer an oath there,
  - (b) outwith the United Kingdom, before—
    - (i) a British diplomatic or consular officer, or
    - (ii) any person authorised to administer an oath or affirmation under the law of the place where the oath is made.
- (3) The identity of the creditor and the identity of the person before whom the oath is made, and their authority to make and to administer the oath respectively, are presumed to be correctly stated unless the contrary is established.
- (4) Any seal or signature on the oath is presumed to be authentic unless the contrary is established.
- (5) If the oath contains an error or has omitted a fact—
  - (a) the sheriff to whom the petition was presented, or
  - (b) in the case of a creditor concurring in a debtor application, AiB,
 may at any time before sequestration is awarded allow another oath to be produced rectifying the original oath.
- (6) This section applies to the making of that other oath as it applies to the making of the original oath.
- (7) The creditor must produce, along with the oath—
  - (a) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt, and
  - (b) if a petitioning creditor, such evidence as is available to the creditor to show the apparent insolvency of the debtor.

## PART 2

### SEQUESTRATION: AWARD AND RECALL

#### *Award of sequestration*

#### **19 When sequestration is awarded**

- (1) AiB, on a debtor application being made, is to award sequestration without delay if satisfied—
  - (a) that the application is made in accordance with—
    - (i) this Act, and
    - (ii) any provisions made under this Act,
  - (b) that subsection (3) of section 2 applies to the debtor, and
  - (c) that the provisions of subsection (3) of section 6 have been complied with.
- (2) The sheriff, where a petition for sequestration of the estate of a debtor is presented by a creditor, or by a trustee acting under a trust deed, is to grant warrant to cite the debtor to appear before the sheriff on such date as is specified in the warrant (being a date no fewer than 6 nor more than 14 days after the date of citation) to show cause why sequestration should not be awarded.
- (3) And where on that petition the sheriff is satisfied—
  - (a) if the debtor has not appeared, that proper citation has been made of the debtor,
  - (b) that the petition has been presented in accordance with this Act,
  - (c) that the provisions of subsection (1) of section 12 have been complied with,
  - (d) that, in the case of a petition by a creditor, the requirements of this Act relating to apparent insolvency have been fulfilled, and
  - (e) that in the case of a petition by a trustee, the averments in the trustee's petition as to any of the conditions in subsection (2) of section 2 are true,the sheriff must there and then award sequestration.
- (4) But subsection (3) is subject to subsections (5) to (7).
- (5) Sequestration is not to be awarded in pursuance of subsection (3) if—
  - (a) cause is shown why sequestration cannot competently be awarded,
  - (b) without delay, the debtor pays or satisfies, or produces written evidence of the payment or satisfaction of, or gives or shows that there is sufficient security for the payment of—
    - (i) the debt in respect of which the debtor became apparently insolvent, and
    - (ii) any other debt due by the debtor to the petitioner and to any creditor concurring in the petition.
- (6) Where the sheriff is satisfied that the debtor will, before the expiry of the period of 42 days beginning with the day the debtor appears before the sheriff, pay or satisfy the debts mentioned in sub-paragraphs (i) and (ii) of subsection (5)(b), the sheriff may continue the petition for a period of no more than 42 days.

- (7) The sheriff may continue the petition for such period as the sheriff thinks fit if satisfied—
  - (a) that a debt payment programme, under Part 1 of the 2002 Act, relating to—
    - (i) the debt in respect of which the debtor became apparently insolvent, and
    - (ii) any other debt due by the debtor to the petitioner and to any creditor concurring in the petition,
 has been applied for and has not yet been approved or rejected, or
  - (b) that such a debt payment programme will be applied for.
- (8) In this Act, "the date of sequestration" means—
  - (a) where a debtor application is made, the date on which sequestration is awarded,
  - (b) where the petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, and sequestration is awarded, the date on which the sheriff granted warrant under subsection (2) (or, where more than 1 warrant is so granted, the date on which the first warrant is so granted).

**20 Effect of sequestration on land attachment**

- (1) No land attachment of the heritable property of a debtor, created within the period of six months before the date of sequestration (whether or not subsisting at that date), is effectual to create a preference for the creditor.
- (2) A creditor who creates a land attachment within the period of 6 months mentioned in subsection (1) is entitled to payment, out of the attached land or out of the proceeds of sale of it, of the expenses incurred—
  - (a) in obtaining the extract of the decree, or other document, containing the warrant for land attachment, and
  - (b) in serving the charge for payment, registering the notice of land attachment, serving a copy of that notice, and registering certificate of service of that copy.
- (3) A notice of land attachment—
  - (a) registered on or after the date of sequestration against land forming part of the debtor's heritable estate (including any estate vesting under section 59(4) in the trustee in the sequestration) is of no effect,
  - (b) registered before that date and in relation to which, by that date, no land attachment is created is of no effect.
- (4) It is not competent for a creditor to insist in a land attachment—
  - (a) created over the debtor's heritable estate before the beginning of the period of 6 months mentioned in subsection (1), and
  - (b) which subsists on the date of sequestration.
- (5) But subsection (4) is subject to subsections (6) to (9).
- (6) Where, in execution of a warrant for sale, a contract to sell the land has been concluded—
  - (a) the trustee is to concur in and ratify the deed implementing that contract, and

- (b) the appointed person is to account for and pay to the trustee in the sequestration any balance of the proceeds of sale (being the balance which would, but for the sequestration, be due to the debtor) after disbursing those proceeds in accordance with section 116 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (disbursement of proceeds of sale of attached land).
- (7) Subsection (6) does not apply where the deed implementing the contract is not registered before the expiry of the period of 28 days beginning with the day on which—
  - (a) the certified copy of the order of the sheriff granting warrant is recorded, under subsection (1)(a) of section 22, in the register of inhibitions, or
  - (b) the certified copy of the determination of AiB awarding sequestration is recorded, under subsection (2) of that section, in that register.
- (8) Where a decree of foreclosure has been granted but an extract of it has not been registered, the creditor may proceed to complete title to the land by registering that extract provided that the creditor does so before the expiry of the period mentioned in subsection (7).
- (9) The Scottish Ministers may, as they think fit, prescribe a period in substitution for the period mentioned in subsection (7); and a different period may be prescribed for the purposes of subsection (8) than is prescribed for the purposes of subsection (7).
- (10) Expressions used in this section which also occur in Chapter 2 of Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) have the same meanings in this section as they have in that Chapter.

**21 Effect of sequestration on diligence generally etc.**

- (1) The order of the sheriff, or as the case may be the determination of the debtor application by AiB, awarding sequestration has, as from the date of sequestration, in relation to diligence done (whether before or after that date) in respect of any part of the estate of the debtor, the effect mentioned in subsection (2).
- (2) The effect is of—
  - (a) an arrestment in execution and decree of furthcoming,
  - (b) an arrestment in execution and warrant of sale, and
  - (c) an attachment,
 in favour of the creditors according to their respective entitlements.
- (3) Where an inhibition on the estate of the debtor takes effect within the period of 60 days before the date of sequestration, any relevant right of challenge vests, at the date of sequestration, in the trustee in the sequestration as does any right of the inhibitor to receive payment for the discharge of the inhibition.
- (4) But subsection (3) neither entitles the trustee to receive any payment made to the inhibitor before the date of sequestration nor affects the validity of anything done before that date in consideration of such payment.
- (5) In subsection (3), "any relevant right of challenge" means any right to challenge a deed voluntarily granted by the debtor if it is a right which vested in the inhibitor by virtue of the inhibition.

- (6) No arrestment, money attachment, interim attachment or attachment of the debtor's estate (including any estate vesting in the trustee under section 59(4)) executed—
- (a) within the period of 60 days before the date of sequestration and whether or not subsisting at that date, or
  - (b) on or after that date,
- is effectual to create a preference for the arrester or attacher.
- (7) The estate so arrested or attached is, or any funds released under section 73J(2) of the Debtor's (Scotland) Act 1987 (c. 18) (automatic release of funds) or the proceeds of sale of such estate are, to be handed over to the trustee.
- (8) An arrester or attacher whose arrestment, money attachment, interim attachment or attachment is executed within the period mentioned in subsection (6)(a) is entitled to payment, out of the arrested or attached estate or out of the proceeds of the sale of such estate, of the expenses incurred—
- (a) in obtaining—
    - (i) warrant for interim attachment, or
    - (ii) the extract of the decree or other document on which the arrestment, money attachment or attachment proceeded,
  - (b) in executing the arrestment, money attachment, interim attachment or attachment, and
  - (c) in taking any further action in respect of the diligence.
- (9) Nothing in subsections (6) to (8) applies to an earnings arrestment, a current maintenance arrangement, a conjoined arrestment order or a deduction from earnings order under the Child Support Act 1991 (c.48).
- (10) No pointing of the ground in respect of the debtor's estate (including any estate vesting in the trustee under section 59(4)) executed—
- (a) within the period of 60 days before the date of sequestration, or
  - (b) on or after that date,
- is effectual in a question with the trustee except for the interest on the debt of a secured creditor, being interest for the current half-yearly term and arrears of interest for 1 year immediately before the commencement of that term.
- (11) The preceding provisions of this section and subsections (1) and (2) of section 20 apply to the estate of a deceased debtor which—
- (a) has been sequestrated within 12 months after the date of death, or
  - (b) was absolutely insolvent at that date and in respect of which a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) within 12 months after that date,
- but with the modifications mentioned in subsection (12).
- (12) The modifications are that—
- (a) any reference to the date of sequestration is to be construed as a reference to the date of death, and
  - (b) any reference to the debtor is to be construed as a reference to the deceased debtor.

- (13) It is not competent, on or after the date of sequestration, for any creditor to be confirmed as executor-creditor on the estate.
- (14) Subsections (15) and (16) apply where, within 12 months after the debtor's death—
  - (a) the debtor's estate is sequestrated, or
  - (b) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer the debtor's estate and that estate is absolutely insolvent.
- (15) No confirmation as executor-creditor on that estate at any time after the debtor's death is effectual in a question with the trustee or the judicial factor.
- (16) But the executor-creditor is entitled—
  - (a) out of the estate, or
  - (b) out of the proceeds of sale of the estate,
 to the expenses incurred by the executor-creditor in obtaining the confirmation.

## **22 Registration of warrant or determination of debtor application**

- (1) On the sheriff granting warrant under section 19(2) the sheriff clerk is, without delay, to send—
  - (a) a certified copy of the order granting the warrant to the Keeper of the Register of Inhibitions for recording in that register,
  - (b) a copy of that order to AiB, and
  - (c) where the debtor is taking part in a debt payment programme under Part 1 of the 2002 Act, a copy of that order to the DAS administrator.
- (2) On awarding sequestration on a debtor application AiB is, without delay, to send a certified copy of AiB's determination of the application to the Keeper of the Register of Inhibitions for recording in that register.
- (3) Recording under subsection (1)(a) or (2) has the effect, as from the date of sequestration, of an inhibition of the debtor's heritable estate at the instance of the creditors who subsequently have claims in the sequestration accepted under section 88.
- (4) The effect mentioned in subsection (3) expires—
  - (a) on the recording under section 23(8)(a) of a certified copy of an order refusing to award sequestration or under section 25(11)(a) of a certified copy of an order recalling an award of sequestration,
  - (b) on the recording under paragraph 13(4)(a) of schedule 3 of a certified copy of a certificate discharging the debtor, or
  - (c) (if the effect has not earlier expired by virtue of paragraph (a) or (b)), at the end of the period of 3 years beginning with the date of sequestration.
- (5) But paragraph (c) of subsection (4) is subject to subsections (6) and (7).

- (6) The trustee in the sequestration (if not discharged) may, before the end of—
  - (a) the period mentioned in paragraph (c) of subsection (4), or
  - (b) a period for which the effect mentioned in subsection (3) has been renewed by virtue of this subsection,
 send a memorandum in a form prescribed by act of sederunt to the Keeper of the Register of Inhibitions for recording in that register.
- (7) Such recording renews, for a period of 3 years as from the expiry of the period mentioned—
  - (a) in paragraph (c) of subsection (4), or
  - (b) as the case may be, in paragraph (b) of subsection (6),
 the effect mentioned in subsection (3).
- (8) In subsection (1)(c), "DAS administrator" has the meaning given by regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011 No.141).

### **23 Further matters in relation to award of sequestration**

- (1) On application the sheriff may, at any time after sequestration has been awarded, transfer the sequestration to any other sheriff.
- (2) But subsection (1) is subject to subsection (3).
- (3) The debtor may, with the leave of the sheriff, appeal to the sheriff principal against such a transfer.
- (4) Where the sheriff makes an order refusing to award sequestration, the petitioner may appeal against the order within 14 days after the date on which the order is made.
- (5) Where AiB, on determining a debtor application, refuses to award sequestration the debtor, or a creditor concurring in the application, may appeal to the sheriff against the determination within 14 days after the date on which the determination is made.
- (6) An award of sequestration is not subject to review otherwise than by recall under sections 24 and 25.
- (7) But subsection (6) is without prejudice to any right to bring an action of reduction of an award of sequestration.
- (8) Where a petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, the sheriff clerk is—
  - (a) on the final determination or the abandonment of any appeal under subsection (4) in relation to the petition, or (if there is no such appeal) on the expiry of the 14 days mentioned in that subsection, to send a certified copy of the order refusing to award sequestration to the Keeper of the Register of Inhibitions for recording in that register,
  - (b) to send without delay a copy of that order to—
    - (i) AiB, and
    - (ii) where the debtor is taking part in a debt payment programme under Part 1 of the 2002 Act, the DAS administrator.
- (9) Where sequestration has been awarded the process of sequestration is not to fall asleep.

- (10) Where a debtor learns, whether before or after the date of sequestration, that the debtor may derive benefit from another estate, the debtor is as soon as practicable after that date—
  - (a) to inform the trustee in the sequestration of that fact, and
  - (b) to inform the person who is administering that other estate of the sequestration.
- (11) A debtor who fails to comply with subsection (10) commits an offence and is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (12) In subsection (8)(b)(ii), "DAS administrator" has the meaning given by regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011 No.141).

*Recall of sequestration*

**24 Petitions for recall of sequestration**

- (1) A petition for recall of an award of sequestration may be presented to the sheriff by—
  - (a) the debtor,
  - (b) any creditor,
  - (c) any other person having an interest (whether or not a person who was a petitioner for, or concurred in a debtor application for, the sequestration),
  - (d) the trustee in the sequestration, or
  - (e) AiB.
- (2) A copy of the petition, along with a notice stating that the recipient of the notice may lodge answers to the petition within 14 days after service of the notice, is to be served by the petitioner upon—
  - (a) the debtor,
  - (b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration,
  - (c) the trustee, and
  - (d) AiB.
- (3) At the same time as service is made under subsection (2), the petitioner is to publish a notice in the Edinburgh Gazette stating that—
  - (a) a petition has been presented under this section, and
  - (b) any person having an interest may lodge answers to the petition within 14 days after publication of the notice.
- (4) A petition under this section may be presented—
  - (a) within 10 weeks after the date of the award of sequestration, or
  - (b) at any time if presented on any of the grounds mentioned in paragraphs (a) to (c) of section 25(2).
- (5) But subsection (4) is subject to sections 77(3) and 78(3).
- (6) Notwithstanding that a petition has been presented under this section, the proceedings in the sequestration are to continue as if the petition had not been presented until the recall is granted.

- (7) But subsection (6) is subject to section 25(9).
- (8) Where a petitioner under this section, or a person who has lodged answers to the petition, withdraws or dies, any person—
  - (a) entitled to present, or
  - (b) (as the case may be) lodge answers to,a petition under this section may be sisted in place of the person who has withdrawn or died.

## **25 Recall of sequestration**

- (1) The sheriff may recall an award of sequestration if satisfied that in all the circumstances of the case (including those arising after the date of the award) it is appropriate to do so.
- (2) In particular, the sheriff may recall the award if satisfied—
  - (a) that the debtor has paid the debtor's debts in full or has given sufficient security for their payment,
  - (b) that a majority in value of the creditors reside in a country other than Scotland and that it is more appropriate for the debtor's estate to be administered in that other country, or
  - (c) that another award of sequestration of the estate, or of an analogous remedy, as defined in section 16(7), has (or other such awards have) been granted.
- (3) Where another award of sequestration of the debtor's estate has been granted, the sheriff may, after such intimation as the sheriff considers necessary, recall an award (whether or not the award in respect of which the petition for recall was presented).
- (4) On recalling an award of sequestration, the sheriff—
  - (a) is to make provision for the payment of the outlays and remuneration of the trustee in the sequestration (see sections 35 and 37(2) and (3)) and of any interim trustee (see sections 36 and 37(8))—
    - (i) by directing that such payment is to be made out of the debtor's estate, or
    - (ii) by requiring that a person who was a party to the petition for sequestration, or as the case may be to the debtor application, is to pay the whole or any part of those outlays and remuneration,
  - (b) may direct that payment of the expenses of a creditor who was a petitioner for sequestration, or concurred in the debtor's application for sequestration, is to be made out of the debtor's estate, and
  - (c) may make any further order the sheriff considers necessary or reasonable in all the circumstances of the case.
- (5) But paragraph (b) of subsection (4) is without prejudice to subsection (10).
- (6) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor, or as the case may be the other person, would have been in if the sequestration had not been awarded.
- (7) But subsection (6) is subject to subsection (8).

- (8) A recall of an award of sequestration is not to—
  - (a) affect the interruption of prescription caused by—
    - (i) the presentation of the petition for sequestration,
    - (ii) the making of the debtor application, or
    - (iii) the submission of a claim under section 32 or 84,
  - (b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee in the sequestration, with a person acting in good faith, or
  - (c) affect a bankruptcy restrictions order which has not been annulled under section 113(1)(a).
- (9) Where the sheriff considers that it is inappropriate to recall, or to refuse to recall, an award of sequestration straight away, the sheriff may order that the proceedings in the sequestration are to continue but are to be subject to such conditions as the sheriff may think fit.
- (10) The sheriff may make such order in relation to the expenses in a petition for recall as the sheriff thinks fit.
- (11) The sheriff clerk is to send—
  - (a) a certified copy of any order recalling an award of sequestration to the Keeper of the Register of Inhibitions for recording in that register, and
  - (b) a copy of any order recalling, or refusing to recall, an award of sequestration or a copy of any order under section 77(3)(b) or 78(3)(b) to—
    - (i) AiB, and
    - (ii) if AiB is not the trustee in the sequestration, to the trustee in the sequestration.
- (12) The trustee in the sequestration (whether or not AiB) is, on receiving a copy sent under subsection (11)(b), to insert the copy in the sederunt book.

### **PART 3**

#### INITIAL STAGES OF SEQUESTRATION, STATUTORY MEETING AND TRUSTEE VOTE

##### *Initial stages*

#### **26 Interim preservation of estate**

- (1) An interim trustee (see sections 36 and 37(8)) may, in pursuance of the function conferred by subsection (1) of section 36, give general or particular directions to the debtor relating to the management of the debtor's estate.
- (2) In exercising the function so conferred, an interim trustee may—
  - (a) require the debtor to deliver up to the interim trustee—
    - (i) any money or valuables, or
    - (ii) any document relating to the debtor's business or financial affairs, belonging to, or in the possession of, the debtor or under the debtor's control,
  - (b) place in safe custody anything mentioned in paragraph (a),

- (c) require the debtor to deliver up to the interim trustee any perishable goods belonging to the debtor or under the debtor's control,
  - (d) arrange for the sale or disposal of such goods,
  - (e) make, or cause to be made, an inventory or valuation of any property belonging to the debtor,
  - (f) require the debtor to implement any transaction entered into by the debtor,
  - (g) effect or maintain insurance policies in respect of the business or property of the debtor,
  - (h) carry on any business of the debtor, or
  - (i) borrow money in so far as it is necessary for the interim trustee to do so to safeguard the debtor's estate.
- (3) Section 74 applies to an interim trustee as it applies to a trustee.
- (4) The sheriff, on the application of an interim trustee, may—
- (a) on cause shown, grant a warrant authorising the interim trustee to enter the house where the debtor resides or the debtor's business premises and to search for and take possession of anything mentioned in paragraph (a) or (c) of subsection (2) (if need be, by opening shut and lock-fast places), or
  - (b) make such other order to safeguard the debtor's estate as the sheriff thinks appropriate.
- (5) The sheriff, on an application by the debtor on the grounds that a direction under subsection (1) is unreasonable, may—
- (a) if the sheriff considers the direction to be unreasonable, set it aside, and
  - (b) in any event, give such directions to the debtor regarding the management of the debtor's estate as the sheriff considers appropriate,
- but, subject to any interim order of the sheriff, the debtor is to comply with the direction appealed against pending the final determination of the appeal.
- (6) If a debtor—
- (a) fails without reasonable excuse to comply with a direction under subsection (1) or (5)(b) or a requirement under subsection (2)(a), (c) or (f), or,
  - (b) obstructs the interim trustee where the interim trustee is acting in pursuance of subsection (4)(a),
- then the debtor commits an offence.
- (7) A person convicted of an offence under subsection (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
    - (i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
    - (ii) in any other case, to imprisonment for a term not exceeding 3 months,
 or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or

- (b) on conviction on indictment—
  - (i) to a fine, or
  - (ii) to imprisonment for a term not exceeding 2 years, or both to a fine and to such imprisonment.

**27 Statement of assets and liabilities etc.**

- (1) Where a debtor has made a debtor application then, not later than 7 days after the appointment of the trustee in the sequestration under section 37 (where the trustee is not AiB), the debtor is to send to the trustee such statement of assets and liabilities as was sent to AiB in pursuance of section 6(3).
- (2) Where a petitioner for sequestration is a creditor, or a trustee acting under a trust deed, then, not later than 7 days after having been notified by the trustee as mentioned in section 37(15)(a) the debtor is to send to the trustee a statement of assets and liabilities.
- (3) If the debtor—
  - (a) fails to send, in accordance with subsection (1) or (2), a statement of assets and liabilities to the trustee,
  - (b) fails to disclose a material fact in any such statement, or
  - (c) makes a material misstatement in any such statement,then the debtor commits an offence.
- (4) A person convicted of an offence under subsection (3) is liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale, or
  - (b) to imprisonment for a term not exceeding 3 months, or both to such fine and such imprisonment.
- (5) In any proceedings for an offence under subsection (3), it is a defence to show that the accused had a reasonable excuse for the failure to send, or as the case may be for the failure to disclose or for making the misstatement.

**28 Duties on receipt of list of assets and liabilities**

- (1) As soon as practicable after a trustee has received a statement of assets and liabilities—
  - (a) the trustee is to prepare a statement of the debtor's affairs so far as within the knowledge of the trustee, and
  - (b) if, in the trustee's opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in paragraphs (e) to (h) of section 90(1) the trustee is so to indicate in the statement prepared under paragraph (a).

- (2) Not later—
  - (a) than 4 days before the date fixed for the statutory meeting (see section 29), or
  - (b) where the trustee does not intend to hold such a meeting, than 60 days after the date on which the sequestration is awarded,

the trustee is to send to AiB the statement, copy statement and comments mentioned in subsection (3).
- (3) The statement, copy statement and comments are—
  - (a) the statement of assets and liabilities (unless that statement has already been received by AiB by virtue of section 2(3)),
  - (b) subject to subsection (4), a copy of the statement prepared under paragraph (a) of subsection (1), and
  - (c) written comments by the trustee indicating what in the trustee's opinion are the causes of the insolvency and to what extent the conduct of the debtor may have contributed to the insolvency.
- (4) The trustee need not send the copy mentioned in paragraph (b) of subsection (3) if the trustee has, in accordance with section 71(1)(c), sent a copy of the inventory and valuation to AiB.
- (5) The written comments made under paragraph (c) of subsection (3) are absolutely privileged.
- (6) Subsections (2) and (5) do not apply in any case where AiB is the trustee.

*Statutory meeting*

**29 Statutory meeting**

A meeting of creditors called under section 30 is, in this Act, referred to as "the statutory meeting".

**30 Calling of statutory meeting(1) Not later than—**

- (a) 60 days after the date on which sequestration is awarded, or
  - (b) such greater number of days after that date as the sheriff may, on cause shown, allow,
- the trustee is to give notice to every creditor known to the trustee of whether or not the trustee intends to call the statutory meeting.
- (2) A notice under subsection (1)—
    - (a) is to be accompanied by a copy of the trustee's statement of the debtor's affairs, and
    - (b) where the trustee is notifying an intention not to hold the statutory meeting, is to inform creditors of the effect of subsections (5) and (6).
  - (3) The statutory meeting may be held at such time and place as the trustee in the sequestration may determine.
  - (4) But subsection (3) is subject to subsections (6) and (7).
  - (5) Within 7 days after the giving of notice under subsection (1), any creditor may request the trustee to call the statutory meeting.

- (6) Where a request or requests under subsection (5) are made by not less than  $\frac{1}{4}$  in value of the debtor's creditors, the trustee must call the statutory meeting not later than—
  - (a) 28 days after the date on which notice is given under subsection (1), or
  - (b) such greater number of days after that date as the sheriff may, on cause shown, allow.
- (7) Where the trustee gives notice under subsection (1) that the trustee intends to call the statutory meeting, that meeting is to be called not later than 28 days after the date on which the notice is given.
- (8) No fewer than 7 days before the date fixed for the statutory meeting, the trustee—
  - (a) is to notify every creditor known to the trustee of the date, time and place of the meeting, and
  - (b) must in the notification—
    - (i) invite the submission of such claims as have not already been submitted, and
    - (ii) inform the creditors of the trustee's duties under section 33(4).
- (9) The creditors may continue the statutory meeting to a date not later than—
  - (a) 7 days after the date on which the period of 28 days mentioned in subsection (7) ends, or
  - (b) such greater number of days after that date as the sheriff may, on cause shown, allow.

**31 Procedure where no statutory meeting called**

- (1) Where the trustee in the sequestration does not call the statutory meeting and the period of 7 days mentioned in section 30(5) expires, the trustee is, without delay, to make a report to AiB on the circumstance of the sequestration.
- (2) But subsection (1) does not apply if AiB is the trustee.

**32 Submission of claims for voting purposes**

- (1) For the purposes of voting at the statutory meeting a creditor (in this section referred to as "C") must, in accordance with this section, submit a claim to the trustee in the sequestration at or before the meeting.
- (2) C submits a claim under this section by producing to the trustee—
  - (a) a statement of claim in the prescribed form, and
  - (b) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt.
- (3) But the trustee may dispense with any requirement under subsection (2) in respect of any debt or of any class of debt.
- (4) Where C neither resides, nor has a place of business, in the United Kingdom, the trustee—
  - (a) must, if the trustee knows where C does reside or have a place of business and if no notification has been given to C under section 30(1), write to C informing C that C may submit a claim under this section, and

- (b) may allow C to submit an informal claim in writing.
- (5) If C has produced a statement of claim in accordance with subsection (2), C may at any time before the statutory meeting produce, in place of that statement of claim, another statement of claim specifying a different amount for C's claim.
- (6) Subsections (7) and (8) apply where C produces under this section—
  - (a) a statement of claim,
  - (b) account,
  - (c) voucher, or
  - (d) other evidence,which is false.
- (7) C commits an offence unless C shows that C neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false.
- (8) The debtor commits an offence if the debtor—
  - (a) knew, or became aware, that the statement of claim, account, voucher or other evidence was false, and
  - (b) failed, as soon as practicable after acquiring such knowledge, to report to the trustee that the statement of claim, account, voucher or other evidence was false.
- (9) C may, in such circumstances as may be prescribed, state the amount of C's claim in foreign currency.
- (10) The trustee is, on production of any document to the trustee under this section—
  - (a) to initial the document,
  - (b) to keep a record of it, stating the date on which it was produced to the trustee, and
  - (c) if requested by the person producing it to return it (if it is not a statement of claim) to that person.
- (11) The submission of a claim under this section bars the effect of any enactment or rule of law relating to the limitation of actions.
- (12) Schedule 1 has effect for determining the amount in respect of which C is entitled to claim.
- (13) A person convicted of an offence under subsection (7) or (8) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
    - (i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
    - (ii) in any other case, to imprisonment for a term not exceeding 3 months,or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or
  - (b) on conviction on indictment—
    - (i) to a fine, or
    - (ii) to imprisonment for a term not exceeding 2 years,

or both to a fine and to such imprisonment.

### **33 Proceedings before trustee vote**

- (1) At the commencement of the statutory meeting the trustee in the sequestration is to chair the meeting and, as the person chairing it, is—
  - (a) for the purposes of subsection (3), to accept or reject in whole or in part the claim of each creditor (and if the amount of the claim is stated in foreign currency, to convert that amount into sterling, in such manner as may be prescribed, at the rate of exchange prevailing at the close of business on the date of sequestration),
  - (b) on that being done, to invite the creditors to elect one of their number to chair the meeting in place of the trustee,
  - (c) to preside over the election, and
  - (d) to arrange for a record to be made of the proceedings at the meeting.
- (2) But, if no person is elected in pursuance of paragraph (b) of subsection (1), the trustee is to chair the statutory meeting throughout.
- (3) The acceptance of a claim in whole or in part under paragraph (a) of that subsection is, subject to section 34(6), to determine the entitlement of a creditor to vote at the statutory meeting.
- (4) On the conclusion of the proceedings under subsection (1)—
  - (a) the trustee is to make available for inspection—
    - (i) the statement of assets and liabilities, and
    - (ii) the statement prepared under section 28(1),
  - (b) the trustee is to answer to the best of the trustee's ability any questions,
  - (c) the trustee is to consider any representations put to the trustee by the creditors which relate to the debtor's—
    - (i) assets and business or financial affairs, or
    - (ii) conduct in relation to such assets and affairs,
  - (d) after the trustee considers any such representations as are mentioned in paragraph (c) if, in the trustee's opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in paragraphs (e) to (h) of section 90(1), the trustee is so to indicate,
  - (e) the trustee is to determine whether it is necessary to revise the trustee's statement of the debtor's affairs, and
  - (f) if the trustee does so determine, the trustee is to revise the statement either at, or as soon as possible after, the statutory meeting.
- (5) Where the trustee does carry out such a revision, the trustee is as soon as possible after the statutory meeting to send a copy of the revised statement to every creditor known to the trustee.

**34 Trustee vote**

- (1) At the statutory meeting the creditors are, at the conclusion of the proceedings under section 33(4), to proceed to a vote at which they are—
  - (a) to confirm the appointment of the trustee appointed under section 37 (referred to in this section and in sections 41 to 44 as the "original trustee"), or
  - (b) to elect another person as the trustee in the sequestration (referred to in this section and in sections 38 and 41 to 47 as the "replacement trustee").
- (2) The vote is referred to in this Act as a "trustee vote".
- (3) None of the persons listed in subsection (5) is eligible for election as replacement trustee.
- (4) No one who becomes a person so listed after being elected as replacement trustee is qualified to continue to act as trustee.
- (5) The persons are—
  - (a) the debtor,
  - (b) a person not qualified to act as an insolvency practitioner,
  - (c) a person who, though qualified to act as an insolvency practitioner, is not qualified to act as such in relation to the debtor,
  - (d) a person who holds an interest opposed to the general interests of the creditors,
  - (e) a person who has not given an undertaking, in writing, to act as trustee, and
  - (f) AiB.
- (6) None of the persons listed in subsection (7) is entitled to vote in the trustee vote.
- (7) The persons are—
  - (a) anyone acquiring a debt due by the debtor, otherwise than by succession, after the date of sequestration, and
  - (b) any creditor to the extent that the creditor's debt is a postponed debt.
- (8) Where AiB is the original trustee, if no creditor entitled to vote in the trustee vote attends the statutory meeting or no replacement trustee is elected, AiB—
  - (a) is without delay to report the proceedings at the statutory meeting to the sheriff, and
  - (b) is to continue to act as the trustee.
- (9) Where AiB is not the original trustee, if no creditor entitled to vote in the trustee vote attends the statutory meeting or no replacement trustee is elected, the original trustee—
  - (a) is without delay—
    - (i) to notify AiB accordingly, and
    - (ii) to report the proceedings at the statutory meeting to the sheriff, and
  - (b) is to continue to act as the trustee in the sequestration.

## PART 4

### TRUSTEES AND COMMISSIONERS

#### *Trustees*

#### **35 Functions of trustee**

- (1) In every sequestration there is to be a trustee, whose general functions are—
  - (a) to recover, manage and realise the estate of the debtor, whether situated in Scotland or elsewhere,
  - (b) to distribute the estate among the debtor's creditors according to their respective entitlements,
  - (c) to ascertain the reasons for the debtor's insolvency and the circumstances surrounding it,
  - (d) to ascertain the state of the debtor's liabilities and assets,
  - (e) to maintain, for the purpose of providing an accurate record of the sequestration process, a sederunt book during the trustee's term of office,
  - (f) to keep regular accounts of the trustee's intromissions with the debtor's estate, such accounts being available for inspection at all reasonable times by the commissioners (if any), the creditors and the debtor,
  - (g) whether or not the trustee is still acting in the sequestration, to supply AiB with such information as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.
- (2) The trustee, in performing that person's functions under this Act, must have regard to advice offered to that person by the commissioners (if any).
- (3) If the trustee has reasonable grounds to suspect that an offence has been committed in relation to a sequestration—
  - (a) by the debtor in respect of the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or
  - (b) by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the trustee in respect of the debtor's assets, business or financial affairs,

the trustee must report the matter to AiB.

- (4) If T has reasonable grounds to believe that any behaviour on the part of D is of a kind that would result in a sheriff granting, under section 106(1), an application for a bankruptcy restrictions order, T must report the matter to AiB.
- (5) A report under subsection (3) or (4) is absolutely privileged.
- (6) Subsections (1)(g), (3) and (4) do not apply in any case where AiB is the trustee.
- (7) The trustee may apply to the sheriff for directions in relation to any particular matter arising in the sequestration.
- (8) The debtor, a creditor or any other person having an interest may, if dissatisfied with any act, omission or decision of the trustee, apply to the sheriff.

- (9) On an application under subsection (8), the sheriff may—
  - (a) confirm, annul or modify the act or decision in question,
  - (b) give the trustee directions, or
  - (c) make such order,as the sheriff thinks fit.
- (10) The trustee is to comply with the requirements of subsections (1)(a) to (d) and (2) only in so far as, in the trustee's view, to do so would be—
  - (a) of financial benefit to the debtor's estate, and
  - (b) in the interests of the creditors.

**36 Functions of interim trustee**

- (1) An interim trustee's general function is to safeguard the debtor's estate pending the determination of the petition for sequestration.
- (2) An interim trustee, whether or not still acting in the sequestration, is to supply the AiB with such information as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.

**37 Appointment of trustee or interim trustee**

- (1) Subsection (2) applies where the sheriff awards sequestration of the debtor's estate and the petition for the sequestration—
  - (a) nominates a person to be the trustee in the sequestration,
  - (b) states that the person—
    - (i) is qualified to act as an insolvency practitioner, and
    - (ii) has given an undertaking to act as the trustee in the sequestration, and
  - (c) has, annexed to it, a copy of the undertaking.
- (2) The sheriff may, if—
  - (a) it appears to the sheriff that the person is so qualified and has given the undertaking, and
  - (b) no interim trustee is appointed under subsection (8),appoint the person to be the trustee in the sequestration.
- (3) Where the sheriff—
  - (a) awards sequestration of the debtor's estate,
  - (b) does not, under subsection (2), appoint a person to be the trustee in the sequestration, and
  - (c) no interim trustee is appointed under subsection (8),the sheriff is to appoint AiB to be the trustee in the sequestration.
- (4) Subsections (5) and (7) apply where the sheriff—
  - (a) awards sequestration of the debtor's estate, and
  - (b) an interim trustee is appointed under subsection (8).

- (5) The sheriff may appoint—
  - (a) the interim trustee, or
  - (b) subject to subsection (6), such other person as may be nominated by the petitioner, to be the trustee in the sequestration.
- (6) A person nominated under subsection (5)(b) may be appointed to be the trustee in the sequestration only if—
  - (a) it appears to the sheriff that the person is qualified to act as an insolvency practitioner and has given an undertaking to act as the trustee in the sequestration, and
  - (b) a copy of the undertaking has been lodged with the sheriff.
- (7) Where the sheriff does not, under subsection (5), appoint a person to be the trustee in the sequestration, the sheriff is to appoint AiB to be the trustee in the sequestration.
- (8) Where a petition for sequestration is presented by a creditor, or by a trustee acting under a trust deed, the sheriff may appoint an interim trustee before sequestration is awarded if—
  - (a) the debtor consents, or
  - (b) the trustee acting under the trust deed or any creditor shows cause.
- (9) For the purposes of the appointment of an interim trustee under subsection (8)—
  - (a) where a person is nominated as mentioned in subsection (1)(a) and the provisions of that subsection apply, the sheriff may appoint that person, and
  - (b) where such a person is not appointed, the sheriff is to appoint AiB.
- (10) Subsection (11) applies where AiB awards sequestration of the debtor's estate and the debtor application—
  - (a) nominates a person to be the trustee,
  - (b) states that the person—
    - (i) is qualified to act as an insolvency practitioner, and
    - (ii) has given an undertaking to act as the trustee in the sequestration, and
  - (c) has, annexed to it, a copy of the undertaking.
- (11) AiB may, if it appears to AiB that the person is so qualified and has given that undertaking, appoint the person to be the trustee in the sequestration.
- (12) But subsection (11) is subject to subsection (13).
- (13) Where—
  - (a) AiB awards sequestration of the debtor's estate, and
  - (b) the debtor application is made by a debtor to whom section 2(3)(d) applies, AiB is not to make an appointment under subsection (11).

- (14) Where AiB—
- (a) awards sequestration of the debtor's estate, and
  - (b) does not, under subsection (11), appoint a person to be the trustee in the sequestration,

AiB is deemed to be appointed the trustee in the sequestration.

- (15) Where—
- (a) a trustee is appointed in a sequestration for which the petition is presented by a creditor, or by a trustee acting under a trust deed, or
  - (b) an interim trustee is appointed under subsection (8),
- the appointee is, as soon as practicable, to notify the debtor of the appointment.

### **38 Removal, resignation etc. of interim trustee**

- (1) This section applies where—
- (a) an interim trustee is appointed under section 37(8), and
  - (b) the petition for sequestration has not been determined.
- (2) Where, under section 120(4) the sheriff removes an interim trustee from office the sheriff is, on the application of AiB, to appoint a new interim trustee.
- (3) Without prejudice to that section or to subsection (2), where the sheriff is satisfied—
- (a) that an interim trustee (in this section referred to as "IT") is—
    - (i) for a reason mentioned in subsection (4), or
    - (ii) by, under or by virtue of any other provision of this Act, unable to act, or
  - (b) that IT's conduct has been such that IT should no longer continue to act,
- then, on the application of the debtor, a creditor or AiB, the sheriff is to remove the interim trustee from office and appoint a new interim trustee.
- (4) The reasons are—
- (a) that IT is incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)),
  - (b) that IT has some incapacity by virtue of which IT is unable to act as interim trustee.
- (5) An interim trustee (not being AiB) may apply to the sheriff for authority to resign office; and if the sheriff is, in respect of the applicant, satisfied as is mentioned in subsection (3), the sheriff is to grant the application.
- (6) Where, following an application under subsection (5) the interim trustee resigns office, the sheriff is to appoint a new interim trustee.
- (7) Where the interim trustee dies, the sheriff is, on the application of the debtor, a creditor or AiB to appoint a new interim trustee.
- (8) No person (other than AiB) is to act as interim trustee in a sequestration who would, by virtue of section 34(3), be ineligible to be elected as replacement trustee in the sequestration.

- (9) An interim trustee who, by virtue of subsection (8), is prohibited from acting as such, is without delay to make an application under subsection (5).
- (10) Subsections (1) to (3) of section 37 apply as regards the appointment of an interim trustee under this section as if, for any reference—
  - (a) to the sheriff awarding sequestration of the debtor's estate, there were substituted a reference to the sheriff appointing a new interim trustee, and
  - (b) to the petition for sequestration, there were substituted a reference to the application under this section for the appointment of a new interim trustee.

**39 Termination of interim trustee's functions where not appointed trustee**

- (1) This section applies where an interim trustee (not being AiB) is appointed under section 37(8) and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under subsection (5) or (7) of section 37, or
  - (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee in the sequestration, the interim trustee—
  - (a) is to hand over to the other person everything in the interim trustee's possession which relates to the sequestration, and
  - (b) on that being done, is to cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of the interim trustee as may be appropriate.
- (4) Within 3 months after the sheriff awards, or refuses to award, sequestration the interim trustee is to—
  - (a) submit to AiB—
    - (i) the interim trustee's accounts for intromissions (if any) with the debtor's estate,
    - (ii) a claim for outlays reasonably incurred by the interim trustee, and
    - (iii) a claim for remuneration for work reasonably undertaken by the interim trustee, and
  - (b) send a copy of the interim trustee's accounts and claims to—
    - (i) the debtor,
    - (ii) the petitioner, and
    - (iii) in a case where sequestration is awarded, the trustee and all creditors known to the interim trustee.
- (5) On a submission being made under subsection (4)(a), AiB is to—
  - (a) audit the accounts,
  - (b) issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee,

- (c) send a copy of the determination to—
    - (i) the interim trustee, and
    - (ii) the persons mentioned in subsection (4)(b), and
  - (d) where a trustee (not being AiB) is appointed in the sequestration, send a copy of the audited accounts and of the determination to the trustee, who is to insert them in the sederunt book.
- (6) Where AiB is appointed as the trustee in the sequestration, AiB is to insert a copy of the audited accounts and of the determination in the sederunt book.
  - (7) The interim trustee, or any person mentioned in subsection (4)(b) may, within 14 days after the issuing of the determination under subsection (5)(b), appeal to the sheriff against the determination.
  - (8) On receiving a copy of the determination sent under subsection (5)(c)(i), the interim trustee may apply to AiB for a certificate of discharge.
  - (9) The interim trustee is to send to the persons mentioned in subsection (4)(b) notice of any application under subsection (8) and is to inform them—
    - (a) that they may make written representations relating to it to AiB within the period of 14 days after such notification, and
    - (b) of the effect mentioned in subsection (15).
  - (10) On the expiry of the period mentioned in subsection (9)(a) AiB is, after considering any representations made to AiB, to—
    - (a) grant or refuse to grant the certificate of discharge, and
    - (b) notify the persons mentioned in subsection (4)(b) accordingly.
  - (11) The interim trustee, or any person mentioned in subsection (4)(b), may, within 14 days after the issuing of a determination under subsection (10), appeal from it to the sheriff.
  - (12) If, following an appeal under subsection (11), the sheriff determines that a certificate of discharge—
    - (a) which has been refused should be granted, the sheriff is to order AiB to grant it,
    - (b) which has been granted should have been refused, the sheriff is to revoke the certificate.
  - (13) The sheriff clerk is to send a copy of the decree of the sheriff, following an appeal under subsection (11), to AiB.
  - (14) The decision of the sheriff in an appeal under subsection (7) or (11) is final.
  - (15) The grant of a certificate of discharge under this section by AiB has the effect of discharging the interim trustee from all liability (other than any liability arising from fraud)—
    - (a) to the debtor,
    - (b) to the petitioner, or
    - (c) to the creditors,

in respect of any act or omission of the interim trustee in exercising the functions conferred on the interim trustee by this Act.

**40 Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed trustee**

- (1) This section applies where the AiB is appointed as interim trustee under section 37(8) and the sheriff—
  - (a) awards sequestration and appoints another person as trustee under section 37(5), or
  - (b) refuses to award sequestration.
- (2) Where the sheriff awards sequestration and appoints another person as trustee in the sequestration, AiB—
  - (a) is to hand over to the other person everything in AiB's possession which relates to the sequestration, and
  - (b) on that being done, is to cease to act in the sequestration.
- (3) The sheriff may make such order in relation to liability for the outlays and remuneration of AiB as may be appropriate.
- (4) Within 3 months after the sheriff awards, or refuses to award, sequestration AiB is to—
  - (a) send to the debtor and the petitioner—
    - (i) AiB's accounts for AiB's intromissions (if any) with the debtor's estate,
    - (ii) a determination of AiB's fees and outlays, calculated in accordance with regulations made under section 124, and
    - (iii) the notice mentioned in subsection (8), and
  - (b) in a case where sequestration is awarded, send a copy of those accounts, that determination and that notice to all creditors known to AiB.
- (5) AiB is, unless the sheriff refuses to award sequestration, to insert a copy of those accounts and that determination in the sederunt book.
- (6) The debtor, the petitioner and any creditor may, within 14 days after the sending of the notice under subsection (4)(a)(iii), or as the case may be (4)(b), appeal to the sheriff against –
  - (a) that determination,
  - (b) the discharge of AiB in respect of AiB's acting as interim trustee, or
  - (c) both that determination and the discharge.
- (7) The decision of the sheriff in an appeal under subsection (6) is final.
- (8) The notice is a notice in writing stating—
  - (a) that AiB has commenced procedure under this Act leading to discharge in respect of AiB's acting as interim trustee,
  - (b) that an appeal may be made to the sheriff under subsection (6), and
  - (c) expressly that "subsection (10) of section 40 of the Bankruptcy (Scotland) Act 2013 (asp 00) provides for the discharge of AiB in the circumstances mentioned in paragraphs (a) and (b) of subsection (9) of that section".

- (9) Subsection (10) applies where—
  - (a) the requirements of this section have been complied with, and
  - (b) no appeal is made under subsection (6) or such an appeal is made but is refused as regards the discharge of AiB.
- (10) AiB is discharged from all liability (other than any liability arising from fraud)—
  - (a) to the debtor,
  - (b) to the petitioner, or
  - (c) to the creditors,
 in respect of any act or omission of AiB in exercising the functions of interim trustee conferred on AiB by this Act.

**41 Appointment of replacement trustee**

- (1) This section applies where a replacement trustee is elected by virtue of a trustee vote.
- (2) On the election of the replacement trustee—
  - (a) the original trustee is without delay to make a report of the proceedings at the statutory meeting to the sheriff, and
  - (b) the debtor, a creditor, the original trustee, the replacement trustee or AiB may, within 4 days after the statutory meeting, object to any matter connected with the election.
- (3) Any objection under paragraph (b) of subsection (2) is to be to the sheriff, specifying the grounds on which the objection is taken.
- (4) If there is no timeous objection under that paragraph, the sheriff is without delay—
  - (a) to declare, and
  - (b) to make an order appointing,
 the elected person to be the trustee in the sequestration.
- (5) If there is a timeous objection under paragraph (b) of subsection (2), the sheriff is without delay—
  - (a) to give parties an opportunity to be heard on the objection, and
  - (b) to give a decision.
- (6) If, in a decision under subsection (5)(b), the sheriff—
  - (a) rejects the objection, subsection (4) applies as if there had been no timeous objection,
  - (b) sustains the objection, the sheriff is to order the original trustee to arrange a new meeting.
- (7) At any meeting arranged by virtue of subsection (6)(b), a new trustee vote is to be held.
- (8) Sections 33 and 34 and this section apply in relation to any meeting arranged by virtue of subsection (6)(b) as they apply in relation to the statutory meeting.
- (9) Any—
  - (a) declaration,
  - (b) appointment, or

- (c) decision,  
of the sheriff under this section is final
- (10) No expense in objecting under this section is to fall on the debtor's estate.

#### **42 Termination of original trustee's functions**

- (1) This section applies where—
  - (a) a replacement trustee (in this section referred to as "RT") is appointed under section 41, and
  - (b) the original trustee (in this section referred to as "OT") is not AiB.
- (2) OT is, on the appointment of RT, to hand over to RT everything in OT's possession which relates to the sequestration, including—
  - (a) the statement of assets and liabilities,
  - (b) a copy of the statement prepared under section 28(1)(a) (as revised under section 33(4)(f) if so revised), and
  - (c) a copy of the written comments sent under section 28(2));and on that being done OT ceases to act in the sequestration.
- (3) Within 3 months after the appointment of RT, OT is to—
  - (a) submit to AiB—
    - (i) OT's accounts of OT's intromissions (if any) with the debtor's estate,
    - (ii) a claim for outlays reasonably incurred, and for remuneration for work reasonably undertaken, by OT, and
  - (b) send to RT a copy of what is submitted under paragraph (a).
- (4) Where OT was appointed under section 37(8) as the interim trustee in the sequestration, OT's accounts and the claim referred to in subsection (3)(a)(ii) are to include accounts and a claim for the period of OT's appointment as interim trustee.
- (5) On a submission being made to AiB under subsection (3), AiB—
  - (a) is to audit the accounts and to issue a determination fixing the amount of the outlays and remuneration payable to OT, and
  - (b) is then to send a copy of—
    - (i) the determination to OT, and
    - (ii) the audited accounts and the determination to RT.
- (6) RT is to insert in the sederunt book the copies received by virtue of subsection (5)(b)(ii).
- (7) OT, RT, the debtor or any creditor may appeal to the sheriff against a determination under subsection (5)(a) within 14 days after it is issued.
- (8) The decision of the sheriff on an appeal under subsection (7) is final.
- (9) RT, on being appointed, is to make such insertions in the sederunt book as are appropriate to provide a record of the sequestration process before that appointment but no such insertion is to relate to the written comments sent under section 28(2).

**43 Accountant in Bankruptcy's intromissions in capacity of original trustee**

- (1) This section applies where AiB was the original trustee and some other person is appointed as replacement trustee under section 41.
- (2) AB is, on the appointment of the replacement trustee, to hand over to that person everything in AiB's possession which relates to the sequestration and which AiB obtained in the capacity of original trustee (including the statement of assets and liabilities); and on that being done AiB ceases to act as trustee.
- (3) AiB is, not later than 3 months after the appointment of the replacement trustee, to supply to that person—
  - (a) AiB's accounts of AiB's intromissions (if any) as original trustee with the debtor's estate,
  - (b) a determination of AiB's fees and outlays calculated in accordance with regulations under section 124, and
  - (c) a copy of the notice mentioned in subsection (4)(b).
- (4) AiB is to send to the debtor and to all creditors known to AiB—
  - (a) a copy of the determination mentioned in subsection (3)(b), and
  - (b) a notice in writing stating—
    - (i) that AiB has commenced the procedure under this Act leading to discharge in respect of AiB's actings as trustee,
    - (ii) that the accounts of AiB's intromissions (if any) with the debtor's estate are available for inspection at such address as AB may determine,
    - (iii) that an appeal may be made to the sheriff under subsection (5), and
    - (iv) the effect of subsection (8).
- (5) The replacement trustee, the debtor or any creditor may appeal to the sheriff against—
  - (a) the determination mentioned in subsection (3)(b),
  - (b) the discharge of AiB in respect of AiB's actings as trustee, or
  - (c) both such determination and discharge.
- (6) An appeal under subsection (5) may not be made more than 14 days after the issue of the notice mentioned in subsection (4)(b).
- (7) The decision of the sheriff on an appeal under subsection (5) is final.
- (8) Where—
  - (a) the requirements of this section have been complied with, and
  - (b) either no appeal is made under subsection (5) or any such appeal is refused as regards the discharge of AiB,

AiB is to be discharged from all liability (other than liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of AiB in exercising the functions of trustee in the sequestration.
- (9) The replacement trustee, on being appointed, is to make such insertions in the sederunt book as are appropriate to provide a record of the sequestration process before the appointment.

#### **44 Discharge of original trustee**

- (1) On receiving a copy of the determination of AiB sent under section 42(5)(b)(i) the original trustee may apply to AiB for a certificate of discharge.
- (2) The original trustee is to send notice of the application to the debtor, to all creditors known to the original trustee and to the replacement trustee and is to inform the debtor—
  - (a) that the debtor, the replacement trustee or any creditor may, in relation to the application, make written representations to AiB within 14 days after such notification,
  - (b) that the audited accounts of the original trustee's intromissions (if any) with the debtor's estate are available for inspection at the original trustee's office and that a copy of those accounts has been sent to the replacement trustee for insertion in the sederunt book, and
  - (c) of the effect mentioned in subsection (8).
- (3) On the expiry of the 14 days mentioned in subsection (2)(a) AiB, after considering any representations duly made to AiB, is—
  - (a) to grant or refuse to grant the certificate of discharge, and
  - (b) to notify accordingly (in addition to the original trustee) the debtor, the replacement trustee and all creditors who have made such representations.
- (4) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may, within 14 days after notification under subsection (3)(b), appeal against AiB's grant or refusal to the sheriff.
- (5) If, on such appeal, the sheriff determines that a certificate of discharge which has been refused should be granted the sheriff is to order AiB to grant it.
- (6) The sheriff clerk is to send a copy of the sheriff's decree to AiB.
- (7) The decision of the sheriff on an appeal under subsection (4) is final.
- (8) The grant of a certificate of discharge under this section by AiB has the effect of discharging the original trustee from all liability (other than any liability arising from fraud) to the creditors, or to the debtor, in respect of any act or omission of the original trustee in exercising the functions conferred on the original trustee by this Act.
- (9) Where a certificate of discharge is granted under this section, the replacement trustee is to make an appropriate entry in the sederunt book.
- (10) This section does not apply where AiB is the original trustee.

#### **45 Resignation or death of trustee**

- (1) The trustee in the sequestration (in this section referred to as "T") may apply to AiB for authority to resign office and AiB is to grant the application where satisfied that—
  - (a) T is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause), or
  - (b) T's conduct has been such that T should no longer continue to act.

- (2) AiB may make the granting of an application under subsection (1) subject—
  - (a) to the election of a new trustee, and
  - (b) to such other conditions as AiB thinks appropriate in all the circumstances of the case.
- (3) Where AiB grants an application under subsection (1), then—
  - (a) except where paragraph (b) applies, the commissioners are, or if there are no commissioners AiB is, to call a meeting of the creditors, to be held not more than 28 days after T resigns, for the election by the creditors of a new trustee, and
  - (b) if the application is granted subject to the election of a new trustee, T is to call a meeting of the creditors, to be held not more than 28 days after the granting of the application, for such an election.
- (4) Where the commissioners (see section 48) become, or if there are no commissioners AiB becomes, aware that T has died, they or as the case may be AiB are, as soon as practicable after becoming so aware, to call a meeting of creditors for the election by the creditors of a new trustee.
- (5) The preceding provisions of this Part in relation to the election of a replacement trustee and the appointment of that trustee also apply, subject to any necessary modifications, in relation to the election and appointment of a new trustee in pursuance of subsections (1) to (3) or subsection (4).
- (6) Where, at a meeting called under subsection (3) or (4), no new trustee is elected—
  - (a) AiB, or
  - (b) a person nominated by AiB and consenting to the nomination (and not being a person listed in section 34(5)),may apply to the sheriff for appointment as trustee in the sequestration.
- (7) On an application under subsection (6), the sheriff is to make an order appointing the applicant as trustee in the sequestration.
- (8) The new trustee (in this section referred to as "NT") may require—
  - (a) delivery to NT of all documents relating to the sequestration and in the possession of T or T's representatives (except that, in the case of T's accounts, NT is entitled to delivery only of a copy),
  - (b) T or T's representatives to submit T's accounts for audit to the commissioners or, if there are no commissioners, to AiB.
- (9) The commissioners are, or if there are no commissioners AiB is, to issue a determination fixing the amount of the outlays and remuneration payable to T or T's representatives in accordance with section 94.
- (10) T or T's representatives, NT, the debtor or any creditor may within 14 days after a determination under subsection (9) is issued—
  - (a) by the commissioners, appeal against it to AiB,
  - (b) by AiB, appeal against it to the sheriff.
- (11) A decision of AiB under subsection (10)(a) is appealable to the sheriff.
- (12) The decision of the sheriff on an appeal under subsection (10)(b) or (11) is final.

**46 Replacement of trustee acting in two or more sequestrations**

- (1) This section applies where a trustee acting as such in two or more sequestrations—
  - (a) dies, or
  - (b) ceases, by virtue of section 34(4), to be qualified to continue to act as trustee.
- (2) AiB may, by a single petition to the Court of Session, apply—
  - (a) in a case where subsection (1)(b) applies, for the removal of the trustee from office in each sequestration in which the trustee has ceased to be qualified, and
  - (b) for the appointment, as the trustee in each sequestration in which the trustee was acting, of—
    - (i) AiB, or
    - (ii) such person as may be nominated by AiB (being a person who is not, by virtue of section 34(3), ineligible for election as replacement trustee) if that person consents to the nomination.
- (3) The procedure in a petition under subsection (2) is to be such as may be prescribed by act of sederunt.
- (4) Any such act of sederunt may, in particular, make provision as to the intimation to each sheriff—
  - (a) who awarded sequestration, or
  - (b) to whom, under section 23(1), sequestration was transferred,of the appointment by the Court of Session of a trustee in the sequestration.

**47 Removal of trustee and provision for where trustee is unable to act or should no longer continue to act**

- (1) The trustee in the sequestration (in this section referred to as "T") may be removed from office—
  - (a) by the creditors at a meeting called for the purpose if they also elect, then and there, a new trustee, or
  - (b) by order of the sheriff, on the application of—
    - (i) AiB,
    - (ii) the commissioners, or
    - (iii) a person representing not less than  $\frac{1}{4}$  in value of the creditors,if the sheriff is satisfied that cause has been shown on the basis of circumstances other than those mentioned in subsection (10).
- (2) Paragraph (b) of subsection (1) is without prejudice to section 120(4).
- (3) "Creditors", in subsection (1)(a), does not include—
  - (a) anyone acquiring a debt due by the debtor, other than by succession, after the date of sequestration, or
  - (b) any creditor to the extent than the creditor's debt is a postponed debt.

- (4) The sheriff—
- (a) is to order any application under subsection (1)(b) to be served on T and intimated in the Edinburgh Gazette, and
  - (b) before disposing of the application is to give T the opportunity of being heard.
- (5) On an application under subsection (1)(b) the sheriff may—
- (a) in ordering, or
  - (b) instead of ordering,
- the removal of the trustee from office, make such further order as the sheriff thinks fit.
- (6) T, AiB, the commissioners or any creditor may, within 14 days after the decision of the sheriff on an application under subsection (1)(b), appeal against that decision.
- (7) If T has been removed from office—
- (a) under subsection (1)(b),
  - (b) under section 120(4), or
  - (c) following an appeal under subsection (6),
- the commissioners are (or if there are no commissioners AiB is) to call a meeting of creditors, to be held no more than 28 days after the removal, for the election by the creditors of a new trustee.
- (8) Where the sheriff is satisfied of any of the circumstances mentioned in subsection (10), the sheriff may, on the application of a commissioner, the debtor, a creditor or AiB, and after such intimation as the sheriff considers necessary—
- (a) declare the office of trustee to have become, or to be, vacant, and
  - (b) make any necessary order—
    - (i) to enable the sequestration to proceed, or
    - (ii) to safeguard the estate pending the election of a new trustee (in this section referred to as "NT").
- (9) And on that being done the commissioners are, or if there are no commissioners AiB is, to call a meeting of creditors, to be held not more than 28 days after the declaration mentioned in subsection (8)(a), for the election of NT by the creditors.
- (10) The circumstances are that T—
- (a) is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever other than death), or
  - (b) has engaged in such conduct that T should no longer continue to act in the sequestration.
- (11) Subsection (8) is without prejudice to section 120(4).
- (12) The preceding provisions of this Part in relation to the election of a replacement trustee and the appointment of that trustee also apply, subject to any necessary modifications, in relation to the election and appointment of NT in pursuance of subsection (7) or (9).
- (13) Where, at a meeting called under subsection (7) or (9), no new trustee is elected—
- (a) AiB, or

- (b) a person nominated by AiB and consenting to the nomination (and not being a person listed in section 34(5)),  
may apply to the sheriff for appointment as trustee in the sequestration.
- (14) On an application under subsection (13), the sheriff is to make an order appointing the applicant as trustee in the sequestration.
- (15) The new trustee ("NT") may require—
  - (a) delivery to NT of all documents relating to the sequestration and in the possession of T or T's representatives (except that, in the case of T's accounts, NT is entitled to delivery only of a copy),
  - (b) T or T's representatives to submit T's accounts for audit to the commissioners or, if there are no commissioners, to AiB.
- (16) The commissioners are, or if there are no commissioners AiB is, to issue a determination fixing the amount of the outlays and remuneration payable to T or T's representatives in accordance with section 94.
- (17) T or T's representatives, NT, the debtor or any creditor may within 14 days after a determination under subsection (16) is issued—
  - (a) by the commissioners, appeal against it to AiB,
  - (b) by AiB, appeal against it to the sheriff.
- (18) A decision of AiB under subsection (17)(a) is appealable to the sheriff.
- (19) The decision of the sheriff on an appeal under subsection (17)(b) or (18) is final.
- (20) This section does not apply where AiB is T.

### *Commissioners*

#### **48 Commissioners**

In any sequestration commissioners, whose general functions are—

- (a) to supervise the intrusions of the trustee in the sequestration with the sequestrated estate, and
- (b) to advise the trustee,

may be elected in accordance with section 49.

#### **49 Election, resignation and removal of commissioners**

- (1) At the statutory meeting or at any subsequent meeting of creditors, the creditors (other than any such person as is listed in section 34(7)) may, from among the creditors or their mandatories, elect a commissioner or commissioners (or a new or additional commissioner or new or additional commissioners).
- (2) No more than 5 commissioners are to hold office in any one sequestration at any one time.
- (3) None of the persons listed in subsection (5) is eligible for election as a commissioner.
- (4) Nor is anyone who becomes a person so listed after being elected as a commissioner entitled to continue to act as a commissioner.
- (5) The persons are—

- (a) any person listed in paragraph (a) or (d) of section 34(5), and
  - (b) a person who is an associate of the debtor or of the trustee in the sequestration.
- (6) A commissioner may resign office at any time.
- (7) A commissioner may be removed from office—
- (a) by a person whose mandatory the commissioner is recalling the mandate and intimating in writing to the trustee that it is recalled, or
  - (b) by the creditors (other than any such person as is listed in section 34(7)) at a meeting called for the purpose.
- (8) Subsection (7) is without prejudice to section 120(4).

## **PART 5**

### VESTING

#### *Vesting*

#### **50 Vesting of estate at date of sequestration**

- (1) The whole estate of the debtor vests for the benefit of the creditors in the trustee in the sequestration, by virtue of the trustee's appointment, as at the date of sequestration.
- (2) But subsection (1) is subject to section 61 and to section 91(3) of the Pensions Act 1995 (c.26).
- (3) It is not competent for—
- (a) the trustee, or
  - (b) any person deriving title from the trustee,
- to complete title, before the expiry of the period mentioned in subsection (4), to any heritable property in Scotland vested in the trustee by virtue of the trustee's appointment.
- (4) The period is that of 28 days (or such other period as may be prescribed) which begins with the day on which the certified copy of—
- (a) the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 22 in the register of inhibitions, or
  - (b) the determination of AiB awarding sequestration is recorded under subsection (2) of that section in that register.
- (5) The exercise by the trustee of any power conferred on the trustee by this Act, in respect of any heritable estate vested in the trustee by virtue of that person's appointment, is not challengeable on the ground of a prior inhibition.
- (6) Where the debtor has an uncompleted title to any heritable estate in Scotland, the trustee may complete title to that estate either in the trustee's own name or in the name of the debtor.
- (7) But completion of title in the name of the debtor does not validate by accretion any unperfected right in favour of a person other than the trustee.

(8) Moveable property in respect of which, but for this subsection—

- (a) delivery or possession, or
- (b) intimation of assignation,

would be required in order to complete title vests in the trustee, by virtue of the trustee's appointment, as if at the date of sequestration (as the case may be) the trustee had taken delivery or possession of the property or had made intimation of its assignation to the trustee.

- (9) Any non-vested contingent interest which the debtor has vests in the trustee as if an assignation of that interest had been executed by the debtor (and intimation of assignation made) at the date of sequestration.
- (10) Any non-vested contingent interest vested in the trustee by virtue of subsection (9) is, where it remains so vested as at the date on which the debtor's discharge becomes effective, re-invested in the debtor as if an assignation of that interest had been executed by the trustee (and intimation of assignation made) at that date.
- (11) A person claiming a right to any estate claimed by the trustee may apply to the sheriff for the estate to be excluded from such vesting, a copy of the application being served on the trustee.
- (12) The sheriff is to grant the application if satisfied that the estate should not be so vested.
- (13) Where any successor of a deceased debtor whose estate has been sequestrated has made up title to, or is in possession of, any part of that estate, the sheriff may on the application of the trustee order the successor to convey such estate to the trustee.

## **51 Provision supplementary to section 50 and interpretation of Part 5**

- (1) In subsection (1) of section 50, the "whole estate of the debtor" means the debtor's whole estate at the date of sequestration (wherever situated) including—
  - (a) any income or estate vesting in the debtor on the date of sequestration,
  - (b) any property of the debtor title to which has not been completed by another person deriving right from the debtor, and
  - (c) the capacity to exercise and to take proceedings for exercising all such powers in, over or in respect of any property as—
    - (i) might have been exercised by the debtor for the debtor's own benefit as at, or on, the date of sequestration, or
    - (ii) might be exercised on a relevant date.
- (2) But subsection (1) is subject to subsection (3) and to section 145.
- (3) The "whole estate of the debtor" does not include any interest of the debtor as tenant under—
  - (a) a tenancy which is an assured tenancy within the meaning of Part 2 of the Housing (Scotland) Act 1988 (c.43),
  - (b) a protected tenancy within the meaning of the Rent (Scotland) Act 1984 (c.58) in respect of which, by virtue of Part 8 of that Act, no premium can lawfully be required as a condition of assignation, or
  - (c) a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001 (asp 10).

- (4) On the date on which the trustee serves notice to that effect on the debtor, the interest of the debtor as tenant under any of the tenancies referred to in subsection (3) forms part of the debtor's estate and vests in the trustee as if it had vested in the trustee under section 59(4).
- (5) In this Part "relevant date" means a date after the date of sequestration and before the date on which the debtor's discharge becomes effective.

## **52 Property subject to restraint order**

- (1) Subsection (2) applies where—
  - (a) property is excluded from the debtor's estate by virtue of section 420(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
  - (b) an order under section 50, 67A, 128, 131A, 198 or 215A of that Act has not been made in respect of the property,
  - (c) the restraint order is discharged, and
  - (d) immediately after the discharge of the restraint order the property is not detained under or by virtue of section 44A, 47J, 122A, 127J, 193A or 195J of that Act.
- (2) The property vests in the trustee in the sequestration as part of the debtor's estate.
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

## **53 Property released from detention**

- (1) Subsection (2) applies where—
  - (a) property is excluded from the debtor's estate by virtue of section 420(2)(b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),
  - (b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and
  - (c) the property is released.
- (2) The property vests in the trustee in the sequestration as part of the debtor's estate.

## **54 Property in respect of which receivership or administration order is made**

- (1) Subsection (2) applies where—
  - (a) property is excluded from the debtor's estate by virtue of section 420(2)(c) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the receiver or administrator (as the case may be).
- (2) The property vests in the trustee in the sequestration as part of the debtor's estate.

**55 Property in respect of which realisation order is made**

- (1) Subsection (2) applies where—
  - (a) property is excluded from the debtor's estate by virtue of section 420(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the appropriate officer.
- (2) The property vests in the trustee in the sequestration as part of the debtor's estate.

**56 Property subject to certain orders where confiscation order discharged or quashed**

- (1) Subsection (2) applies where—
  - (a) property is excluded from the debtor's estate by virtue of section 420(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property excluded from debtor's estate),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act, and
  - (c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.
- (2) Any such property vests in the trustee in the sequestration as part of the debtor's estate if it is in the hands of—
  - (a) a receiver appointed under Part 2 or 4 of that Act,
  - (b) an administrator appointed under Part 3 of that Act, or
  - (c) an appropriate officer (within the meaning of section 41A, 120A or 190A of that Act).
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

**57 Vesting of income received by debtor after sequestration**

- (1) Any income, of whatever nature, received by the debtor on a relevant date, other than income arising from the estate which is vested in the trustee in the sequestration, is to vest in the debtor.
- (2) But subsection (1) is subject to subsection (3) and to section 58(1).
- (3) Regardless of anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999 (c.30), the sheriff, on the application of the trustee, may, after having regard to all the circumstances, determine a suitable amount to allow for—
  - (a) aliment for the debtor, and
  - (b) the debtor's relevant obligations.
- (4) If the debtor's income is in excess of the total amount so allowed, the sheriff is—
  - (a) to fix the amount of the excess, and
  - (b) order that amount to be paid to the trustee.

- (5) No application may be made under subsection (3) after the date on which the debtor's discharge becomes effective.
- (6) But subsection (5) is subject to section 58(10).
- (7) An order under subsection (4) is to specify the period during which it has effect and that period—
  - (a) may end after the date on which the debtor's discharge becomes effective, and
  - (b) is to end no later than 3 years after the date on which the order is made.
- (8) An order under subsection (4) may provide that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.
- (9) Where a third person pays a sum of money to the trustee under subsection (8), the third person is discharged of any liability to the debtor to the extent of the sum so paid.
- (10) A debtor who fails to comply with an order under subsection (4) commits an offence and is liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale,
  - (b) to imprisonment for a term not exceeding 3 months, or
  - (c) both to such fine and to such imprisonment.
- (11) The amount allowed for the purposes specified in paragraphs (a) and (b) of subsection (3) is not to be less than the total amount of any income received by the debtor—
  - (a) by way of guaranteed minimum pension, and
  - (b) in respect of the debtor's protected rights as a member of a pension scheme.
- (12) In subsection (11), "guaranteed minimum pension" and "protected rights" have the same meanings as in the Pension Schemes Act 1993 (c.48).
- (13) The debtor's relevant obligations referred to in paragraph (b) of subsection (3) are—
  - (a) any obligation of aliment owed by the debtor ("obligation of aliment" having the same meaning as in the Family Law (Scotland) Act 1985 (c.37)),
  - (b) any obligation of the debtor to make a periodical allowance to a former spouse or former civil partner, and
  - (c) any obligation of the debtor to pay child support maintenance under the Child Support Act 1991 (c.48).
- (14) But any amount allowed under subsection (3) for the relevant obligations referred to in paragraphs (a) and (b) of subsection (13) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance in question.
- (15) In the event of any change in the debtor's circumstances the sheriff, on the application of—
  - (a) the trustee,
  - (b) the debtor, or
  - (c) any other interested party,may vary or recall an order under subsection (4).
- (16) The sheriff clerk is to send a copy of any order made under subsection (4) (and a copy of any variation or recall of such an order) to AiB.

## **58 Debtor's agreement**

- (1) Where no order has been made under section 57(4), a debtor may enter into an agreement in writing with the trustee in the sequestration (such agreement being in this section referred to as a "debtor's agreement") which provides—
  - (a) that the debtor is to pay to the trustee an amount equal to a specified part or proportion of the debtor's income, or
  - (b) that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.
- (2) Where a third person pays a sum of money to the trustee under subsection (1)(b), the third person is discharged of any liability to the debtor to the extent of the sum so paid.
- (3) No debtor's agreement is to be entered into after the date on which the debtor's discharge becomes effective.
- (4) Subsection (7) of section 57 applies to a debtor's agreement as it applies to an order made under subsection (4) of that section.
- (5) A debtor's agreement may, if subsection (9) has been complied with, be enforced as if it were an order made under section 57(4).
- (6) But subsection (10) of section 57 does not apply as respects the enforcement of a debtor's agreement.
- (7) A debtor's agreement may be varied—
  - (a) by written agreement between the parties, or
  - (b) by the sheriff, on the application of the trustee, the debtor or any other interested party.
- (8) The sheriff—
  - (a) is not to vary a debtor's agreement so as to include provision of a kind which could not be included in an order made under subsection (4), and
  - (b) is to grant an application to vary a debtor's agreement if and to the extent that the sheriff thinks variation is necessary to determine a suitable amount to allow for the purposes specified in paragraphs (a) and (b) of section 57(3), being an amount not to be included in the amount paid to the trustee.
- (9) The trustee (unless AiB) is to send a copy of any debtor's agreement (and a copy of any variation of such an agreement) to AiB.
- (10) If the debtor fails to comply with a debtor's agreement the sheriff, on the application of the trustee, may make an order under subsection 57(4)—
  - (a) ending on the date on which the agreement would, had the debtor continued to comply with it, have ended, and
  - (b) on the same terms as the agreement.

## **59 Further provision as regards vesting of estate after sequestration**

- (1) Diligence in respect of a debt or obligation mentioned in subsection (2) is not competent against income vesting in the debtor under section 57(1).
- (2) The debt or obligation is one in respect of which the debtor, if discharged under section 98, would be discharged under section 100.

- (3) For the purposes of subsection (1), diligence includes the making of a deduction from earnings order under the Child Support Act 1991 (c.48).
- (4) Any estate, wherever situated, which—
  - (a) is acquired by the debtor on a relevant date, and
  - (b) would have vested in the trustee in the sequestration if it had been part of the debtor's estate on the date of sequestration,
 vests in the trustee for the benefit of the creditors as at the date of acquisition.
- (5) A person who holds estate vesting in the trustee under subsection (4) is, on production to the person of a copy of the order certified by the sheriff clerk, or as the case may be by AiB, appointing the trustee, to convey or deliver the estate to the trustee.
- (6) But if such a person has, in good faith and without knowledge of the sequestration, conveyed the estate to—
  - (a) the debtor, or
  - (b) to anyone on the instructions of the debtor,
 the person incurs no liability to the trustee except to account for any proceeds of the conveyance which are in the person's hands.
- (7) Subsection (4) is without prejudice to section 57(1).
- (8) Subsections (4) and (5) are without prejudice to any right acquired in the estate in good faith and for value.

## **60 Dealings and circumstances of debtor after sequestration**

- (1) The debtor must immediately notify the trustee in the sequestration—
  - (a) of any assets acquired by the debtor on a relevant date, or
  - (b) of any other change in the debtor's financial circumstances.
- (2) A debtor who fails to comply with subsection (1) commits an offence and is liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale,
  - (b) to imprisonment for a term not exceeding 3 months, or
  - (c) both to such fine and to such imprisonment.
- (3) Any dealing of, or with, the debtor and relating to the debtor's estate vested in the trustee under section 50 or 59 is of no effect in a question with the trustee.
- (4) But subsection (3) is subject to subsections (5) and (6).
- (5) Subsection (3) does not apply where the person seeking to uphold the dealing establishes that the trustee—
  - (a) has abandoned to the debtor the property to which the dealing relates,
  - (b) has expressly or impliedly authorised the dealing, or
  - (c) is otherwise personally barred from challenging the dealing.

- (6) Nor does that subsection apply where the person seeking to uphold the dealing establishes both—
- (a) that the dealing is—
    - (i) the performance of an obligation undertaken before the date of sequestration by a person obliged to the debtor in the obligation,
    - (ii) the purchase from the debtor of goods for which the purchaser has given value to the debtor or is willing to give value to the trustee,
    - (iii) a banking transaction in the ordinary course of business between the banker and the debtor, or
    - (iv) one which satisfies the conditions mentioned in subsection (9), and
  - (b) that the person dealing with the debtor was, at the time when the dealing occurred, unaware of the sequestration and had at that time no reason to believe that the debtor's estate had been sequestrated or was the subject of sequestration proceedings.
- (7) Where the trustee has abandoned heritable property to the debtor, notice (in such form as may be prescribed) given to the debtor by the trustee is sufficient evidence that the property is vested in the debtor.
- (8) Where notice is given under subsection (7), the trustee is as soon as reasonably practicable after giving it to record a certified copy of it in the register of inhibitions.
- (9) The conditions are that—
- (a) the dealing constitutes—
    - (i) the transfer of incorporeal moveable property, or
    - (ii) the creation, transfer, variation or extinguishing of a real right in heritable property,
 for which the person dealing with the debtor has given adequate consideration to the debtor or is willing to give adequate consideration to the trustee,
  - (b) the dealing requires the delivery of a deed, and
  - (c) the delivery occurs during the period beginning with the date of sequestration and ending 7 days after the day on which—
    - (i) the certified copy of the order of the sheriff granting warrant is recorded in the register of inhibitions under subsection (1)(a) of section 22, or
    - (ii) the certified copy of the determination of AiB awarding sequestration is recorded in that register under subsection (2) of that section.

*Limitation on vesting*

**61 Limitation on vesting**

- (1) The following property of the debtor does not vest in the trustee in the sequestration—
- (a) any property—
    - (i) kept outside a dwellinghouse, and
    - (ii) in respect of which attachment is, by virtue of section 11(1) of the 2002 Act, incompetent,

- (b) any property—
    - (i) kept inside a dwellinghouse, and
    - (ii) not a non-essential asset for the purposes of Part 3 of that Act, and
  - (c) property held on trust by the debtor for any other person.
- (2) The vesting of the debtor's estate in the trustee in the sequestration does not affect the right of hypothec of a landlord.
  - (3) Sections 50 and 57 are without prejudice to the right of any secured creditor which is preferable to the rights of the trustee.

## PART 6

### SAFEGUARDING INTERESTS OF CREDITORS

#### *Gratuitous alienations and unfair preferences*

#### **62 Gratuitous alienations**

- (1) Subsection (2) applies where—
  - (a) by an alienation (whether before or after the coming into force of this Act) by a debtor—
    - (i) any of the debtor's property has been transferred, or
    - (ii) any claim or right of the debtor has been discharged or renounced,
  - (b) any of the following has occurred—
    - (i) the debtor's estate has been sequestrated (other than, in the case of a natural person, after the debtor has died),
    - (ii) the debtor has granted a trust deed which has become a protected trust deed,
    - (iii) the debtor has died and within twelve months after the date of death the debtor's estate has been sequestrated, or
    - (iv) the debtor has died, the debtor's estate was absolutely insolvent at the date of death and within those twelve months a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) to administer that estate, and
  - (c) the alienation took place on a relevant day.
- (2) The alienation is challengeable by—
  - (a) any creditor who is a creditor by virtue of a debt incurred on or before (as the case may be) the date of sequestration, the granting of the trust deed or the date of death, or
  - (b) (as the case may be) the trustee in the sequestration, the trustee acting under the trust deed or the judicial factor.
- (3) For the purposes of paragraph (c) of subsection (1), the day on which an alienation takes place is the day on which the alienation becomes completely effectual.

- (4) In that paragraph, "relevant day" means, if the alienation has the effect of favouring—
  - (a) a person who is an associate of the debtor, a day not earlier than 5 years before, or
  - (b) any other person, a day not earlier than 2 years before,(as the case may be) the date of sequestration, the granting of the trust deed or the date of death.
- (5) On a challenge being brought under subsection (2), the court is to grant decree—
  - (a) of reduction, or
  - (b) for such restoration of property to the debtor's estate, or such other redress, as may be appropriate.
- (6) Except that the court is not to grant such decree if the person seeking to uphold the alienation establishes—
  - (a) that immediately, or at any other time, after the alienation the debtor's assets were greater than the debtor's liabilities,
  - (b) that the alienation was made for adequate consideration, or
  - (c) that the alienation was—
    - (i) a birthday, Christmas or other conventional gift, or
    - (ii) a gift made, for a charitable purpose, to a person who is not an associate of the debtor,  
being a gift which, having regard to all the circumstances, it was reasonable for the debtor to make.
- (7) Subsection (6) is without prejudice to any right acquired, in good faith and for value, from or through the transferee in the alienation.
- (8) In subsection (6)(c)(ii), "charitable purpose" means any charitable, benevolent or philanthropic purpose whether or not it is charitable within the meaning of any rule of law.
- (9) For the purposes of subsections (1) to (8), an alienation in implementation of a prior obligation is deemed to be one for which there was no consideration, or no adequate consideration, to the extent that the prior obligation was undertaken for no consideration, or no adequate consideration.
- (10) This section is without prejudice to the operation of section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 (c.26) (which provides that a policy of assurance may be effected in trust for spouse, future spouse and children) including the operation of that section as applied by section 132 of the Civil Partnership Act 2004 (c.33).
- (11) A trustee in a sequestration, a trustee acting under a protected trust deed or a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) has the same right as a creditor has under any rule of law to challenge an alienation of a debtor made for no consideration or for no adequate consideration.
- (12) The trustee in the sequestration is to insert in the sederunt book a copy of any decree under this section affecting the sequestrated estate.

### 63 Unfair preferences

- (1) Subsection (5) applies to a transaction entered into (whether before or after the coming into force of this Act) by a debtor which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors, being a preference created not earlier than 6 months before—
  - (a) the date of sequestration of the debtor's estate (if, in the case of a natural person, a date within the debtor's lifetime),
  - (b) the granting by the debtor of a trust deed which has become a protected trust deed,
  - (c) the debtor's death where, within twelve months after the date of death—
    - (i) the debtor's estate is sequestrated,
    - (ii) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) to administer the debtor's estate and that estate was absolutely insolvent at the date of death.
- (2) But subsection (5) does not apply to—
  - (a) a transaction in the ordinary course of trade or business,
  - (b) a payment in cash for a debt which when it was paid had become payable,
  - (c) a transaction by which the parties undertake reciprocal obligations (whether the performance by the parties of their respective obligations is to occur at the same time or at different times),
  - (d) the granting of a mandate by a debtor authorising an arrestee to pay over the arrested funds, or part of the arrested funds, to the arrester where—
    - (i) there has been a decree for payment or a warrant for summary diligence, and
    - (ii) the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution.
- (3) Paragraphs (b) and (c) of subsection (2) are to be disregarded if the transaction in question was collusive with the purpose of prejudicing the general body of creditors.
- (4) For the purposes of subsection (1), the day on which a preference is created is the day on which it becomes completely effectual.
- (5) The transaction is challengeable by—
  - (a) any creditor who is a creditor by virtue of a debt incurred on or before (as the case may be) the date of sequestration, the granting of the protected trust deed or the debtor's death, or
  - (b) (as the case may be) the trustee in the sequestration, the trustee acting under the protected trust deed or the judicial factor.
- (6) On a challenge being brought under subsection (5) the court, if satisfied that the transaction challenged is a transaction to which that subsection applies, is to grant decree—
  - (a) of reduction, or
  - (b) for such restoration of property to the debtor's estate, or such other redress, as may be appropriate.

- (7) Subsection (6) is without prejudice to any right acquired, in good faith and for value, from or through the creditor in whose favour the preference was created.
- (8) A trustee, a trustee acting under a protected trust deed or a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) has the same right as a creditor has under any rule of law to challenge a preference created by a debtor.
- (9) The trustee in the sequestration is to insert in the sederunt book a copy of any decree under this section affecting the sequestrated estate.

*Recall of certain orders*

**64 Recall of order for payment of capital sum on divorce or on dissolution of civil partnership**

- (1) This section applies where—
  - (a) a court has—
    - (i) under section 5 of the Divorce (Scotland) Act 1976 (c.39) or section 8(2) of the Family Law (Scotland) Act 1985 (c.37), made an order (whether before or after the coming into force of this Act) for the payment by a debtor of a capital sum, or
    - (ii) under the said section 8(2), made an order for the transfer of property by the debtor or made a pension sharing order,
  - (b) on the date of the making of the order the debtor was absolutely insolvent or was rendered so by implementation of the order, and
  - (c) within 5 years after the making of the order—
    - (i) the debtor's estate has been sequestrated other than on the death of the debtor,
    - (ii) the debtor has granted a trust deed which has (whether or not within the 5 years) become a protected trust deed,
    - (iii) the debtor has died and, within 12 months after the date of death, the debtor's estate has been sequestrated, or
    - (iv) the debtor has died and, within those 12 months, a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) to administer the debtor's estate.
- (2) The court, on the application of (as the case may be) the trustee in the sequestration, the trustee acting under the trust deed or the judicial factor, may make an order for recall of the order in question and—
  - (a) for the repayment to the applicant of the whole or part of any sum already paid under the order,
  - (b) for the return to the applicant of all or part of any property already transferred under the order, or
  - (c) (where such property has been sold) for payment to the applicant of all or part of the proceeds of sale.
- (3) But before making an order under subsection (2), the court is to have regard to all the circumstances including, in particular, the financial and other circumstances (in so far as made known to the court) of the person against whom the order would be made.

- (4) Where an application is brought under this section in a case where the debtor's estate has been sequestrated, the trustee in the sequestration is to insert a copy of any decree of recall in the sederunt book.

*Excessive contributions*

**65 Recovery of excessive pension contributions**

- (1) Where a debtor's estate has been sequestrated and the debtor—
- (a) has rights under an approved pension arrangement, or
  - (b) has excluded rights under an unapproved pension arrangement,
- the trustee in the sequestration may apply to the court for an order under this section.
- (2) If the court is satisfied—
- (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and
  - (b) that the making of any of the relevant contributions ("the excessive contributions") has unfairly prejudiced the debtor's creditors,
- the court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.
- (3) Subsection (4) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the debtor under—
- (a) the arrangement, or
  - (b) any other pension arrangement,
- having at any time become subject to a debit under section 29(1)(a) of the 1999 Act (debts giving effect to pension-sharing), less than it would otherwise have been.
- (4) Where this subsection applies—
- (a) any relevant contributions which were represented by the rights which became subject to the debit are, for the purposes of subsection (2), to be taken to be contributions of which the rights under the arrangement are the fruits, and
  - (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) are to be treated as excessive contributions before any which are so represented by virtue of that paragraph.
- (5) In subsections (2) to (4), "relevant contributions" means contributions to the arrangement or to any other pension arrangement—
- (a) which the debtor has at any time made on the debtor's own behalf, or
  - (b) which have at any time been made on the debtor's behalf.
- (6) The court is, in determining whether it is satisfied under subsection (2)(b), to consider in particular—
- (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of, or of any of, the debtor's creditors, and

- (b) whether the total amount of any contributions—
  - (i) made by or on behalf of the debtor to pension arrangements, and
  - (ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pensions arrangements,

is an amount which is excessive in view of the debtor's circumstances when those contributions were made.
- (7) For the purposes of this section and of sections 66 and 67, rights of a debtor under an unapproved pension arrangement are excluded rights if they are rights which are excluded from the debtor's estate by virtue of regulations under section 12 of the 1999 Act.
- (8) In the recovery provisions (see section 67(7))—
  - "the 1999 Act" means the Welfare Reform and Pensions Act 1999,
  - "approved pension arrangement" has the same meaning as in section 11 of that Act, and
  - "unapproved pension arrangement" has the same meaning as in section 12 of that Act.

**66 Orders under section 65**

- (1) Without prejudice to the generality of subsection (2) of section 65, an order under that section may include provision—
  - (a) requiring the person responsible for the arrangement to pay an amount to the trustee,
  - (b) adjusting the liabilities of the arrangement in respect of the debtor,
  - (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the debtor under the arrangement,
  - (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the debtor's case with any requirement under section 67(1) or in giving effect to the order.
- (2) In subsection (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.
- (3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the 1999 Act (pension sharing orders).
- (4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 65 is the lesser of—
  - (a) the amount of the excessive contributions, and
  - (b) the value of the debtor's rights under the arrangement (if the arrangement is an approved pension arrangement) or of the debtor's excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

- (5) An order under section 65 which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the trustee must provide for the liabilities of the arrangement to be correspondingly reduced.
- (6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—
  - (a) the amount of the liabilities immediately before the reduction, and
  - (b) the amount of the liabilities immediately after the reduction,
 is equal to the restoration amount.
- (7) An order under section 65 in respect of an arrangement—
  - (a) is binding on the person responsible for the arrangement, and
  - (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

**67 Orders under section 65: supplementary**

- (1) The person responsible for—
  - (a) an approved pension arrangement under which a debtor has rights,
  - (b) an unapproved pension arrangement under which a debtor has excluded rights, or
  - (c) a pension arrangement under which a debtor has at any time had rights,
 must, on the trustee in the sequestration making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under section 65.
- (2) Nothing in—
  - (a) any provision of section 159 of the Pensions Schemes Act 1993 or section 91 of the Pensions Act 1995 (which prevent assignation and the making of orders that restrain a person from receiving anything which the person is prevented from assigning),
  - (b) any provision of any enactment (whether passed or made before or after the passing of the 1999 Act) corresponding to any of the provisions mentioned in paragraph (a), or
  - (c) any provision of the arrangements in question corresponding to any of those provisions,
 applies to a court exercising its powers under section 65.
- (3) Where any sum is required by an order under section 65 to be paid to the trustee, that sum is to be comprised in the debtor's estate.
- (4) Regulations made by the Secretary of State may, for the purposes of the recovery provisions, make provision about the calculation and verification of—
  - (a) any such value as is mentioned in section 66(4)(b),
  - (b) any such amounts as are mentioned in section 66(6)(a) and (b).

- (5) The power conferred by subsection (4) includes power to provide for calculation or verification—
  - (a) in such manner as may, in the particular case, be approved by a prescribed person, or
  - (b) in accordance with guidance from time to time prepared by a prescribed person.
- (6) References in the recovery provisions to the person responsible for a pension arrangement are to—
  - (a) the trustees, managers or provider of the arrangement, or
  - (b) the person having, in relation to the arrangement, functions corresponding to those of a trustee, manager or provider.
- (7) In this section and in section 65 "the recovery provisions" means this section and sections 65 and 66.
- (8) Regulations under subsection (4) may contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

**68 Excessive contributions in pension-sharing cases: general**

- (1) For the purposes of section 62, a pension-sharing transaction is taken—
  - (a) to be a transaction, entered into by the transferor (in this section referred to as "TR") with the transferee (in this section referred to as "TE"), by which the appropriate amount is transferred by TR to TE, and
  - (b) to be capable of being an alienation challengeable under that section only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (2) For the purposes of section 63, a pension-sharing transaction is taken—
  - (a) to be something (namely a transfer of the appropriate amount to TE) done by TR, and
  - (b) to be capable of being an unfair preference given to TE only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (3) For the purposes of section 64, a pension-sharing transaction is taken—
  - (a) to be a pension sharing order made by the court under section 8(2) of the Family Law (Scotland) Act 1985, and
  - (b) to be an order capable of being recalled under that section only so far as it is a payment or transfer of so much of the appropriate amount as is recoverable.
- (4) Where—
  - (a) an alienation is challenged under section 62,
  - (b) a transaction is challenged under section 63, or
  - (c) an application is made under section 64 for the recall of an order made in divorce proceedings,

if any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question is to be determined in accordance with subsections (5) to (9).

- (5) The court is first to determine the extent, if any, to which TR's rights under the shared arrangement at the time of the transaction appear to have been, whether directly or indirectly, the fruits of contributions ("personal contributions")—
- (a) which TR has at any time made on TR's own behalf, or
  - (b) which have at any time been made on TR's behalf,
- to the shared arrangement or any other pension arrangement.
- (6) Where it appears that those rights were to any extent the fruits of personal contributions, the court is then to determine the extent, if any, to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced TR's creditors ("the unfair contributions").
- (7) If it appears to the court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.
- (8) If it appears to the court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the court that the transfer could not have been so made.
- (9) In making the determination mentioned in subsection (6) the court is to consider in particular—
- (a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of TR's creditors or any of them, and
  - (b) whether the total amount of any personal contributions represented, at the time the pension sharing arrangement was made, by rights under pension arrangements is an amount which is excessive in view of TR's circumstances when those contributions were made.
- (10) In this section and sections 69 and 70—
- "appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of section 29(1) of the Welfare Reform and Pensions Act 1999 (c.30) (creation of pension credits and debits),
- "pension-sharing transaction" means an order or provision falling within section 28(1) of that Act (orders and agreements which activate pension-sharing),
- "shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates,
- "transferee" (or "TE"), in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made, and
- "transferor" (or "TR"), in relation to a pension-sharing transaction, means the person to whose rights the transaction relates.

**69 Excessive contributions in pension-sharing cases: recovery orders**

- (1) In this section and section 70, "recovery order" means—
  - (a) a decree granted under section 62(5),
  - (b) a decree granted under section 63(6), or
  - (c) an order made under section 64(2),in any proceedings to which section 68 applies.
- (2) A recovery order may include provision—
  - (a) requiring the person responsible for a pension arrangement in which TE (see section 68(10)) has acquired rights derived directly or indirectly from the pension-sharing transaction (again see section 68(10)) to pay an amount to the trustee,
  - (b) adjusting the liabilities of the pension arrangement in respect of TE,
  - (c) adjusting any liabilities of the pension arrangement in respect of any other person that derive, directly or indirectly, from rights of TE under the arrangement,
  - (d) for the recovery by the person responsible for the pension arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the debtor's case with any requirement under section 70(1) or in giving effect to the order.
- (3) Subsection (2) is without prejudice to the generality of section 62(5), 63(6) or 64(2).
- (4) In subsection (2), references to adjusting the liabilities of a pension arrangement in respect of a person include, in particular, reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.
- (5) The maximum amount which the person responsible for an arrangement may be required to pay by a recovery order is the smallest of—
  - (a) so much of the appropriate amount (see section 68(10)) as is recoverable in accordance with section 68,
  - (b) so much, if any, of the amount of the unfair contributions (within the meaning given by section 68(6)) as is not recoverable by way of an order under section 65 containing provision such as is mentioned in section 66(1)(a), and
  - (c) the value of the debtor's rights under the arrangement acquired by TE as a consequence of the transfer of the appropriate amount.
- (6) A recovery order which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the trustee must provide for the liabilities of the arrangement to be correspondingly reduced.
- (7) For the purposes of subsection (6), liabilities are correspondingly reduced if the difference between—
  - (a) the amount of the liabilities immediately before the reduction, and
  - (b) their amount immediately after the reduction,is equal to the restoration amount.

- (8) A recovery order in respect of an arrangement—
  - (a) is binding on the person responsible for the arrangement, and
  - (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

**70 Recovery orders: supplementary**

- (1) The person responsible for a pension arrangement under which a transferee has, at any time, acquired rights by virtue of the transfer of the appropriate amount (see section 68(10)) is, on the trustee making a written request, to provide the trustee with such information about the arrangement and the rights under it of the transferor and the transferee as the trustee may reasonably require for, or in connection with, the making of an application for a recovery order.
- (2) Nothing in the provisions mentioned in subsection (3) applies to a court exercising its power to make a recovery order (see section 69(1)).
- (3) The provisions are—
  - (a) any provision of section 159 of the Pension Schemes Act 1993 (c.48) or section 91 of the Pensions Act 1995 (c.26) (which prevent assignation and the making of orders which restrain a person from receiving anything the person is prevented from assigning),
  - (b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999 (c.30)) corresponding to any of the provisions mentioned in paragraph (a), or
  - (c) any provision of the arrangement in question corresponding to any of those provisions.
- (4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—
  - (a) any such value as is mentioned in section 69(5)(c), or
  - (b) any such amounts as are mentioned in section 69(7)(a) and (b).
- (5) The power conferred by subsection (4) includes power to provide for calculation or verification—
  - (a) in such manner as may, in the particular case, be approved by a prescribed person, or
  - (b) in accordance with guidance from time to time prepared by a prescribed person.
- (6) References in the recovery provisions to the person responsible for a pension arrangement are to—
  - (a) the trustees, managers or providers of the arrangement, or
  - (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (7) In this section—
  - "prescribed" means prescribed by regulations,
  - "the recovery provisions" means this section and sections 62, 64, 63 and 69, and
  - "regulations" means regulations made by the Secretary of State.

- (8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

## **PART 7**

### ADMINISTRATION OF ESTATE BY TRUSTEE

#### *General*

#### **71 Taking possession of estate by trustee**

- (1) The trustee in the sequestration is—
- (a) for the purpose of recovering the estate of the debtor under section 35(1)(a), to take possession as soon as may be after the trustee's appointment—
    - (i) of the debtor's whole estate so far as vesting in the trustee under sections 50 and 57, and
    - (ii) of any document in the debtor's possession or control relating to the debtor's assets or the debtor's business or financial affairs,
  - (b) to make up and maintain, and record in the sederunt book, an inventory and valuation of the estate, and
  - (c) on that being done, to send a copy of the inventory and valuation to AiB.
- (2) Paragraph (a) of subsection (1) is subject to section 76.
- (3) The trustee is entitled to have access to, and to make a copy of, any document relating to the assets or the business or financial affairs of the debtor—
- (a) sent by or on behalf of the debtor to a third party, and
  - (b) in the third party's hands.
- (4) If a person obstructs the trustee in the trustee's exercise, or attempted exercise, of a power conferred by subsection (3), the sheriff may, on the trustee's application, order the person to cease obstructing the trustee.
- (5) The trustee may require delivery to the trustee of any title deed or other document of the debtor, even if a right of lien is claimed over it.
- (6) Subsection (5) is without prejudice to any preference of the holder of the lien.

#### **72 Management and realisation of estate**

- (1) The trustee in the sequestration, as soon as may be after the trustee's appointment, is to consult with AiB concerning the exercise of the trustee's functions under section 35(1)(a).
- (2) The trustee is to comply with any general or specific directions given to the trustee (as the case may be)—
- (a) by the creditors,
  - (b) on the application under this subsection of the commissioners, by the sheriff, or
  - (c) by AiB,
- as to the exercise by the trustee of such functions.
- (3) But subsection (2) is subject to subsections (4), (9) and (12).

- (4) Subsections (1) and (2) do not apply where the trustee is AiB.
- (5) The trustee may do any of the following things—
  - (a) carry on or close down any business of the debtor,
  - (b) bring, defend or continue any legal proceedings relating to the estate of the debtor,
  - (c) create a security over any part of the estate,
  - (d) where any right, option or other power forms part of the debtor's estate, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power,
  - (e) borrow money in so far as it is necessary for the trustee to do so to safeguard the debtor's estate,
  - (f) effect or maintain insurance policies in respect of the business or property of the debtor.
- (6) Any sale of the debtor's estate by the trustee may either be by public sale or by private bargain.
- (7) The following rules apply to the sale of any part of the debtor's heritable estate over which a heritable security is held by a creditor or creditors if the rights of the secured creditor or creditors are preferable to those of the trustee—
  - (a) the trustee may sell that part only with the concurrence of every such creditor unless the trustee obtains a sufficiently high price to discharge every such security,
  - (b) the following acts are precluded—
    - (i) the taking of steps by a creditor to enforce the creditor's security over the part after the trustee has intimated to the creditor that the trustee intends to sell the part,
    - (ii) the commencement by the trustee of the procedure for the sale of the part after the creditor has intimated to the trustee that the creditor intends to commence the procedure for its sale,
  - (c) except that where the trustee or a creditor has given intimation under paragraph (b) but has unduly delayed in proceeding with the sale then, if authorised by the sheriff in the case of—
    - (i) sub-paragraph (i) of that paragraph, any creditor to whom intimation has been given may enforce the creditor's security, or
    - (ii) sub-paragraph (ii) of that paragraph, the trustee may sell the part.
- (8) The function of the trustee under section 35(1)(a) to realise the debtor's estate includes the function of selling, with or without recourse against the estate, debts owing to the estate.
- (9) The trustee may sell any perishable goods without complying with any directions given to the trustee under subsection (2)(a) or (c) if the trustee considers that compliance with such directions would adversely affect the sale.
- (10) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this section.
- (11) It is not competent for the trustee or an associate of the trustee, or for any commissioner, to purchase any of the debtor's estate in pursuance of this section.

- (12) The trustee—
- (a) is to comply with the requirements of subsection (7) of this section, and
  - (b) may do anything permitted by this section,
- only in so far as, in the trustee's view, it would be of financial benefit to the estate of the debtor, and in the interests of the creditors, to do so.

*Contractual powers and money received*

**73 Contractual powers of trustee**

- (1) The trustee in the sequestration may, as respects any contract entered into by the debtor before the date of sequestration—
- (a) adopt it (except where adoption is precluded by its express or implied terms) if the trustee considers that its adoption would be beneficial to the administration of the debtor's estate, or
  - (b) refuse to adopt it.
- (2) But subsection (1) is subject to subsections (3) and (4).
- (3) The trustee is, as respects any contract entered into by the debtor, to adopt or refuse to adopt the contract—
- (a) within 28 days after receiving a request in writing in that regard, from a party to the contract, or
  - (b) within such longer period after such receipt as the sheriff, on application by the trustee, may allow.
- (4) If, within the period of 28 days or as the case may be within the longer period allowed, the trustee does not reply in writing to a request under subsection (3), the trustee is deemed to have refused to adopt the contract.
- (5) The trustee may enter into any contract where the trustee considers that to do so would be beneficial for the administration of the debtor's estate.

**74 Money received by trustee**

- (1) All money received by the trustee in the sequestration in the exercise of the trustee's functions are to be deposited by the trustee in the name of the debtor's estate in an interest-bearing account in an appropriate bank or institution.
- (2) But subsection (1) is subject to subsections (3) and (5).
- (3) In any case where the trustee is AiB, all money received by the trustee in the exercise of the trustee's functions as trustee are to be deposited by the trustee—
- (a) in the name of the debtor's estate, or
  - (b) in the name of the Scottish Ministers,
- in an interest-bearing account in an appropriate bank or institution.
- (4) But subsection (3) is subject to subsection (5).
- (5) The trustee may at any time retain in the trustee's hands a sum not exceeding £200 or such other sum as may be prescribed.

**75 Debtor's family home**

- (1) This section applies where a debtor's sequestrated estate includes any right in the debtor's family home.
- (2) At the end of the period of 3 years beginning with the date of sequestration, the right—
  - (a) ceases to form part of the debtor's sequestrated estate, and
  - (b) is reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (3) Subsection (2) does not apply if—
  - (a) during the period mentioned in subsection (2), the trustee in the sequestration—
    - (i) disposes of or otherwise realises the right,
    - (ii) concludes missives for sale of the right,
    - (iii) sends a memorandum to the Keeper of the Register of Inhibitions under section 22(6),
    - (iv) completes title in the Land Register of Scotland, or as the case may be in the Register of Sasines, in relation to the right,
    - (v) commences proceedings to obtain the authority of the sheriff under section 76(1)(b) to sell or dispose of the right,
    - (vi) commences proceedings in an action for division and sale of the family home,
    - (vii) commences proceedings in an action for the purpose of obtaining vacant possession of the family home,
    - (viii) enters with the debtor into an agreement such as is mentioned in subsection (4), or
    - (ix) commences an action under section 62 in respect of the right, or
  - (b) the trustee in the sequestration—
    - (i) does not, at any time during the period mentioned in subsection (2), know about the facts giving rise to a right of action under section 62, but
    - (ii) commences an action under that section reasonably soon after becoming aware of those facts.
- (4) The agreement referred to in subsection (3)(a)(viii) is an agreement that the debtor is to incur a specified liability to the debtor's estate (with or without interest from the date of the agreement) in consideration of which the right is to—
  - (a) cease to form part of the debtor's sequestrated estate, and
  - (b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (5) If the debtor does not inform the trustee of the right before the end of the period mentioned in subsection (2) then the period so mentioned is to be taken, for the purposes of subsections (2) and (3)—
  - (a) not to begin with the date of sequestration, but
  - (b) to begin instead with the date on which T becomes aware of it.

- (6) The sheriff may, on the trustee's application, substitute for the period mentioned in subsection (2) a longer period—
  - (a) in prescribed circumstances, and
  - (b) in such other circumstances as the sheriff thinks appropriate.
- (7) The Scottish Ministers may, by regulations—
  - (a) make provision for this section to have effect with the substitution, in such circumstances as may be specified in the regulations, of a shorter period for the period mentioned in subsection (2),
  - (b) prescribe circumstances in which this section does not apply,
  - (c) prescribe circumstances in which a sheriff may disapply this section,
  - (d) make provision requiring the trustee to give notice that this section applies or does not apply,
  - (e) make provision about compensation,
  - (f) make such provision as they consider necessary or expedient in consequence of regulations made under paragraphs (a) to (e), or
  - (g) modify paragraph (a) of subsection (3) so as to—
    - (i) add or remove a matter, or
    - (ii) vary a matter,
 referred to in that paragraph.
- (8) In this section, "family home" has the same meaning as in section 76.

**76 Power of trustee in relation to debtor's family home**

- (1) Before the trustee in the sequestration (in this section referred to as "T"), or the trustee acting under the trust deed (in this section referred to as "TU"), sells or disposes of any right in the debtor's family home, T or TU is—
  - (a) to obtain the relevant consent, or
  - (b) where unable to obtain that consent, to obtain the authority of the sheriff in accordance with subsection (2).
- (2) Where T or TU requires to obtain the authority of the sheriff in terms of subsection (1)(b), the sheriff, after having regard to all the circumstances of the case including—
  - (a) the needs and financial resources of the debtor's spouse or former spouse,
  - (b) the needs and financial resources of the debtor's civil partner or former civil partner,
  - (c) the needs and financial resources of any child of the family,

- (d) the interests of the creditors, and
- (e) the length of the period during which (whether before or after the relevant date) the family home was used as a residence by any of the persons referred to in paragraphs (a) to (c),

may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 3 years) as the sheriff may consider reasonable in the circumstances or may grant the application subject to such conditions as the sheriff may prescribe.

- (3) Subsection (2) applies to an action brought by T or TU—
  - (a) for division and sale of, or
  - (b) for the purpose of obtaining vacant possession of,the debtor's family home as that subsection applies to an application under subsection (1)(b).
- (4) Before commencing proceedings to obtain the authority of the sheriff under subsection (1)(b), T or TU must give notice of the proceedings to the local authority in whose area the home is situated.
- (5) Notice under subsection (4) must be given in such form and manner as may be prescribed.
- (6) For the purposes of subsection (3), any reference in subsection (2) to the granting of the application is to be construed as a reference to the granting of decree in the action.
- (7) In this section—

"family home" means any property in which, at the relevant date, the debtor had a right (whether alone or in common with another person), being property which was occupied at that date as a residence—

- (a) by—
  - (i) the debtor and the debtor's spouse or civil partner,
  - (ii) the debtor's spouse or civil partner,
  - (iii) the debtor's former spouse or former civil partner,in any of those cases, whether with or without a child of the family, or
- (b) by the debtor with a child of the family,

"child of the family" includes—

- (a) any child or grandchild of either—
  - (i) the debtor, or
  - (ii) the debtor's spouse or civil partner (or former spouse or civil partner),and

- (b) any person who has been brought up or accepted by either—
  - (i) the debtor, or
  - (ii) the debtor's spouse or civil partner (or former spouse or civil partner), as if a child of the debtor, spouse, civil partner or former spouse or civil partner,

(whatever age the child, grandchild or person may be),

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

"relevant consent" means, in relation to the sale or disposal of any right in a family home—

- (a) in a case where the family home is occupied by the debtor's spouse or civil partner (or former spouse or civil partner), the consent of the spouse or civil partner (or as the case may be former spouse or civil partner) whether or not the family home is also occupied by the debtor,
- (b) where paragraph (a) does not apply, in a case where the family home is occupied by the debtor with a child of the family, the consent of the debtor, and

"relevant date" means the day immediately preceding the date of sequestration or, as the case may be, the day immediately preceding the date the trust deed was granted.

#### *Rights of spouse or civil partner*

### **77 Protection of rights of spouse against arrangements intended to defeat them**

- (1) Subsections (2) and (3) apply where a debtor's sequestrated estate includes a matrimonial home in respect of which—
  - (a) the debtor, immediately before the date the order was made appointing the trustee, was an entitled spouse, and
  - (b) the other spouse is a non-entitled spouse.
- (2) Where the trustee in the sequestration knows—
  - (a) that the debtor is married to the non-entitled spouse, and
  - (b) where the non-entitled spouse is residing,

the trustee is to inform the non-entitled spouse, within the period of 14 days beginning with the date mentioned in subsection (1)(a), of the fact that sequestration of the debtor's estate has been awarded, of the right of petition which exists under section 24 and of the effect of subsection (3).

- (3) On the petition under section 24 of the non-entitled spouse presented either within the period of 40 days beginning with the date mentioned in subsection (1)(a) or within the period of 10 weeks beginning with the date of the award of sequestration the sheriff, if satisfied that the purpose of the petition for sequestration, or as the case may be the debtor application, was wholly or mainly to defeat the occupancy rights of the non-entitled spouse, may—
  - (a) under section 25, recall the sequestration, or
  - (b) make such order as the sheriff thinks appropriate to protect the occupancy rights of the non-entitled spouse.
- (4) The reference in subsection (1)(a) to the date the order is made appointing the trustee is, in a case where more than 1 trustee is appointed in the sequestration, to be construed as a reference to the date the first order is made appointing a trustee.
- (5) In subsection (1)—
 

"entitled spouse" and "non-entitled spouse" are to be construed in accordance with section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59),

"matrimonial home" has the meaning assigned by section 22 of that Act, and

"occupancy rights" has the meaning assigned by section 1(4) of that Act.

## **78 Protection of rights of civil partner against arrangements intended to defeat them**

- (1) Subsections (2) and (3) apply where a debtor's sequestrated estate includes a family home in respect of which—
  - (a) the debtor, immediately before the date the order was made appointing the trustee, was an entitled partner, and
  - (b) the other partner in the civil partnership is a non-entitled partner.
- (2) Where the trustee in the sequestration knows—
  - (a) that the debtor is in civil partnership with the non-entitled partner, and
  - (b) where the non-entitled partner is residing,

the trustee is to inform the non-entitled partner, within the period of 14 days beginning with the date mentioned in subsection (1)(a), of the fact that sequestration of the debtor's estate has been awarded, of the right of petition which exists under section 24 and of the effect of subsection (3).
- (3) On the petition under section 24 of the non-entitled partner presented either within the period of 40 days beginning with the date mentioned in subsection (1)(a) or within the period of 10 weeks beginning with the date of the award of sequestration the sheriff, if satisfied that the purpose of the petition for sequestration, or as the case may be the debtor application, was wholly or mainly to defeat the occupancy rights of the non-entitled partner, may—
  - (a) under section 25, recall the sequestration, or
  - (b) make such order as the sheriff thinks appropriate to protect the occupancy rights of the non-entitled partner.
- (4) The reference in subsection (1)(a) to the date the order is made appointing the trustee is, in a case where more than 1 trustee is appointed in the sequestration, to be construed as a reference to the date the first order is made appointing a trustee.

- (5) In subsection (1)—
- "entitled partner" and "non-entitled partner" are to be construed in accordance with section 101 of the Civil Partnership Act 2004 (c.33),
- "family home" has the meaning assigned by section 135 of that Act, and
- "occupancy rights" means the rights conferred by section 101(1) of that Act.

*Account of state of affairs*

**79 Debtor's account of state of affairs**

- (1) This section applies to a debtor who—
- (a) has not been discharged under this Act, or
- (b) is subject to—
- (i) an order made by the sheriff under subsection (4) of section 57, or
- (ii) an agreement entered into under subsection (1) of that section.
- (2) The trustee in the sequestration is, at the end of—
- (a) the period of 6 months beginning with the date of sequestration, and
- (b) each subsequent period of 6 months,

to require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.

**PART 8**

EXAMINATION OF DEBTOR

*Private and public examination*

**80 Private examination**

- (1) The trustee in the sequestration may request—
- (a) the debtor to appear before the trustee and to give information relating to the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or
- (b) the debtor's spouse or civil partner, or any other person who the trustee believes can give such information (in this Act such spouse, civil partner or other person being referred to as a "relevant person") to give that information.
- (2) The trustee may, if the trustee considers it necessary, apply to the sheriff for an order to be made under subsection (3)
- (3) On application to the sheriff under subsection (2), the sheriff may make an order requiring the debtor or a relevant person to attend for private examination before the sheriff on a date and at a time specified in the order.
- (4) But subsection (3) is subject to section 82(3).
- (5) A date specified in an order under subsection (3) is to be not earlier than 8 days nor later than 16 days after the date of the order.

- (6) If a person fails without reasonable excuse to comply with an order under subsection (3) then the person commits an offence and is liable, on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale, or
  - (b) to imprisonment for a term not exceeding 3 months,
 or both to such fine and such imprisonment.
- (7) Where the debtor is an entity whose estate may be sequestrated by virtue of section 4(1), the references, in this section and in sections 81 to 83, to the debtor are to be construed, unless the context otherwise requires, as references to a person representing the entity.

## **81 Public examination**

- (1) At least 8 weeks before the end of the first accounting period the trustee in the sequestration—
  - (a) may, or
  - (b) if requested to do so by AiB or by the commissioners (if any) or by  $\frac{1}{4}$  in value of the creditors, shall,
 apply to the sheriff for an order for the public examination before the sheriff of the debtor (see section 80(7)), or of a relevant person, relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs.
- (2) Except that on cause shown such application may be made by the trustee at any time.
- (3) On an application under subsection (1) the sheriff is to make an order requiring the debtor or the relevant person to attend for examination before the sheriff in open court on a date and at a time specified in the order.
- (4) But subsection (3) is subject to section 82(3).
- (5) A date specified in an order under subsection (3) is to be not earlier than 8 days nor later than 16 days after the date of the order.
- (6) On the sheriff making an order under subsection (3), the trustee is to—
  - (a) publish in the Edinburgh Gazette a notice in such form, and containing such particulars, as may be prescribed,
  - (b) send a copy of the notice—
    - (i) to every creditor known to the trustee, and
    - (ii) where the order is in respect of a relevant person, to the debtor, and
  - (c) inform each person sent a copy under paragraph (b) that the person may participate in the examination.
- (7) If a person fails without reasonable excuse to comply with an order under subsection (3) then the person commits an offence and is liable, on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale, or
  - (b) to imprisonment for a term not exceeding 3 months,
 or both to such fine and such imprisonment.

## **82 Provisions ancillary to sections 80 and 81**

- (1) If a debtor (see section 80(7)) or relevant person is residing in Scotland, the sheriff may on the application of the trustee grant a warrant (which may be executed by a judicial officer anywhere in Scotland) to apprehend the debtor or relevant person and to have the apprehended or arrested person taken to the place of the examination.
- (2) But a warrant under subsection (1) is not to be granted unless the sheriff is satisfied that it is necessary to grant it to secure the attendance of the debtor or relevant person at the examination.
- (3) If the debtor or relevant person is for any good reason prevented from attending for examination, the sheriff may grant a commission to take the examination of the debtor or relevant person (the commissioner being, in this section and in section 83, referred to as an "examining commissioner").
- (4) Subsection (3) is without prejudice to subsection (5).
- (5) The sheriff or the examining commissioner may at any time adjourn the examination to such day as the sheriff or examining commissioner may fix.
- (6) The sheriff or examining commissioner may order the debtor or a relevant person to produce for inspection any document—
  - (a) in the custody or control of the person so ordered, and
  - (b) relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs,

and to deliver the document or a copy of the document to the trustee in the sequestration for further examination by the trustee.

### *Conduct of examination*

## **83 Conduct of examination**

- (1) The examination, whether before the sheriff or an examining commissioner, is to be taken on oath.
- (2) At the examination—
  - (a) the trustee in the sequestration (or a solicitor or counsel acting on behalf of the trustee) and, in the case of public examination, any creditor may question the debtor or a relevant person, and
  - (b) the debtor (see section 80(7)) may question a relevant person,as to any matter relating to the the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs.
- (3) The debtor or a relevant person—
  - (a) is required to answer any question relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs, and
  - (b) is not excused from answering any such question on the ground—
    - (i) that the answer may incriminate, or tend to incriminate, the person questioned, or
    - (ii) of confidentiality.

- (4) Except that—
  - (a) a statement made by the debtor or a relevant person in answer to any such question is not admissible in evidence in any subsequent criminal proceedings against the person making it (except where the proceedings are in respect of a charge of perjury relating to the statement), and
  - (b) a person subject to examination is not required to disclose any information received from a person not called for examination if the information is confidential between the 2 persons.
- (5) The rules relating to the recording of evidence in ordinary causes specified in the First Schedule to the Sheriff Courts (Scotland) Act 1907 (c.51) apply in relation to the recording of evidence at the examination before the sheriff or examining commissioner.
- (6) The debtor's deposition at the examination is to be—
  - (a) subscribed by the debtor and by the sheriff (or as the case may be the examining commissioner), and
  - (b) inserted in the sederunt book.
- (7) The trustee is to—
  - (a) insert a copy of the record of the examination in the sederunt book, and
  - (b) send a copy of the record to AiB.
- (8) A relevant person is entitled, as if the person were a witness in an ordinary civil cause in the sheriff court, to fees or allowances in respect of the person's attendance at the examination.
- (9) Except that the sheriff may disallow or restrict the entitlement to such fees or allowances if the sheriff thinks it appropriate to do so in all the circumstances.

## PART 9

### CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

#### *Submission and adjudication of claims*

#### **84 Submission of claims to trustee**

- (1) A creditor, in order to obtain an adjudication as to that person's entitlement—
  - (a) to vote at a meeting of creditors other than the statutory meeting, or
  - (b) (so far as funds are available) to a dividend out of the debtor's estate in respect of any accounting period,
 is to submit a claim in accordance with this section to the trustee in the sequestration.
- (2) Where the claim is by virtue of—
  - (a) paragraph (a) of subsection (1), it is to be submitted at or before the meeting,
  - (b) paragraph (b) of that subsection, it is to be submitted not later than 8 weeks before the end of the accounting period.
- (3) But subsection (1) is subject to subsection (4) and to section 92(6) to (8).

- (4) A claim submitted by a creditor—
- (a) under section 32 and accepted in whole or in part by the trustee for the purpose of voting at the statutory meeting, or
  - (b) under this section and not rejected in whole,
- is deemed to have been re-submitted for the purpose of obtaining an adjudication as to the creditor's entitlement both to vote at any subsequent meeting and (so far as funds are available) to a dividend in respect of an accounting period or as the case may be of any subsequent accounting period.
- (5) A creditor submits a claim under this section by producing to the trustee—
- (a) a statement of claim in the prescribed form, and
  - (b) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt.
- (6) But the trustee, with the consent of the commissioners if any, may dispense with any requirement under subsection (5) in respect of any debt or of any class of debt.
- (7) Where a creditor (in this subsection referred to as "C") neither resides, nor has a place of business, in the United Kingdom, the trustee—
- (a) is, if the trustee knows where C does reside or have a place of business and if no notification has been given to C under section 30(1), to write to C informing C that C may submit a claim under this section, and
  - (b) may allow C to submit an informal claim in writing.
- (8) Where a creditor has submitted a claim under this section (or under section 32 a statement of claim which has been deemed re-submitted as mentioned in subsection (4)), the creditor may at any time submit a further claim under this section specifying a different amount for the creditor's claim.
- (9) But a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the trustee requires the secured creditor to discharge, or convey or assign, the security under paragraph 5(3) of schedule 1.

## **85 Evidence as to validity or amount of claim**

- (1) The trustee in the sequestration, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under section 84, may require—
- (a) the creditor to produce further evidence, or
  - (b) any other person who the trustee believes can produce relevant evidence to produce such evidence,
- and if the creditor (or as the case may be the other person) refuses or delays to do so, the trustee may apply to the sheriff for an order requiring the creditor (or the other person) to attend for private examination before the sheriff.
- (2) At any private examination under subsection (1)—
- (a) a solicitor or counsel may act on behalf of the trustee, or
  - (b) the trustee may appear on the trustee's own behalf.
- (3) Sections 80(3) to (6) and 83(1) apply, subject to any necessary modifications, to the examination of the creditor (or the other person) as they apply to the examination of a relevant person.

- (4) References in subsections (1) and (3) to the creditor in a case where the creditor is an entity mentioned in section 4(1) are to be construed, unless the context otherwise requires, as references to a person representing the entity.

**86 False claims etc.** Subsections (2) and (3) apply where a creditor produces under section 84 or 85—(a) a statement of claim,

- (b) account,
- (c) voucher, or
- (d) other evidence,

which is false.

- (2) The creditor commits an offence unless it is shown that the creditor neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false.
- (3) The debtor commits an offence if the debtor—
  - (a) knew, or became aware, that the statement of claim, account, voucher or other evidence was false, and
  - (b) failed, as soon as practicable after acquiring such knowledge, to report to the trustee that the statement of claim, account, voucher or other evidence was false.
- (4) A person convicted of an offence under subsection (2) or (3) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
    - (i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
    - (ii) in any other case, to imprisonment for a term not exceeding 3 months,or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or
  - (b) on conviction on indictment—
    - (i) to a fine, or
    - (ii) to imprisonment for a term not exceeding 2 years,or both to a fine and to such imprisonment.

**87 Further provision as to claims**

- (1) A creditor may, in such circumstances as may be prescribed, state the amount of the creditor's claim under section 84 in foreign currency.
- (2) The trustee in the sequestration is, on production of any document to the trustee for the purposes of any of sections 84 to 86—
  - (a) to initial the document,
  - (b) to make an insertion relating to it in the sederunt book, stating the date on which it was produced to the trustee, and

- (c) if requested by the person producing it to return it (if it is not a statement of claim) to that person.
- (3) The submission of a claim under section 84 bars the effect of any enactment or rule of law relating to the limitation of actions.
- (4) Schedule 1 has effect for determining the amount in respect of which the creditor is entitled to claim.

**88 Adjudication of claims**

- (1) At the commencement of every meeting of creditors (other than the statutory meeting) the trustee in the sequestration is, for the purposes of section 89 so far as it relates to voting at the meeting, to accept or reject the claim of each creditor.
- (2) Subsection (3) applies where funds are available for payment of a dividend out of the debtor's estate in respect of an accounting period.
- (3) For the purpose of determining who is entitled to such a dividend, the trustee—
  - (a) is, not later than 4 weeks before the end of the period, to accept or reject every claim submitted (or deemed to have been re-submitted) to the trustee under this Act, and
  - (b) is at the same time to make a decision on any matter required to be specified under paragraph (a) or (b) of subsection (7).
- (4) The trustee is then, as soon as reasonably practicable, to send a list of every claim so accepted or rejected (including its amount and whether it has been accepted or rejected) to the debtor and to every creditor known to the trustee.
- (5) If the amount of a claim is stated in foreign currency, the trustee in adjudicating under subsection (1) or (3) on the claim is to convert the amount into sterling, in such manner as may be prescribed, at the rate of exchange prevailing at the close of business on the date of sequestration.
- (6) Where the trustee rejects a claim, the trustee is without delay to notify the claimant, giving reasons for the rejection.
- (7) Where the trustee accepts or rejects a claim, the trustee is to record in the sederunt book the trustee's decision on the claim, specifying—
  - (a) the amount of the claim accepted by the trustee,
  - (b) the category of debt, and the value of any security, as decided by the trustee, and
  - (c) if the trustee is rejecting the claim, the trustee's reasons for doing so.
- (8) The debtor or any creditor may—
  - (a) if dissatisfied with the acceptance or rejection of any claim, appeal to the sheriff against that acceptance or rejection, or
  - (b) in relation to the acceptance or rejection of any claim, if dissatisfied with a decision in respect of any matter requiring to be specified under subsection (7)(a) or (b), appeal to the sheriff against the decision.
- (9) Except that—
  - (a) a debtor may appeal under subsection (8) if, and only if, the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal,

- (b) if the acceptance or rejection is under subsection (1), any appeal under subsection (8) must be brought within 2 weeks after the acceptance or rejection, and
  - (c) if the acceptance or rejection is under subsection (3), any such appeal must be brought not later than 2 weeks before the end of the accounting period.
- (10) The trustee is to record the sheriff's decision in the sederunt book.
- (11) Any reference in this section to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

*Entitlement to vote and draw a dividend*

**89 Voting and drawing a dividend**

- (1) A creditor whose claim has been accepted in whole or in part by the trustee in the sequestration or on appeal under subsection (8) of section 88 is entitled, in a case where the acceptance is under (or on appeal arising from)—
- (a) subsection (1) of that section, to vote on any matter at the meeting of creditors for the purpose of voting at which the claim is accepted, or
  - (b) subsection (3) of that section, to payment out of the debtor's estate of a dividend in respect of the accounting period for the purposes of which the claim is accepted
- (2) But—
- (a) paragraph (a) of subsection (1) is subject to sections 47(1)(a) and 49(1) and (7)(b), and
  - (b) the entitlement mentioned in paragraph (b) of that subsection arises only in so far as the estate has funds available, having regard to section 90, to make the payment in question.
- (3) No vote is to be cast, by virtue of a debt, more than once on any resolution put to a meeting of creditors.
- (4) Where a creditor—
- (a) is entitled to vote under this section,
  - (b) has lodged the creditor's claim in 1 or more sets of other proceedings, and
  - (c) votes (either in person or by proxy) on a resolution put to the meeting,
- only the creditor's vote is to be counted.
- (5) Subsection (6) applies where—
- (a) a creditor has lodged the creditor's claim in more than 1 set of other proceedings, and
  - (b) more than 1 member State liquidator seeks to vote by virtue of the claim.
- (6) The entitlement to vote by virtue of the claim is exercisable by the member State liquidator in main proceedings whether or not the creditor has lodged the claim in those proceedings.
- (7) For the purposes of subsections (4) to (6), "other proceedings" means main proceedings, secondary proceedings or territorial proceedings in a member State other than the United Kingdom.

*Distribution*

**90 Priority in distribution**

- (1) The funds of the debtor's estate are to be distributed by the trustee in the sequestration to meet the following debts in the order in which they are mentioned—
  - (a) the outlays and remuneration of an interim trustee in the administration of the debtor's estate,
  - (b) the outlays and remuneration of the trustee in the sequestration in the administration of the debtor's estate,
  - (c) where the debtor has died—
    - (i) deathbed and funeral expenses reasonably incurred, and
    - (ii) expenses reasonably incurred in administering the deceased's estate,
  - (d) the expenses reasonably incurred by a creditor who is a petitioner for, or concurs in a debtor application for, sequestration,
  - (e) preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
  - (f) ordinary debts (that is to say, debts which are neither secured debts nor debts mentioned in any other paragraph of this subsection),
  - (g) interest, between the date of sequestration and the date of payment of the debt, at the rate specified in subsection (10) on—
    - (i) the preferred debts, and
    - (ii) the ordinary debts,
  - (h) any postponed debt.
- (2) In this Act, "preferred debt" means a debt listed in Part 1 of schedule 2 to this Act.
- (3) Part 2 of that schedule has effect for the interpretation of Part 1 of that schedule.
- (4) In this Act, "postponed debt" means—
  - (a) a loan made to the debtor, in consideration of a share of the profits in the debtor's business, which is postponed under section 3 of the Partnership Act 1890 (c.39) to the claims of other creditors,
  - (b) a loan made to the debtor by the debtor's spouse or civil partner, or
  - (c) a creditor's right to—
    - (i) anything vesting in the trustee by virtue of a successful challenge under section 62, or
    - (ii) the proceeds of sale of anything so vesting.
- (5) A debt falling within any of paragraphs (c) to (h) of subsection (1) has the same priority as any other debt falling within the same paragraph and, where the funds of the estate are inadequate to enable the debts mentioned in the paragraph in question to be paid in full, those debts are to abate in equal proportions.
- (6) Any surplus remaining after all the debts mentioned in this section have been paid in full is to be made over to the debtor or the debtor's assignees.

- (7) In subsection (6), "surplus"—
  - (a) includes any kind of estate, but
  - (b) does not include any unclaimed dividend.
- (8) Subsection (6) is subject to Article 35 of the EC Regulation (which provides that any surplus in secondary proceedings is to be transferred to main proceedings).
- (9) Nothing in this section affects—
  - (a) any right of a secured creditor which is preferable to the rights of the trustee,
  - (b) any preference of the holder of a lien over a title deed, or other document, which has been delivered to the trustee in accordance with a requirement under section 71(5).
- (10) The rate of interest referred to in paragraph (g) of subsection (1) is whichever is the greater of—
  - (a) the prescribed rate at the date of sequestration, and
  - (b) the rate applicable to that debt apart from the sequestration.

## **91 Accounting periods**

- (1) The trustee in the sequestration is to make up accounts of the trustee's intromissions with the debtor's estate in respect of each accounting period.
- (2) In this Act, "accounting period" is to be construed as follows—
  - (a) the first accounting period is the period of 12 months beginning with the date on which sequestration is awarded, and
  - (b) subject to the exception mentioned in subsection (4), any subsequent accounting period is the period of 12 months beginning when its immediately preceding accounting period ends.
- (3) But—
  - (a) paragraph (a) of subsection (2) is subject to subsection (4), and
  - (b) paragraph (b) of subsection (2) is subject to the exception that—
    - (i) in a case where AiB is not the trustee, the trustee and the commissioners (or, if there are no commissioners, the trustee and AiB) agree, or
    - (ii) in a case where AiB is the trustee, the trustee determines, that an accounting period is to be some other period beginning when its immediately preceding accounting period ends, it is that other period.
- (4) Where the trustee was appointed under section 37(8) as interim trustee in the sequestration, the first accounting period is the period—
  - (a) beginning with the date of the appointment as interim trustee, and
  - (b) ending on the date 12 months after that on which sequestration is awarded.

- (5) An agreement under sub-paragraph (i), or determination under sub-paragraph (ii), of subsection (3)(b)—
  - (a) may be made in respect of one accounting period or more,
  - (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, is not to have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended,
  - (c) may provide for different accounting periods to be of different duration, and
  - (d) is to be recorded in the sederunt book by the trustee.

**92 Distribution in accordance with accounting periods**

- (1) The trustee in the sequestration is—
  - (a) if the funds of the debtor's estate are sufficient, and
  - (b) after making allowance for future contingencies,
 to pay, under section 93(1), a dividend out of the estate in respect of each accounting period.
- (2) But subsection (1) is subject to the following provisions of this section.
- (3) The trustee may pay—
  - (a) the debts mentioned in paragraphs (a) to (d) of section 90(1), other than the trustee's own remuneration, at any time,
  - (b) the preferred debts at any time but only with the consent of the commissioners or, if there are no commissioners, of AiB.
- (4) If, in respect of an accounting period, the trustee—
  - (a) is not ready to pay a dividend, or
  - (b) considers it would be inappropriate to pay a dividend because the expense of doing so would be disproportionate to the amount of the dividend,
 the trustee may, with the consent of the commissioners or, if there are no commissioners, of AiB, postpone the payment to a date not later than the time for payment of a dividend in respect of the next accounting period.
- (5) Where an appeal is taken under section 88(9)(c) against the acceptance or rejection of a creditor's claim the trustee is, at the time of payment of dividends and until the appeal is determined, to set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.
- (6) Where a creditor—
  - (a) has failed to produce evidence in support of the creditor's claim earlier than 8 weeks before the end of an accounting period on being required to do so under section 84(1), and
  - (b) has given a reason for such failure which is acceptable to the trustee,
 the trustee is to set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the trustee to be satisfied under that

section, an amount which would be sufficient, were the claim accepted in full, to pay a dividend in respect of that claim.

- (7) Where a creditor submits a claim to the trustee later than 8 weeks before the end of an accounting period but more than 8 weeks before the end of a subsequent accounting period in respect of which, after making allowance for future contingencies, funds are available for the payment of a dividend, the trustee is, if the trustee accepts the claim in whole or in part, to pay to the creditor—
  - (a) the same dividend as has, or dividends as have, already been paid to creditors of the same class in respect of any accounting period or periods, and
  - (b) whatever dividend may be payable to the creditor in respect of the subsequent accounting period mentioned above.
- (8) But paragraph (a) of subsection (7) is without prejudice to any dividend which has already been paid.
- (9) In the declaration of, and payment of, a dividend, no payments are to be made more than once by virtue of the same debt.
- (10) Any dividend paid in respect of a claim is to be paid to the creditor.

*Procedure after end of accounting period*

**93 Submission of accounts and scheme of division**

- (1) Within 2 weeks after the end of an accounting period the trustee in the sequestration is, in respect of that period, to submit to the commissioners (or, if there are no commissioners, to AiB)—
  - (a) the trustee's accounts of the trustee's intromissions with the estate of the debtor for audit and, where funds are available after making allowance for future contingencies, a scheme of division of the divisible funds, and
  - (b) a claim for the outlays reasonably incurred by the trustee and for the trustee's remuneration.
- (2) Where documents mentioned in subsection (1) are submitted to the commissioners, the trustee is to send a copy of them to AiB.
- (3) All accounts in respect of legal services incurred by the trustee are, before they are paid by the trustee, to be submitted for taxation to the auditor of the court before which the sequestration is pending.
- (4) But subsection (3) is subject to subsection (5).
- (5) Where—
  - (a) any such account has been agreed between the trustee and the person entitled to payment in respect of that account,
  - (b) the trustee is not an associate of that person, and
  - (c) the commissioners have (or, if there are no commissioners, AiB has) determined that the account need not be submitted for taxation,

the trustee may pay the account without submitting it for taxation.

**94 Audit of accounts and determination as to outlays and remuneration payable to trustee**

(1) Within 6 weeks after the end of an accounting period—(a) the commissioners (or, as the case may be, AiB)—

- (i) may audit the accounts, and
  - (ii) are (or is) to issue a determination fixing the amount of the outlays and the remuneration payable to the trustee in the sequestration, and
- (b) the trustee is to make the audited accounts, scheme of division and that determination available for inspection by the debtor and the creditors.
- (2) The basis for fixing the amount of the remuneration payable to the trustee may be a commission calculated by reference to the value of the debtor's estate which has been realised by the trustee.
  - (3) But there is in any event to be taken into account—
    - (a) the work which, having regard to that value, was reasonably undertaken by the trustee, and
    - (b) the extent of the trustee's responsibilities in administering the debtor's estate.
  - (4) In fixing the amount of such remuneration in respect of any accounting period, the commissioners (or, as the case may be, AiB) may take into account any adjustment which the commissioners or AiB may wish to make in the amount of remuneration fixed in respect of any earlier accounting period.

**95 Appeal against determination as to outlays and remuneration payable to trustee**

- (1) Not later than 8 weeks after the end of an accounting period the trustee in the sequestration, the debtor or any creditor may appeal against a determination issued under subsection (1)(a)(ii)—
  - (a) to AiB where it is a determination of the commissioners, and
  - (b) to the sheriff where it is a determination of AiB.
- (2) But subsection (1) is subject to subsection (4).
- (3) The determination of AiB in an appeal under paragraph (a) of subsection (1) is appealable to the sheriff (whose decision on an appeal under this subsection or under paragraph (b) of subsection (1) is final).
- (4) The debtor may appeal under subsection (1) if, and only if, the debtor satisfies AiB, or as the case may be the sheriff, that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.
- (5) Before the debtor or a creditor appeals under subsection (1) or (3), debtor or as the case may be the creditor must give notice to the trustee of the intention to appeal.

**96 Further provision as to procedure after end of accounting period**

- (1) On—
  - (a) the expiry of the 8 weeks mentioned in section 95(1), or
  - (b) if there is an appeal under that subsection, on the final determination of the last such appeal,

the trustee in the sequestration is to pay to the creditors their dividends in accordance with the scheme of division.

- (2) Any dividend—
  - (a) allocated to a creditor but not cashed or uplifted, or
  - (b) dependent on a claim in respect of which an amount has been set aside under subsection (5) or (6) of section 92,is to be deposited by the trustee in an appropriate bank or institution.
- (3) If a creditor's claim is revalued, the trustee may—
  - (a) in paying any dividend to that creditor, make such adjustment to it as the trustee considers necessary to take account of that revaluation, or
  - (b) require the creditor to repay to the trustee the whole or part of a dividend already paid to the creditor.
- (4) The trustee is to insert in the sederunt book the audited accounts, the scheme of division and the final determination in relation to the trustee's outlays and remuneration.

**97 Procedure after end of accounting period where Accountant in Bankruptcy is trustee**

- (1) In any case where AiB is the trustee in the sequestration, AiB is at the end of each accounting period to prepare accounts of AiB's intromissions with the estate of the debtor and is to make a determination of AiB's fees and outlays calculated in accordance with regulations under section 124.
- (2) Such accounts and determination are to be available for inspection by the debtor and the creditors by not later than 6 weeks after the end of the accounting period to which they relate.
- (3) In making a determination as mentioned in subsection (1), AiB may take into account any adjustment which AiB may wish to make in the amount of AiB's 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 AiB's determination.
- (5) But subsection (4) is subject to subsection (7).
- (6) The decision of the sheriff on an appeal under subsection (4) is final.
- (7) The debtor may appeal under subsection (4) if, and only if, the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.
- (8) Before the debtor or a creditor appeals under subsection (4), debtor or as the case may be the creditor must give notice to AiB of the intention to appeal.
- (9) On the expiry of the 8 weeks mentioned in subsection (4), AiB is to pay to the creditors their dividends in accordance with the scheme of division.
- (10) Any dividend—
  - (a) allocated to a creditor but not cashed or uplifted, or
  - (b) dependent on a claim in respect of which an amount has been set aside under subsection (5) or (6) of section 92,

is to be deposited by AiB in an appropriate bank or institution.

- (11) If a creditor's claim is revalued, AiB may—
  - (a) in paying any dividend to that creditor, make such adjustment to it as AiB considers necessary to take account of that revaluation, or
  - (b) require the creditor to repay to AiB the whole or part of a dividend already paid to the creditor.
- (12) AiB is to insert in the sederunt book AiB's accounts, the scheme of division and the final determination in relation to AiB's outlays and remuneration.

## **PART 10**

### DISCHARGE

#### *Discharge of debtor*

#### **98 Automatic discharge of debtor**

- (1) The debtor is to be discharged on the expiry of one year after the date of sequestration.
- (2) But subsection (1) is subject to subsection (3) and to section 99.
- (3) If the debtor has been discharged under or by virtue of this section, the debtor may apply to AiB for a certificate that the debtor has been so discharged and AiB, if satisfied of such discharge, is to grant a certificate of discharge in the prescribed form.

#### **99 Deferral of automatic discharge**

- (1) The trustee in the sequestration or any creditor may, not later than 9 months after the date of sequestration, apply to the sheriff for a deferment of the discharge of a debtor by virtue of section 98(1).
- (2) On any such application the sheriff is to order—
  - (a) the applicant to serve the application on the debtor and (if the trustee is not the applicant and has not been discharged) on the trustee, and
  - (b) the debtor to lodge in court a declaration—
    - (i) that the debtor has made a full and fair surrender of the debtor's estate and a full disclosure of all claims which the debtor is entitled to make against other persons, and
    - (ii) that the debtor has delivered to the trustee every document under the debtor's control relating to the debtor's estate or the debtor's business or financial affairs.
- (3) If the debtor fails to lodge the declaration in court within 14 days of being so ordered to do so, the sheriff is to defer the debtor's discharge, without a hearing, for a period not exceeding 2 years.
- (4) If the debtor lodges the declaration within that 14 days, the sheriff is to—
  - (a) fix a date for hearing not earlier than 28 days after the declaration is lodged, and

- (b) order the applicant to notify—
    - (i) the debtor, and
    - (ii) the trustee (or, if the trustee has been discharged, AiB),  
of the date so fixed.
- (5) The trustee (or, if the trustee has been discharged, AiB) is, not later than 7 days before the date so fixed, to lodge in court a report upon—
  - (a) the debtor's assets and liabilities,
  - (b) the debtor's financial and business affairs,
  - (c) the debtor's conduct in relation to those affairs,
  - (d) the sequestration, and
  - (e) the debtor's conduct in the course of the sequestration.
- (6) After considering at the hearing any representations made by the applicant, by the debtor or by any creditor, the sheriff is to make an order either—
  - (a) deferring the discharge for such period not exceeding 2 years as the sheriff thinks appropriate, or
  - (b) dismissing the application.
- (7) The applicant or the debtor may, within 14 days after an order under subsection (6) is made, appeal against that order.
- (8) Where the discharge is deferred under subsection (3) or (6) the clerk of the court is to send—
  - (a) a certified copy of the order deferring discharge to the Keeper of the Register of Inhibitions for recording in that register, and
  - (b) a copy of that order—
    - (i) to AiB, and
    - (ii) to the trustee (if not discharged) for insertion in the sederunt book.
- (9) If the debtor's discharge has been deferred under subsection (3) or (6), the debtor may—
  - (a) at any time after that deferral, and
  - (b) provided the debtor lodges in court a declaration as to the matters mentioned in sub-paragraphs (i) and (ii) of subsection (2)(b),  
petition the sheriff for discharge.
- (10) Subsections (4) to (8) apply, with any necessary modifications, in relation to the proceedings which follow the lodging of a declaration under subsection (9)(b) as they apply in relation to the proceedings which follow the timeous lodging of a declaration under subsection (2)(b).
- (11) The trustee or any creditor may, not later than 3 months before the end of a period of deferment, apply to the sheriff for a further deferment of the discharge.
- (12) Subsections (2) to (11) apply in relation to any such further deferment.

**100 Effect of discharge under section 98**

- (1) On the discharge of the debtor under section 98, the debtor is discharged of all debts and obligations contracted by the debtor, or for which the debtor was liable, at the date of sequestration.
- (2) Subsection (1) is subject to subsections (3) and (5).
- (3) The debtor is not discharged by virtue of subsection (1) from—
  - (a) any liability to pay a fine or other penalty due to the Crown,
  - (b) any liability to pay a fine imposed in a justice of the peace court (or a district court),
  - (c) any liability under a compensation order (within the meaning of section 249 of the Criminal Procedure (Scotland) Act 1995 (c.46)),
  - (d) any liability to forfeiture of a sum of money deposited in court under section 24(6) of the Criminal Procedure (Scotland) Act 1995 (c.46),
  - (e) any liability incurred by reason of fraud or breach of trust,
  - (f) any obligation to pay—
    - (i) aliment, or any sum of an alimentary nature, under any enactment or rule of law, or
    - (ii) any periodical allowance payable on divorce by virtue of a court order or under an obligation, or
  - (g) the obligation imposed on the debtor by section 131.
- (4) The obligations mentioned in paragraph (f) of subsection (3) do not include—
  - (a) aliment, or a periodical allowance, which could be included in the amount of a creditor's claim under paragraph 2 of schedule 1, or
  - (b) child support maintenance within the meaning of the Child Support Act 1991 (c.48) which was unpaid in respect of any period before the date of sequestration of—
    - (i) any person by whom it was due to be paid, or
    - (ii) any employer by whom it was, or was due to be, deducted under section 31(5) of that Act.
- (5) The discharge of the debtor under section 98 does not affect any right of a secured creditor for a debt or other obligation in respect of which the debtor has been discharged, to enforce the security in respect of that debt or obligation.
- (6) In subsection (3)(a), the reference to a fine or other penalty due to the Crown includes a reference to a confiscation order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (c.29).
- (7) In construing subsection (3)(b), paragraph 33(1) of the schedule to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (construction of references to the district court) is to be disregarded.

**101 Discharge on composition**

Schedule 3 to this Act has effect in relation to—

- (a) an offer of composition by or on behalf of the debtor to the trustee in the sequestration in respect of the debtor's debts, and
- (b) where the offer is approved, the debtor's discharge and the discharge of the trustee.

*Discharge of trustee*

**102 Discharge of trustee**

- (1) After the trustee in the sequestration has made a final division of the debtor's estate and has inserted the trustee's final audited accounts in the sederunt book, the trustee—
  - (a) is to deposit any unclaimed dividends and any unapplied balances in an appropriate bank or institution,
  - (b) on that being done—
    - (i) is to send to AiB the sederunt book, a copy of the audited accounts and a receipt for the deposit of the unclaimed dividends and unapplied balances, and
    - (ii) may at the same time apply to AiB for a certificate of discharge.
- (2) The trustee is to send, to the debtor and to all the creditors known to the trustee, notice of any application under subsection (1)(b)(ii) and is to inform the debtor and such creditors—
  - (a) that written representations relating to the application may be made by them to AiB within the period of 14 days after the notification,
  - (b) that the sederunt book is available for inspection at the office of AiB and contains the audited accounts of, and scheme of division in, the sequestration, and
  - (c) of the effect mentioned in subsection (7).
- (3) On the expiry of the period mentioned in subsection (2)(a), AiB, after examining the documents sent to AiB and considering any representations duly made to AiB, is to—
  - (a) grant or refuse to grant the certificate of discharge, and
  - (b) notify accordingly (in addition to the trustee)—
    - (i) the debtor, and
    - (ii) all creditors who made such representations.
- (4) Within 14 days after the issuing of the determination under subsection (3)—
  - (a) the trustee,
  - (b) the debtor, or
  - (c) any creditor who made representations under subsection (2)(a),may appeal against the determination to the sheriff.
- (5) If, on an appeal under subsection (4), the sheriff determines that a certificate of discharge which has been refused should be granted—
  - (a) the sheriff is to order AiB to grant it, and

- (b) the sheriff clerk is to send AiB a copy of the sheriff's decree.
- (6) The decision of the sheriff on an appeal under subsection (4) is final.
- (7) The grant of a certificate of discharge under this section has the effect of discharging the trustee from all liability (other than any liability arising from fraud)—
  - (a) to the debtor, or
  - (b) to the creditors,
 in respect of any act or omission of the trustee in exercising the functions conferred on the trustee by this Act (including, where the trustee was also the interim trustee, the functions so conferred on him as interim trustee).
- (8) Where a certificate of discharge is granted under this section, AiB is to make an appropriate entry in—
  - (a) the register of insolvencies, and
  - (b) in the sederunt book.
- (9) The provisions of this section apply (subject to any necessary modifications)—
  - (a) where a trustee has died, to the trustee's executor, or
  - (b) where a trustee has resigned office or been removed from office, to that trustee,
 as they apply to a trustee who has made a final division of the debtor's estate in accordance with the preceding provisions of this Act.
- (10) This section does not apply in any case where AiB is trustee.

**103 Unclaimed dividends**

- (1) Any person producing evidence of that person's right may apply to AiB to receive a dividend deposited under section 102(1)(a) or 104(3) if the application is made not later than 7 years after the date of deposit.
- (2) If AiB is satisfied of that person's right to the dividend, AiB is to authorise the bank or institution in which the deposit was made to pay to the person the amount of the dividend and of any interest which has accrued on the dividend.
- (3) AiB is, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 102(1)(a) or 104(3), to hand over the deposit receipt or other voucher relating to the dividend or balance to the Scottish Ministers who on that being done are entitled to payment of the amount due (principal and interest) from the bank or institution in which the deposit was made.

**104 Discharge of Accountant in Bankruptcy**

- (1) This section applies where AiB has acted as the trustee in the sequestration.
- (2) After AiB has made a final division of the debtor's estate, AiB is to insert in the sederunt book—
  - (a) AiB's final accounts of his intromissions (if any) with the debtor's estate,
  - (b) the scheme of division (if any), and
  - (c) a determination of AiB's fees and outlays, calculated in accordance with regulations made under section 124 of this Act.

- (3) AiB is to deposit any unclaimed dividends and any unapplied balances in an appropriate bank or institution.
- (4) AiB is to send to the debtor and to all creditors known to AiB—
  - (a) a copy of the determination mentioned in subsection (2)(c),
  - (b) a notice in writing stating—
    - (i) that AiB has commenced the procedure under this Act leading to discharge in respect of AiB's actings as trustee,
    - (ii) that the sederunt book relating to the sequestration is available for inspection at such address as AiB may determine,
    - (iii) that an appeal may be made to the sheriff under subsection (5), and
    - (iv) what the effect of subsections (8) and (9) is.
- (5) The debtor or any creditor may appeal to the sheriff against—
  - (a) the determination of AiB mentioned in subsection (2)(c),
  - (b) the discharge of AiB in respect of AiB's actings as trustee, or
  - (c) both such determination and discharge.
- (6) Any appeal under subsection (5) is to be made not more than 14 days after the issue of the notice mentioned in subsection (4)(b).
- (7) The decision of the sheriff in an appeal under subsection (5) is final.
- (8) Subsection (9) applies where—
  - (a) the requirements of this section have been complied with, and
  - (b) no appeal is made under subsection (5) or such an appeal is made but is refused as regards the discharge of AiB.
- (9) AiB is discharged from all liability (other than any liability arising from fraud)—
  - (a) to the debtor, or
  - (b) to the creditors,
 in respect of any act or omission of AiB in exercising the functions of trustee in the sequestration.
- (10) Where AiB is discharged from all liability as mentioned in subsection (9), AiB is to make an entry in the sederunt book recording the discharge.

## PART 11

### BANKRUPTCY RESTRICTIONS ORDERS, INTERIM BANKRUPTCY RESTRICTIONS ORDERS AND BANKRUPTCY RESTRICTIONS UNDERTAKINGS

#### *Bankruptcy restrictions orders*

#### **105 Bankruptcy restrictions order**

- (1) Where sequestration of a living debtor's estate is awarded, an order (to be known as a "bankruptcy restrictions order") in respect of the debtor may be made by the sheriff.
- (2) A bankruptcy restrictions order may be made only on the application of AiB.

## 106 Grounds for making bankruptcy restrictions order

- (1) The sheriff is to grant an application for a bankruptcy restrictions order if the sheriff thinks it appropriate having regard to the conduct, whether before or after the date of sequestration, of the debtor.
- (2) The sheriff is, in particular, to take into account any of the following kinds of behaviour on the part of the debtor—
  - (a) failing to keep records which account for a loss of property—
    - (i) by the debtor, or
    - (ii) by a business carried on by the debtor,  
where the loss occurred in the period beginning 2 years before the date of presentation of the petition for sequestration, or as the case may be the date the debtor application was made, and ending with the date of the application for a bankruptcy restrictions order,
  - (b) failing to produce records of that kind on demand by—
    - (i) AiB,
    - (ii) the interim trustee, or
    - (iii) the trustee in the sequestration,
  - (c) making a gratuitous alienation or any other alienation—
    - (i) for no consideration, or
    - (ii) for no adequate consideration,  
which a creditor has, under any rule of law, right to challenge,
  - (d) creating an unfair preference, or any other preference, which a creditor has, under any rule of law, right to challenge,
  - (e) making an excessive pension contribution,
  - (f) failing to supply goods or services which were wholly or partly paid for, where the failure has given rise to a claim submitted by a creditor under section 32 or 84,
  - (g) trading at a time before the date of sequestration when the debtor knew, or ought to have known, that the debtor was unable to meet the debtor's debts,
  - (h) incurring, before the date of sequestration, a debt which the debtor had no reasonable expectation of being able to pay,
  - (i) failing to account satisfactorily to the sheriff, AiB, the interim trustee or the trustee, for—
    - (i) a loss of property, or
    - (ii) an insufficiency of property to meet the debtor's debts,
  - (j) carrying on any gambling, speculation or extravagance—
    - (i) which may have contributed materially to, or increased the extent of, the debtor's debts, or
    - (ii) which took place between the date of presentation of the petition for sequestration, or as the case may be the date the debtor application was made, and the date on which sequestration is awarded,

- (k) neglect of business affairs, being neglect of a kind which may have contributed materially to, or increased the extent of, the debtor's debts,
  - (l) fraud or breach of trust,
  - (m) failing to co-operate with—
    - (i) AiB,
    - (ii) the interim trustee, or
    - (iii) the trustee in the sequestration.
- (3) The sheriff is also, in particular, to consider whether the debtor—
- (a) has previously been sequestrated, and
  - (b) remained undischarged from that sequestration at any time during the period of 5 years ending with the date of the sequestration to which the application relates.
- (4) For the purposes of subsection (2)—
- "excessive pension contribution" is to be construed in accordance with section 65, and
- "gratuitous alienation" means an alienation challengeable under section 62.

**107 Bankruptcy restrictions order: application of section 134(8)**

- (1) Where the sheriff thinks it appropriate, the sheriff may specify in a bankruptcy restrictions order that section 134(8) is to apply to the debtor, during the period the debtor is subject to the order, as if the debtor were a debtor within the meaning of section 134(10)(a).
- (2) But for the purposes of subsection (1), section 134(10) has effect as if, for paragraph (c) of that section, there were substituted—
  - "(c) the "relevant information" about the status of the debtor is the information that (as the case may be)—
    - (i) the debtor is subject to a bankruptcy restrictions order, or
    - (ii) where the debtor's estate has been sequestrated and the debtor has not been discharged, that fact."

**108 Timing of application for bankruptcy restrictions order**

- (1) Any application for a bankruptcy restrictions order must be made within the period which begins with the date of sequestration and ends with the date on which the debtor's discharge becomes effective.
- (2) Except that, with the permission of the sheriff, such an application may be made after the end of the period referred to in subsection (1).

**109 Duration of bankruptcy restrictions order and application for annulment**

- (1) A bankruptcy restrictions order—
  - (a) comes into force when made, and
  - (b) ceases to have effect at the end of a day specified in the order.

- (2) The day specified under subsection (1)(b) must not be a day—
  - (a) before the end of the period of 2 years, or
  - (b) after the end of the period of 15 years,which begins on the day the order is made.
- (3) On application by the debtor, the sheriff may—
  - (a) annul a bankruptcy restrictions order, or
  - (b) vary it.
- (4) Variation under subsection (3)(b) may include providing for such an order to cease to have effect at the end of a day earlier than that specified under subsection (1)(b).

*Interim bankruptcy restrictions orders*

**110 Interim bankruptcy restrictions orders**

- (1) This section applies at any time between—
  - (a) the making of an application for a bankruptcy restrictions order, and
  - (b) the determination of the application.
- (2) The sheriff may make an interim bankruptcy restrictions order if the sheriff thinks—
  - (a) that there are *prima facie* grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
  - (b) that it is in the public interest to make an interim bankruptcy restrictions order.
- (3) An interim bankruptcy restrictions order—
  - (a) may be made only on the application of AiB,
  - (b) has the same effect as a bankruptcy restrictions order, and
  - (c) comes into force when made.
- (4) An interim bankruptcy restrictions order ceases to have effect—
  - (a) on the determination of the application for a bankruptcy restrictions order,
  - (b) on the acceptance of a bankruptcy restrictions undertaking made by the debtor, or
  - (c) if the sheriff discharges the interim bankruptcy restrictions order on the application of AiB or of the debtor.
- (5) Where a bankruptcy restrictions order is made in respect of a debtor who is subject to an interim bankruptcy restrictions order, subsection (2) of section 109 has effect in relation to the bankruptcy restrictions order as if the reference in that subsection to the day the order is made were a reference to the day the interim bankruptcy restrictions order is made.

*Bankruptcy restriction undertakings*

**111 Bankruptcy restrictions undertakings**

- (1) A living debtor not subject to a bankruptcy restrictions order may offer an undertaking (to be known as a "bankruptcy restrictions undertaking") to AiB.

- (2) In determining whether to accept a bankruptcy restrictions undertaking, AiB is to have regard to the matters specified in section 106(2) and (3).
- (3) A bankruptcy restrictions undertaking—
  - (a) takes effect on being accepted by AiB, and
  - (b) ceases to have effect at the end of a day specified in the undertaking.
- (4) The day specified under subsection (3)(b) must not be a day—
  - (a) before the end of the period of 2 years, or
  - (b) after the end of the period of 15 years,
 which begins on the day the undertaking is accepted.
- (5) On application by the debtor, the sheriff may—
  - (a) annul a bankruptcy restrictions undertaking, or
  - (b) vary it.
- (6) Variation under subsection (5)(b) may include providing for such an undertaking to cease to have effect at the end of a day earlier than that specified under subsection (3)(b).

**112 Bankruptcy restrictions undertakings: application of section 134(8)**

- (1) A debtor may, with the agreement of AiB, specify in a bankruptcy restrictions undertaking that subsection (8) of section 134 is to apply to the debtor, during the period the undertaking has effect, as if the debtor were a debtor within the meaning of subsection (10)(a) of that section.
- (2) But for the purposes of subsection (1), section 134 has effect as if, for paragraph (c) of subsection (10) of that section, there were substituted—
  - "(c) the "relevant information" about the status of the debtor is the information that (as the case may be)—
    - (i) the debtor is subject to a bankruptcy restrictions undertaking, or
    - (ii) where the debtor's estate has been sequestrated and the debtor has not been discharged, that fact."

**113 Bankruptcy restrictions orders, interim bankruptcy restrictions orders and bankruptcy restrictions undertakings: effect of recall of sequestration**

- (1) Where an award of sequestration of a debtor's estate is recalled under section 25(1) (or (2))—
  - (a) the sheriff may annul any bankruptcy restrictions order, interim bankruptcy restrictions order or bankruptcy restrictions undertaking in force in respect of the debtor,
  - (b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor, and
  - (c) no new bankruptcy restrictions undertaking by the debtor may be accepted.

- (2) Where the sheriff refuses to annul, under subsection (1)(a), a bankruptcy restrictions order, interim bankruptcy restrictions order or bankruptcy restrictions undertaking the debtor may, no later than 28 days after that on which the award of sequestration is recalled, appeal to the sheriff principal against the refusal.
- (3) The decision of the sheriff principal on an appeal under subsection (2) is final.

*Effect of discharge on approval of offer of composition*

**114 Effect of discharge on approval of offer of composition**

- (1) This section applies where a certificate of discharge is granted, under paragraph 13(1) of schedule 3 to this Act, discharging a debtor.
- (2) The debtor remains subject to any bankruptcy restrictions order, interim bankruptcy restrictions order or bankruptcy restrictions undertaking in force in respect of the debtor.
- (3) But subsection (2) is subject to sections 109(3)(a), 110(4)(c) and 111(5)(a).
- (4) The sheriff may make a bankruptcy restrictions order in relation to the debtor on an application made before the discharge.
- (5) AiB may accept a bankruptcy restrictions undertaking offered before the discharge.
- (6) No application for a bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.

**PART 12**

VOLUNTARY TRUST DEEDS FOR CREDITORS

**115 Voluntary trust deeds for creditors**

Schedule 4 has effect in relation to trust deeds executed after 1 April 1986 (the date of commencement of section 59 of the Bankruptcy (Scotland) Act 1985 (c.66)).

**116 Petition for conversion into sequestration**

- (1) This section applies where a member State liquidator proposes to petition the sheriff for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a protected trust deed into sequestration.
- (2) An affidavit complying with section 117 must be—
  - (a) prepared and sworn, and
  - (b) lodged in court in support of the petition.
- (3) The petition and affidavit required under subsection (2) are to be served upon—
  - (a) the debtor,
  - (b) the trustee, and
  - (c) such other person as may be prescribed.

**117 Contents of affidavit required under section 116(2)**

- (1) An affidavit required under section 116(2) must—
  - (a) state that main proceedings have been opened in relation to the debtor in a member State other than the United Kingdom,
  - (b) state that the member State liquidator believes that the conversion of the protected trust deed into a sequestration would prove to be in the interests of the creditors in the main proceedings,
  - (c) contain such other information as the member State liquidator considers will be of assistance to the sheriff—
    - (i) in deciding whether to make an order under section 118, and
    - (ii) if the sheriff were to do so, in considering the need for any consequential provision that would be necessary or desirable, and
  - (d) contain such other matters as may be prescribed.
- (2) Any affidavit under this section must be sworn by, or on behalf of, the member State liquidator.

**118 Power of sheriff on petition for conversion into sequestration**

- (1) On hearing the petition for conversion into sequestration, the sheriff may make such order as the sheriff thinks fit.
- (2) If the sheriff makes an order for conversion into sequestration, the order may contain all such consequential provisions as the sheriff thinks necessary or desirable.
- (3) The provisions of this Act apply to an order made by the sheriff under subsection (1) as if the order were a determination by AiB of a debtor application—
  - (a) under section 19(1), and
  - (b) in relation to which the member State liquidator is a concurring creditor.
- (4) On the sheriff making an order for conversion into sequestration under subsection (1), any expenses properly incurred as expenses of the administration of the trust deed in question become a first charge on the debtor's estate.

**PART 13**

ACCOUNTANT IN BANKRUPTCY

*Appointment*

**119 Accountant in Bankruptcy**

- (1) AiB is to be appointed by the Scottish Ministers and is an officer of the court.
- (2) The Scottish Ministers may appoint a member of the staff of AiB—
  - (a) to be Depute Accountant in Bankruptcy, and
  - (b) as Depute Accountant in Bankruptcy, to exercise all the functions of the AiB at any time when AiB is unable to do so.

## *Functions*

### **120 Supervisory functions of Accountant in Bankruptcy**

- (1) AiB has, in the administration of sequestration and personal insolvency, the following general functions—
  - (a) as regards interim trustees (not being AiB), trustees in sequestrations (not being AiB), trustees under protected trust deeds and commissioners—
    - (i) supervision of the performance by them of the functions conferred on them by this Act, or by any other enactment or by any rule of law, and
    - (ii) the investigation of any complaints made against them,
  - (b) the determination of debtor applications,
  - (c) the maintenance of a register (in this Act referred to as the "register of insolvencies"), in such form as may be prescribed by act of sederunt,
  - (d) the preparation of an annual report, and
  - (e) such other functions as may from time to time be conferred on AiB by the Scottish Ministers.
- (2) The register of insolvencies is to contain particulars of—
  - (a) estates which have been sequestrated,
  - (b) trust deeds sent to AiB for registration,
  - (c) bankruptcy restrictions orders, interim bankruptcy restrictions orders and bankruptcy restrictions undertakings,
  - (d) orders made under subsection (4)(b) of section 57 and agreements made under subsection (1) of section 58, and
  - (e) the winding up and receivership of business associations which the Court of Session has jurisdiction to wind up.
- (3) The annual report is to be presented to the Scottish Ministers and the Court of Session and is to contain—
  - (a) statistical information relating to—
    - (i) the state of all sequestrations,
    - (ii) the winding up and receivership of business associations of which particulars have been registered in the register of insolvencies during the year to which the report relates,
  - (b) particulars of trust deeds registered as protected trust deeds in that year, and
  - (c) particulars of the performance of AiB's functions under this Act.
- (4) If it appears to AiB that a person mentioned in paragraph (a) of subsection (1) has failed, without reasonable excuse, to perform a duty imposed on that person by any provision of this Act, or by any other enactment or by any rule of law, AiB is to report the matter to the sheriff who, after hearing the person on the matter, may—
  - (a) remove the person from office,
  - (b) censure the person, or
  - (c) make such other order as the circumstances of the case may require.

- (5) Where AiB has reasonable grounds to suppose that an offence has been committed—
- (a) by a person mentioned in paragraph (a) of subsection (1),
  - (b) in relation to a sequestration, by the debtor in respect of the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or
  - (c) in relation to a sequestration, by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the trustee in the sequestration in respect of the debtor's assets or the debtor's business or financial affairs,

AiB is to report the matter to the Lord Advocate.

- (6) AiB is to—
- (a) make the register of insolvencies available for inspection at all reasonable times, and
  - (b) provide any person, on request, with a certified copy of an entry in the register.
- (7) In subsections (2) and (3), "business association" has the meaning given in section C2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

#### **121 Performance of certain functions of the Accountant in Bankruptcy**

- (1) The functions of AiB, other than functions conferred by section 120, may be carried out on AiB's behalf by any member of AiB's staff authorised by AiB to do so.
- (2) Without prejudice to subsection (1), AiB may appoint, on such terms and conditions as AiB considers appropriate, such persons as AiB considers fit to perform on AiB's behalf any of AiB's functions in respect of the sequestration of the estate of any debtor.
- (3) A person appointed under subsection (2) must comply with such general or specific directions as AiB may from time to time give to such person as to the performance of those functions.
- (4) AiB may pay a person so appointed such fee as AiB may consider appropriate.

#### **122 Further duty of Accountant in Bankruptcy**

AiB is, on receiving any notice under section 109(1) of the Insolvency Act 1986 (c.45) in relation to a community interest company, to forward a copy of that notice to the Regulator of Community Interest Companies.

#### *Directions to Accountant in Bankruptcy*

#### **123 Directions to Accountant in Bankruptcy**

- (1) The Scottish Ministers may, after consultation with the Lord President of the Court of Session, give AiB general directions as to the performance of AiB's functions under this Act.
- (2) Directions under this section may be given in respect of—
  - (a) all cases, or
  - (b) any class or description of cases,but are not to be given in respect of a particular case.
- (3) AiB must comply with any directions given under this section.

**124 Fees for Accountant in Bankruptcy**

The Scottish Ministers may prescribe—

- (a) the fees and outlays to be payable to AiB in respect of the exercise of any of AiB's functions under this Act or the Insolvency Act 1986,
- (b) the time at or by which, and the manner in which, such fees and outlays are to be paid, and
- (c) the circumstances, if any, in which AiB may allow—
  - (i) exemption from payment, or
  - (ii) the remission or modification of payment,of any fees or outlays payable to AiB.

**PART 14**

MISCELLANEOUS AND GENERAL

*Miscellaneous*

**125 Liabilities and rights of co-obligants**

- (1) Where a creditor has an obligant bound to the creditor along with the debtor for the whole or part of the debt, the obligant is not freed or discharged from the obligant's liability for the debt by reason of the discharge of the debtor or by virtue of the creditor's voting or drawing a dividend or assenting to, or not opposing—
  - (a) the discharge of the debtor, or
  - (b) any composition.
- (2) Where—
  - (a) the creditor has had a claim accepted in whole or in part, and
  - (b) the obligant holds a security over any part of the debtor's estate,the obligant is to account to the trustee in the sequestration so as to put the estate in the same position as if the obligant had paid the debt to the creditor and thereafter had had the obligant's claim accepted in whole or in part in the sequestration after deduction of the value of the security.
- (3) The obligant may require and obtain at the obligant's own expense from the creditor an assignation of the debt on payment of the amount of the debt and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.
- (4) Subsection (3) is without prejudice to any right, under any rule of law, of a co-obligant who has paid the debt.
- (5) In this section, "obligant" includes cautioner.

**126 Member State liquidator deemed creditor**

For the purposes of this Act, and without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights), a member State liquidator appointed in relation to a debtor is deemed to be a creditor in the sum due to creditors in proceedings in relation to which the member State liquidator holds office.

**127 Trustee's duty to provide certain notices and copies of documents to member State liquidator**

- (1) This section applies where a member State liquidator has been appointed in relation to a debtor.
- (2) Where an interim trustee or a trustee in the sequestration is obliged—
  - (a) to give notice to, or
  - (b) provide a copy of a document to,the sheriff or AiB, the interim trustee or trustee in the sequestration is also to give such notice, or provide such a copy, to the member State liquidator.
- (3) Subsection (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).
- (4) In subsection (2)(b), "document" includes an order of court.

**128 Extortionate credit transactions**

- (1) This section applies where—
  - (a) a debtor is, or has been, party to a transaction for, or involving, the provision to D of credit, and
  - (b) the debtor's estate is sequestrated.
- (2) The sheriff may, on the application of the trustee in the sequestration, make an order with respect to the transaction if the transaction—
  - (a) is, or was, extortionate, and
  - (b) was not entered into more than 3 years before the date of sequestration.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
  - (a) the terms of the transaction are, or were, such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
  - (b) the transaction otherwise grossly contravened ordinary principles of fair dealing;and it is to be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is, or as the case may be was, extortionate.
- (4) An order under this section with respect to a transaction may contain such 1 or more of the following as the sheriff thinks fit—
  - (a) provision setting aside the whole or part of any obligation created by the transaction,

- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,
  - (c) provision requiring any person who is a party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the debtor,
  - (d) provision requiring any person to surrender to the trustee any property held by the person as security for the purposes of the transaction,
  - (e) provision directing accounts to be taken between any persons.
- (5) Any sums required to be paid, or property required to be surrendered, to the trustee in accordance with an order under this section vest in the trustee.
  - (6) But the powers conferred by this section are exercisable, in relation to a transaction, concurrently with any powers exercisable under this Act in relation to that transaction as a gratuitous alienation or unfair preference.
  - (7) In this section, "credit" has the same meaning as in the Consumer Credit Act 1974 (c.39).

### **129 Sederunt book and other documents**

- (1) Whoever by virtue of this Act for the time being holds the sederunt book is to make it available for inspection at all reasonable hours by any interested party; but this subsection is subject to subsection (2).
- (2) As regards any case in which the person on whom a duty is imposed by subsection (1) is AiB, the Court of Session may by act of sederunt—
  - (a) limit the period for which the duty is so imposed, and
  - (b) prescribe conditions in accordance with which the duty is to be carried out.
- (3) An entry in the sederunt book is sufficient evidence of the facts stated in that entry, (except where the entry is founded on by the trustee in the sequestration in the trustee's own interest).
- (4) Notwithstanding any provision of this Act, the trustee is not bound to insert in the sederunt book a document of a confidential nature.
- (5) The trustee is not bound to exhibit to a person other than a commissioner or AiB any document in the trustee's possession which is of a confidential nature.
- (6) An extract from the register of insolvencies bearing to be signed by AiB is sufficient evidence of the facts stated in the extract.

### **130 Power to cure defect in procedure**

- (1) On the application of a person having an interest, the sheriff may—
  - (a) if there has been a failure to comply with a requirement of this Act (or of regulations under this Act), make an order—
    - (i) waiving the failure, and
    - (ii) so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure, or
  - (b) if for any reason anything required or authorised to be done in, or in connection with, the sequestration process cannot be done, make such order as may be necessary to enable the thing to be done.

- (2) In an order under subsection (1), the sheriff may impose such conditions, including conditions as to expenses, as the sheriff thinks fit and may—
  - (a) authorise, or dispense with, the performance of any act in the sequestration process,
  - (b) appoint as trustee on the debtor's estate a person who would be eligible to be elected under section 34 (whether or not in place of an existing trustee),
  - (c) extend or waive a time limit specified in or under this Act.
- (3) An application under subsection (1)—
  - (a) may at any time be remitted by the sheriff to the Court of Session—
    - (i) of the sheriff's own accord, or
    - (ii) on an application by a person having an interest, and
  - (b) is to be so remitted, if the Court of Session so directs on an application by any such person,
 

where the sheriff considers, or as the case may be the Court of Session consider, that the remit is desirable because of the importance or complexity of the matters raised by the application.
- (4) The trustee in the sequestration is to record in the sederunt book the decision of the sheriff or of the Court of Session under this section.

### **131 Debtor to co-operate with trustee**

- (1) The debtor is to take every practicable step (and in particular is to execute any document) which may be necessary to enable the trustee in the sequestration to perform the functions conferred on the trustee by this Act.
- (2) If the sheriff, on the trustee's application, is satisfied—
  - (a) that the debtor has failed to execute a document in compliance with subsection (1), the sheriff may authorise the sheriff clerk to do so, or
  - (b) that the debtor has failed to comply in any other respect with that subsection, the sheriff may order the debtor to do so.
- (3) The execution, by virtue of paragraph (a) of subsection (2), of a document by the sheriff clerk has the like force and effect in all respects as if it had been executed by the debtor.
- (4) If the debtor fails to comply with an order under subsection (2)(b) then the debtor commits an offence.
- (5) If the debtor is convicted of an offence under subsection (4) then the debtor is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
    - (i) in a case where the debtor has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
    - (ii) in any other case, to imprisonment for a term not exceeding 3 months,

or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii),

- (b) on conviction on indictment—
  - (i) to a fine or to imprisonment for a term not exceeding 2 years, or
  - (ii) both to a fine and to such imprisonment.
- (6) In this section, "debtor" includes a debtor discharged under this Act.

### **132 Arbitration and compromise**

- (1) The trustee in the sequestration may (but if there are commissioners then only with their consent or with the consent of the creditors or of the sheriff)—
  - (a) refer to arbitration any claim or question, of whatever nature, arising in the course of the sequestration, or
  - (b) make a compromise with regard to any claim, of whatever nature, made against or on behalf of the sequestrated estate.
- (2) Where a claim or question is referred to arbitration under this section, AiB may vary any time limit for carrying out a procedure under this Act.
- (3) A decree arbitral on a reference under paragraph (a) of subsection (1), or a compromise under paragraph (b) of that subsection, is binding on the creditors and on the debtor.
- (4) And the trustee is to insert a copy of the decree arbitral, or record the compromise, in the sederunt book.

### **133 Meetings of creditors and commissioners**

Part 1 of schedule 5 has effect in relation to meetings of creditors other than the statutory meeting, part 2 in relation to all meetings of creditors and part 3 in relation to meetings of commissioners.

### **134 General offences by debtor etc.**

- (1) If during the relevant period a debtor makes—
  - (a) to a creditor, or
  - (b) to a person concerned in the administration of the debtor's estate,a false statement in relation to the debtor's assets or financial or business affairs then, unless the debtor shows that the debtor neither knew nor had reason to believe that the statement was false, the debtor commits an offence.
- (2) If during the relevant period a debtor, or some other person acting in the debtor's interest (whether or not with the debtor's authority)—
  - (a) destroys,
  - (b) damages,
  - (c) conceals,
  - (d) disposes of, or
  - (e) removes from Scotland,

any part of the debtor's estate or any document relating to the debtor's assets or business or financial affairs then, unless the perpetrator shows that it was not done with intent to prejudice the creditors, the perpetrator commits an offence.

- (3) If, after the date of sequestration of the estate of a debtor, the debtor (being a person who is absent from Scotland) fails when required by the court to come to Scotland for any purpose connected with the administration of that estate, then the debtor commits an offence.
- (4) If during the relevant period a debtor, or some other person acting in the debtor's interest (whether or not with the debtor's authority), falsifies any document relating to the debtor's assets or business or financial affairs, then the perpetrator commits an offence unless the perpetrator shows that the perpetrator had no intention to mislead the trustee, a commissioner or any creditor.
- (5) If a debtor whose estate is sequestrated—
- (a) knows that a person has falsified a document relating to the debtor's assets or business or financial affairs, and
  - (b) fails, within one month of acquiring that knowledge, to report it to the trustee in the sequestration,
- then the debtor commits an offence.
- (6) If, during the relevant period, a person (in this subsection referred to as "P") who is absolutely insolvent—
- (a) transfers anything to another person for an inadequate consideration, or
  - (b) grants an unfair preference to any of P's creditors,
- then, unless P shows that it was not done with intent to prejudice P's creditors, P commits an offence.
- (7) If, at any time in the period of one year ending with the sequestration of the estate of a debtor who is engaged in trade or business, the debtor otherwise than in the ordinary course of the trade or business pledges or disposes of property which the debtor has obtained on credit and has not paid for then, unless the debtor shows that it was not done with intent to prejudice the debtor's creditors, the debtor commits an offence.
- (8) If a debtor, either alone or jointly with another person, obtains credit—
- (a) to the extent of £500 or such other sum as may be prescribed or more, or
  - (b) of any amount where, at the time the credit is obtained, the debtor has debts amounting to £1,000 or such other sum as may be prescribed or more,
- without giving the person from whom the credit is obtained the relevant information about the debtor's status, then the debtor commits an offence.
- (9) For the purpose of calculating an amount of credit mentioned in subsection (8), or of debts mentioned in paragraph (b) of that subsection, no account is to be taken of any credit obtained or, as the case may be, of any liability for charges in respect of—
- (a) any of the supplies mentioned in section 137(4), and
  - (b) any council tax (within the meaning of section 99(1) of the Local Government Finance Act 1992 (c.14).

- (10) For the purposes of subsection (8)—
- (a) "debtor" means—
    - (i) a person whose estate has been sequestrated,
    - (ii) a person who has been adjudged bankrupt in England and Wales or in Northern Ireland, or
    - (iii) a person subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England and Wales,
 being, in the case of a person mentioned in sub-paragraph (i) or (ii), a person who has not been discharged,
  - (b) the reference to the debtor obtaining credit includes a reference to a case where goods—
    - (i) are hired to the debtor under a hire-purchase agreement, or
    - (ii) are agreed to be sold to the debtor under a conditional sale agreement, and
  - (c) the "relevant information" about the status of the debtor is the information that (as the case may be)—
    - (i) the debtor's estate has been sequestrated and that the debtor has not been discharged,
    - (ii) the debtor is an undischarged bankrupt in England and Wales or in Northern Ireland, or
    - (iii) the debtor is subject to a bankruptcy restrictions order, or a bankruptcy restrictions undertaking, made in England and Wales.
- (11) In this section—
- "the relevant period" means the period commencing one year immediately before the date of sequestration of the debtor's estate and ending with the debtor's discharge, and
- references to intent to prejudice creditors include references to intent to prejudice an individual creditor.
- (12) If a person does, or fails to do, in England and Wales or in Northern Ireland anything which if done, or as the case may be not done, in Scotland is an offence under subsection (1), (2), (4), (5), (6) or (7), then that person commits an offence under the subsection in question.
- (13) A person convicted of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
    - (i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
    - (ii) in any other case, to imprisonment for a term not exceeding 3 months,
 or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii), or

- (b) on conviction on indictment, to a fine, or—
  - (i) in the case of an offence under subsection (1), (2), (4) or (7), to imprisonment for a term not exceeding 5 years, or
  - (ii) in any other case, to imprisonment for a term not exceeding 2 years,or both to a fine and to such imprisonment as is mentioned, in relation to the case in question, in sub-paragraph (i) or (ii).

**135 Summary proceedings**

- (1) Summary proceedings for an offence under this Act may be commenced at any time within the period of 12 months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to the Lord Advocate's knowledge.
- (2) But no such proceedings are to be commenced by virtue of this section more than 3 years after the commission of the offence.
- (3) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c.40) (date of commencement of summary proceedings) has effect for the purposes of this section as it has for the purposes of that section.
- (4) For the purposes of subsection (1), a certificate of the Lord Advocate as to the date on which the evidence in question came to the Lord Advocate's knowledge is conclusive evidence of the date on which it did so.

**136 Outlays of insolvency practitioner in acting as interim trustee or trustee**

The Scottish Ministers may, by regulations, provide for the premium (or a proportionate part of the premium) of any bond of caution or other security required, for the time being, to be given by an insolvency practitioner to be taken into account as part of the outlays of the practitioner in the practitioner's acting as an interim trustee or as trustee in the sequestration.

**137 Supplies by utilities**

- (1) This section applies where on any day ("the relevant day")—
  - (a) sequestration is awarded in a case where a debtor application was made,
  - (b) a warrant is granted under section 19(2) in a case where the petition was presented by a creditor or by a trustee acting under a trust deed, or
  - (c) the debtor grants a trust deed.
- (2) If a request falling within subsection (3) is made for the giving, after the relevant day, of any of the supplies mentioned in subsection (4), the supplier—
  - (a) may make it a condition of the giving of the supply that the office holder personally guarantee the payment of any charges in respect of the supply, and
  - (b) is not to make it a condition (or to do anything which has the effect of making it a condition) of the giving of the supply that any outstanding charges in respect of a supply given to the debtor before the relevant day are paid.
- (3) A request falls within this subsection if it is made—
  - (a) by or with the concurrence of the office holder, and

- (b) for the purposes of any business which is, or has been, carried on by or on behalf of the debtor.
- (4) The supplies are—
  - (a) a supply of gas by a gas supplier, within the meaning of Part 1 of the Gas Act 1986,
  - (b) a supply of electricity by an electricity supplier, within the meaning of Part 1 of the Electricity Act 1989,
  - (c) a supply of water by Scottish Water, and
  - (d) a supply of communications services by a provider of a public electronic communications service.
- (5) In subsection (4)(d) "communications services" do not include electronic communications services to the extent that they are used to broadcast, or otherwise transmit, programme services (within the meaning of the Communications Act 2003).
- (6) In this section, "the office holder" means, as the case may be—
  - (a) the interim trustee,
  - (b) the trustee in the sequestration, or
  - (c) the trustee acting under a trust deed.

**138 Edinburgh Gazette**

The keeper of the Edinburgh Gazette is, on each day of its publication, to send a free copy of it to—

- (a) AiB, and
- (b) the petition department of the Court of Session.

**139 Disqualification provisions: power to make orders**

- (1) The Scottish Ministers may make an order under this section in relation to a disqualification provision.
- (2) A "disqualification provision" is a provision, made by or under any enactment, which disqualifies (whether permanently or temporarily) a relevant debtor or a category of relevant debtors from—
  - (a) being elected or appointed to an office or position,
  - (b) holding an office or position, or
  - (c) becoming or remaining a member of a body or group.
- (3) In subsection (2), the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables the person to be dismissed.
- (4) An order under subsection (1) may repeal or revoke the disqualification provision.
- (5) An order under subsection (1) may amend, or modify the effect of, the disqualification provision—
  - (a) so as to reduce the category of relevant debtors to whom the disqualification provision applies,

- (b) so as to extend the disqualification provision to some or all natural persons who are subject to a bankruptcy restrictions order,
  - (c) so that the disqualification provision applies only to some or all natural persons who are subject to a bankruptcy restrictions order,
  - (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.
- (6) An order by virtue of subsection (5)(d) may provide for a discretion to be subject to—
- (a) the approval of a specified person or body,
  - (b) appeal to a specified person, body, court or tribunal.
- (7) The Scottish Ministers may be specified for the purposes of subsection (5)(d) or (6)(a) or (b).
- (8) In this section, "bankruptcy restrictions order" includes—
- (a) a bankruptcy restrictions undertaking,
  - (b) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to the Insolvency Act 1986 (c.45), and
  - (c) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule.
- (9) In this section, "relevant debtor" means a debtor—
- (a) whose estate has been sequestrated,
  - (b) who has granted (or on whose behalf has been granted) a trust deed,
  - (c) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland, or
  - (d) who, in England and Wales or in Northern Ireland, has made an agreement with the debtor's creditors—
    - (i) for a composition in satisfaction of the debtor's debts,
    - (ii) for a scheme of arrangement of the debtor's affairs, or
    - (iii) for some other kind of settlement or arrangement.
- (10) An order under this section may make—
- (a) provision generally or for a specified purpose only,
  - (b) different provision for different purposes, and
  - (c) transitional, consequential or incidental provision.
- (11) An order under this section is subject to the affirmative procedure.

*General*

**140 Regulations**

- (1) This section relates to regulations made under this Act by the Scottish Ministers.
- (2) Subject to subsection (3), the regulations are subject to the negative procedure.
- (3) Regulations under—
  - (a) section 2(3)(a) or 5(1), 7, 8(4) or 75(7)(g), or

(b) paragraph 6 of schedule 4,  
are subject to the affirmative procedure.

- (4) The regulations, if made other than under section 2(3)(a), 5(1) or 7, may make different provision for different cases or classes of case.
- (5) Subsection (4) is without prejudice to section 7(2)(e).

#### **141 Modification of regulation making powers**

Any power in a provision of this Act to make regulations may, in so far as the provision relates to a matter to which the EC Regulation applies, be exercised for the purpose of making provision in consequence of the EC Regulation.

#### **142 Variation of references to time, money etc.**

For any reference in this Act to—

- (a) a period of time,  
(b) an amount of money, or  
(c) a fraction,

there may be prescribed, in substitution, some other period or as the case may be some other amount or fraction.

#### **143 Interpretation**

- (1) In this Act, unless the context otherwise requires—

"Accountant in Bankruptcy" (or "AiB") is to be construed in accordance with section 119,

"accounting period" is to be construed in accordance with section 91(2),

"apparent insolvency" and "apparently insolvent" are to be construed in accordance with section 15,

"appropriate bank or institution" means—

- (a) the Bank of England,  
(b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c.8) to accept deposits,  
(c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits, or  
(d) a person who is exempt from the general prohibition in respect of accepting deposits as a result of an exemption order made under section 38(1) of that Act,

"associate" is to be construed in accordance with section 144,

"bankruptcy restrictions order" has the meaning given by section 105,

"bankruptcy restrictions undertaking" has the meaning given by section 111,

"business" means the carrying on of any activity, whether for profit or not,

"centre of main interests" has the same meaning as in the EC Regulation,

"commissioner", except in the expression "examining commissioner", is to be construed in accordance with section 48,

"court" means Court of Session or sheriff,

"creditor" includes a member State liquidator deemed to be a creditor under section 126,

"date of sequestration" has the meaning assigned by section 19(8),

"debtor" includes, without prejudice to the expression's generality, an entity whose estate may be sequestrated by virtue of section 4, a deceased debtor, a deceased debtor's executor or a person entitled to be appointed a deceased debtor's executor,

"debtor application" means an application for sequestration made to AiB under section 2(1)(a) or section 4(3)(a), (4)(a) or (6)(a),

"the EC Regulation" means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings,

"establishment" has the meaning given by Article 2(h) of the EC Regulation,

"examination" means a public examination under section 81 or a private examination under section 80,

"examining commissioner" is to be construed in accordance with section 82(3),

"interim trustee" is to be construed in accordance with section 37(8),

"main proceedings" means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of that regulation and—

- (a) in relation to England and Wales and Scotland, set out in Annex A to that regulation under the heading "United Kingdom", and
- (b) in relation to another member State, set out in Annex A to that regulation under the heading relating to that member State,

"member State liquidator" means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom,

"ordinary debt" is to be construed in accordance with section 90(1)(f),

"original trustee" is to be construed in accordance with section 34(1)(a),

"postponed debt" has the meaning assigned by section 90(4),

"preferred debt" has the meaning assigned by section 90(2),

"prescribed" means prescribed by regulations made by the Scottish Ministers,

"protected trust deed" means a trust deed which has been granted protected status in accordance with regulations made under paragraph 6 of schedule 4,

"qualified creditor" and "qualified creditors" are to be construed in accordance with section 5(1),

"qualified to act as an insolvency practitioner" is to be construed in accordance with section 390 of the Insolvency Act 1986 (c.45) (persons not qualified to act as insolvency practitioners),

"register of insolvencies" has the meaning assigned by section 120(1)(c),

"relevant person" has the meaning assigned by section 80(1)(b),

"replacement trustee" is to be construed in accordance with section 34(1)(b),

"secondary proceedings" means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation, falling within the definition of winding-up proceedings in Article 2(c) of that regulation and—

- (a) in relation to England and Wales and Scotland, set out in Annex B to that regulation under the heading "United Kingdom", and
- (b) in relation to another member State, set out in Annex B to that regulation under the heading relating to that member State,

"secured creditor" means a creditor who holds a security for a debt over any part of the debtor's estate,

"security" means any security, heritable or moveable, or any right of lien, retention or preference,

"sederunt book" means the sederunt book maintained under section 35(1)(e),

"sequestration proceedings" includes a debtor application (and analogous expressions are to be construed accordingly),

"statement of assets and liabilities" means a document (including a copy of a document) in such form as may be prescribed containing—

- (a) a list of the debtor's assets and liabilities,
- (b) a list of the debtor's income and expenditure, and
- (c) such other information as may be prescribed,

"statutory meeting" has the meaning assigned by section 29,

"temporary administrator" means a temporary administrator referred to by Article 38 of the EC Regulation,

"territorial proceedings" means any proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation, falling within the definition of insolvency proceedings in Article 2(a) of that regulation and—

- (a) in relation to England and Wales and Scotland, set out in Annex A to that regulation under the heading "United Kingdom", and
- (b) in relation to another member State, set out in Annex A to that regulation under the heading relating to that member State,

"trust deed" means—

- (a) a voluntary trust deed granted by or on behalf of a debtor whereby the debtor's estate (other than such of that estate as would not, under section 61(1), vest in the trustee were that estate sequestrated) is conveyed to the trustee for the benefit of the debtor's creditors generally, and
- (b) any other trust deed which would fall within paragraph (a) but for—
  - (i) the exclusion from the estate conveyed to the trustee of the whole or part of the debtor's dwellinghouse, where a secured creditor holds a security over it, and

- (ii) the fact that the debtor's estate is not conveyed to the trustee for the benefit of creditors generally because the secured creditor has, at the debtor's request, agreed before the trust deed is granted not to claim under the trust deed for any of the debt in respect of which the security is held,

"trustee vote" is to be construed in accordance with section 34(1) and (2),

"unfair preference" means a preference created as is mentioned in subsection (1) of section 63 by a transaction to which subsection (5) of that section applies, and

"the 2002 Act" means the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17).

- (2) The expressions in the definition of "appropriate bank or institution" in subsection (1) must be read with—
  - (a) section 22 of the Financial Services and Markets Act 2000 (c.8),
  - (b) any relevant order under that section, and
  - (c) Schedule 2 to that Act.
- (3) In paragraph (b) of the definition of "trust deed" in subsection (1), "the debtor's dwellinghouse" means a dwellinghouse (including any yard, garden, outbuilding or other pertinents) which, on the day immediately preceding the date the trust deed was granted—
  - (a) the debtor (whether alone or in common with any other person)—
    - (i) owned, or
    - (ii) leased under a long lease ("long lease" having the same meaning as in section 28(1) of the Land Registration (Scotland) Act 1979 (c.33)), and
  - (b) was the debtor's sole or main residence.
- (4) For the purposes of subsection (3)(b), a dwellinghouse may be the debtor's sole or main residence irrespective of whether it is used, to any extent, by the debtor for the purposes of any profession, trade or business.
- (5) Any reference in this Act to a debtor being absolutely insolvent is to be construed as a reference to the debtor's liabilities being greater than the debtor's assets; and any reference to a debtor's estate being absolutely insolvent is to be construed accordingly.
- (6) Any reference in this Act to value of the creditors is, in relation to any matter, a reference to the value of their claims as accepted for the purposes of that matter.
- (7) Any reference in this Act to "the creditors" in the context of their giving consent or doing any other thing is, unless the context otherwise requires, to be construed as a reference to the majority in value of such creditors as vote in that context at a meeting of creditors.
- (8) Any reference in this Act to any of the following acts by a creditor barring the effect of any enactment or rule of law relating to the limitation of actions, namely—
  - (a) the presentation of a petition for sequestration,
  - (b) the concurrence in a debtor application, and
  - (c) the submission of a claim,

is to be construed as a reference to that act having the same effect, for the purposes of that enactment or rule of law, as an effective acknowledgement of the creditor's claim.

- (9) Any reference in this Act to any such enactment as is mentioned in subsection (8) does not include a reference to an enactment which implements or gives effect to any international agreement or obligation.
- (10) Any reference in this Act, however expressed, to the time when a petition for sequestration is presented is to be construed as a reference to the time when the petition is received by the sheriff clerk.
- (11) Any reference in this Act, however expressed, to the time when a debtor application is made is to be construed as a reference to the time when the application is received by AiB.

**144 Meaning of "associate"**

- (1) For the purposes of this Act, any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this section (any reference, whether in those provisions or in regulations under subsection (15), to a person being an associate of another person being taken to be a reference to their being associates of each other).
- (2) But subsection (1) is subject to subsection (15).
- (3) A person (in this subsection referred to as "A") is an associate of a natural person (in this subsection referred to as "B") if A is—
  - (a) B's husband, wife or civil partner,
  - (b) a relative of B or of B's husband, wife or civil partner, or
  - (c) the husband, wife or civil partner of such a relative.
- (4) A person (in this subsection referred to as "C") is an associate of any person (in this subsection referred to as "D") with whom C is in partnership and of any person who is an associate of D.
- (5) A firm is an associate of any person who is a member of the firm.
- (6) For the purposes of this section, a person (in this subsection referred to as "E") is a relative of a natural person (in this subsection referred to as "F") if E is F's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant treating any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of someone (in this subsection referred to as "S") as S's child.
- (7) References in this section to a husband, wife or civil partner include references to a former husband, wife or civil partner and a reputed husband, wife or civil partner.
- (8) A person (in this subsection referred to as "G") is an associate of any person whom G employs or by whom G is employed.
- (9) For the purposes of subsection (8), any director or other officer of a company is to be treated as employed by the company.

- (10) A company is an associate of another company if—
- (a) the same person has control of both, or if a person (in this subsection referred to as "H") has control of one and persons who are H's associates have control of the other, or
  - (b) a group of 2 or more persons has control of each company and the groups either—
    - (i) consist of the same persons, or
    - (ii) could be regarded as consisting of the same persons by treating (in one case or more) a member of either group as replaced by a person of whom that member is an associate.
- (11) A company is an associate of another person (in this subsection referred to as "J") if—
- (a) J has control of it, or
  - (b) J and persons who are J's associates together have control of it.
- (12) For the purposes of this section, a person (in this subsection referred to as "K") is taken to have control of a company—
- (a) if the directors of the company, or of another company which has control of it, (or any of them) are accustomed to act in accordance with K's directions or instructions, or
  - (b) if K is entitled to exercise, or control the exercise of,  $\frac{1}{3}$  or more of the voting power at any general meeting of the company or of another company which has control of the company.
- (13) Where two or more persons together satisfy either of the conditions mentioned in subsection (12), they are taken to have control of the company.
- (14) In subsections (9) to (13), "company" includes any body corporate (whether incorporated in Great Britain or elsewhere).
- (15) The Scottish Ministers may by regulations—
- (a) amend the preceding provisions of this section so as to provide further categories of persons who, for the purposes of this Act, are to be associates of other persons, and
  - (b) provide that any or all of subsections (3) to (14) (or any subsection added by virtue of paragraph (a))—
    - (i) is to cease to apply, whether in whole or in part, or
    - (ii) is to apply subject to such modifications as they may specify in the regulations.
- (16) The Scottish Ministers may in the regulations make such incidental or transitional provision as they consider appropriate.

**145 Proceedings under EC Regulation: modified definition of "estate"**

In the application of this Act to insolvency proceedings under the EC Regulation, a reference to "estate" is a reference to estate which may be dealt with in those proceedings.

**146 Crown application**

This Act binds the Crown as creditor only.

**147 Re-enactment**

Schedule 6, derived from Part 2 of Schedule 7 to the Bankruptcy (Scotland) Act 1985 (c.66) (and re-enacting sections 10 and 189 of the Bankruptcy (Scotland) Act 1913 (c.20)), has effect.

**148 Modifications, repeals, savings, revocations and transitional provisions**

- (1) Schedule 7 makes provision for the modification of enactments.
- (2) The enactments mentioned in schedule 8 to this Act are repealed, or as the case may be revoked, to the extent mentioned in the second column of that schedule.
- (3) Nothing in this Act affects any of the enactments repealed, revoked or amended by this Act in their operation in relation to a sequestration as regards which the award was made before the coming into force of this Act.
- (4) The apparent insolvency of a debtor may be constituted for the purposes of this Act even though the circumstance founded upon for such constitution occurred on a date before the coming into force of this Act; and for those purposes the apparent insolvency is taken to have been constituted on the date in question.
- (5) If a debtor whose estate is sequestrated after the coming into force of this Act is liable, by virtue of a transaction entered into before the date on which section 102 of the Bankruptcy (Scotland) Act 1913 (c.20) was repealed, to pay royalties or a share of the profits to any person in respect of copyright, or interest in copyright, comprised in the sequestrated estate, then that section applies in relation to the trustee in the sequestration as it applied, before its repeal, in relation to any trustee in bankruptcy (within the meaning of that Act).
- (6) Where sequestration of a debtor's estate is awarded under this Act a person—
  - (a) does not commit an offence under any provision of this Act in respect of anything done before the date of commencement of that provision, but
  - (b) instead commits an offence under the Bankruptcy (Scotland) Act 1985 (c.66) (or as the case may be under the Bankruptcy (Scotland) Act 1913 (c.20)) in respect of anything so done which would have been an offence under that Act if the award of sequestration had been made under that Act.
- (7) Unless the context otherwise requires, any reference in any enactment or document—
  - (a) to notour bankruptcy, or to a person being notour bankrupt, is to be construed as a reference to apparent insolvency, or to a person being apparently insolvent, within the meaning of section 15 of this Act,
  - (b) to a person's estate being sequestrated under the Bankruptcy (Scotland) Act 1913 or the Bankruptcy (Scotland) Act 1985 is to be construed as, or as including, a reference to its being sequestrated under this Act, and
  - (c) to a trustee in sequestration or to a trustee in bankruptcy, is to be construed as a reference to a trustee in a sequestration within the meaning of this Act,(analogous references being construed accordingly).

- (8) Unless the context otherwise requires, any reference in any enactment or document—
- (a) to a "gratuitous alienation" is to be construed as including a reference to an alienation challengeable under section 62(2), or
  - (b) to a "fraudulent preference" or to an "unfair preference" is to be construed as including a reference to an unfair preference within the meaning of this Act.

**149 Continuity of the law**

- (1) The repeal and re-enactment of a provision by this Act does not affect the continuity of the law.
- (2) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) a provision repealed by this Act, being a provision in force or effective immediately before the coming into force of this Act, has effect after that coming into force as if done under (or for the purposes of or in reliance on) the corresponding provision of this Act.
- (3) Any reference (express or implied) in this Act or in any other enactment or document to a provision of this Act is to be construed, so far as the context permits, as including, as respects times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.
- (4) Any reference (express or implied) in any enactment or document to a provision repealed by this Act is to be construed, so far as the context permits, as including, as respects times, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to that corresponding provision.
- (5) Subsections (1) to (4) have effect in place of section 17(2) of the Interpretation Act 1978 (c.30) (repeal and re-enactment); but nothing in this section affects any other provision of that Act.
- (6) This section is without prejudice to section 148(3) and to any specific transitional provision or saving contained in this Act.
- (7) References in this section to this Act include subordinate legislation made under or by virtue of this Act.

**150 Commencement**

- (1) This Act comes into force at the end of the period of 3 months beginning with the day on which the Bill for the Act receives Royal Assent.
- (2) This Act applies to sequestrations as regards which the petition is presented, or the debtor application is made—
  - (a) on or after the date on which the Act comes into force, or
  - (b) before that date, but in respect of which no award of sequestration has been made by that date.

**151 Short title**

The short title of this Act is the Bankruptcy (Scotland) Act 2013.

SCHEDULE 1  
*(introduced by sections 5(4), 32(12) and 87(4))*

DETERMINATION OF AMOUNT OF CREDITOR'S CLAIM

*Amount which may be claimed generally*

- 1 (1) Subject to the provisions of this schedule, the amount in respect of which a creditor is entitled to claim is 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 the sequestration, the amount of the claim is to be calculated as if the debt were payable on that date but subject to the deduction of interest at the rate specified in section 90(10) from that date until the date for payment of the debt.
- (3) In calculating the amount of a creditor's claim, the creditor is to 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 for periodical allowance on divorce or on dissolution of civil partnership*

- 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 the debtor's death, is not entitled to include in the amount of the person's 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—
    - (i) in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses), or
    - (ii) in the case of civil partners (or, where the aliment is payable to a former civil partner in respect of a child after dissolution of a civil partnership, former civil partners),they were living apart during that period, or
  - (b) any aliment for a period after the date of sequestration.
- (2) Sub-paragraph (1) applies to a periodical allowance payable on divorce or on dissolution of a civil partnership—
  - (a) by virtue of a court order, or
  - (b) under any legally binding obligation which is supported by evidence in writing,as it applies to aliment and as if, for heads (i) and (ii) of that sub-paragraph and the word "they" which immediately follows those heads, there were substituted "the payer and payee".

*Debts depending on contingency*

- 3 (1) The amount which a creditor is entitled to claim does not include a debt in so far as its existence or amount depend upon a contingency.

- (2) But sub-paragraph (1) is subject to sub-paragraph (3).
- (3) On an application by the creditor—
  - (a) to the trustee in the sequestration, or
  - (b) if there is no trustee, to the sheriff,
 the trustee, or sheriff, is to put a value on the debt in so far as it is contingent.
- (4) The amount in respect of which the creditor is then entitled to claim is that value but no more.
- (5) And where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.
- (6) An interested person may appeal to the sheriff against a valuation under sub-paragraph (3) by the 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 of a composition by the debtor but the sequestration is subsequently revived, the amount in respect of which a creditor is entitled to claim is the same amount as if the composition had not been so approved less any payment already made to the creditor under the composition contract.

*Secured debts*

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

*Valuation of claims against partners for debts of the partnership*

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

SCHEDULE 2  
*(introduced by section 90(2) and (3))*

PREFERRED DEBTS

**PART 1**

LIST OF PREFERRED DEBTS

*Contributions to occupational pension schemes etc.*

- 1 Any sum which is owed by the debtor and is a sum to which Schedule 4 to the Pension Schemes Act 1993 (c.48) (contributions to occupational pension scheme and state scheme premiums) applies.

*Remuneration of employees etc.*

- 2 (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 4 months which immediately precedes 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 amount 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).
- 3 So much of any amount which—
- (a) is ordered, whether before or after the relevant date, to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985 (c.17), and
  - (b) is so ordered in respect of a default made by the debtor before that date in the discharge of the debtor's obligations under that Act,
- as does not exceed such amount as may be prescribed.

*Levies on coal and steel production*

- 4 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 Treaty establishing the European Coal and Steel Community, or
  - (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 that Community.

**PART 2**

INTERPRETATION OF PART 1

*Meaning of "the relevant date"*

- 5 In Part 1, "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 death.

*Amounts payable by way of remuneration*

- 6 (1) For the purposes of paragraph 2, 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) 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 28(1) to (3) of the Employment Rights Act 1996 (c.18) (entitlement to payment for workless day),
  - (b) a payment for time off under section 53(1) (looking for new employment or making arrangements for training for future employment) or 56(1) (antenatal care) of that Act,
  - (c) remuneration on suspension on medical grounds under section 64 of that Act,
  - (d) a payment for time off under section 169(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) (trade union duties), or
  - (e) remuneration under a protective award made by an employment tribunal under section 189 of that Act (redundancy dismissal with compensation).
- (3) For the purposes of paragraph 2(2), holiday remuneration is deemed, in the case of a person ("P") whose employment has been terminated by or in consequence of the award of sequestration of P's employer's estate, to have accrued to P in respect of a period of employment if, by virtue of P's contract of employment or of any enactment, that remuneration would have accrued in respect of that period if P's employment had continued until P became entitled to be allowed the holiday.

- (4) In sub-paragraph (3), "enactment" includes an order made or direction given under an enactment.
- (5) Without prejudice to the preceding provisions of this paragraph—
  - (a) any remuneration payable by the debtor to a person in respect of—
    - (i) a period of holiday, or
    - (ii) 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.

*Transitional provisions*

- 7 Regulations under paragraph 2 or 3 may contain such transitional provisions as may appear to the Scottish Ministers necessary or expedient.

SCHEDULE 3  
*(introduced by section 101)*

DISCHARGE ON COMPOSITION

- 1 (1) At any time after the sheriff or, as the case may be, AiB appoints the trustee in the sequestration, an offer of composition may be made to the trustee, by or on behalf of the debtor, in respect of the debtor's debts.
- (2) Any offer of composition must specify caution or other security to be provided for its implementation.
- 2 The trustee, where the trustee is not AiB, is to submit the offer of composition along with a report on it to the commissioners or, if there are no commissioners, to AiB.
- 3 The commissioners or, if there are no commissioners, AiB—
  - (a) if they consider (or AiB considers) that the offer of composition will be timeously implemented and that, were the rules set out in section 90 of, and schedule 1 to, this Act 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,
 are (or is) to recommend that the offer be placed before the creditors.
- 4 Where a recommendation is made that the offer of composition be placed before the creditors, the trustee is—
  - (a) to intimate the recommendation to the debtor and record it in the sederunt book,
  - (b) to publish in the Edinburgh Gazette a notice stating that an offer of composition has been made and where its terms may be inspected, and

- (c) not later than one week after the date of publication of the notice, to send to every creditor known to the trustee—
    - (i) a copy of the terms of offer, and
    - (ii) such other information as may be prescribed.
- 5 The notice mentioned in paragraph 4(b) is to be in the prescribed form and to contain such information as may be prescribed.
- 6 Where, within the period of 5 weeks beginning with the date of publication of that notice, the trustee does not receive notification in writing from—
- (a) a majority in number, or
  - (b) not less than one third in value,
- of the creditors that they reject the offer of composition, the offer is to be approved by trustee.
- 7 Where the trustee receives such notification—
- (a) within the period, and
  - (b) to the extent,
- mentioned in paragraph 6, the offer of composition is to be rejected by the trustee.
- 8 Where a creditor—
- (a) has, under paragraph 4(c)(i), been sent a copy of the terms of offer, and
  - (b) has not notified trustee, as mentioned in paragraph 6, that the creditor objects to the offer,
- the creditor is to be treated for all purposes as if the creditor had accepted the offer.
- 9 (1) The Scottish Ministers may by regulations amend paragraphs 4 to 8 by—
- (a) replacing them,
  - (b) varying them, or
  - (c) adding to, or deleting anything from, them.
- (2) Regulations under sub-paragraph (1) may contain such amendments of this Act as appear to the Scottish Ministers to be necessary in consequence of the amendments to paragraphs 4 to 8.
- 10 (1) Where an offer of composition is approved, a creditor—
- (a) who has not, under paragraph 4(c)(i), been sent a copy of the terms of offer, or
  - (b) who has notified the trustee, as mentioned in paragraph 6, that the creditor rejects the offer,
- may, not more than 28 days after the expiry of the period mentioned in paragraph 6, appeal to AiB against the approval.
- (2) In determining an appeal under sub-paragraph (1), AiB may—
- (a) approve or reject the offer of composition, and
  - (b) make such other determination in consequence of that approval or rejection as AB thinks fit.

- 11 (1) Where an offer of composition is approved, the trustee, where the trustee is not AiB—
- (a) is to submit to the commissioners or, if there are no commissioners, to AiB—
    - (i) the trustee's accounts of the trustee's intromissions with the debtor's estate for audit, and
    - (ii) a claim for the outlays reasonably incurred by the trustee and for the trustee's remuneration,
  - (b) where those documents are so submitted, is to send a copy of them to AiB, and
  - (c) is to take all reasonable steps to ensure that the interim trustee (where a different person) has submitted, or submits, to AiB the interim trustee's—
    - (i) accounts, and
    - (ii) claim for outlays and remuneration.
- (2) Where the offer of composition is approved and the trustee is AiB, the trustee is to prepare accounts of the trustee's intromissions with the debtor's estate and to make a determination of the trustee's fees and outlays calculated in accordance with regulations made under section 124.
- (3) Subsections (1) and (2) of section 93, (1) to (3) of section 95 and (4) of section 96 apply, subject to any necessary modifications, in respect of the accounts and claim submitted under sub-paragraph (1)(a) as they apply in respect of the accounts and claim submitted under subsection (1) of section 93.
- (4) Subsections (2) to (4), (6), (9) and (12) of section 97 apply, subject to any necessary modifications, in respect of the accounts prepared and determination made under sub-paragraph (2) as they apply in respect of the accounts prepared and determination made under subsection (1) of that section.
- 12 As soon as the procedure under paragraph 11 has been completed, there is to be sent to AiB—
- (a) by the trustee (where the trustee is not AiB), 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, and
  - (b) by or on behalf of the debtor, the bond of caution or other security for payment of the composition.
- 13 (1) Where the documents have been sent to AiB under paragraph 12 and either—
- (a) the 28 days mentioned in paragraph 10(1) have expired, or
  - (b) AiB, in determining an appeal under paragraph 10(1), has approved the offer of composition,
- AiB is to grant the certificates of discharge referred to in sub-paragraph (2).
- (2) Those certificates are—
- (a) a certificate discharging the debtor, and
  - (b) a certificate discharging the trustee.
- (3) A certificate granted under sub-paragraph (1) is to be in the prescribed form.

- (4) AiB is—
- (a) to send a certified copy of the certificate discharging the debtor to the Keeper of the Register of Inhibitions for recording in that register, and
  - (b) either—
    - (i) to send a copy of that certificate to the trustee, who is to insert it in the sederunt book, or
    - (ii) where AiB is the trustee, to insert a copy of that certificate in the sederunt book.
- 14 A certificate granted under paragraph 13(1) discharging the trustee has the effect of discharging the trustee from all liability (other than any liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of the trustee in exercising the functions conferred on the trustee by this Act.
- 15 Even though an offer of composition has been made the sequestration is, until the discharge of the debtor becomes effective, to proceed as if no such offer has been made.
- 16 On the discharge of the debtor becoming effective the sequestration ceases.
- 17 A creditor who has not submitted a claim under section 84 before an offer of composition is approved is not entitled to make any demand against—
- (a) a person offering the composition on behalf of the debtor, or
  - (b) a cautioner in the offer.
- 18 But paragraph 17 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.
- 19 The debtor may make two, but no more than two, offers of composition in the course of a sequestration.
- 20 (1) On the granting of a certificate under paragraph 13(1) discharging the debtor—
- (a) the debtor is re-invested in the debtor's estate as existing at the date the certificate is granted,
  - (b) the debtor is discharged of all debts for which the debtor was liable at the date of sequestration (other than any debts mentioned in section 100(3)), and
  - (c) the claims of creditors in the sequestration are converted into claims for their respective shares in the composition.
- (2) But sub-paragraph (1)(b) is subject to paragraphs 17 and 18.
  - (3) The discharge of the debtor by virtue of the granting of a certificate under paragraph 13(1) does not affect any right of a secured creditor for a debt or other obligation in respect of which the debtor has been discharged to enforce the security in respect of that debt or obligation.

- 21 (1) The Court of Session, on the application of any creditor, may recall the approval of the offer of composition and the granting of certificates discharging the debtor and the 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 of the composition, or
  - (b) that for any reason the composition—
    - (i) cannot be proceeded with, or
    - (ii) 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 is to revive the sequestration.
- (3) But the revival of the sequestration does not affect the validity of any transaction entered into by the debtor, after the debtor's discharge, with a person who has given value and has acted in good faith.
- (4) Where the trustee has been discharged, the Court may, on pronouncing decree of recall under this paragraph—
- (a) appoint a judicial factor to administer the debtor's estate, and
  - (b) give the judicial factor such order as it thinks fit as to that administration.
- (5) The clerk of court is to send a copy of any decree of recall under this paragraph to the trustee, or to the judicial factor, for insertion in the sederunt book.
- 22 (1) The Court of Session, on the application of any creditor, may reduce a certificate granted under paragraph 13(1) discharging the debtor where it is satisfied that—
- (a) a payment was made,
  - (b) a preference was granted, or
  - (c) 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 trustee has been discharged the Court may, on pronouncing a decree of reduction under this paragraph—
- (a) appoint a judicial factor to administer the debtor's estate, and
  - (b) give the judicial factor such order as it thinks fit as to that administration.
- (4) The clerk of court is to send a copy of any decree of reduction under this paragraph to the trustee, or to the judicial factor, for insertion in the sederunt book.

SCHEDULE 4  
(introduced by section 115)

VOLUNTARY TRUST DEEDS FOR CREDITORS

*Remuneration of trustee*

- 1        Whether or not—
- (a) provision is made in the trust deed for auditing the accounts of the trustee in the sequestration and for determining the method of fixing the trustee's remuneration, or
  - (b) the trustee and the creditors have agreed on such auditing and the method of fixing that 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 the trustee's remuneration fixed by, AiB.

*Accountant in Bankruptcy's power to carry out audit*

- 2        AiB may, at any time, audit the trustee's accounts and fix the trustee's remuneration.

*Registration of notice of inhibition*

- 3 (1)    The trustee, from time to time after the trust deed is delivered to the trustee, may cause a notice in such form as is prescribed by act of sederunt to be recorded in the register of inhibitions.
- (2)    Such recording has the same effect as the recording in that register of letters of inhibition against the debtor.
- (3)    The trustee, after—
- (a) the debtor's estate has been distributed finally among the debtor's creditors, or
  - (b) the trust deed has otherwise ceased to be operative,
- is to cause a notice in such form as is so prescribed to be recorded in that register recalling the notice recorded under sub-paragraph (1).

*Lodging of claim to bar effect of limitation of actions*

- 4        The submission to the trustee, acting under a trust deed, of a claim by a creditor bars the effect of any enactment or rule of law relating to limitation of actions.

*Valuation of claims*

- 5 (1)    Unless the trust deed otherwise provides, schedule 1 applies in relation to a trust deed as it applies to a sequestration but subject to the following modifications.
- (2)    In paragraphs 1, 2 and 5, for the word "sequestration", wherever it occurs, there is substituted "granting of the trust deed".

- (3) In paragraph 3(3), for heads (a) and (b) and the words "the trustee or sheriff" which immediately follow head (b) there is substituted "the trustee".
- (4) Paragraph 4 is to be disregarded.

*Protected trust deeds*

- 6 (1) The Scottish Ministers may by regulations make provision as to—
  - (a) the conditions which require to be fulfilled in order for a trust deed to be granted the status of a protected trust deed,
  - (b) the consequences of a trust deed being granted that status,
  - (c) the rights of any creditor who does not accede to a trust deed which is granted protected status,
  - (d) the extent to which the debtor may be discharged, by virtue of a protected trust deed, from the debtor's liabilities or from such liabilities or class of liabilities as may be prescribed in the regulations,
  - (e) the circumstances in which the debtor may bring to an end the operation of a trust deed in respect of which the conditions provided for under head (a) are not fulfilled,
  - (f) the administration of the trust under a protected trust deed (including provisions about the remuneration payable to the trustee).
- (2) Regulations under this paragraph may—
  - (a) make provision enabling applications to be made to the court, and
  - (b) contain such amendments of this Act as appear to the Scottish Ministers to be necessary in consequence of any other provision of the regulations.

SCHEDULE 5  
*(introduced by section 133)*

MEETINGS OF CREDITORS AND COMMISSIONERS

**PART 1**

MEETINGS OF CREDITORS OTHER THAN THE STATUTORY MEETING

*Calling of meeting*

- 1 The trustee in the sequestration is to call a meeting of creditors if required to do so—
  - (a) by order of the sheriff,
  - (b) by one-tenth in number or one-third in value of the creditors,
  - (c) by a commissioner, or
  - (d) by AiB.

- 2 A meeting called under paragraph 1 is to be held not later than 28 days after—
- (a) the issuing of the order under head (a), or
  - (b) the receipt by the trustee of the requirement under head (b), (c) or (d),
- of that paragraph.
- 3 The trustee, or a commissioner who has given notice to the trustee, may at any time call a meeting of creditors.
- 4 The trustee, calling a meeting under paragraph 1 or 3, or a commissioner calling a meeting under paragraph 3, is no fewer than 7 days before the date fixed for the meeting to notify—
- (a) every creditor known to the trustee or, as the case may be, to the commissioner, and
  - (b) AiB,
- of the date, time and place fixed for the holding of the meeting and of the meeting's purpose.
- 5 Where—
- (a) a requirement has been made under paragraph 1, but
  - (b) no meeting has been called by the trustee,
- AiB may, of AiB's own accord or on the application of any creditor, call a meeting of creditors.
- 6 AiB, calling a meeting under paragraph 5, is no fewer than 7 days before the date fixed for the meeting to take reasonable steps to notify the creditors of the date, time and place fixed for the holding of the meeting and of the meeting's purpose.
- 7 It is not necessary to notify under paragraph 4 or 6 any creditor whose accepted claim is less than £50 or such sum as may be prescribed, unless the creditor has in writing requested such notification.

#### *Role of trustee at meeting*

- 8 At the commencement of a meeting the trustee is to be the person chairing the meeting and as such is, after carrying out the trustee's duties under section 88(1)—
- (a) to invite the creditors to elect one of their number to chair the meeting in the trustee's place, and
  - (b) to preside over the election.
- 9 If no person is elected in pursuance of paragraph 8, the trustee is to chair the meeting throughout.
- 10 The trustee is to arrange for a record to be made of the proceedings at the meeting and is to insert the minutes of the meeting in the sederunt book.

#### *Appeals*

- 11 The trustee, a creditor or any other person having an interest may, within 14 days after the date of a meeting called under paragraph 4 or 6, appeal to the sheriff against a resolution of the creditors at the meeting.

## PART 2

### ALL MEETINGS OF CREDITORS

#### *Validity of proceedings*

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

#### *Locus of meeting*

- 13 Every meeting is to 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*

- 14 A creditor may authorise in writing a person to represent the creditor at a meeting.
- 15 A creditor is to lodge with the trustee, before the commencement of the meeting, any authorisation given under paragraph 14.
- 16 Any reference in paragraph 8, or in the following provisions of this Part, to a creditor includes a reference to a person authorised under paragraph 14 by a creditor.

#### *Quorum*

- 17 The quorum at any meeting is one creditor.

#### *Voting at meeting*

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

#### *Objections by creditors*

- 19 At any meeting the person chairing it ("Ch") may allow or disallow any objection by a creditor, other than (if Ch is not the trustee) an objection relating to a creditor's claim.
- 20 A person aggrieved by the determination of Ch in respect of an objection may appeal to the sheriff against the determination.
- 21 If Ch is in doubt as to whether to allow or disallow an objection, the meeting is to proceed as if no objection had been made, except that for the purposes of appeal the objection is to be deemed to have been disallowed.

### *Adjournment of meeting*

- 22 If no creditor has appeared at a meeting by half an hour after the time appointed for its commencement, Ch may adjourn it such other day as Ch may appoint, being a day no fewer than 7, nor more than 21, days after that on which the meeting is adjourned.
- 23 Ch may, with the consent of a majority in value of the creditors who vote on a resolution to adjourn a meeting, adjourn the meeting.
- 24 Any adjourned meeting is to be held at the same time and place as the original meeting, unless in the resolution another time or place is specified.

### *Minutes of meeting*

- 25 The minutes of every meeting are to be signed by Ch and within 14 days after the meeting are to be sent to AiB.

## **PART 3**

### MEETINGS OF COMMISSIONERS

- 26 The trustee—
- (a) may call a meeting of commissioners at any time, and
  - (b) is to call such a meeting—
    - (i) on being required to do so by order of the sheriff, or
    - (ii) on being requested to do so by AiB or by any commissioner.
- 27 If the trustee fails to call a meeting of commissioners within 14 days after being required or requested to do so under paragraph 26, a commissioner may call a meeting of commissioners.
- 28 The trustee is to give the commissioners at least 7 days notice of a meeting called by the trustee unless the commissioners decide that they do not require such notice.
- 29 The trustee is to act as clerk at a meeting of commissioners and is to insert a record of the deliberations of the commissioners in the sederunt book.
- 30 If the commissioners are considering the performance of the functions of the trustee under any provision of this Act, the trustee is to withdraw from the meeting if requested to do so by the commissioners and in such a case a commissioner is to—
- (a) act as clerk,
  - (b) transmit a record of the deliberations of the commissioners to the trustee for insertion in the sederunt book, and
  - (c) authenticate the insertion when made.
- 31 The quorum at a meeting of commissioners is one commissioner and the commissioners may act by a majority of the commissioners present at the meeting.
- 32 Any matter may be agreed by the commissioners without a meeting if such agreement—
- (a) is unanimous, and
  - (b) is subsequently recorded in a minute signed by the commissioners.

- 33 Any minute signed under paragraph 32(b) is to be inserted by the trustee in the sederunt book.

SCHEDULE 6  
(introduced by section 147)

RE-ENACTMENT OF SECTIONS 10 AND 189 OF THE BANKRUPTCY (SCOTLAND) ACT 1913

*Arrestments and attachments*

- 1 (1) Subject to sub-paragraph (2), all arrestments and attachments which have been executed within 60 days prior to the constitution of the apparent insolvency of the debtor, or within 4 months after its constitution, rank *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 is to be followed up without undue delay.
- (3) A creditor judicially producing, in a process relative to the subject of such arrestment or attachment, liquid grounds of debt or decree of payment within the 60 days or 4 months referred to in sub-paragraph (1) is entitled to rank as if the creditor had executed an arrestment or an attachment.
- (4) If, in the meantime—
- (a) the first or any subsequent arrester obtains a decree of furthcoming and recovers payment, that arrester, or
  - (b) an attachment creditor carries through an auction, that attachment creditor,
- is accountable for the sum recovered to those who, by virtue of this Act, may eventually be found to have a ranking *pari passu* on the sum; and is liable in an action at their instance for payment to them proportionately, after allowing out of the fund the expense of such recovery.
- (5) Arrestments executed for attaching the same effects of the debtor after the period of 4 months subsequent to the constitution of the debtor's apparent insolvency do not compete with those within the 60 days or 4 months referred to in sub-paragraph (1) but may rank with each other on any reversion of the fund attached in accordance with any enactment or rule of law relating to such ranking.
- (6) Any reference in sub-paragraphs (1) to (5) to a debtor is to be construed as including a reference to an entity whose apparent insolvency may, by virtue of subsection (6) of section 15, be constituted under subsection (1) of that section.
- (7) This paragraph applies in respect of arrestments and attachments executed whether before or after the coming into force of this Act.
- (8) Nothing in this paragraph applies to an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order.

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

2 Any—

- (a) conveyance, assignation, instrument, discharge, writing or deed relating solely to the estate of a debtor which has been or may be sequestrated, under either this or any former Act, being estate which after the execution of the document in question is and remains the property of the debtor, for the benefit of the debtor's creditors, or of the trustee in the sequestration,
- (b) discharge to the 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 the debtor, and
- (f) other deed or writing forming part of the proceedings ordered under such sequestration,

is exempt from all stamp duties or other Government duty.

SCHEDULE 7

*(introduced by section 148(1))*

MODIFICATION OF ENACTMENTS *Judicial Factors (Scotland) Act 1889 (c.39)*<sup>1</sup> In section 11A(2) of the *Judicial Factors (Scotland) Act 1889* (application for judicial factor on estate of person deceased), for the words "73(2) of the *Bankruptcy (Scotland) Act 1985*, section 51" there is substituted "143(5) of the *Bankruptcy (Scotland) Act 2013*, section 90".

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

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

- (a) after the words "1985", where they first occur, there is inserted "or the *Bankruptcy (Scotland) Act 2013*", and
- (b) in paragraph (b)—
  - (i) after the words "1985" there is inserted "or (1)(a) of section 22 of the *Bankruptcy (Scotland) Act 2013*", and
  - (ii) for the words "that section" there is substituted "the said section 14 or (4) of the said section 22".

*Administration of Justice Act 1956 (c.46)*

- 3 In section 47G of the Administration of Justice Act 1956 (ranking of arresting creditor of demise charterer in sequestration or winding up of owner), for subsection (3) there is substituted—

"(3) Subsections (6) to (8) of section 21 of the Bankruptcy (Scotland) Act 2013 (asp 00) (further provision as regards the effect of sequestration on diligence) and, in so far as applying and modifying those subsections, section 185(1)(a) and (2) of the Insolvency Act 1986 (c.45) (application of sequestration provisions relating to diligence on winding up) shall apply to such an arrestment as they apply to any other arrestment."

*Sheriff Courts (Scotland) Act 1971 (c.58)*

- 4 In section 32(1)(m) of the Sheriff Courts (Scotland) Act 1971 (power of Court of Session to regulate civil procedure in sheriff court), for the words "12 of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "19 of the Bankruptcy (Scotland) Act 2013 (asp 00)".

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

- 5 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) In section 9(1) (definition of "relevant claim" for purposes of sections 6, 7 and 8 of the Act)—
- (a) in paragraph (b), for the words "22 or 48 of the Bankruptcy (Scotland) Act 1985" there is substituted "32 or 84 of the Bankruptcy (Scotland) Act 2013", and
  - (b) in paragraph (c), for the words "5(2)(c) of the Bankruptcy (Scotland) Act 1985" there is substituted "143(1) of the Bankruptcy (Scotland) Act 2013".
- (3) In section 22A(3) (10 years' prescription of obligations), in paragraph (b) of the definition of "relevant claim", for the words "22 or 48 of the Bankruptcy (Scotland) Act 1985" there is substituted "32 or 84 of the Bankruptcy (Scotland) Act 2013".

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

- 6 In section 31 of the Local Government (Scotland) Act 1973 (disqualification for nomination, election and holding office as member of local authority)—
- (a) in subsection (2)(b), for the words "1985" there is substituted "2013", and
  - (b) in subsection (3B)—
    - (i) in paragraph (a), for the words "56A of the Bankruptcy (Scotland) Act 1985" there is substituted "105 of the Bankruptcy (Scotland) Act 2013", and
    - (ii) in paragraph (b), for the words "56G" there is substituted "111".

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

- 7 In section 12(3)(b) of the Land Registration (Scotland) Act 1979 (indemnity in respect of loss), after the word "respectively" there is inserted "or subsection (5) of section 62, or subsection (6) of section 63, of the Bankruptcy (Scotland) Act 2013".

*Education (Scotland) Act 1980 (c.44)*

- 8 In section 73B(12) of the Education (Scotland) Act 1980 (regulations relating to student loans), for the words "54 of the Bankruptcy (Scotland) Act 1985 or on an order being made under paragraph 11 of Schedule 4" there is substituted "98 of the Bankruptcy (Scotland) Act 2013 or on certificates being granted under paragraph 13 of schedule 3".

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

- 9 (1) The Family Law (Scotland) Act 1985 is amended as follows.
- (2) In section 14(5)(b) (incidental orders), for the words "41 of the Bankruptcy (Scotland) Act 1985" there is substituted "77 of the Bankruptcy (Scotland) Act 2013".
- (3) In section 16(3)(b) (agreements on financial provision), for the words "10(5) of the Bankruptcy (Scotland) Act 1985" there is substituted "16(6) of the Bankruptcy (Scotland) Act 2013".

*Legal Aid (Scotland) Act 1986 (c.47)*

- 10 In Part 2 of Schedule 2 to the Legal Aid (Scotland) Act 1986 (civil legal aid: excepted proceedings), in paragraph 3(d), for the words "5(2)(a) of the Bankruptcy (Scotland) Act 1985" there is substituted "2(1)(a) of the Bankruptcy (Scotland) Act 2013".

*Debtors (Scotland) Act 1987 (c.18)*

- 11 (1) The Debtors (Scotland) Act 1987 is amended as follows.
- (2) In section 9(10)(b) (effect of time to pay order on diligence), for the words "7 of the Bankruptcy (Scotland) Act 1985" there is substituted "15 of the Bankruptcy (Scotland) Act 2013".
- (3) In section 13(2) (saving of creditor's rights and remedies), for the words "24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985" there is substituted "1 of schedule 6 to the Bankruptcy (Scotland) Act 2013".
- (4) In section 66 (recall and variation of conjoined arrestment order)—
- (a) in subsection (2)(e), for the words "13 of the Bankruptcy (Scotland) Act 1985 or the permanent" there is substituted "38 of the Bankruptcy (Scotland) Act 2013 or the", and
- (b) in subsection (7), the words "the permanent" are repealed.
- (5) In section 67 (equalisation of diligences not to apply), for the words "24 of Schedule 7 to the Bankruptcy (Scotland) Act 1985" there is substituted "1 of schedule 6 to the Bankruptcy (Scotland) Act 2013".

- (6) In section 72(5) (effect of sequestration on diligence against earnings), for the words "12(4) of the Bankruptcy (Scotland) Act 1985" there is substituted "19(8) of the Bankruptcy (Scotland) Act 2013".
- (7) In section 93(4) (recovery from debtor of expenses of certain diligences)—
  - (a) in paragraph (b), for the words "1985" there is substituted "2013", and
  - (b) in paragraph (f), for the words "Schedule 5 to the Bankruptcy (Scotland) Act 1985" there is substituted "schedule 4 to the Bankruptcy (Scotland) Act 2013".

*Agricultural Holdings (Scotland) Act 1991 (c.55)*

- 12 (1) The Agricultural Holdings (Scotland) Act 1991 is amended as follows.
  - (2) In section 21(6) (notice to quit and notice of intention to quit), after the words "under the" there is inserted "Bankruptcy (Scotland) Act 2013, the".
  - (3) In section 22(2)(f) (restriction on operation of notices to quit), for the words "7 of the Bankruptcy (Scotland) Act 1985" there is substituted "15 of the Bankruptcy (Scotland) Act 2013".
  - (4) In section 41(3)(b) (direction by Land Court that holding be treated as market garden), for the words "7 of the Bankruptcy (Scotland) Act 1985" there is substituted "15 of the Bankruptcy (Scotland) Act 2013".
  - (5) In section 85(1) (interpretation), in the definition of—
    - (a) "landlord", for the words from ", tutor" to the end there is substituted "or tutor of a landlord or the trustee or interim trustee in the sequestration of a landlord's estate;"; and
    - (b) "tenant", for the words from ", curator" to the end there is substituted "or curator bonis of a tenant or the trustee or interim trustee in the sequestration of a tenant's estate;".

*Further and Higher Education (Scotland) Act 1992 (c.37)*

- 13 In paragraph 7 of Schedule 2 to the Further and Higher Education (Scotland) Act 1992 (constitution and proceedings of boards of management), in sub-paragraph (2)(b), for the words "1985" there is substituted "2013".

*Crofters (Scotland) Act 1993 (c.44)*

- 14 In paragraph 10 of Schedule 2 to the Crofters (Scotland) Act 1993 (the statutory conditions), for the words "1985" there is substituted "2013".

*Proceeds of Crime (Scotland) Act 1995 (c.43)*

- 15 (1) The Proceeds of Crime (Scotland) Act 1995 is amended as follows.
  - (2) In Schedule 1 (administrators), in paragraph 2(1)(j), for the words "74 of the Bankruptcy (Scotland) Act 1985" there is substituted "144 of the Bankruptcy (Scotland) Act 2013".

- (3) In Schedule 2 (sequestration etc. of persons holding realisable or forfeitable property)—
- (a) in paragraph 1(1)(a), for the words "12(4) of the 1985" there is substituted "19(8) of the 2013",
  - (b) in paragraph 1(2)—
    - (i) in head (a), for the words "31(8) of the 1985" there is substituted "51 of the 2013",
    - (ii) for head (b) there is substituted—
      - "(b) any income of the debtor which has been ordered, under subsection (4) of section 57 of that Act, to be paid to the trustee in the sequestration or any estate which, under subsection (4) of section 51, or subsection (4) of section 59, of that Act vests in the trustee," and
    - (iii) for the words "permanent trustee in accordance with section 48" there is substituted "trustee in the sequestration in accordance with section 84",
  - (c) in paragraph 1(3), for the words "1985" there is substituted "2013",
  - (d) in paragraph 1(4), for the words "2(5) of the 1985" there is substituted "37(8) of the 2013",
  - (e) in paragraph 1(5)—
    - (i) in head (a), for the words "34 or 36 of the 1985" there is substituted "62 or 63 of the 2013", and
    - (ii) in head (b), for the words "34 and 36" there is substituted "62 and 63",
  - (f) in paragraph 5—
    - (i) in sub-paragraph (1), for the words "1985" there is substituted "2013", and
    - (ii) in sub-paragraph (3), the words from "the reference" to "sequestration and" are repealed,
  - (g) in paragraph 6(1), for the words "1985", in both places where they appear, there is substituted "2013", and
  - (h) in paragraph 6(3), for the words "or permanent" there is substituted "trustee or".

*Education (Scotland) Act 1996 (c.43)*

- 16 In paragraph 4 of Schedule 1 to the Education (Scotland) Act 1996 (the Scottish Qualifications Authority), in sub-paragraph (2)(b), for the words "1985" there is substituted "2013".

*Adults with Incapacity (Scotland) Act 2000 (asp 4)*

- 17 In section 87(4) of the Adults with Incapacity (Scotland) Act 2000 (interpretation), for the words "5 to the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "4 to the Bankruptcy (Scotland) Act 2013 (asp 00)".

*Regulation of Care (Scotland) Act 2001 (asp 8)*

- 18 In section 29(3)(d) of the Regulation of Care (Scotland) Act 2001 (regulations relating to care services), for the words from "permanent" to "respect" there is substituted "trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00);".

*Housing (Scotland) Act 2001 (asp 10)*

- 19 In paragraph 4 of Schedule 7 to the Housing (Scotland) Act 2001 (regulation of registered social landlords), in sub-paragraph (2)(a), for the words "1985 (c.66)" there is substituted "2013 (asp 00)".

*International Criminal Court (Scotland) Act 2001 (asp 13)*

- 20 (1) Schedule 6 to the International Criminal Court (Scotland) Act 2001 (freezing orders in respect of property liable to forfeiture) is amended as follows.
- (2) In paragraph 8 (sequestration)—
- (a) in sub-paragraph (1)(a), for the words "12(4) of the 1985" there is substituted "19(8) of the 2013", and
  - (b) in sub-paragraph (2)—
    - (i) in head (a), for the words "31(8) of the 1985" there is substituted "51(1) of the 2013",
    - (ii) in head (b), for the words "32(2) of that Act to be paid to the permanent trustee" there is substituted "57(4) of that Act to be paid to the trustee in the sequestration",
    - (iii) in head (c), for the words "31(10) or 32(6) of that Act vests in the permanent trustee" there is substituted "51(4) or 59(4) of that Act vests in the trustee in the sequestration", and
    - (iv) for the words "22 of that Act or the permanent trustee in accordance with section 48" there is substituted "32 of that Act or the trustee in the sequestration in accordance with section 84",
  - (c) in sub-paragraph (3), for the words "1985" there is substituted "2013",
  - (d) in sub-paragraph (4), for the words "2(5) of the 1985" there is substituted "37(8) of the 2013", and
  - (e) sub-paragraph (5) is repealed.
- (3) In paragraph 12 (interpretation)—
- (a) the definition of "the 1985 Act" is repealed, and
  - (b) after the definition of "the 1986 Act" there is inserted—  
""the 2013 Act" means the Bankruptcy (Scotland) Act 2013 (asp 00);".

*Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)*

- 21 (1) The 2002 Act is amended as follows.
- (2) In section 9Q(3) (recovery of expenses of interim attachment)—
- (a) in paragraph (b), for the words "1985 (c.66)" there is substituted "2013 (asp 00)", and
  - (b) in paragraph (f), for the words "5 to the 1985" there is substituted "4 to the 2013".
- (3) In section 31(1) (disposal of proceeds of auction), for the words "37 (effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "21 (further provision as regards the effect of sequestration on diligence) of the Bankruptcy (Scotland) Act 2013 (asp 00)".
- (4) In section 40(3) (recovery from debtor of expenses of attachment)—
- (a) in paragraph (b), for the words "1985 (c.66)" there is substituted "2013 (asp 00)", and
  - (b) in paragraph (f), for the words "5 to the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "4 to the Bankruptcy (Scotland) Act 2013 (asp 00)".

*Agricultural Holdings (Scotland) Act 2003 (asp 11)*

- 22 In section 93 of the Agricultural Holdings (Scotland) Act 2003 (interpretation), in the definition of—
- (a) "landlord"—
    - (i) after the word "guardian" there is inserted "or", and
    - (ii) for the words from "or permanent" to the end there is substituted "of a landlord or the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013, of a landlord's estate;".
  - (b) "tenant"—
    - (i) after the word "guardian" there is inserted "or", and
    - (ii) for the words from "or permanent" to the end there is substituted "of a tenant or the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013, of a tenant's estate;".

*Charities and Trustee Investment (Scotland) Act 2005 (asp 10)*

- 23 In section 70(3)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (disqualification: supplementary)—
- (a) in sub-paragraph (i), for the words "54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "98 (or 98 and 99) of the Bankruptcy (Scotland) Act 2013 (asp 00)", and
  - (b) in sub-paragraph (ii), for the words "an order under paragraph 11 of Schedule 4" there is substituted "the granting of certificates under paragraph 13 of schedule 3".

*Licensing (Scotland) Act 2005 (asp 16)*

- 24 In section 28(8) of the Licensing (Scotland) Act 2005 (period of effect of premises licence), for the words "1985 (c.66)" there is substituted "2013 (asp 00)".

*Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*

- 25 In section 195(4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (recovery from debtor of expenses of money attachment)—
- (a) in paragraph (a), for the words "1985 Act" there is substituted "Bankruptcy (Scotland) Act 2013 (asp 00)", and
  - (b) in paragraph (e), for the words "the 1985 Act" there is substituted "that Act of 2013".

*Criminal Proceedings etc. (Scotland) Act 2007 (asp 6)*

- 26 In section 73(2)(b) of the Criminal Proceedings etc. (Scotland) Act 2007 (disqualification where sequestration or bankruptcy), for the words "1985 (c.66)" there is substituted "2013 (asp 00)".

SCHEDULE 8  
(introduced by section 148(2))

**REPEALS AND REVOCATIONS**

**PART 1**

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Bankruptcy (Scotland) Act 1985 (c.66)	The whole Act.
Debtors (Scotland) Act 1987 (c.18)	In Schedule 6, paragraphs 27 and 28.
Bankruptcy (Scotland) Act 1993 (c.6)	The whole Act.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)	In Schedule 3, paragraph 15(4). In Schedule 4, paragraph 58.
Housing (Scotland) Act 2001 (asp 10)	In schedule 10, paragraph 10.
Water Industry (Scotland) Act 2002 (asp 3)	In schedule 7, paragraph 16.
Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)	In schedule 3, paragraph 15.
Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)	Sections 1 and 2. Sections 5 to 32. Sections 35 and 36. Schedule 1. In schedule 5, paragraph 13.
Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6)	Part 2.

**PART 2**  
REVOCATIONS

<i>Enactment</i>	<i>Extent of revocation</i>
Debt Arrangement Scheme (Scotland) Regulations 2004 (S.S.I. 2004 No. 468)	In schedule 3, paragraphs 1 and 2.
Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 (S.S.I. 2008 No. 81)	Regulation 4.
Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008 No. 82)	Regulation 8.
Protected Trust Deeds (Scotland) Regulations 2008 (S.S.I. 2008 No. 143)	The whole instrument.
Protected Trust Deeds (Scotland) Amendment Regulations 2010 (S.S.I. 2010 No. 398)	The whole instrument.
Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011 No. 141)	Regulation 45. In schedule 2, paragraphs 1 and 2.

# Appendix 3

## Draft section 104 Order

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### STATUTORY INSTRUMENTS

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**2013 No. 0000**

## Bankruptcy

### The Bankruptcy (Scotland) Act 2013 (Consequential Provisions and Modifications) Order 2013

*Made---*

*Laid before Parliament----*

*Coming into force---*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104 and 112 to 115 of, and Schedule 7, to the Scotland Act 1998.

#### **Citation and commencement**

**1.** This Order may be cited as the Bankruptcy (Scotland) Act 2013 (Consequential Provisions and Modifications) Order 2013 and comes into force on.....

#### **Interpretation**

**2.—(1)** In this Order unless the context otherwise requires –

"the 2013 Act" means the Bankruptcy (Scotland) Act 2013,<sup>(a)</sup>

"creditor" includes a member State liquidator deemed to be a creditor under section 126 of the 2013 Act,

"date of sequestration" has the meaning assigned by section 19(8) of the 2013 Act,

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(a) asp.00.

"debtor" includes, without prejudice to the expression's generality, an entity whose estate may be sequestrated by virtue of section 4 of the 2013 Act, a deceased debtor, a deceased debtor's executor or a person entitled to be appointed a deceased debtor's executor,

"debtor application" means an application for sequestration made to the Accountant in Bankruptcy under section 2(1)(a) or 4(3)(a), (4)(a) or (6)(a) of the 2013 Act,

"the EC Regulation" means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings,

"examination" means a public examination under section 81, or a private examination under section 80, of the 2013 Act,

"relevant person" has the meaning assigned by section 80(1)(b) of the 2013 Act, and

"trust deed" means—

- (a) a voluntary trust deed granted by or on behalf of a debtor ("D") whereby D's estate (other than such of D's estate as would not, under section 61(1) of the 2013 Act, vest in the trustee were D's estate sequestrated) is conveyed to the trustee ("T") for the benefit of D's creditors generally, and
- (b) any other trust deed which would fall within sub-paragraph (a) but for—
  - (i) the exclusion from the estate conveyed to T of the whole or part of D's dwellinghouse, where a secured creditor holds a security over it, and
  - (ii) the fact that D's estate is not conveyed to T for the benefit of creditors generally because the secured creditor has, at D's request, agreed before the trust deed is granted not to claim under the trust deed for any of the debt in respect of which the security is held,

(2) Any reference in this Order, however expressed, to the time when a petition for sequestration is presented is to be construed as a reference to the time when the petition is received by the sheriff clerk.

(3) Any reference in this Order, however expressed, to the time when a debtor application is made is to be construed as a reference to the time when the application is received by the Accountant in Bankruptcy.

### **Provisions ancillary to sections 80 and 81 of the 2013 Act**

**3.** —(1) If a debtor or relevant person is residing in a part of the United Kingdom other than Scotland, the sheriff may on the application of the trustee grant a warrant for the arrest of the debtor or relevant person and to have the arrested person taken to the place of the examination.

(2) But a warrant under paragraph (1) is not to be granted unless the sheriff is satisfied that it is necessary to grant it to secure the attendance of the debtor or relevant person at the examination.

(3) If the debtor or relevant person is for any good reason prevented from attending for examination, the sheriff may grant a commission to take the examination of the debtor or relevant person (the commissioner being, in this article and in section 83 of the 2013 Act, referred to as an "examining commissioner").

(4) Paragraph (3) is without prejudice to paragraph (5).

(5) The sheriff or the examining commissioner may at any time adjourn the examination to such day as the sheriff or examining commissioner may fix.

(6) The sheriff or examining commissioner may order the debtor ("D") or a relevant person to produce for inspection any document—

- (a) in the custody or control of the person so ordered, and
- (b) relating to D's assets, D's dealings with those assets or D's conduct in relation to D's business or financial affairs,

and to deliver the document or a copy of the document to the trustee in the sequestration for further examination by the trustee.

#### **Effect of discharge under section 98 of the 2013 Act**

4. —(1) On the discharge of the debtor ("D") under section 98 of the 2013 Act, D is discharged of all debts and obligations contracted by D, or for which D was liable, at the date of sequestration.

(2) Paragraph (1) is subject to paragraphs (3) and (5).

(3) D is not discharged by virtue of paragraph (1) from—

- (a) any liability to pay a fine or other penalty due to the Crown,
- (b) any liability to pay a fine imposed in Scotland in a justice of the peace court (or a district court),
- (c) any liability under a compensation order (within the meaning of section 249 of the Criminal Procedure (Scotland) Act 1995<sup>(a)</sup>),
- (d) any liability to forfeiture of a sum of money deposited in court under section 24(6) of the Criminal Procedure (Scotland) Act 1995,
- (e) any liability incurred by reason of fraud or breach of trust,
- (f) any obligation to pay—
  - (i) aliment, or any sum of an alimentary nature, under any enactment or rule of law, or
  - (ii) any periodical allowance payable on divorce by virtue of a court order or under an obligation, or
- (g) the obligation imposed on D by section 131 of the 2013 Act.

(4) The obligations mentioned in sub-paragraph (f) of paragraph (3) do not include—

- (a) aliment, or a periodical allowance, which could be included in the amount of a creditor's claim under paragraph 2 of schedule 1 to the 2013 Act, or
- (b) child support maintenance within the meaning of the Child Support Act 1991<sup>(b)</sup> which was unpaid in respect of any period before the date of sequestration of—
  - (i) any person by whom it was due to be paid, or

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<sup>(a)</sup> c.46.  
<sup>(b)</sup> c. 48.

(ii) any employer by whom it was, or was due to be, deducted under section 31(5) of that Act.

(5) The discharge of D under section 98 of the 2013 Act does not affect any right of a secured creditor for an obligation in respect of which D has been discharged, to enforce the security in respect of the obligation.

(6) In paragraph (3)(a), the reference to a fine or other penalty due to the Crown includes a reference to a confiscation order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002<sup>(a)</sup>.

(7) In construing paragraph (3)(b), paragraph 33(1) of the schedule to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007<sup>(b)</sup> (construction of references to the district court) is to be disregarded.

(8) This article extends to all parts of the United Kingdom other than Scotland (and is without prejudice to section 100 of the 2013 Act).

### **Regulations under section 67 or 70 of the 2013 Act**

**5.** —(1) Any power of the Secretary of State to make regulations under section 67 or 70 of the 2013 Act is exercisable by statutory instrument.

(2) A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Such regulations may make different provision for different cases or classes of case.

(4) Any power to make such regulations may, in so far as it relates to a matter to which the EC Regulation applies, be exercised for the purpose of making provision in consequence of the EC Regulation.

### **Limitation of actions**

**6.** —(1) The following bar the effect of any enactment or rule of law relating to the limitation of actions—

(a) the presentation of a petition for sequestration under section 2, 3 or 4 of the 2013 Act,

(b) the submission of a claim under section 32 or 84 of that Act,

(c) the submission by a creditor of a claim to the trustee in a sequestration acting under a trust deed,

(d) concurrence in a debtor application under section 6 of that Act.

(2) Reference in paragraph (1) to any of a creditor's acts mentioned in sub-paragraphs (a) to (d) of that paragraph barring the effect of any enactment or rule of law relating to the limitation of actions is to be construed as reference to that act having the same effect, for the purposes of the enactment or rule of law, as an effective acknowledgement of the creditor's claim.

(3) Reference in paragraph (1) or (2) to an enactment does not include reference to an enactment which implements or gives effect to any international agreement or obligation.

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<sup>(a)</sup> c. 29.  
<sup>(b)</sup> asp 6.

(4) This article extends to all parts of the United Kingdom other than Scotland (and is without prejudice to sections 12(6), 13(3), 32(11), and 87(3) of, and paragraph 4 of schedule 4 to, the 2013 Act).

### **Discharge on composition**

**7.** —(1) On the granting of a certificate under paragraph 13(1) of schedule 3 to the 2013 Act the debtor to which the certificate relates is discharged of all debts for which that debtor is liable at the date of sequestration (other than the debts mentioned in article 4(3)).

(2) The discharge of a debtor by virtue of the granting of a certificate under that paragraph does not affect any right of a secured creditor for a debt or other obligation in respect of which the debtor has been discharged to enforce the security in respect of that debt or obligation.

(3) This article extends to all parts of the United Kingdom other than Scotland (and is without prejudice to paragraph 20(1)(b) and (3) of schedule 3 to the 2013 Act).

### **Modifications, repeals and revocations**

**8.** —(1) Schedule 1 makes provision for the modification of enactments.

(2) The enactments mentioned in Schedule 2 are repealed, or as the case may be revoked, to the extent mentioned in the second column of that schedule.

(3) Nothing in this Order affects any of the enactments repealed, revoked or modified by this Order in their operation in relation to a sequestration as regards which the award was made before the coming into force of this Order.

(4) Any modification, repeal or revocation made by Schedule 1 or 2 has the same extent as the enactment or provision to which it relates.

### **Sequestrations to which Order applies**

**9.** This Order applies to sequestrations as regards which the petition is presented, or the debtor application is made—

(a) on or after the date on which the 2013 Act comes into force, or

(b) before that date, but in respect of which no award of sequestration has been made by that date.

### **Crown application**

**10.** This Order binds the Crown as creditor only.

*Signed by authority of the Secretary of State*

*Parliamentary Under Secretary of State  
Scotland Office  
Dover House  
London*

*Date*

## SCHEDULE 1

### MODIFICATION OF PUBLIC GENERAL ACTS

#### *Superannuation Act 1972 (c.11)*

- 1 In section 5(2) of the Superannuation Act 1972 (benefits under civil service superannuation schemes not assignable), for the words "32(2) and (4) of the Bankruptcy (Scotland) Act 1985" there is substituted "57(3), (4) and (15) of the Bankruptcy (Scotland) Act 2013".

#### *Control of Pollution Act 1974 (c.40)*

- 2 (1) The Control of Pollution Act 1974 is amended as follows.
- (2) In section 30Y(b)(i) (abandoned mines: introductory)—
- (a) for the word "permanent" there is substituted "trustee", and
  - (b) for the words "1985" there is substituted "2013".
- (3) In section 30Z(5)(a) (mine operators to give SEPA six months' notice of any proposed abandonment)—
- (a) for the word "permanent" there is substituted "trustee", and
  - (b) for the words "1985" there is substituted "2013".

#### *Insolvency Act 1986 (c.45)*

- 3 (1) The Insolvency Act 1986 is amended as follows.
- (2) In section 51(6) (appointment of receiver), in the definition of "bankruptcy restrictions order"—
- (a) in paragraph (a), for the words "56A of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "105 of the Bankruptcy (Scotland) Act 2013 (asp 00)", and
  - (b) in paragraph (b), for the words "56G" there is substituted "111".
- (3) In section 185(1) (effect of diligence: Scotland), for the words from "1985" to the end of paragraph (b) there is substituted—
- "2013—
- (a) subsections (3) to (10) of section 20 (effect of sequestration on land attachment) and (1) to (10) of section 21 (effect of sequestration on diligence generally etc.); and
  - (b) subsections (6), (7), (10) and (11) of section 72 (management and realisation of estate,".

- (4) In section 193 (unclaimed dividends: Scotland)—
  - (a) in subsection (2), for the words "73(1) of the Bankruptcy (Scotland) Act 1985" there is substituted "143(1) of the Bankruptcy (Scotland) Act 2013", and
  - (b) in subsection (3), for the words—
    - (i) "58 of the Bankruptcy (Scotland) Act 1985" there is substituted "103 of the Bankruptcy (Scotland) Act 2013", and
    - (ii) "57" there is substituted "102".
- (5) In section 242(3)(a) (gratuitous alienations: Scotland), for the words "1985" there is substituted "2013".
- (6) In section 388 (meaning of "act as an insolvency practitioner")—
  - (a) in subsection (2)(a), for the word "permanent" there is substituted "trustee",
  - (b) in subsection (3), for the words "1985" there is substituted "2013",
  - (c) in subsection (4), for the definition of "interim trustee" and "permanent trustee" there is substituted—
 

"sequestration" means sequestration under the Bankruptcy (Scotland) Act 2013", and
  - (d) in subsection (5)(b), for the words "1985" there is substituted "2013".
- (7) In section 389(2) (acting without qualification an offence), for the words "1985" there is substituted "2013".
- (8) In section 426(10)(b) (co-operation between courts exercising jurisdiction in relation to insolvency), for the words "1985" there is substituted "2013".
- (9) In section 435(5)(a) (meaning of "associate"), for the words "1985" there is substituted "2013".
- (10) In paragraph 14 of Schedule 8 (provisions capable of inclusion in company insolvency rules), for the words "1985" there is substituted "2013".

*Companies Act 1989 (c.40)*

- 4 (1) The Companies Act 1989 is amended as follows.
- (2) In section 159(2) (proceedings of exchange or clearing house take precedence over insolvency proceedings), for the words "1985" there is substituted "2013".
- (3) In section 161 (supplementary provisions as to default proceedings)—
  - (a) in subsection (2), for the words "permanent trustee on the sequestrated" there is substituted "trustee in the sequestration of the", and
  - (b) in subsection (4), for the words "1985" there is substituted "2013".
- (4) In section 163(3) (net sum payable on completion of default proceedings), for the words "73(1) of the Bankruptcy (Scotland) Act 1985" there is substituted "19(8) of the Bankruptcy (Scotland) Act 2013".

- (5) In section 164 (disclaimer of property, rescission of contracts etc.)—
- (a) in subsection (2)—
    - (i) for the words "permanent trustee on the sequestrated" there is substituted "trustee in the sequestration of the", and
    - (ii) for the words "42 of the Bankruptcy (Scotland) Act 1985" there is substituted "73 of the Bankruptcy (Scotland) Act 2013", and
  - (b) in subsection (3), for the words "32(8) of the Bankruptcy (Scotland) Act 1985" there is substituted "60(3) of the Bankruptcy (Scotland) Act 2013".
- (6) In section 165(2)(a) (adjustment of prior transactions), for the words "34 or 36 of the Bankruptcy (Scotland) Act 1985" there is substituted "62 or 63 of the Bankruptcy (Scotland) Act 2013".
- (7) In section 175(4) (administration orders etc.), for the words "32(8) of the Bankruptcy (Scotland) Act 1985" there is substituted "60(3) of the Bankruptcy (Scotland) Act 2013".
- (8) In section 180(2) (proceedings against market property by unsecured creditors), for the words "1985" there is substituted "2013".
- (9) In section 182(2) (powers of court in relation to certain proceedings begun before commencement), for the words "1985" there is substituted "2013".
- (10) In section 190 (minor definitions)—
- (a) in subsection (1)—
    - (i) for the definitions of "interim trustee" and "permanent trustee" there is substituted—
      - ""interim trustee" has the same meaning as in the Bankruptcy (Scotland) Act 2013", and
    - (ii) at the appropriate place there is inserted—
      - ""sequestration" means sequestration under the Bankruptcy (Scotland) Act 2013;"
  - (b) in subsection (6), for the words "1985" there is substituted "2013", and
  - (c) in subsection (7)(b), for the words "or permanent trustee" there is substituted "trustee or to a trustee in the sequestration of an estate".
- (11) In section 191 (index of defined expressions), in the table—
- (a) the entry relating to "permanent trustee" is omitted, and
  - (b) for the entry relating to "trustee, interim or permanent (in relation to Scotland)" there is substituted—
    - (i) in the first column, "trustee (in relation to Scotland)", and
    - (ii) in the second column, "section 190(1) and (7)(b)".

*Environmental Protection Act 1990 (c.43)*

- 5 In section 78X(4)(e) of the Environmental Protection Act 1990 (supplementary provisions)—
- (a) for the word "permanent" there is substituted "trustee", and

- (b) for the words "1985" there is substituted "2013".

*Water Resources Act 1991 (c.57)*

- 6 (1) The Water Resources Act 1991 is amended as follows.
- (2) In section 91A(1)(b)(ii) (introductory)—
  - (a) for the word "permanent" there is substituted "trustee", and
  - (b) for the words "1985" there is substituted "2013".
- (3) In section 91B(5)(b) (mine operators to give the Environment Agency six months' notice before an abandonment takes effect)—
  - (a) for the word "permanent" there is substituted "trustee", and
  - (b) for the words "1985" there is substituted "2013".

*Social Security Administration Act 1992 (c.5)*

- 7 (1) The Social Security Administration Act 1992 is amended as follows.
- (2) In section 71(10B) (overpayments), for the words "1985" there is substituted "2013".
- (3) In section 78(3B) (recovery of social fund awards), for the words "1985" there is substituted "2013".

*Taxation of Chargeable Gains Act 1992 (c.12)*

- 8 In section 66(5) of the Taxation of Chargeable Gains Act 1992 (insolvents' assets), in the definition of "trustee in bankruptcy"—
  - (a) for the words "permanent trustee within the meaning of" there is substituted "trustee in a sequestration under", and
  - (b) for the words "1985" there is substituted "2013".

*Pension Schemes Act 1993 (c.48)*

- 9 (1) The Pensions Schemes Act 1993 is amended as follows.
- (2) In section 47(7) (entitlement to guaranteed minimum pension for purposes of relationship with social security benefits), for the words "36A of the Bankruptcy (Scotland) Act 1985" there is substituted "65 of the Bankruptcy (Scotland) Act 2013".
- (3) In section 127(2)(b) (transfer to Secretary of State of rights and remedies), for the words "1985" there is substituted "2013".
- (4) In section 128 (priority in bankruptcy etc.), for the words "4 of Schedule 3 to the Bankruptcy (Scotland) Act 1985" there is substituted "1 of schedule 2 to the Bankruptcy (Scotland) Act 2013".
- (5) In section 147 (death, insolvency or disability of authorised complainant), for the words "1985" there is substituted "2013".

- (6) In paragraph 4 of Schedule 4 (priority in bankruptcy etc.), for the words "3 to the Bankruptcy (Scotland) Act 1985" there is substituted "2 to the Bankruptcy (Scotland) Act 2013".

*Value Added Tax Act 1994 (c.23)*

- 10 (1) The Value Added Tax Act 1994 is amended as follows.
  - (2) In section 73 (failure to make returns etc.), in each of subsections (5) and (10), for the words "interim or permanent trustee" there is substituted "trustee or interim trustee in a sequestration under the Bankruptcy (Scotland) Act 2013".
  - (3) In section 75(4) (assessments in cases of acquisitions of certain goods by non-taxable persons), for the words "interim or permanent trustee" there is substituted "trustee or interim trustee in a sequestration under the Bankruptcy (Scotland) Act 2013".
  - (4) In section 76(10) (assessments of amounts due by way of penalty, interest or surcharge), for the words "interim or permanent trustee" there is substituted "trustee or interim trustee in a sequestration under the Bankruptcy (Scotland) Act 2013".
  - (5) In section 78A(8) (assessment for interest overpayments), for the words "interim or permanent trustee" there is substituted "trustee or interim trustee in a sequestration under the Bankruptcy (Scotland) Act 2013".
  - (7) In section 81(5)(c) (interest given by way of credit and set-off of credits), for the words "1985" there is substituted "2013".
  - (8) In section 96(1) (interpretation), the definitions of "interim trustee" and "permanent trustee" are omitted.

*Environment Act 1995 (c.25)*

- 11 In Part 1 of Schedule 5 to the Environment Act 1995 (membership of flood defence committees), in paragraph 3(3)(a), for the words "54 of the Bankruptcy (Scotland) Act 1985" there is substituted "98 of the Bankruptcy (Scotland) Act 2013".

*Pensions Act 1995 (c.26)*

- 12 (1) The Pensions Act 1995 is amended as follows.
  - (2) In section 22(3) (circumstances in which certain provisions of the Act apply), the words "and "interim trustee" and "permanent trustee" have the same meanings as they have in the Bankruptcy (Scotland) Act 1985" are omitted.
  - (3) In section 75(8)(b) (deficiencies in assets), for the words "1985" there is substituted "2013".
  - (4) In section 94(3)(d) (sections 91 to 93: supplementary), for the words "32(2) of the Bankruptcy (Scotland) Act 1985" there is substituted "57(4) of the Bankruptcy (Scotland) Act 2013".
  - (5) In section 123(2) ("connected" and "associated" persons), for the words "74 of the Bankruptcy (Scotland) Act 1985 (associated persons)" there is substituted "144 of the Bankruptcy (Scotland) Act 2013 (meaning of "associate")".

*Finance Act 1996 (c.8)*

- 13 In section 50(10) of the Finance Act 1996 (power to assess), for the words from "an" to "1985)" there is substituted "a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013, of a person's estate".

*Employment Rights Act 1996 (c.18)*

- 14 (1) The Employment Rights Act 1996 is amended as follows.
- (2) In section 184(4) (debts to which Part 12 of the Act applies)—
- (a) for the words from "permanent", where it first occurs, to "1985)" there is substituted "trustee or interim trustee in the sequestration of an estate under the Bankruptcy (Scotland) Act 2013", and
  - (b) in paragraph (b), for the word "permanent" there is substituted "trustee".
- (3) In section 187(4)(a) (role of relevant officer)—
- (a) for the word "permanent" there is substituted "trustee", and
  - (b) for the words "1985" there is substituted "2013".
- (4) In section 189(2)(b) (transfer of rights and remedies), for the words "1985" there is substituted "2013".

*Housing Grants, Construction and Regeneration Act 1996 (c.53)*

- 15 In section 113 of the Housing Grants, Construction and Regeneration Act 1996 (prohibition of conditional payment provisions)—
- (a) in subsection (3)(b), for the words "12 of the Bankruptcy (Scotland) Act 1985" there is substituted "19 of the Bankruptcy (Scotland) Act 2013", and
  - (b) in subsection (4)(b), for the words "1985" there is substituted "2013".

*Scotland Act 1998 (c.46)*

- 16 In Part 2 of Schedule 5 to the Scotland Act 1998 (reserved matters: specific reservations), in Section C2, for the words "Bankruptcy (Scotland) Act 1985", in both places where they appear, there is substituted "Bankruptcy (Scotland) Act 2013".

*Welfare Reform and Pensions Act 1999 (c.30)*

- 17 (1) Section 13 of the Welfare Reform and Pensions Act 1999 (application of sections 11 and 12 of the Act to Scotland) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (b), for the words "1985" there is substituted "2013",
  - (b) in paragraph (d), for the words "permanent trustee or" there is substituted "trustee in a sequestration under the Bankruptcy (Scotland) Act 2013 or to his", and
  - (c) in paragraph (e), for the words "12(4) of the Bankruptcy (Scotland) Act 1985" there is substituted "19(8) of that Act".

- (3) In subsection (3), in the paragraph to be substituted for paragraph (b) of each of subsections (5) and (7) of section 11 of the Act, for the words "12(4) of the Bankruptcy (Scotland) Act 1985" there is substituted "19(8) of the Bankruptcy (Scotland) Act 2013".

*Financial Services and Markets Act 2000 (c.8)*

18 (1) The Financial Services and Markets Act 2000 is amended as follows.

- (2) In section 220(3)(b) (scheme manager's power to inspect information held by liquidator etc.), for the words from "permanent" to "on" there is substituted "trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013, of".
- (3) In section 355(1) (interpretation of part 24 of the Act)—
- (a) the definition of "the 1985 Act" is omitted, and
  - (b) after the definition of "the 1989 Order" there is inserted—  
"the 2013 Act" means the Bankruptcy (Scotland) Act 2013;".
- (4) In section 358 (authority's powers to participate in proceedings: trust deeds for creditors in Scotland)—
- (a) in subsection (2)(b), for the words "5(1)(c) of Schedule 5 to the 1985" there is substituted "6(1)(c) of schedule 4 to the 2013",
  - (b) subsection (3) is omitted, and
  - (c) in subsection (7), for the words "1985" there is substituted "2013".
- (5) In section 372(1)(b) (petitions), for the words "5 of the 1985" there is substituted "2 or 3 of the 2013".
- (6) In section 373(3) (insolvency practitioner's duty to report to authority), for the words "12 of the 1985" there is substituted "19 of the 2013".
- (7) In section 374 (authority's powers to participate in proceedings)—
- (a) in subsection (1)—
    - (i) in paragraph (b), for the words "5 of the 1985" there is substituted "2 or 3 of the 2013", and
    - (ii) in paragraph (c), for the words "6 of the 1985" there is substituted "4 of the 2013",
  - (b) in subsection (2)(b)(iii), for the words "1985" there is substituted "2013", and
  - (c) in subsection (4)(c), for the words "17 or 18 of Schedule 6 to the 1985" there is substituted "26 or 27 of schedule 5 to the 2013".

*Terrorism Act 2000 (c.11)*

19 (1) Schedule 4 to the Terrorism Act 2000 (forfeiture orders) is amended as follows.

- (2) In paragraph 48(4), for the words "51(1) of the Bankruptcy (Scotland) Act 1985" there is substituted "90(1) of the Bankruptcy (Scotland) Act 2013".
- (3) In paragraph 51(4), for the words "1985" there is substituted "2013".
- (4) In paragraph 53(1)(c), for the words "permanent or interim trustee on the" there is substituted "trustee or interim trustee in the sequestration of a".

*Limited Liability Partnerships Act 2000 (c.12)*

- 20 In section 7(2)(b) of the Limited Liability Partnerships Act 2000 (ex-members), for the words from "or permanent" to "1985) or" there is substituted ", the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013, of his estate or his".

*Finance Act 2000 (c.17)*

- 21 In Schedule 6 to the Finance Act 2000 (climate change levy)—
- (a) in paragraph 75(2)(i), for the words "1985" there is substituted "2013",
  - (b) in paragraph 76(3), for head (a) there is substituted—
    - "(a) a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00), of a person's estate;"
  - (c) in paragraph 91(4), for head (a) there is substituted—
    - "(a) a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00), of a person's estate;"
  - (d) in paragraph 103(5), for head (a) there is substituted—
    - "(a) a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00), of a person's estate;" and
  - (e) in paragraph 120(7)(k), for the words "1985" there is substituted "2013".

*Finance Act 2001 (c.9)*

- 22 (1) The Finance Act 2001 is amended as follows.
- (2) In section 37(7)(k) (insolvency etc.), for the words "1985 (c.66)" there is substituted "2013 (asp 00)".
  - (3) In paragraph 19(4) of Schedule 5 (aggregates levy: recovery and interest), for head (a) there is substituted—
    - "(a) a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00), of a person's estate;"
  - (4) In Schedule 8 (aggregates levy: repayments and credits)—
    - (a) in paragraph 11(2)(i), for "1985 (c.66)" there is substituted "2013 (asp 00)", and
    - (b) in paragraph 12(3), for head (a) there is substituted—
      - "(a) a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00), of a person's estate;"
  - (5) In paragraph 1(5) of Schedule 10 (aggregates levy: assessment of civil penalties and interest on them), for head (a) there is substituted—
    - "(a) a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00), of a person's estate;"

*Proceeds of Crime Act 2002 (c.29)*

- 23 (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) In section 84(2)(d) (property: general provisions), for the words from ", permanent" to the end there is substituted "or liquidator or in the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00)), of his estate".
  - (3) In section 95(3) (available amount), in the definition of "preferred debt", for the words "51(2) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "90(2) of the Bankruptcy (Scotland) Act 2013 (asp 00)".
  - (4) In section 150(2)(d) (property: general provisions)—
    - (a) the words from "permanent" to "(c.66)," are omitted, and
    - (b) at the end there is added "or in the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00)), of his estate".
  - (5) In section 232(2)(d) (property: general provisions), for the words from ", permanent" to the end there is substituted "or liquidator or in the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00)), of his estate".
  - (6) In section 311 (insolvency)—
    - (a) in subsection (3)—
      - (i) in paragraph (c), for the words "2 of the 1985" there is substituted "37 of the 2013", and
      - (ii) in paragraph (f), for the words "1985" there is substituted "2013",
    - (b) in subsection (7)(a), for the words "1985 Act means the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "2013 Act means the Bankruptcy (Scotland) Act 2013 (asp 00)", and
    - (c) in subsection (8)(a), for the words "1985 Act is the applicable enactment, any property comprised in an estate to which the 1985" there is substituted "2013 Act is the applicable enactment, any property comprised in an estate to which that Act".
  - (7) In section 420 (modifications of the Bankruptcy (Scotland) Act 1985)—
    - (a) in subsection (2), for the words "1985" there is substituted "2013",
    - (b) in subsection (4), for the words—
      - (i) "permanent trustee" there is substituted "trustee in the sequestration", and
      - (ii) "48 of the 1985" there is substituted "84 of the 2013", and
    - (c) in subsection (5), for the words "2(5) of the 1985" there is substituted "37(8) of the 2013".
  - (9) The title of section 420 becomes "Modifications of the 2013 Act".
  - (10) In section 421 (restriction of powers)—
    - (a) in subsection (3)(a), for the words "31(8) of the 1985" there is substituted "51 of the 2013",
    - (b) in subsection (3)(b), for the words—
      - (i) "32(2)" there is substituted "57(4)", and
      - (ii) "permanent trustee" there is substituted "trustee in the sequestration",

- (c) in subsection (3)(c), for the words—
    - (i) "31(10) or 32(6)" there is substituted "51(4) or 59(4)", and
    - (ii) "permanent trustee" there is substituted "trustee in the sequestration".
  - (d) in subsection (4), for the words "1985" there is substituted "2013", and
  - (e) subsections (5) and (6) are omitted.
- (11) In section 422 (tainted gifts), in each of subsections (2) and (3), for the words "34 or 36 of the 1985" there is substituted "62 or 63 of the 2013".
- (12) In section 434 (interpretation)—
- (a) in subsection (1)—
    - (i) paragraph (a) is omitted, and
    - (ii) after paragraph (d) there is inserted—
      - "(da) the 2013 Act is the Bankruptcy (Scotland) Act 2013 (asp 00);", and
  - (b) in subsection (2), for the words "12(4) of the 1985" there is substituted "19(8) of the 2013".
- (13) In paragraph 3 of Schedule 3 (administrators: further provision), in sub-paragraph (10), for the words "74 of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "144 of the Bankruptcy (Scotland) Act 2013 (asp 00)".

*Civil Partnership Act 2004 (c.33)*

- 24 In paragraph 23 of Schedule 21 to the Civil Partnership Act 2004 (references to stepchildren in existing Acts), for the words "74(4)(a) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "144(6) of the Bankruptcy (Scotland) Act 2013 (asp 00)".

*Pensions Act 2004 (c.35)*

- 25 (1) The Pensions Act 2004 is amended as follows.
- (2) In section 38(10)(c) (contribution notices where avoidance of employer debt), for the words "74 of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "144 of the Bankruptcy (Scotland) Act 2013 (asp 00)".
  - (3) In section 51(3)(c) (interpretation), for the words "74 of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "144 of the Bankruptcy (Scotland) Act 2013 (asp 00)".
  - (4) In section 53(6)(c) (restoration orders: supplementary), for the words "74 of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "144 of the Bankruptcy (Scotland) Act 2013 (asp 00)".
  - (5) In section 57(2)(c) (partnerships and limited liability partnerships), for the words "74 of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "144 of the Bankruptcy (Scotland) Act 2013 (asp 00)".
  - (6) In section 121(4)(b) (insolvency event, insolvency date and insolvency practitioner), for the words "12 of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "19 of the Bankruptcy (Scotland) Act 2013 (asp 00)".

*Income Tax (Trading and Other Income) Act 2005 (c.5)*

- 26 In section 259(a) (meaning of "statutory insolvency arrangement"), for the words "4 or 5 to the Bankruptcy (Scotland) Act 1985" there is substituted "3 or 4 to the Bankruptcy (Scotland) Act 2013".

*Gambling Act 2005 (c.19)*

- 27 (1) The Gambling Act 2005 is amended as follows.
- (2) In section 114(1)(d) (operating licences: lapse), for the words "12(1) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "19(1) of the Bankruptcy (Scotland) Act 2013 (asp 00)".
  - (3) In section 194(1)(d) (premises licences: lapse), for the words "12(1) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "19(1) of the Bankruptcy (Scotland) Act 2013 (asp 00)".
  - (4) In paragraph 15 of Schedule 10 (family entertainment centre gaming machine permits), in sub-paragraph (1)(d), for the words "12(1) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "19(1) of the Bankruptcy (Scotland) Act 2013 (asp 00)".
  - (5) In paragraph 15 of Schedule 14 (prize gaming permits), in sub-paragraph (1)(d), for the words "12(1) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "19(1) of the Bankruptcy (Scotland) Act 2013 (asp 00)".

*Companies Act 2006 (c.46)*

- 28 (1) The Companies Act 2006 is amended as follows.
- (2) In section 102(5) (re-registration of private limited company as unlimited)—
    - (a) for paragraph (a) there is substituted—
      - "(a) a trustee in the sequestration of the estate of a member of the company;"
      - and
    - (b) in paragraph (b), for the words "1985" there is substituted "2013 (asp 00)".
  - (3) In section 109(5) (re-registration of public company as private and unlimited)—
    - (a) for paragraph (a) there is substituted—
      - "(a) a trustee in the sequestration of the estate of a member of the company;"
      - and
    - (b) in paragraph (b), for the words "1985" there is substituted "2013 (asp 00)".
  - (4) In section 148(4)(a)(ii) (termination or suspension of nomination), for the words "1985 (c.66)" there is substituted "2013 (asp 00)".
  - (5) In section 310(3)(b) (persons entitled to receive notice of meetings), for the words "1985 (c.66)" there is substituted "2013 (asp 00)".
  - (6) In section 982(8) (further provision about consideration held on trust under section 981(9) of the Act) for the words—
    - (a) "58 of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "103 of the Bankruptcy (Scotland) Act 2013 (asp 00)", and
    - (b) "57(1)(a)" there is substituted "102(1)(a)".

- (7) In Part 6 of Schedule 5 (communications by a company: supplementary provisions), in paragraph 17(5)(b), for the words "1985 (c.66)" there is substituted "2013 (asp 00)".

*Armed Forces Act 2006 (c.52)*

- 29 In section 356(4)(b)(ii) of the Armed Forces Act 2006 (avoidance of assignment of, or charge on, pay and pensions etc.), for the words "permanent trustee in a sequestration" there is substituted "trustee in the sequestration of a person's estate".

*Serious Crime Act 2007 (c.27)*

- 30 In section 27(8) of the Serious Crime Act 2007 (power to wind up companies etc: England and Wales and Scotland), for "1985 (c.66)" there is substituted "2013 (asp 00)".

*Banking Act 2009 (c.1)*

- 31 In section 103 of the Banking Act 2006 (general powers, duties and effect), in the entry in the table of applied provisions which relates to section 185 of the Insolvency Act 1986, for the words "section 37(1) of the Bankruptcy (Scotland) Act 1985" there is substituted "section 21(1) and (2) of the Bankruptcy (Scotland) Act 2013".

*Corporation Tax Act 2009 (c.4)*

- 32 In section 1319 of the Corporation Tax Act 2009 (interpretation), in paragraph (a) of the definition of "statutory insolvency arrangement", for the words "4 or 5 to the Bankruptcy (Scotland) Act 1985" there is substituted "3 or 4 to the Bankruptcy (Scotland) Act 2013".

*Coroners and Justice Act 2009 (c.25)*

- 33 (1) The Coroners and Justice Act 2009 is amended as follows.
- (2) In section 164(6) (the available amount), in the definition of "preferred debts", for the words "51(2) of the Bankruptcy (Scotland) Act 1985 (c.66)" there is substituted "90(2) of the Bankruptcy (Scotland) Act 2013 (asp 00)".
- (3) In section 165(3)(c) (property), for the words from ", permanent" to the end there is substituted "or liquidator or in the trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2013 (asp 00), of the person's estate;".

## SCHEDULE 2

## REPEALS AND REVOCATIONS

## PART 1

## REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Gas Act 1986 (c.44)	In Schedule 7, paragraph 32.
Social Security Act 1986 (c.50)	In Schedule 10, paragraph 80.
Criminal Justice Act 1988 (c.33)	In Schedule 15, paragraphs 106 to 109.
Housing Act 1988 (c.50)	Section 118.
Electricity Act 1989 (c.29)	In Schedule 16, paragraph 32.
Broadcasting Act 1990 (c.42)	In Schedule 20, paragraph 41.
Child Support Act 1991 (c.48)	In Schedule 5, paragraph 6.
Pension Schemes Act 1993 (c.48)	In Schedule 8, paragraph 17.
Value Added Tax Act 1994 (c.23)	In Schedule 14, paragraph 9.
Finance Act 1994 (c.9)	In Schedule 7, paragraph 7(3) to (5).
Drug Trafficking Act 1994 (c.37)	Section 65(4).
	In Schedule 1, paragraph 10.
Jobseekers Act 1995 (c.18)	In Schedule 2, paragraph 8.
Pensions Act 1995 (c.26)	In Schedule 3, paragraphs 13 and 14.
Gas Act 1995 (c.45)	In Schedule 4, paragraph 13.
Scotland Act 1998 (c.46)	In Schedule 8, paragraph 22.
Welfare Reform and Pensions Act 1999 (c.30)	In Schedule 2, paragraph 1.
	In Schedule 12, paragraphs 67 to 69.
Utilities Act 2000 (c.27)	In Schedule 6, paragraph 46.
Proceeds of Crime Act 2002 (c.29)	In Schedule 11, paragraph 15.
Enterprise Act 2002 (c.40)	Section 251(2).
Income Tax (Earnings and Pensions) Act 2003 (c.1)	In Schedule 6, paragraph 153.

<i>Enactment</i>	<i>Extent of repeal</i>
Communications Act 2003 (c.21)	In Schedule 17, paragraph 78.
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27)	Section 59(2).
Civil Partnership Act 2004 (c.33)	In Schedule 28, Part 3.
Consumer Credit Act 2006 (c.14)	In Schedule 3, paragraph 15(5)(f).
Pensions Act 2007 (c. 22)	In Schedule 5, paragraphs 1 and 2.
Serious Crime Act 2007 (c.27)	In Schedule 8, paragraph 150.
Policing and Crime Act 2009 (c.26)	In Schedule 7, paragraphs 46 to 52.

## **PART 2**

### REVOCATIONS

<i>Enactment</i>	<i>Extent of revocation</i>
Insolvency (ECSC Levy Debts) Regulations 1987 (S.I. 1987 No. 2093)	Regulation 3.
Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999 No.1820)	In Schedule 2, paragraph 82.
Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001 No. 3649)	Articles 224 and 225.
Insolvency (Scotland) Regulations 2003 (S.I. 2003 No. 2109)	Part 1 and Schedule 1.

## Appendix 4

### BANKRUPTCY (SCOTLAND) BILL 2013

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#### DERIVATIONS AND DESTINATIONS (DRAFT)

##### CONTENTS

- a Table of Derivations; and
- a Table of Destinations.

The Table of Derivations shows the derivations of the provisions of the Bill. The Table of Destinations shows how the enactments proposed to be repealed are dealt with by the consolidation.

The following abbreviations are used in the Tables:

1985		The Bankruptcy (Scotland) Act 1985 (c.66)
1986G	=	The Gas Act 1986 (c.44)
1986	=	The Social Security Act 1986 (c.50)
1987D	=	The Debtors (Scotland) Act 1987 (c.18)
1987	=	The Criminal Justice (Scotland) Act 1987 (c.41)
1988	=	The Criminal Justice Act 1988 (c.33)
1988H	=	The Housing Act 1988 (c.50)
1989	=	The Electricity Act 1989 (c.29)
1991	=	The Child Support Act 1991 (c.48)
1993	=	The Bankruptcy (Scotland) Act 1993 (c.6)
1993PS	=	The Pension Schemes Act 1993 (c.48)
1994	=	The Drug Trafficking Act 1994 (c.37)
1995P	=	The Pensions Act 1995 (c.26)
1995	=	The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)
1995G	=	The Gas Act 1995 (c.45)
1995M	=	The Criminal Procedure (Scotland) Act 1995 (c.46)
1998	=	The Scotland Act 1998 (c.46)
1999	=	The Welfare Reform and Pensions Act 1999 (c.30)
2000	=	The Utilities Act 2000 (c.27)
2001	=	The Housing (Scotland) Act 2001 (asp 10)
2002	=	The Proceeds of Crime Act 2002 (c.29)

2002E	=	The Enterprise Act 2002 (c.40)
2002W	=	The Water Industry (Scotland) Act 2002 (asp 3)
2002DA	=	The Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)
2003	=	The Communications Act 2003 (c.21)
2004C	=	The Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27)
2004	=	The Civil Partnership Act 2004 (c.33)
2006	=	The Consumer Credit Act 2006 (c.14)
2007P	=	The Pensions Act 2007 (c.22)
2007SC	=	The Serious Crime Act 2007 (c.27)
2007	=	The Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)
2007CP	=	The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)
2009	=	The Policing and Crime Act 2009 (c.26)
2010	=	The Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6)
2010R	=	The Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)
S.I. 1985/1925	=	The Bankruptcy (Scotland) Regulations 1985 S.I. No.1925
S.I. 1986/517	=	The Act of Sederunt (Bankruptcy) 1986 S.I. No.517
S.I. 1987/2093	=	The Insolvency (ECSC Levy Debts) Regulations 1987 S.I. No.2093
S.I. 1999/1379	=	The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 S.I. No.1379
S.I. 1999/1820	=	The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 S.I. No. 1820
S.I. 2001/3649	=	The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 S.I. No.3649
S.I. 2003/2109	=	The Insolvency (Scotland) Regulations 2003 S.I. No.2109
S.S.I. 2004/468	=	The Debt Arrangement Scheme (Scotland) Regulations 2004 S.S.I. No.468
S.S.I. 2008/81	=	The Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 S.S.I. No.81
S.S.I. 2008/82	=	The Bankruptcy (Scotland) Regulations 2008 S.S.I. No.82
S.I. 2009/1941	=	The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 S.I. No.1941
S.S.I. 2011/141	=	The Debt Arrangement Scheme (Scotland) Regulations 2011 S.S.I. No.141
Draft Order 2013	=	The Scottish Law Commission's draft of an S.I. entitled " <i>The Bankruptcy (Scotland) Act 2013 (Consequential Provisions and Modifications) Order 2013</i> ".

"Sc. Law Com. Rec. No." followed by a number indicates that the provision gives effect to the Recommendation bearing that number in the Scottish Law Commission's *Report on the Consolidation of Bankruptcy Legislation in Scotland*.

## TABLE OF DERIVATIONS

<i>Provision of Bill</i>	<i>Derivation</i>
s.1	1985 s.5(1).
s.2(1)	1985 s.5(2); 1993 s.3(2); 2007 s.14(3)(a); 2010 s.9(1)(a).
s.2(2)	1985 s.5(2C); 1993 s.3(2); 2007 sch.1 para.4(4).
s.2(3) and (4)	1985 s.5(2B); 1993 s.3(2); 2007 ss.15(1) and 25(a) and sch.1 para.4(3); 2010 s.9(1)(c).
s.2(5)	1985 s.5(2D); 2007 s.26.
s.2(6)	1985 s.5(2E); 2007 s.26.
s.2(7)	1985 s.5(2F); 2010 s.9(1)(d).
s.3	1985 s.5(3); S.I. 2003/2109 reg.5(2).
s.4(1)	1985 s.6(1).
s.4(2)	1985 s.6(2); S.I. 2009/1941 Sch.1 para.60; Sc. Law Com. Rec. No. 4.
s.4(3)	1985 s.6(3); S.I. 2003/2109 reg.6(1); 2007 s.14(4).
s.4(4)	1985 s.6(4); S.I. 2003/2019 reg.6(1); 2007 s.14(4).
s.4(5)	1985 s.6(5); S.I. 2003/2109, reg.6(2); 2007 sch.1 para.5.
s.4(6)	1985 s.6(6); S.I. 2003/2109 reg.6(1); 2007 s.14(4).
s.4(7)	1985 s.6(7).
s.4(8) and (9)	1985 s.6(8); 2007 s.14(4).
s.5(1) to (3)	1985 s.5(4); 1987 s. 45(5)(a); 1993 s.3(3); 1994 sch.1 para.10(1); 2002 sch.11 para.15(2); 2007, s.25(b) and sch.1 para.4(5).
s.5(4)	1985 s.5(5); 2007 sch.1 para.4(6).
s.6(1)	1985 s.5(4B); 2007 s.14(3)(b).
s.6(2)	1985 s.5(4C); 2007 s.14(3)(b).
s.6(3)	1985 s.5(6A); 1993 s.3(6); 2007 sch.1 para.4(7).
s.6(4)	1985 s.5(9); 1993 s.3(7); 2007 sch.1 para.4(10); Sc. Law Com. Rec. No. 3.
s.6(5)	1985 s.5(10); 1993 s.3(7); 2007 sch.1 para.4(11).
s.7(1)	1985 s.5A(1) to (4); 2007 s.15(2).
s.7(2)	1985 s.5A(5); 2007 s.15(2).
s.8	1985 s.5B; 2010 s.9(2); Sc. Law Com. Rec. No. 27.
s.9(1)	1985 s.5(7); 2007 sch.6.
s.9(2)	1985 s.5(7A); 2007 sch.1 para.4(8).
s.9(3) and (4)	1985 s.5(8); 2007 sch.6.
s.9(5) and (6)	1985 s.5(8A); 2007 sch.1 para.4(9).
s.10(1)	1985 s.6B(1); 2007 s.14(5).
s.10(2)	1985 s.6B(2); 2007 s.14(5).
s.11(1)	1985 s.6A(1); S.I. 2003/2109 reg.7.
s.11(2)	1985 s.6A(2); S.I. 2003/2109 reg.7.

<i>Provision of Bill</i>	<i>Derivation</i>
s.12(1)	1985 s.5(6); 1993 s.3(5).
s.12(2)	1985 s.8(1); S.I. 2003/2109 reg. 9(1); 2007 sch.6.
s.12(3)	1985 s.8(2).
s.12(4)	1985 s.8(3); S.I. 2003/2109 reg.9(2).
s.12(5)	1985 s.8(4).
s.12(6)	1985 s.8(5); 2007 sch.6.
s.12(7)	1985 s.8(6); 2007 sch.6.
s.13(1)	1985 s.8A(1); 2007 s.14(6).
s.13(2)	1985 s.8A(2); 2007 s.14(6).
s.13(3)	1985 s.8A(3); 2007 s.14(6).
s.14(1)	1985 s.9(1); 2007 ss.14(7)(a) and 16(1)(a).
s.14(2)	1985 s.9(1A); 2007 s.14(7)(b).
s.14(3)	1985 s.9(2); 2007 s.14(7)(c) and 16(1)(b).
s.14(4)	1985 s.9(2A); 2007 s.14(7)(d).
s.14(5)	1985 s.9(3); 2007 s.16(1)(c).
s.14(6) and (7)	1985 s.9(3A); 2007 s.14(7)(e).
s.14(8)	1985 s.9(5); 2007 sch.1 para.7.
s.14(9)	1985 s.9(6); S.I. 2003/2109 reg.10.
s.15(1) to (3)	1985 s.7(1) (part); 1987 s.45(5)(b)(i) and (ii); 1988 sch.15 para.108; S.I. 2003/2109 reg.8(1); S.S.I. 2004/468 reg.46; 2007 sch.6; 2009 sch.7 para.47(a); S.S.I. 2011/141 reg.45; Sc.Law Com. Recs. Nos. 5 and 30.
s.15(4) and (5)	1985 s.7(3); Sc. Law Com. Rec. No. 6.
s.15(6)	1985 s.7(4).
s.15(7)	1985 s.7(2); S.I. 2003/2109 reg.8(2); 2007 sch.1 para.6.
s.15(8)	1985 s.7(1) (part); 1987 s.45(5)(b)(iii); 1994 sch.1 para.10(2); 2002 sch.11 para.15(3); 2009 sch.7 para.47(b).
s.16(1)	1985 s.10(1); 2007 sch.1 para.8.
s.16(2)	1985 s.10(2); 2007 sch.1 para.8.
s.16(3)	1985 s.10(3); 2007 sch.1 para.8.
s.16(4)	1985 s.10(4); 2007 sch.1 para.8.
s.16(5)	1985 s.10(6); 2007 sch.1 para.8.
s.16(6)	1985 s.10(5); 2007 sch.1 para.8.
s.16(7)	1985 s.10(7); 2007 sch.1 para.8.
s.17(1)	1985 s.10A(1); 2007 sch.1 para.8.
s.17(2)	1985 s.10A(2); 2007 sch.1 para.8.
s.17(3)	1985 s.10A(3); 2007 sch.1 para.8.
s.17(4)	1985 s.10A(4); 2007 sch.1 para.8.
s.17(5) and (6)	1985 s.10A(5); 2007 sch.1 para.8.
s.17(7) and (8)	1985 s.10A(6); 2007 sch.1 para.8.
s.18(1)	1985 s.11(1); 2007 sch. 1 para.9(a).
s.18(2)	1985 s.11(2).
s.18(3) and (4)	1985 s.11(3).
s.18(5) and (6)	1985 s.11(4); 2007 sch.1 para.9(b).
s.18(7)	1985 s.11(5).

<i>Provision of Bill</i>	<i>Derivation</i>
s.19(1)	1985 s.12(1); 1993 s.4(2); 2007 s.14(8) and sch.1 para.10(a); 2010 s.9(3).
s.19(2)	1985 s.12(2); 2007 sch.1 para.10(b).
s.19(3) and (4)	1985 s.12(3); 1993 s.4(4); 2007 s.27(2) and sch.1 para.10(c).
s.19(5)	1985 s.12(3A); 1993 s.4(4).
s.19(6)	1985 s.12(3B); 2007 s.27(3).
s.19(7)	1985 s.12(3C); 2007 s.27(3).
s.19(8)	1985 s.12(4); 1993 s.4(5); 2007 sch.1 para.10(d); Sc. Law Com. Rec. No.7.
s.20(1)	1985 s.37(5B); 2007 sch.5 para.13(3)(e).
s.20(2)	1985 s.37(5C); 2007 sch.5 para.13(3)(e).
s.20(3)	1985 s.37(8A); 2007 sch.5 para.13(3)(f).
s.20(4) and (5)	1985 s.37(8B); 2007 sch.5 para.13(3)(f).
s.20(6)	1985 s.37(8C); 2007 sch.5 para.13(3)(f).
s.20(7)	1985 s.37(8D); 2007 sch.5 para.13(3)(f).
s.20(8)	1985 s.37(8E); 2007 sch.5 para.13(3)(f).
s.20(9)	1985 s.37(8F); 2007 sch.5 para.13(3)(f).
s.20(10)	1985 s.37(10); 2007 sch.5 para.13(3)(g).
s.21(1) and (2)	1985 s.37(1); 2007 sch.1 para.33, sch.5 para.13(3)(a) and sch.6.
s.21(3) and (4)	1985 s.37(2); 2007 sch.5 para.13(3)(b) and sch.6.
s.21(5)	1985 s.37(3).
s.21(6) and (7)	1985 s.37(4); 2002DA sch.3 para.15(4); 2007 sch.5 para.13(3)(c) and sch.6.
s.21(8)	1985 s.37(5); 2002DA sch.3, para.15(4); 2007 sch.5 para.13(3)(d).
s.21(9)	1985 s.37(5A); 1987D sch.6 para.27; 1991 sch.5 para.6(3).
s.21(10)	1985 s.37(6); 2007 sch.6.
s.21(11) and (12)	1985 s.37(7).
s.21(13)	1985 s.37(8); 2007 sch.6; Sc. Law Com. Rec. No. 19.
s.21(14) to (16)	1985 s.37(9); 2007 sch.6.
s.22(1)	1985 s.14(1) (part); S.S.I. 2004/468 sch.3 para.1; 2007 sch.1 para.12(2) and sch.6; S.S.I. 2011/141 sch.2 para.1; Sc. Law Com. Recs. Nos. 8 and 30.
s.22(2)	1985 s.14(1A); 2007 sch.1 para.12(3).
s.22(3)	1985 s.14(2); 2007 sch.1 para.12(4) and sch.6.
s.22(4) and (5)	1985 s.14(3); 2007 sch.1 para.12(5) and sch.6.
s.22(6) and (7)	1985 s.14(4); 2007 sch.6; Sc. Law Com. Rec. 11.
s.22(8)	1985 s.14(1)(part); S.S.I. 2004/468 sch.3 para.1; S.S.I. 2011/141 sch.2 para.1; Sc. Law Com. Rec. No. 30.
s.23(1) and (2)	1985 s.15(2); 2007 s.16(2)(b).
s.23(3)	1985 s.15(2A); 2007 s.16(2)(c).
s.23(4)	1985 s.15(3); 2007 s.16(2)(d) and sch.6.
s.23(5)	1985 s.15(3A); 2007 sch.1 para.13.
s.23(6) and (7)	1985 s.15(4).
s.23(8)	1985 s.15(5) (part); S.S.I. 2004/468 sch.3 para.2; 2007 s.16(2)(e) and sch.6; S.S.I. 2011/141 sch.2 para.2.
s.23(9)	1985 s.15(7).

<i>Provision of Bill</i>	<i>Derivation</i>
s.23(10)	1985 s.15(8); 2007 sch.6.
s.23(11)	1985 s.15(9).
s.23(12)	1985 s.15(5) (part); S.S.I. 2004/468 sch.3 para.2; S.S.I. 2011/141 sch.2 para.2.
s.24(1)	1985 s.16(1); 2007 s.16(3), sch.1 para.14(a) and sch.6.
s.24(2)	1985 s.16(2); 2007 sch.1 para.14(b) and sch.6.
s.24(3)	1985 s.16(3).
s.24(4) and (5)	1985 s.16(4); 1993 sch.1 para.5(2); 2004 sch.28 para.31.
s.24(8)	1985 s.16(6).
s.25(1) and (2)	1985 s.17(1); 2007 s.16(4)(a) and sch.1 para.15; Sc. Law Com. Rec. No.12.
s.25(3)	1985 s.17(2); 2007 s.16(4)(b); Sc. Law Com. Rec. No.12.
s.25(4) and (5)	1985 s.17(3); 2007 s.16(4)(c) and sch.1 para.15(b) and (c); Sc. Law Com. Rec. No.13.
s.25(6) and (7)	1985 s.17(4).
s.25(8)	1985 s.17(5); 2007 sch.1 para.15(d).
s.25(9)	1985 s.17(6); 2007 s.16(4)(d).
s.25(10)	1985 s.17(7); 2007 s.16(4)(e).
s.25(11) and (12)	1985 s.17(8); 2004 sch.28 para.32; 2007 s.16(4)(f) and sch.6; Sc. Law Com. Rec. No.14.
s.26(1)	1985 s.18(1); 2007 sch.1 para.16(2).
s.26(2)	1985 s.18(2); 2007 sch.1 para.16(3) and sch.6.
s.26(3)	1985 s.18(2A); 2007 sch.1 para.16(4).
s.26(4)	1985 s.18(3); 1993 sch.2; 2007 sch.1 para.16(5).
s.26(5)	1985 s.18(4); 2007 sch.1 para.16(6).
s.26(6)	1985 s.18(5).
s.26(7)	1985 s.18(6).
s.27(1)	1985 s.19(1); 1993 sch.1 para.7; 2007 sch.1 para.17(2) and sch.6.
s.27(2)	1985 s.19(2); 1993 sch.1 para.7; 2007 sch.1 para.17(3) and sch.6.
s.27(3) and (4)	1985 s.19(3); 1993 sch.1 para.7; 2007 sch.6.
s.27(5)	1985 s.19(4); 1993 sch.1 para.7; 2007 sch.6.
s.28(1)	1985 s.20(1); 1993 sch.1 para.8; 2007 sch.6; Sc. Law Com. Rec. No.15.
s.28(2) and (3)	1985 s.20(2); 1993 sch.1 para.8(3) and sch.2; 2007 sch.1 para.18(a) and sch.6.
s.28(4)	1985 s.20(2A); 2007 sch.1 para.18(b).
s.28(5)	1985 s.20(3).
s.28(6)	1985 s.20(5A); 1993 sch.1 para.8(4); 2007 sch.6.
s.29	1985 s.20A; 1993 sch.1 para.9; 2007 sch.6.
s.30(1)	1985 s.21A(2); 1993 s.5; 2007 sch.1 para.20 and sch.6.
s.30(2)	1985 s.21A(3); 1993 s.5; 2007 s.28(2) and sch.6.
s.30(3) and (4)	1985 s.21A(1); 1993 s.5; 2007 sch.6.
s.30(5)	1985 s.21A(4); 1993 s.5; 2007 sch.6.
s.30(6)	1985 s.21A(5); 1993 s.5; 2007 sch.6.

<i>Provision of Bill</i>	<i>Derivation</i>
s.30(7)	1985 s.21A(6); 1993 s.5; 2007 sch.6.
s.30(8)	1985 s.21A(7); 1993 s.5; 2007 sch.6.
s.30(9)	1985 s.21A(8); 1993 s.5; 2007 sch.6.
s.31(1)	1985 s.21B(1); 1993 s.5; 2007 sch.1 para.21(a) and sch.6.
s.31(2)	1985 s.21B(1A); 2007 sch.1 para.21(b).
s.32(1)	1985 s.22(1); 2007 sch.6.
s.32(2) and (3)	1985 s.22(2); 2007 sch.6.
s.32(4)	1985 s.22(3); 2007 sch.1 para.22 and sch.6.
s.32(5)	1985 s.22(4).
s.32(6) to (8)	1985 s.22(5); 2007 sch.6.
s.32(9)	1985 s.22(6).
s.32(10)	1985 s.22(7); 2007 sch.6.
s.32(11)	1985 s.22(8).
s.32(12)	1985 s.22(9).
s.32(13)	1985 s.22(10).
s.33(1) and (2)	1985 s.23(1); 2007 s.11(3); 2007 sch.6.
s.33(3)	1985 s.23(2).
s.33(4)	1985 s.23(3); 1993 sch.1 para.11; 2007 sch.6; Sc. Law Com. Rec. No.15.
s.33(5)	1985 s.23(5); 1993 sch.1 para.11; 2007 sch.6.
s.34(1) and (2)	1985 s.24(1); 1993 sch.1 para.12(2); 2007 s.11(4).
s.34(3) to (5)	1985 s.24(2); 1993 sch.1 para.12(3); 2007 s.7(2), sch.1 para.23(2) and sch.6.
s.34(6) and (7)	1985 s.24(3); 2007 sch.1 para.23(3).
s.34(8)	1985 s.24(3A); 1993 sch.1 para.12(4); 2007 sch.1 para.23(4).
s.34(9)	1985 s.24(4); 1993 sch.1 para.12(5); 2007 sch.1 para.23(5) and sch.6.
s.35(1)	1985 s.3(1); 2007 sch.6.
s.35(2)	1985 s.3(2); 2007 sch.6.
s.35(3)	1985 s.3(3); 2007 sch.6.
s.35(4)	1985 s.3(3A); 2007 s.8(1)(a).
s.35(5)	1985 s.3(4); 2007 s.8(1)(b).
s.35(6)	1985 s.3(5); 1993 sch.1 para.1; 2007 s.8(1)(c) and sch.6.
s.35(7)	1985 s.3(6); 1993 sch.1 para.1; 2007 sch.6.
s.35(8) and (9)	1985 s.3(7); 1993 sch.1 para.1; 2007 sch.6.
s.35(10)	1995 s.3(8); 2007 s.8(1)(d).
s.36(1)	1985 s.2(6A); 2007 s.6(1)(b).
s.36(2)	1985 s.2(6B); 2007 s.6(1)(b).
s.37(1) and (2)	1985 s.2(1) and (3); 1993 s.2; 2007 s.7(1), sch.1 para.3(2), (3) and (5) and sch.6.
s.37(3)	1985 s.2(2); 1993 s.2; 2007 sch.1 para.3(2) and (4).
s.37(4) and (5)	1985 s.2(2A); 2007 s.6(1)(a).
s.37(6)	1985 s.2(2B); 2007 s.6(1)(a).
s.37(7)	1985 s.2(2C); 2007 s.6(1)(a).

<i>Provision of Bill</i>	<i>Derivation</i>
s.37(8)	1985 s.2(5); 1993 s.2; 2007 sch.1 para.3(2).
s.37(9)	1985 s.2(6); 1993 s.2; 2007 sch.1 para.3(2).
s.37(10) to (12)	1985 s.2(1A); 2007 s.14(2).
s.37(13)	1985 s.2(1C); 2007 s.14(2); Sc. Law Com. Rec. No.2.
s.37(14)	1985 s.2(1B); 2007 s.14(2).
s.37(15)	1985 s.2(7); 1993 s.2; 2007 sch.1 para.3(6).
s.38(1)	1985 s.13(A1); 2007 sch.1 para.11(2).
s.38(2)	1985 s.13(1); 1993 sch.1 para.2; 2007 sch.1 para.11(3).
s.38(3)	1985 s.13(2); 1993 sch.1 para.2; 2007 s.9(1)(a), sch.1 para.11(3) and sch.6.
s.38(4)	1985 s.13(2A); 2007 s.9(1)(b).
s.38(5)	1985 s.13(3); 1993 sch.1 para.2; 2007 sch.1 para.11(3) and (4).
s.38(6)	1985 s.13(4); 1993 sch.1 para.2; 2007 sch.1 para.11(3).
s.38(7)	1985 s.13(5); 1993 sch.1 para.2; 2007 sch.1 para.11(3).
s.38(8) and (9)	1985 s.13(6); 1993 sch.1 para.2; 2007 sch.1 para.11(5).
s.38(10)	1985 s.13(7); 1993 sch.1 para.2; 2007 sch.1 para.11(3).
s.39(1)	1985 s.13A(1); 2007 s.10.
s.39(2)	1985 s.13A(2); 2007 s.10.
s.39(3)	1985 s.13A(3); 2007 s.10.
s.39(4)	1985 s.13A(4); 2007 s.10.
s.39(5)	1985 s.13A(5); 2007 s.10.
s.39(6)	1985 s.13A(6); 2007 s.10.
s.39(7)	1985 s.13A(7); 2007 s.10.
s.39(8)	1985 s.13A(8); 2007 s.10.
s.39(9)	1985 s.13A(9); 2007 s.10.
s.39(10)	1985 s.13A(10); 2007 s.10.
s.39(11)	1985 s.13A(11); 2007 s.10.
s.39(12)	1985 s.13A(12) and (13); 2007 s.10.
s.39(13)	1985 s.13A(14); 2007 s.10.
s.39(14)	1985 s.13A(15); 2007 s.10.
s.39(15)	1985 s.13A(16); 2007 s.10.
s.40(1)	1985 s.13B(1); 2007 s.10.
s.40(2)	1985 s.13B(2); 2007 s.10.
s.40(3)	1985 s.13B(3); 2007 s.10.
s.40(4)	1985 s.13B(4); 2007 s.10; Sc. Law Com. Rec. No.9.
s.40(5)	1985 s.13B(6); 2007 s.10.
s.40(6)	1985 s.13B(7); 2007 s.10.
s.40(7)	1985 s.13B(8); 2007 s.10.
s.40(8)	1985 s.13B(5); 2007 s.10; Sc. Law Com. Rec. No.10.
s.40(9) and (10)	1985 s.13B(9); 2007 s.10.
s.41(1)	1985 s.25(A1); 2007 s.11(5).
s.41(2) and (3)	1985 s.25(1); 2007 sch.1 para.24(2).
s.41(4)	1985 s.25(2); 2007 sch.1 para.24(3).
s.41(5)	1985 s.25(3).
s.41(6) to (8)	1985 s.25(4); 2007 sch.1 para.24(4).
s.41(9) and (10)	1985 s.25(5); 2007 sch.1 para.24(5).

<i>Provision of Bill</i>	<i>Derivation</i>
s.42(1)	1985 s.26(A1) and (5A); 1993 sch.1 para.14(4); 2007 sch.1 para.25(2), (9) and (10).
s.42(2)	1985 s.26(1); 1993 sch.1 para.14(2) and 2007 sch.1 para.25(3); Scot. Law Com. Rec. No.16.
s.42(3)	1985 s.26(2); 2007 sch.1 para.25(4) and sch.6.
s.42(4)	1985 s.26(2A); 2007 sch.1 para.25(5).
s.42(5) and (6)	1985 s.26(3); 2007 sch.1 para.25(6) and sch.6.
s.42(7) and (8)	1985 s.26(4); 1993 sch.1 para.14(3); 2007 sch.1 para.25(7).
s.42(9)	1985 s.26(5); 2007 sch.1 para.25(8).
s.43(1)	1985 s.26A(1); 1993 sch.1 para.15; 2007 sch.1 para.26(2).
s.43(2)	1985 s.26A(2); 1993 sch.1 para.15; 2007 sch.1 para.26(3) and sch.6.
s.43(3)	1985 s.26A(3); 1993 sch.1 para.15; 2007 sch.1 para.26(4).
s.43(4)	1985 s.26A(4); 1993 sch.1 para.15; 2007 sch.6.
s.43(5)	1985 s.26A(5); 1993 sch.1 para.15; 2007 sch.1 para.26(5) and sch.6.
s.43(6) and (7)	1985 s.26A(6); 1993 sch.1 para.15; 2007 sch.6.
s.43(8)	1985 s.26A(7); 1993 sch.1 para.15; 2007 sch.6.
s.43(9)	1985 s.26A(8); 1993 sch.1 para.15; 2007 sch.1 para.26(6).
s.44(1)	1985 s.27(1); 2007 sch.1 para.27(1)(b).
s.44(2)	1985 s.27(2); 2007 sch.1 para.27(1)(a) to (c).
s.44(3)	1985 s.27(3); 2007 sch.1 para.27(1)(b) and (c).
s.44(4) to (6)	1985 s.27(4); 2007 sch.1 para.27(1)(b) and (c); Sc. Law Com. Rec. No.17.
s.44(7)	1985 s.27(4A); 1993 sch.1 para.16(2).
s.44(8)	1985 s.27(5); 2007 sch.1 para.27(1)(b).
s.44(9)	1985 s.27(6); 2007 sch.1 para.27(1)(c).
s.44(10)	1985 s.27(7A); 1993 sch.1 para.16(3).
s.45(1)	1985 s.28(1); 1993 sch.1 para.17(2); 2007 sch.1 para.28(2), (5) and (6) and sch.6.
s.45(2)	1985 s.28(1A); 1993 sch.1 para.17(2); 2007 sch.1 para.28(2) and sch.6.
s.45(3)	1985 s.28(2); 1993 sch.2; 2007 sch.1 para.28(2) and sch.6.
s.45(4)	1985 s.28(3); 2007 sch.6.
s.45(5)	1985 s.28(4); 1993 sch.1 para.17(3); 2007 sch.1 para.28(3) and sch.6.
s.45(6) and (7)	1985 s.28(5); 1993 sch.1 para.17(4); 2007 sch.1 para.28(4) and sch.6.
s.45(8) and (9)	1985 s.28(6); 2007 sch.6.
s.45(10) and (11)	1985 s.28(7); 2007 sch.6.
s.45(12)	1985 s.28(8); 1993 sch.1 para.17(5).
s.46(1)	1985 s.28A(1); 2007 s.12.
s.46(2)	1985 s.28A(2); 2007 s.12.
s.46(3)	1985 s.28A(3); 2007 s.12.
s.46(4)	1985 s.28A(4); 2007 s.12.

<i>Provision of Bill</i>	<i>Derivation</i>
s.47(1) to (3)	1985 s.29(1); 1993 sch.1 para.18; 2007 sch.1 para.29(4) and sch.6.
s.47(4)	1985 s.29(2); 2007 sch.6.
s.47(5)	1985 s.29(3); 2007 sch.6.
s.47(6)	1985 s.29(4); 2007 sch.6.
s.47(7)	1985 s.29(5); 1993 sch.1 para.18; 2007 sch.6.
s.47(8) to (11)	1985 s.29(6) and (9); 1993 sch.1 para.18; 2007 sch.6.
s.47(12)	1985 s.29(7); 2007 sch.1 para.29(2) and sch.6.
s.47(13) to (19)	1985 s.29(8); Sc. Law Com. Rec. No.18.
s.47(20)	1985 s.29(10); 2007 sch.1 para.29(3).
s.48	1985 s.4; 2007 sch.6.
s.49(1) and (2)	1985 s.30(1).
s.49(3) to (5)	1985 s.30(2); 2007 sch.6.
s.49(6)	1985 s.30(3).
s.49(7) and (8)	1985 s.30(4); 1993 sch.1 para.19; 2007 sch.6.
s.50(1) and (2)	1985 s.31(1); 2007 sch.5 para.13(2) and sch.6.
s.50(3)	1985 s.31(1A); 2007 s.17(1).
s.50(4)	1985 s.31(1B); 2007 s.17(1).
s.50(5)	1985 s.31(2); 2007 sch.1 para.30(2) and sch.6.
s.50(6) and (7)	1985 s.31(3); 2007 sch.6.
s.50(8)	1985 s.31(4); 2007 sch.1 para.30(3) and sch.6.
s.50(9)	1985 s.31(5); 2007 sch.6.
s.50(10)	1985 s.31(5A); 2007 s.29.
s.50(11) and (12)	1985 s.31(6); 2007 sch.1 para.30(4) and sch.6.
s.50(13)	1985 s.31(7); 2007 sch.1 para.30(5) and sch.6.
s.51(1) and (2)	1985 s.31(8) (part); 1988H s.118(1); S.I.2003/2109 reg.11; 2007 s.17(1)(b).
s.51(3)	1985 s.31(9); 1988H s.118(2); 2001 sch.10 para.10.
s.51(4)	1985 s.31(10); 1988H s.118(2); 2007 sch.6.
s.51(5)	1985 ss.31(8) (part) and 32(10).
s.52(1)	1985 s.31A(1); 2002 sch.11 para.15(4); 2007SC sch.8 para.150; 2009 sch.7 para.48(2).
s.52(2)	1985 s.31A(2); 2002 sch.11 para.15(4); 2007 sch.6; 2009 sch.7 para.48(3).
s.52(3)	1985 s.31A(3); 2002 sch.11 para.15(4).
s.53	1985 s.31AA; 2009 sch.7 para.49.
s.54(1)	1985 s.31B(1); 2002 sch.11 para.15(4); 2007 sch.6; 2009 sch.7 para.50.
s.54(2)	1985 s.31B(2); 2002 sch.11 para.15(4).
s.55	1985 s.31BA; 2009 sch.7 para.51.
s.56(1)	1985 s.31C(1); 2002 sch.11 para.15(4); 2009 sch.7 para.52(2).

<i>Provision of Bill</i>	<i>Derivation</i>
s.56(2)	1985 s.31C(2); 2002 sch.11 para.15(4); 2007 sch.6; 2009 sch.7 para.52(3).
s.56(3)	1985 s.31C(3); 2002 sch.11 para.15(4).
s.57(1) and (2)	1985 s.32(1); 2007 s.18(2) and sch.6.
s.57(3) and (4)	1985 s.32(2); 1999 sch.2 para.1; 2007 sch.6.
s.57(5) and (6)	1985 s.32(2WA); 2007 s.18(3).
s.57(7)	1985 s.32(2XA); 2007 s.18(3).
s.57(8)	1985 s.32(2YA); 2007 s.18(3).
s.57(9)	1985 s.32(4J); 2007 s.18(4).
s.57(10)	1985 s.32(2ZA); 2007 s.18(3).
s.57(11) and (12)	1985 s.32(2A); 1995P sch.3 para.14.
s.57(13) and (14)	1985 s.32(3); 1991 sch.5 para.6(2)(a); 2004 sch.28 para.34.
s.57(15)	1985 s.32(4); 2007 sch.6.
s.57(16)	1985 s.32(4A); 2007 s.18(4).
s.58(1)	1985 s.32(4B); 2007 s.18(4).
s.58(2)	1985 s.32(4J); 2007 s.18(4).
s.58(3)	1985 s.32(4C); 2007 s.18(4).
s.58(4)	1985 s.32(4D); 2007 s.18(4).
s.58(5)	1985 s.32(4E); 2007 s.18(4).
s.58(6)	1985 s.32(4F); 2007 s.18(4).
s.58(7)	1985 s.32(4G); 2007 s.18(4).
s.58(8)	1985 s.32(4H); 2007 s.18(4).
s.58(9)	1985 s.32(4K); 2007 s.18(4).
s.58(10)	1985 s.32(4L); 2007 s.18(4).
s.59(1) to (3)	1985 s.32(5); 1991 sch.5 para.6(2)(b).
s.59(4) to (8)	1985 s.32(6); 2007 sch.1 para.32; Sc. Law Com. Rec. No.1.
s.60(1) and (2)	1985 s.32(7); 2007 sch.6.
s.60(3) and (4)	1985 s.32(8); 2007 s.17(2)(a) and sch.6.
s.60(5) and (6)	1985 s.32(9); 2007 s.17(2)(b) and sch.6.
s.60(7)	1985 s.32(9A); 2007 s.19(1).
s.60(8)	1985 s.32(9B); 2007 s.19(1).
s.60(9)	1985 s.32(9ZA); 2007 s.17(2)(c).
s.61(1)	1985 s.33(1); 2002DA sch.3 para.15; 2007 sch.6.
s.61(2)	1985 s.33(2); 2007 sch.6.
s.61(3)	1985 s.33(3); 2007 sch.6.
s.62(1)	1985 s.34(2).
s.62(2)	1985 s.34(1); 2007 sch.6.
s.62(3) and (4)	1985 s.34(3).
s.62(5) to (7)	1985 s.34(4); Sc. Law Com. Rec. No.1.
s.62(8)	1985 s.34(5).
s.62(9)	1985 s.34(6).
s.62(10)	1985 s.34(7); 2004 sch.28 para.35.
s.62(11)	1985 s.34(8); 2007 sch.6.
s.62(12)	1985 s.34(9); 2007 sch.6.

<i>Provision of Bill</i>	<i>Derivation</i>
s.63(1)	1985 s.36(1).
s.63(2) and (3)	1985 s.36(2).
s.63(4)	1985 s.36(3).
s.63(5)	1985 s.36(4); 2007 sch.6.
s.63(6) and (7)	1985 s.36(5); Sc. Law Com. Rec. No.1.
s.63(8)	1985 s.36(6); 2007 sch.6.
s.63(9)	1985 s.36(7); 2007 sch.6.
s.64(1)	1985 s.35(1); 1999 sch.12 para.68.
s.64(2) and (3)	1985 s.35(2); 2007 sch.6.
s.64(4)	1985 s.35(3); 2007 sch.6.
s.65(1)	1985 s.36A(1); 1999 s.16; 2007 sch.6.
s.65(2)	1985 s.36A(2); 1999 s.16.
s.65(3)	1985 s.36A(3); 1999 s.16.
s.65(4)	1985 s.36A(4); 1999 s.16.
s.65(5)	1985 s.36A(5); 1999 s.16.
s.65(6)	1985 s.36A(6); 1999 s.16.
s.65(7)	1985 s.36A(7); 1999 s.16.
s.65(8)	1985 s.36A(8); 1999 s.16.
s.66(1)	1985 s.36B(1); 1999 s.16; 2007 sch.6.
s.66(2)	1985 s.36B(2); 1999 s.16.
s.66(3)	1985 s.36B(3); 1999 s.16.
s.66(4)	1985 s.36B(4); 1999 s.16.
s.66(5)	1985 s.36B(5); 1999 s.16; 2007 sch.6.
s.66(6)	1985 s.36B(6); 1999 s.16.
s.66(7)	1985 s.36B(7); 1999 s.16.
s.67(1)	1985 s.36C(1); 1999 s.16; 2007 sch.6.
s.67(2)	1985 s.36C(2); 1999 s.16.
s.67(3)	1985 s.36C(3); 1999 s.16; 2007 sch.6.
s.67(4)	1985 s.36C(4) and (7) (part); 1999 s.16.
s.67(5)	1985 s.36C(5); 1999 s.16; 2007P sch.5 para.1.
s.67(6)	1985 s.36C(6); 1999 s.16.
s.67(7)	1985 s.36C(7) (part); 1999 s.16.
s.67(8)	1985 s.36C(8); 1999 s.16.
s.68(1)	1985 s.36D(1); 1999 sch.12 para.69.
s.68(2)	1985 s.36D(3); 1999 sch.12 para.69.
s.68(3)	1985 s.36D(2); 1999 sch.12 para.69.
s.68(4)	1985 s.36D(4); 1999 sch.12 para.69.
s.68(5)	1985 s.36D(5); 1999 sch.12 para.69.
s.68(6)	1985 s.36D(6); 1999 sch.12 para.69.
s.68(7)	1985 s.36D(7); 1999 sch.12 para.69.
s.68(8)	1985 s.36D(8); 1999 sch.12 para.69.
s.68(9)	1985 s.36D(9); 1999 sch.12 para.69.
s.68(10)	1985 s.36D(10); 1999 sch.12 para.69.
s.69(1)	1985 s.36E(1); 1999 sch.12 para.69.
s.69(2) and (3)	1985 s.36E(2); 1999 sch.12 para.69; 2007 sch.6.

<i>Provision of Bill</i>	<i>Derivation</i>
s.69(4)	1985 s.36E(3); 1999 sch.12 para.69.
s.69(5)	1985 s.36E(4); 1999 sch.12 para.69.
s.69(6)	1985 s.36E(5); 1999 sch.12 para.69; 2007 sch.6.
s.69(7)	1985 s.36E(6); 1999 sch.12 para.69.
s.69(8)	1985 s.36E(7); 1999 sch.12 para.69.
s.70(1)	1985 s.36F(1); 1999 sch.12 para.69; 2007 sch.6.
s.70(2) and (3)	1985 s.36F(2); 1999 sch.12 para.69.
s.70(4)	1985 s.36F(3); 1999 sch.12 para.69.
s.70(5)	1985 s.36F(4); 1999 sch.12 para.69; 2007P sch.5 para.2.
s.70(6)	1985 s.36F(5); 1999 sch.12 para.69.
s.70(7)	1985 s.36F(6); 1999 sch.12 para.69.
s.70(8)	1985 s.36F(7); 1999 sch.12 para.69.
s.71(1) and (2)	1985 s.38(1); 2007 sch.1 para.34 and sch.6.
s.71(3)	1985 s.38(2); 2007 sch.6.
s.71(4)	1985 s.38(3); 2007 sch.6.
s.71(5) and (6)	1985 s.38(4); 2007 sch.6.
s.72(1) to (3)	1985 s.39(1); 2007 sch.1 para.35(2) and sch.6.
s.72(4)	1985 s.39(1A); 2007 sch.1 para.35(3).
s.72(5)	1985 s.39(2); 2007 sch.1 para.35(4) and sch.6.
s.72(6)	1985 s.39(3); 2007 sch.6.
s.72(7)	1985 s.39(4); 2007 sch.1 para.35(5) and sch.6.
s.72(8)	1985 s.39(5); 2007 sch.6.
s.72(9)	1985 s.39(6); 2007 sch.6.
s.72(10)	1985 s.39(7).
s.72(11)	1985 s.39(8); 2007 sch.6.
s.72(12)	1985 s.39(9); 2007 s.8(2).
s.73(1) and (2)	1985 s.42(1); 2007 sch.1 para.39(b) and sch.6.
s.73(3)	1985 s.42(2); 2007 sch.1 para.39(a) and sch.6.
s.73(4)	1985 s.42(3); 2007 sch.6.
s.73(5)	1985 s.42(4); 2007 sch.6.
s.74(1) and (2)	1985 s.43(1); 2007 s.13(a), sch.1 para.40 and sch.6.
s.74(3) and (4)	1985 s.43(1A); 2007 s.13(b).
s.74(5)	1985 s.43(2); 2007 sch.6.
s.75(1)	1985 s.39A(1); 2007 s.19(2); Sc. Law Com. Rec. No.1.
s.75(2)	1985 s.39A(2); 2007 s.19(2); Sc. Law Com. Rec. No.1.
s.75(3)	1985 s.39A(3); 2007 s.19(2); S.S.I. 2008/81 reg.4; Sc. Law Com. Recs. Nos.1 and 20.
s.75(4)	1985 s.39A(5); 2007 s.19(2); Sc. Law Com. Rec. No.1.
s.75(5)	1985 s.39A(6); 2007 s.19(2); Sc. Law Com. Recs. Nos.1 and 21.
s.75(6)	1985 s.39A(7); 2007 s.19(2).
s.75(7)	1985 s.39A(4) and (8); 2007 s.19(2).
s.75(8)	1985 s.39A(9); 2007 s.19(2).
s.76(1)	1985 s.40(1); 2007 sch.1 para.36(a) and (c) and sch.6; 2010 s.11(a); Sc. Law Com. Rec. No.1.

<i>Provision of Bill</i>	<i>Derivation</i>
s.76(2)	1985 s.40(2); 2004 sch.28 para 36(2) and (3); 2007 sch.1 para.36(b) and sch.6; 2010 s.11(a) and (b).
s.76(3)	1985 s.40(3) (part); 2007 sch.6; 2010 s.11(a).
s.76(4)	1985 s.40(3A); 2010 s.11(c).
s.76(5)	1985 s.40(3B); 2010 s.11(c).
s.76(6)	1985 s.40(3) (part).
s.76(7)	1985 s.40(4); 2004 sch.28 para.36(4); 2010 s.11(d); Sc. Law Com. Rec. No.1.
s.77(1) to (4)	1985 s.41(1); 2007 sch.1 para.37 and sch.6.
s.77(5)	1985 s.41(2).
s.78(1) to (4)	1985 s.41A(1); 2004 sch.28 para.37; 2007 sch.1 para.38 and sch.6.
s.78(5)	1985 s.41A(2); 2004 sch.28 para.37.
s.79	1985 s.43A; 2007 s.30.
s.80(1) and (2)	1985 s.44(1); 2004 sch.28 para.38; 2007 sch.6.
s.80(3) to (5)	1985 s.44(2).
s.80(6)	1985 s.44(3).
s.80(7)	1985 s.44(4).
s.81(1) and (2)	1985 s.45(1); 2007 sch.6.
s.81(3) to (5)	1985 s.45(2).
s.81(6)	1985 s.45(3); 2007 sch.6.
s.81(7)	1985 s.45(4).
s.82(1) and (2)	1985 s.46(1); 1993 sch.1 para.20 and sch.2; 2007 sch.1 para.41 and sch.6.
s.82(3) and (4)	1985 s.46(2).
s.82(5)	1985 s.46(3).
s.82(6)	1985 s.46(4); 2007 sch.6.
s.83(1)	1985 s.47(1).
s.83(2)	1985 s.47(2); 2007 sch.6.
s.83(3) and (4)	1985 s.47(3).
s.83(5)	1985 s.47(4); S.I. 1986/517 para.5.
s.83(6)	1985 s.47(5).
s.83(7)	1985 s.47(6); 2007 sch.6.
s.83(8) and (9)	1985 s.47(7).
s.84(1) to (3)	1985 s.48(1); 2007 sch.6.
s.84(4)	1985 s.48(2); 2007 sch.1 para.42(a) and sch.6.
s.84(5) to (7)	1985 ss.22(2) and (3) and 48(3); 2007 sch.1 paras.22 and 42(b) and sch.6.
s.84(8) and (9)	1985 s.48(4); 2007 sch.6.
s.85(1)	1985 s.48(5); 2007 sch.6.
s.85(2)	1985 s.48(8); 2007 sch.6.
s.85(3) and (4)	1985 s.48(6).

<i>Provision of Bill</i>	<i>Derivation</i>
s.86(1) to (3)	1985 ss.22(5) and 48(7) (part); 2007 sch.6.
s.86(4)	1985 ss.22(10) and 48(7) (part); 2007 sch.6.
s.87	1985 ss.22(6) to (9) and 48(7) (part); 2007 sch.6.
s.88(1)	1985 s.49(1); 2007 sch.6.
s.88(2) and (3)	1985 s.49(2); 2007 sch.6.
s.88(4)	1985 s.49(2A); 2007 s.8(3).
s.88(5)	1985 s.49(3); 2007 sch.6.
s.88(6)	1985 s.49(4); 2007 sch.6.
s.88(7)	1985 s.49(5); 2007 sch.6.
s.88(8) to (10)	1985 s.49(6) and (6A); 2007 s.31(1) and sch.6.
s.88(11)	1985 s.49(7).
s.89(1) and (2)	1985 s.50(1); S.I. 2003/2109 reg.13; 2007 sch.6.
s.89(3)	1985 s.50(2); S.I. 2003/2109 reg.13.
s.89(4)	1985 s.50(3); S.I. 2003/2109 reg.13.
s.89(5) and (6)	1985 s.50(4); S.I. 2003/2109 reg.13.
s.89(7)	1985 s.50(5); S.I. 2003/2109 reg.13.
s.90(1)	1985 s.51(1); 2007 sch.1 para.43 and sch.6.
s.90(2) and (3)	1985 s.51(2).
s.90(4)	1985 s.51(3); 2004 sch.28 para.39 and 2007 sch.6.
s.90(5)	1985 s.51(4).
s.90(6) and (7)	1985 s.51(5).
s.90(8)	1985 s.51(5A); S.I. 2003/2109 reg.14.
s.90(9)	1985 s.51(6); 2007 sch.6.
s.90(10)	1985 s.51(7).
s.91(1)	1985 s.52(1); 1993 sch.1 para.21; 2007 sch.6.
s.91(2) and (3)	1985 s.52(2); 1993 sch.1 para.21; 2007 sch.1 para.44(2) and sch.6.
s.91(4)	1985 s.52(2ZA); 2007 sch.1 para.44(3).
s.91(5)	1985 s.52(2A); 1993 sch.1 para.21; 2007 sch.6.
s.92(1) and (2)	1985 s.52(3); 2007 sch.6.
s.92(3)	1985 s.52(4); 2007 sch.6.
s.92(4)	1985 s.52(5); 2007 sch.6.
s.92(5)	1985 s.52(7); 2007 sch.6.
s.92(6)	1985 s.52(8); 2007 sch.6.
s.92(7) and (8)	1985 s.52(9); 2007 sch.6.
s.92(9)	1985 s.52(10); S.I. 2003/2109 reg.15.
s.92(10)	1985 s.52(11); S.I. 2003/2109 reg.15.
s.93(1) and (2)	1985 s.53(1); 2007 sch.6.
s.93(3) and (4)	1985 s.53(2); 1993 sch.1 para.22(2); 2007 sch.6.
s.93(5)	1985 s.53(2A); 1993 sch.1 para.22(2); 2007 sch.1 para.45(a) and sch.6.
s.94(1)	1985 s.53(3); 1993 sch.1 para.22(3) and sch.2; 2007 sch.6.
s.94(2) and (3)	1985 s.53(4); 2007 sch.6.

<i>Provision of Bill</i>	<i>Derivation</i>
s.94(4)	1985 s.53(5); 1993 sch.1 para.22(4).
s.95(1) to (3)	1985 s.53(6); 1993 sch.1 para.22(5); 2007 s.31(2)(a) and sch.6; Sc. Law Com. Rec. No.22.
s.95(4)	1985 s.53(6A); 2007 s.31(2)(b); Sc. Law Com. Rec. No.23.
s.95(5)	1985 s.53(6B); 2007 sch.1 para.45(b).
s.96(1)	1985 s.53(7); 2007 sch.6.
s.96(2)	1985 s.53(8); 2007 sch.6.
s.96(3)	1985 s.53(9); 2007 sch.6.
s.96(4)	1985 s.53(10); 2007 sch.6.
s.97(1) to (9)	1985 s.53A(1) and (2); 2007 sch.1 para.46.
s.97(10) to (12)	1985 ss.53(8) to (10) and 53A(1) and (3).
s.98(1) and (2)	1985 s.54(1); 2007 s.1(2).
s.98(3)	1985 s.54(2).
s.99(1)	1985 s.54(3); 2007 s.1(3) and sch.6.
s.99(2) and (3)	1985 s.54(4); 2007 sch.6.
s.99(4) and (5)	1985 s.54(5); 2007 sch.6.
s.99(6) and (7)	1985 s.54(6).
s.99(8)	1985 s.54(7); 2007 sch.6.
s.99(9) and (10)	1985 s.54(8).
s.99(11) and (12)	1985 s.54(9); 2007 sch.6.
s.100(1) and (2)	1985 s.55(1); 1993 sch.1 para.23(2).
s.100(3) and (4)	1985 s.55(2); 1991 sch.5 para.6(4); 1995 sch.4 para.58(4) and sch.8; 1995M s.2(3); 2007CP sch. para.33(1); Sc. Law Com. Rec. No.24.
s.100(5)	1985 s.55(3); 1993 sch.1 para.23(3); Sc. Law Com. Rec. No.25.
s.100(6)	1985 s.55(2A); 2002 sch.11 para.15(5); 2007 sch.1 para.47.
s.100(7)	Sc. Law Com. Rec. No.24.
s.101	1985 s.56; 2007 sch.6.
s.102(1)	1985 s.57(1); 2007 sch.1 para.49 and sch.6.
s.102(2)	1985 s.57(2); 2007 sch.6.
s.102(3)	1985 s.57(3); 2007 sch.6.
s.102(4) and (5)	1985 s.57(4); 2007 sch.6.
s.102(6)	1985 s.57(4A); 1993 sch.1 para.24(2).
s.102(7)	1985 s.57(5); 2007 sch.6.
s.102(8)	1985 s.57(6).
s.102(9)	1985 s.57(7); 2007 sch.6.
s.102(10)	1985 s.57(8); 1993 sch.1 para.24(3); 2007 sch.6.
s.103(1)	1985 s.58(1); 1993 sch.1 para.25.
s.103(2)	1985 s.58(2).
s.103(3)	1985 s.58(3); 1993 sch.1 para.25; 1998 s.53.
s.104(1)	1985 s.58A(1); 1993 sch.1 para.26; 2007 sch.6.

<i>Provision of Bill</i>	<i>Derivation</i>
s.104(2)	1985 s.58A(2); 1993 sch.1 para.26.
s.104(3)	1985 s.58A(3); 1993 sch.1 para.26.
s.104(4)	1985 s.58A(4); 1993 sch.1 para.26; 2007 sch.6.
s.104(5)	1985 s.58A(5); 1993 sch.1 para.26; 2007 sch.6.
s.104(6) and (7)	1985 s.58A(6); 1993 sch.1 para.26.
s.104(8) and (9)	1985 s.58A(7); 1993 sch.1 para.26; 2007 sch.1 para.50 and sch.6.
s.104(10)	1985 s.58A(8); 1993 sch.1 para.26.
s.105(1)	1985 s.56A(1); 2007 s.2(1).
s.105(2)	1985 s.56A(2); 2007 s.2(1).
s.106(1)	1985 s.56B(1); 2007 s.2(1).
s.106(2)	1985 s.56B(2); 2007 s.2(1).
s.106(3)	1985 s.56B(3); 2007 s.2(1).
s.106(4)	1985 s.56B(4); 2007 s.2(1).
s.107(1)	1985 s.56C(1); 2007 s.2(1).
s.107(2)	1985 s.56C(2); 2007 s.2(1).
s.108(1)	1985 s.56D(1); 2007 s.2(1).
s.108(2)	1985 s.56D(2); 2007 s.2(1).
s.109(1)	1985 s.56E(1); 2007 s.2(1).
s.109(2)	1985 s.56E(2); 2007 s.2(1).
s.109(3) and (4)	1985 s.56E(3); 2007 s.2(1).
s.110(1)	1985 s.56F(1); 2007 s.2(1).
s.110(2)	1985 s.56F(2); 2007 s.2(1).
s.110(3)	1985 s.56F(3) and (4); 2007 s.2(1).
s.110(4)	1985 s.56F(5); 2007 s.2(1).
s.110(5)	1985 s.56F(6); 2007 s.2(1).
s.111(1)	1985 s.56G(1); 2007 s.2(1).
s.111(2)	1985 s.56G(2); 2007 s.2(1).
s.111(3)	1985 s.56G(3); 2007 s.2(1).
s.111(4)	1985 s.56G(4); 2007 s.2(1).
s.111(5) and (6)	1985 s.56G(5); 2007 s.2(1).
s.112(1)	1985 s.56H(1); 2007 s.2(1).
s.112(2)	1985 s.56H(2); 2007 s.2(1).
s.113(1)	1985 s.56J(1); 2007 s.2(1).
s.113(2)	1985 s.56J(2); 2007 s.2(1).
s.113(3)	1985 s.56J(3); 2007 s.2(1).
s.114(1)	1985 s.56K(1); 2007 s.2(1).
s.114(2) and (3)	1985 s.56K(2); 2007 s.2(1).
s.114(4)	1985 s.56K(3); 2007 s.2(1).
s.114(5)	1985 s.56K(4); 2007 s.2(1).
s.114(6)	1985 s.56K(5); 2007 s.2(1).

<i>Provision of Bill</i>	<i>Derivation</i>
s.115	1985 s.59.
s.116(1) and (2) s.116(3)	1985 s.59A(1); S.I. 2003/2109 reg.16; 2007 sch.1 para.51. 1985 s.59A(2); S.I. 2003/2109 reg.16.
s.117(1) s.117(2)	1985 s.59B(1); S.I. 2003/2109 reg.16; 2007 sch.1 para 52. 1985 s.59B(2); S.I. 2003/2109 reg.16.
s.118(1) s.118(2) s.118(3) s.118(4)	1985 s.59C(1); S.I.2003/2109 reg.16; 2007 sch.1 para.53. 1985 s.59C(2); S.I. 2003/2109 reg.16; 2007 sch.1 para.53. 1985 s.59C(2A); 2007 s.32. 1985 s.59C(3); S.I. 2003/2109 reg.16; 2007 sch.1 para.53.
s.119(1) s.119(2)	1985 s.1(1) and (1A); 1998 sch.8 para.22; 2007 s.22. 1985 s.1(2); 1998 sch.8 para.22.
s.120(1) to (3)	1985 s. 1A(1)(a) to (d); 1993 s.1(1); 1998 s.53; S.I. 1999/1820 sch.2 para 82; 2007 ss.2(2), 14(1) and 23(2), sch.1 para.2(a) and sch.6.
s.120(4)	1985 s.1A(2); 1993 s.1(1); 2007 sch.1 para.2(b).
s.120(5)	1985 s.1A(3); 1993 s.1(1); 2007 sch.6.
s.120(6)	1985 s.1A(4); 1993 s.1(1).
s.120(7)	1985 s.1A(1)(e).
s.121(1)	1985 s.1B(1); 1993 s.1(1).
s.121(2)	1985 s.1B(2); 1993 s.1(1).
s.121(3)	1985 s.1B(3); 1993 s.1(1).
s.121(4)	1985 s.1B(4); 1993 s.1(1).
s.122	1985 s.71A; 2004C s.59(2).
s.123(1)	1985 s.1C(1); 1993 s.1(1);1998 s.53.
s.123(2)	1985 s.1C(2); 1993 s.1(1).
s.123(3)	1985 s.1C(3); 1993 s.1(1).
s.124	1985 s.69A; 1993 s.8; 1998 s.53; S.I. 1999/1820 sch.2 para.82.
s.125(1)	1985 s.60(1).
s.125(2)	1985 s.60(2); 2007 sch.6.
s.125(3) and (4) s.125(5)	1985 s.60(3). 1985 s.60(4).
s.126	1985 s.60A; S.I. 2003/2109 reg.17.
s.127(1)	1985 s.60B(1); S.I. 2003/2109 reg.17.
s.127(2)	1985 s.60B(2) (part); S.I. 2003/2109 reg 17; 2007 sch.1 para.54; Sc. Law Com. Rec. No.26.
s.127(3)	1985 s.60B(3); S.I. 2003/2109 reg.17.
s.127(4)	1985 s.60B(2) (part); S.I. 2003/2109 reg.17.
s.128(1)	1985 s.61(1).

<i>Provision of Bill</i>	<i>Derivation</i>
s.128(2)	1985 s.61(2); 2007 sch.1 para.55 and sch.6.
s.128(3)	1985 s.61(3).
s.128(4)	1985 s.61(4); 2007 sch.1 para.55 and sch.6.
s.128(5)	1985 s.61(5); 2007 sch.6.
s.128(6)	1985 s.61(6); 2006 sch.4; 2007 sch.6.
s.128(7)	1985 s.61(7).
s.129(1)	1985 s.62(1).
s.129(2)	1985 s.62(2).
s.129(3)	1985 s.62(3); 2007 sch.6.
s.129(4)	1985 s.62(4); 2007 sch.6.
s.129(5)	1985 s.62(5); 2007 sch.6.
s.129(6)	1985 s.62(6).
s.130(1)	1985 s.63(1).
s.130(2)	1985 s.63(2); 2007 sch.6.
s.130(3)	1985 s.63(3).
s.130(4)	1985 s.63(4); 2007 sch.6.
s.131(1)	1985 s.64(1); 2007 sch.1 para.56 and sch.6.
s.131(2) and (3)	1985 s.64(2); 2007 sch.6.
s.131(4)	1985 s.64(3).
s.131(5)	1985 s.64(5).
s.131(6)	1985 s.64(4).
s.132(1)	1985 s.65(1) (part); 2007 sch.1 para.57 and sch.6.
s.132(2)	1985 s.65(2).
s.132(3)	1985 s.65(1) (part).
s.132(4)	1985 s.65(3); 2007 sch.6.
s.133	1985 s.66.
s.134(1)	1985 s.67(1).
s.134(2)	1985 s.67(2); 2007 s.24(2).
s.134(3)	1985 s.67(3).
s.134(4)	1985 s.67(4); 2007 sch.6.
s.134(5)	1985 s.67(5); 2007 sch.6.
s.134(6)	1985 s.67(6).
s.134(7)	1985 s.67(7).
s.134(8)	1985 s.67(9); 2007 s.24(4).
s.134(9)	1985 s.67(9A); 2007 s.24(5).
s.134(10)	1985 s.67(10); 2007 s.24(6) and (7).
s.134(11)	1985 s.67(11).
s.134(12)	1985 s.67(11A); 2007 s.24(8).
s.134(13)	1985 s.67(12).
s.135(1)	1985 s.68(1); 1993 sch.1, para.27.
s.135(2)	1985 s.68(1A); 1993 sch.1, para.27.
s.135(3)	1985 s.68(2); 1993 sch.1 para.27; 1995 sch.4, para.58(5).
s.135(4)	1985 s.68(3).

<i>Provision of Bill</i>	<i>Derivation</i>
s.136	1985 s.69; 1998 s.53; 2007 sch.1 para.58 and sch.6.
s.137(1)	1985 s.70(1) (part); 2007 sch.1 para.59.
s.137(2)	1985 s.70(2).
s.137(3)	1985 s.70(3).
s.137(4)(a)	1985 s.70(4)(a); 1986G sch.7 para.32; 1995G sch.4 para.13.
s.137(4)(b)	1985 s.70(4)(b); 1989 sch.16 para.32; 2000 sch.6 para.46.
s.137(4)(c)	1985 s.70(4)(c); 2002W sch.7 para.16.
s.137(4)(d)	1985 s.70(4)(d); 2003 sch.17 para.78(2).
s.137(5)	1985 s.70(5); 2003 sch.17 para.78(3).
s.137(6)	1985 s.70(1) (part); 2007 sch.6.
s.138	1985 s.71.
s.139(1)	1985 s.71B(1); 2007 s.5.
s.139(2)	1985 s.71B(2); 2007 s.5.
s.139(3)	1985 s.71B(3); 2007 s.5.
s.139(4)	1985 s.71B(4); 2007 s.5.
s.139(5)	1985 s.71B(5); 2007 s.5.
s.139(6)	1985 s.71B(6); 2007 s.5.
s.139(7)	1985 s.71B(7); 2007 s.5.
s.139(8) and (9)	1985 s.71B(8); 2007 s.5.
s.139(10)	1985 s.71B(9); 2007 s.5.
s.139(11)	1985 s.71B(10); 2007 s.5; 2010R ss.27 and 29.
s.140(1) and (2)	1985 s.72(1) (part); 1998 s.118; 2007 s.35; 2010R ss.27 and 28.
s.140(3)	1985 s.72(2) and (3); 2007 s.35; 2010 s.13(1); 2010R s.29.
s.140(4)	1985 s.72(1) (part); Sc. Law Com. Rec. No. 27.
s.140(5)	Drafting.
s.141	1985 s.72ZA; S.I. 2003/2109 reg.18.
s.142	1985 s.72A; 1993 sch.1 para.28.
s.143(1)	1985 s.73(1).
"Accountant in Bankruptcy"	1985 s.73(1).
"accounting period"	1985 s.73(1); 1993 sch.1 para.29(2).
"apparent insolvency" and "apparently insolvent"	1985 s.73(1).
"appropriate bank or Institution"	1985 s.73(1); S.I. 2001/3649 art.225.
"associate"	1985 s.73(1).
"bankruptcy restrictions order"	1985 s.73(1); 2007 sch.1 para.60(2)(a).
"bankruptcy restrictions undertaking"	1985 s.73(1); 2007 sch.1 para.60(2)(a).
"business"	1985 s.73(1).

<i>Provision of Bill</i>	<i>Derivation</i>
"centre of main interests"	1985 s.73(1); S.I. 2003/2109 reg.19.
"commissioner"	1985 s.73(1); Sc. Law Com. Rec. No.29.
"court"	1985 s.73(1).
"creditor"	1985 s.73(1); S.I. 2003/2109 reg.19.
"date of sequestration"	1985 s.73(1).
"debtor"	1985 s.73(1).
"debtor application"	1985 s.73(1); 2007 sch.1 para.60(2)(b).
"the EC Regulation"	1985 s.73(1); S.I. 2003/2109 reg.19.
"establishment"	1985 s.73(1); S.I. 2003/2109 reg.19.
"examination"	1985 s.73(1).
"examining commissioner"	1985 s.73(1).
"interim trustee"	1985 s.73(1); 2007 sch.1 para.60(2)(d).
"main proceedings"	1985 s.73(1); S.I. 2003/2109 reg.19.
"member State liquidator"	1985 s.73(1); S.I. 2003/2109 reg.19.
"ordinary debt"	1985 s.73(1).
"original trustee"	1985 s.73(1); 2007 sch.1 para 60(2)(e).
"postponed debt"	1985 s.73(1).
"preferred debt"	1985 s.73(1).
"prescribed"	1985 s.73(1); 1998 s.53.
"protected trust deed"	1985 s.73(1); 2007 s.20(2).
"qualified creditor" and "qualified creditors"	1985 s.73(1).
"qualified to act as an insolvency practitioner"	1985 s.73(1); Sc. Law Com. Rec. No.28.
"register of insolvencies"	1985 s.73(1); 1993 sch.1 para.29(3).
"relevant person"	1985 s.73(1).
"replacement trustee"	1985 s.73(1); 2007 sch.1 para.60(2)(f).
"secondary proceedings"	1985 s.73(1); S.I. 2003/2109 reg.19.
"secured creditor"	1985 s.73(1).
"security"	1985 s.73(1).
"sederunt book"	1985 s.73(1).
"sequestration proceedings"	1985 s.73(1); 2007 sch.1 para.60(2)(g).
"statement of assets and liabilities"	1985 s.73(1); 1993 sch.1 para.29(5).
"statutory meeting"	1985 s.73(1); 1993 sch.1 para.29(4).
"temporary administrator"	1985 s.73(1); S.I. 2003/2109 reg.19.
"territorial proceedings"	1985 s.73(1); SI. 2003/2109 reg.19.
"trust deed"	1985 ss.5(4A) and 73(1); 1993 s.3(4) and sch.1 para.29(6); 2007 sch.6; 2010 s.10(1).
"trustee vote"	1985 s.73(1); 2007 sch.1 para.60(2)(h).
"unfair preference"	1985 s.73(1).

<i>Provision of Bill</i>	<i>Derivation</i>
"the 2002 Act"	Drafting.
s.143(2)	1985 s.73(1) (part); S.I. 2001/3649 art.225.
s.143(3) and (4)	1985 ss.5(4AA) and (4AB); 2010 s.10(2).
s.143(5)	1985 s.73(2).
s.143(6)	1985 s.73(3).
s.143(7)	1985 s.73(4).
s.143(8) and (9)	1985 s.73(5); 2007 sch.1 para.60(3).
s.143(10)	1985 s.73(6); 1993 sch.1 para.29(7); 2007 sch.1 para.60(4).
s.143(11)	1985 s.73(6A); 2007 sch.1 para.60(5).
s.144(1) and (2)	1985 s.74(1).
s.144(3)	1985 s.74(2); 2004 sch.28 para.40.
s.144(4) and (5)	1985 s.74(3); S.I. 1985/1925 reg.11(2); S.S.I. 2008/82 reg.8(2).
s.144(6) and (7)	1985 s.74(4); 2004 Sch.28 para.40; Sc. Law Com. Rec. No.31.
s.144(8) and (9)	1985 s.74(5).
s.144(10)	1985 s.74(5A); S.I. 1985/1925 reg.11(3); S.S.I. 2008/82 reg.8(3).
s.144(11)	1985 s.74(5B); S.I. 1985/1925 reg.11(3); S.S.I. 2008/82 reg.8(3).
s.144(12) and (13)	1985 s.74(5C); S.I. 1985/1925 reg.11(3); S.S.I. 2008/82 reg.8(3).
s.144(14)	1985 s.74(6); S.I. 1985/1925 reg.11(4); S.S.I. 2008/82 reg.8(4).
s.144(15) and (16)	1985 s.74(7); 1998 s.53.
s.145	1985 s.31ZA (as re-numbered by 2007 sch.1 para.31); S.I.2003/2109 reg.12.
s.146	1985 s.77.
s.147	1985 s.75(1)(b).
s.148	Drafting and 1985 s.75(6) to (12).
s.149	Drafting.
s.150(1) and (2)	Drafting.
s.151	Drafting.
Sch. 1	
para.1(1) to (3)	1985 sch.1 para.1(1) to (3).
para.2(1) and (2)	1985 sch.1 para.2(1) and (2); 2004 sch.28 para.41; Sc. Law Com. Rec. No.33.
para.3(1) and (2)	1985 sch.1 para.3(1).
para.3(3) to (5)	1985 sch.1 para.3(2); 2007 sch.6.
para.4	1985 sch.1 para.4.
para.5(1) and (2)	1985 sch.1 para.5(1).
para.5(3) and (4)	1985 sch.1 para.5(2); 2007 sch.6.
para.5(5)	1985 sch.1 para.5(3).
para.6(1) and (2)	1985 sch.1 para.6.
Sch. 2	
para.1	1985 sch.3 para.4; 1993PS sch.8 para.17.
para.2(1) to (3)	1985 sch.3 para.5(1) to (3).

<i>Provision of Bill</i>	<i>Derivation</i>
para.3	1985 sch.3 para.6.
para.4	1985 sch.3 para.6A; S.I.1987/2093 reg.3.
para.5	1985 sch.3 para.7.
para.6(1) and (2)	1985 sch.3 para.9(1) and (2); 1986 sch.10, para.80 and sch.11.
para.6(3) and (4)	1985 sch.3 para.9(3).
para.6(5)	1985 sch.3 para.9(4).
para.7	1985 sch.3 para.10; 1998 s.53.
<b>Sch. 3</b>	
para.1(1) and (2)	1985 sch.4 para.1(1) and (2); 2007 s.21(2) and sch.6.
para.2	1985 sch.4 para.2; 1993 sch.1 para.31(2); 2007 sch.6.
para.3	1985 sch.4 para.3.
para.4	1985 sch.4 para.4; 2007 s.21(3) and sch.6.
para.5	1985 sch.4 para.5; 2007 s.21(4).
para.6	1985 sch.4 para.6; 2007 s.21(4).
para.7	1985 sch.4 para.7; 2007 s.21(4).
para.8	1985 sch.4 para.8; 2007 s.21(4).
para.9(1) and (2)	1985 sch.4 para.8A(1) and (2); 2007 s.21(4).
para.10(1) and (2)	1985 sch.4 para.8B(1) and (2); 2007 s.21(4).
para.11(1)	1985 sch.4 para.9(1); 1993 sch.1 para.31(3)(a); 2007 sch.6.
para.11(2)	1985 sch.4 para.9(1A); 1993 sch.1 para.31(3)(b); 2007 sch.6.
para.11(3)	1985 sch.4 para.9(2).
para.11(4)	1985 sch.4 para.9(3); 1993 sch.1 para.31(3)(c); 2007 s.21(5); Sc. Law Com. Rec. No.34.
para.12	1985 sch.4 para.10; 2007 s.21(6).
para.13	1985 sch.4 para.11; 2007 s.21(7).
para.14	1985 sch.4 para.12; 2007 s.21(8) and sch.6.
paras.15 and 16	1985 sch.4 para.13.
paras.17 and 18	1985 sch.4 para.14; 2007 s.21(9).
para.19	1985 sch.4 para.15.
para.20(1) and (2)	1985 sch.4 para.16(1); 1993 sch.1 para.31(4); 2007 s.21(10)(a); Sc. Law Com. Rec. No.35.
para.20(3)	1985 sch.4 para.16(2); 1993 sch.1 para.31(4); 2007 s.21(10)(b); Sc. Law Com. Rec. 25.
para.21(1)	1985 sch.4 para.17(1); 2007 s.21(11) and sch.6.
para.21(2) and (3)	1985 sch.4 para.17(2).
para.21(4)	1985 sch.4 para.17(3); 2007 sch.6.
para.21(5)	1985 sch.4 para.17(4); 2007 sch.6.
para.22(1)	1985 sch.4 para.18(1); 2007 s.21(12).
para.22(2) to(4)	1985 sch.4 para.18(2) to (4); 2007 sch.6.
<b>Sch. 4</b>	
para.1	1985 sch.5 para.1.
para.2	1985 sch.5 para.1A; 2007 s.23(1).
para.3(1) and (2)	1985 sch.5 para.2(1); 2007 sch.6.
para.3(3)	1985 sch.5 para.2(2).
para.4	1985 sch.5 para.3.
para.5	1985 sch.5 para.4; 2007 sch.6.
para.6	1985 sch.5 para.5; 2007 s.20(1); 2010 s.13(2); Sc. Law Com. Rec. No.27.

<i>Provision of Bill</i>	<i>Derivation</i>
Sch. 5	
para.1	1985 sch.6 para.1; 2007 sch.1 para.61(a) and sch.6.
para.2	1985 sch.6 para.2; 2007 sch.1 para.61(a) and sch.6.
para.3	1985 sch.6 para.3; 2007 sch.6.
para.4	1985 sch.6 para.4; 2007 sch.6.
para.5	1985 sch.6 para.5(1); 2007 sch.6.
para.6	1985 sch.6 para.5(2).
para.7	1985 sch.6 para.6.
para.8	1985 sch.6 para.7(1); 2007 sch.6.
para.9	1985 sch.6 para.7(2); 2007 sch.6.
para.10	1985 sch.6 para.7(3); 2007 sch.6.
para.11	1985 sch.6 para.8; 2007 sch.1 para.61(a) and sch.6.
para.12	1985 sch.6 para.9.
para.13	1985 sch.6 para.10.
para.14	1985 sch.6 para.11(1).
para.15	1985 sch.6 para.11(2); 2007 sch.6.
para.16	1985 sch.6 para.11(3).
para.17	1985 sch.6 para.12.
para.18	1985 sch.6 para.13.
para.19	1985 sch.6 para.14(1); 2007 sch.6
para.20	1985 sch.6 para.14(2).
para.21	1985 sch.6 para.14(3).
para.22	1985 sch.6 para.15(1); 2007 sch.1 para.61(b).
para.23	1985 sch.6 para.15(2).
para.24	1985 sch.6 para.15(3).
para.25	1985 sch.6 para.16.
para.26	1985 sch.6 para.17; 2007 sch.1 para.61(a) and sch.6.
para.27	1985 sch.6 para.18; 2007 sch.6.
para.28	1985 sch.6 para.19; 2007 sch.6.
para.29	1985 sch.6 para.20; 2007 sch.6.
para.30	1985 sch.6 para.21; 2007 sch.6.
para.31	1985 sch.6 para.22.
paras.32 and 33	1985 sch.6 para.23; 2007 sch.6.
Sch. 6	1985 sch.7, Part 2; 1987D sch.6 para.28; 2002DA sch.3 para.15; 2007 sch.1 para.62; Sc. Law Com. Rec. No.36.
Sch.7	Drafting.
Sch.8	Drafting.

## TABLE OF DESTINATIONS

### BANKRUPTCY (SCOTLAND) ACT 1985 (c.66)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.1	Accountant in Bankruptcy	s.119	1(1) and (2) inserted in substitution for s.1 (as substituted by 1993 s.1(1)) 1998 sch.8 para.22. 1(1A) inserted 2007 s.22.
s.1A	Supervisory functions of the Accountant in Bankruptcy	s.120	Inserted 1993 s.1(1). Transfer of functions 1998 s.53. Amended S.I. 1999/1820 sch.2 para.82, 2007 ss.2(2), 14(1) and 23(2), 2007 sch.1 para.2 and sch.6.
s.1B	Performance of certain functions of the Accountant in Bankruptcy	s.121	Inserted 1993 s.1(1).
s.1C	Directions to Accountant in Bankruptcy	s.123	Inserted 1993 s.1(1).
s.2(1) and (3)	Appointment and functions of the trustee in the sequestration	s.37(1) and (2)	Inserted (with s.2(2), (4), (5), (6) and (7)) in substitution for s.2 as originally enacted 1993 s.2. Amended 2007 sch.1 para. 3(2), (3) and (5) and sch.6.
s.2(1A)		s.37(10) to (12)	Inserted 2007 s.14(2).
s.2(1B)		s.37(14)	Inserted 2007 s.14(2).
s.2(1C)		s.37(13)	Inserted 2007 s.14(2).
s.2(2)		s.37(3)	Amended 2007 sch.1 para.3(2) and (4).
s.2(2A)		s.37(4) and (5)	Inserted 2007 s.6(1)(a).
s.2(2B)		s.37(6)	Inserted 2007 s.6(1)(a).
s.2(2C)		s.37(7)	Inserted 2007 s.6(1)(a).
s.2(4)		-----	Repealed 2007 sch.6.
s.2(5)		s.37(8)	Amended 2007 sch.1 para.3(2).
s.2(6)		s.37(9)	Amended 2007 sch.1 para.3(2).
s.2(6A)		s.36(1)	Inserted 2007 s.6(1)(b).
s.2(6B)		s.36(2)	Inserted 2007 s.6(1)(b).
s.2(7)		s.37(15)	Amended 2007 sch.1 para.3(6).
s.3(1)	Functions of the trustee	s.35(1)	Amended 2007 s.6(2) and sch.6.
s.3(2) and (3)		s.35(2) and (3)	Amended 2007 sch.6.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.3(3A) s.3(4) s.3(5)		s.35(4) s.35(5) s.35(6)	Inserted 2007 s.8(1)(a). Amended 2007 s.8(1)(b). Inserted 1993 sch.1 para.1. Amended 2007 s.8(1)(c) and sch.6.
s.3(6) and (7)		s.35(7) to (9)	Inserted 1993 sch.1 para.1. Amended 2007 sch.6.
s.3(8)		s.35(10)	Inserted 2007 s.8(1)(d).
s.4	Commissioners	s.48	Amended 2007 sch.6.
s.5(1)	Sequestration of the estate of living or deceased debtor	s.1	
s.5(2)		s.2(1)	Inserted (with s.5(2A) to (2C)) in substitution for section 5(2) as originally enacted 1993 s.3(2). Substituted 2007 s.14(3)(a). Amended 2010 s.9(1)(a). Repealed 2010 s.9(1)(b).
s.5(2A) s.5(2B)		----- s.2(3) and (4)	Amended 2007 ss.15(1) and 25(a) and sch.1 para.4(3) and 2010 s.9(1)(c).
s.5(2C) s.5(2D) and (2E) s.5(2F)		s.2(2) s.2(5) and (6)	Amended 2007 sch.1 para.4(4). Inserted 2007 s.26.
s.5(3) s.5(4)		s.2(7) s.3 s.5(1) to (3)	Inserted 2010 s.9(1)(d). Amended S.I. 2003/2109 reg.5(2). Amended 1987 s.45(5)(a), 1993 s.3(3), 1994 sch.1 para. 10(1), 2002 sch.11 para. 15(2) and 2007 s.25(b) and sch.1 para. 4(5).
s.5(4A)		s.143(1) (Part)	Inserted 1993 s.3(4). Amended 2007 sch.6 and 2010 s.10(1).
s.5(4AA) and (4AB) s.5(4B) and (4C)		s.143(3) and (4) s.6(1) and (2)	Inserted 2010 s.10(2). Inserted 2007 s.14(3)(b).
s.5(5) s.5(6) s.5(6A)		s.5(4) s.12(1) s.6(3)	Amended 2007 sch.1 para.4(6). Amended 1993 s.3(5). Inserted in substitution for s.5(6A) (as inserted by 1993 s.3(6)) 2007 sch.1 para.4(7). Words "in the case of a debtor application" omitted as now superfluous
s.5(7) s.5(7A) s.5(8) s.5(8A) s.5(9)		s.9(1) s.9(2) s.9(3) and(4) s.9(5) and (6) s.6(4)	Amended 2007 sch.6. Inserted 2007 sch.1 para.4(8). Amended 2007 sch.6. Inserted 2007 sch.1 para.4(9). Inserted 1993 s.3(7). Amended 2007 sch.1 para.4(10).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.5(10)		s.6(5)	Inserted 1993 s.3(7). Amended 2007 sch.1 para. 4(11).
s.5A	Debtor applications by low income, low asset debtors	s.7	Inserted 2007 s.15(2).
s.5B	Certificate for sequestration	ss.8 and 140(4)	Inserted 2010 s.9(2).
s.6	Sequestration of other estates	s.4	Amended S.I. 2003/2109 reg.6, 2007 s.14(4) and sch.1 para.5 and S.I. 2009/1941.
s.6A	Petition for sequestration of estate: provision of information	s.11	Inserted S.I. 2003/2109.
s.6B	Debtor application: provision of information	s.10	Inserted 2007 s.14(5).
s.7	Meaning of apparent insolvency	s.15	Subsection (1) amended 1987 s.45(5)(b), 1988 sch.15 para.108, 1994 sch.1 para.10(2) and sch.3, 2002 sch.11 para. 15(3), S.I. 2003 reg.8(1), S.S.I. 2004/468 reg.46, 2007 sch.6, 2009 sch.7 para.47 and S.S.I. 2011/141 para.45. 7(2) amended S.I. 2003/2109 reg.8(2) and 2007 sch.1 para.6.
s.8(1)	Further provisions relating to presentation of petitions	s.12(2)	Amended S.I. 2003/2109 reg.9(1) and 2007 sch.6.
s.8(2)		s.12(3)	
s.8(3)		s.12(4)	Amended S.I. 2003/2109 reg.9(2).
s.8(4)		s.12(5)	
s.8(5)		s.12(6); Draft Order 2013 art.6	Amended 2007 sch.6.
s.8(6)		s.12(7)	Amended 2007 sch.6.
s.8A	Further provision relating to debtor applications	s.13	Inserted 2007 s.14(6).
s.9(1)	Jurisdiction	s.14(1)	Amended 2007 ss.14(7)(a) and 16(1)(a).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.9(1A) s.9(2)		s.14(2) s.14(3)	Inserted 2007 s.14(7)(b). Amended 2007 ss.14(7)(c) and 16(1)(b).
s.9(2A) s.9(3) s.9(3A) s.9(4) s.9(5) s.9(6)		s.14(4) s.14(5) s.14(6) and (7) ----- s.14(8) s.14(9)	Inserted 2007 s.14(7)(d). Amended 2007 s.16(1)(c). Inserted 2007 s.14(7)(e). Repealed 2007 s.16(1)(d).  Amended S.I.2003/2109 reg.10.
ss.10 and 10A	Duty to notify existence of, and powers in relation to, concurrent proceedings for sequestration or analogous remedy	ss.16 and 17	Inserted 2007 sch.1 para.8 (in substitution for s.10 as originally enacted).
s.11	Creditor's oath	s.18	11(1) and (4) amended 2007 sch.1 para.9.
s.12(1)	When sequestration is awarded	s.19(1)	Inserted in substitution for 12(1) as originally enacted 1993 s.4(2). Amended 2007 s.14(8) and sch.1 para.10(a); 2010 s.9(3).
s.12(1A)		-----	Inserted 1993 s.4(3). Repealed 2007 sch.6.
s.12(2) s.12(3) and (3A)		s.19(2) s.19(3) to (5)	Amended 2007 sch.1 para.10(b). Inserted in substitution for 12(3) as originally enacted 1993 s.4(4). 12(3) amended 2007 s.27(2) and sch.1 para.10(c).
s.12(3B) and (3C) s.12(4)		s.19(6) and (7)  s.19(8)	Inserted 2007 s.27(3).  Inserted in substitution for 12(4) as originally enacted 1993 s.4(5). Amended 2007 sch.1 para.10(d).
s.13(A1) s.13(1) to (7)	Resignation, removal etc. of interim trustee	s.38(1)  s.38(2) to (10)	Inserted 2007 sch.1 para.11(2).  13(1), (2) and (3) to (7) inserted in substitution for 13 as originally enacted 1993 sch.1 para.2; 13(2A) inserted 2007 s.9(1)(b); 13(2) amended 2007 sch.1 para.11(3) and sch.6; 13(3) amended 2007 sch.1 para.11(3) and (4); 13(4) and (5) amended 2007 sch.1 para.11(3); 13(6) amended 2007 sch.1 para.11(5); and 13(7) amended 2007 sch.1 para.11(3).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.13A	Termination of interim trustee's functions where not appointed as trustee	s.39	Inserted 2007 s.10.
s.13B	Termination of Accountant in Bankruptcy's functions as interim trustee where not appointed as trustee	s.40	Inserted 2007 s.10.
s.14(1)	Registration of warrant or determination of debtor application	s.22(1) and (8)	Amended S.S.I. 2004/468 sch.3 para.1, 2007 sch.1 para.12(2) and sch.6 and S.S.I. 2011/141 sch.2 para.1.
s.14(1A)		s.22(2)	Inserted 2007 sch.1 para.12(3).
s.14(2)		s.22(3)	Amended 2007 sch.1 para.12(4) and sch.6.
s.14(3)		s.22(4) and (5)	Amended 2007 sch.1 para.12(5) and sch.6.
s.14(4)		s.22(6) and (7)	Amended 2007 sch.6.
s.14(5)		-----	Repealed 2007 sch.6.
s.15(1)		-----	Repealed 2007 s.16(2)(a).
s.15(2)		s.23(1) and (2)	Amended 2007 s.16(2)(b).
s.15(2A)		s.23(3)	Inserted 2007 s.16(2)(c).
s.15(3)		s.23(4)	Amended 2007 s.16(2)(d) and sch.6.
s.15(3A)		s.23(5)	Inserted 2007 sch.1 para.13.
s.15(4)		s.23(6) and (7)	
s.15(5)		s.23(8) and (12)	Amended S.S.I. 2004/468 sch.3 para.2, 2007 s.16(2)(e) and sch.6 and S.S.I. 2011/141 sch.2 para.2.
s.15(6)		-----	Repealed 2010 s.12.
s.15(7)		s.23(9)	
s.15(8)		s.23(10)	Amended 2007 sch.6.
s.15(9)		s.23(11)	
s.16	Petitions for recall of sequestration	s.24	Amended 1993 sch.1 para.5(2), 2004 sch.28 para.31 and 2007 s.16(3), sch.1 para.14 and sch.6.
s.17(1)	Recall of sequestration	s.25(1) and (2)	Amended 2007 s.16(4)(a) and sch.1 para.15.
s.17(2)		s.25(3)	Amended 2007 s.16(4)(b).
s.17(3)		s.25(4) and (5)	Amended 2007 s.16(4)(c). and sch.1 para.15(b) and (c).
s.17(4)		s.25(6) and (7)	
s.17(5)		s.25(8)	Amended 2007 sch.1 para.15(d).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.17(6) s.17(7) s.17(8)		s.25(9) s.25(10) s.25(11) and (12)	Amended 2007 s.16(4)(d). Amended 2007 s.16(4)(e). Amended 2004 sch.28 para.32 and 2007 s.16(4)(f) and sch.6.
s.18	Interim preservation of estate	s.26	Amended 1993 sch.2 and 2007 sch.1 para.16 and sch.6.
s.19	Statement of assets and liabilities etc	s.27	Inserted in substitution for 19 as originally enacted 1993 sch.1 para.7. Amended 2007 sch.1 para.17(2) and (3) and sch.6.
s.20(1)	Trustee's duties on receipt of list of assets and liabilities	s.28(1)	Inserted in substitution for 20(1) as originally enacted 1993 sch.1 para.8(2). Amended 2007 sch.6.
s.20(2)		s.28(2) and (3)	Amended 1993 sch.1 para.8(3) and sch.2 and 2007 sch.1 para.18(a) and sch.6.
s.20(2A)		s.28(4)	Inserted 2007 sch.1 para.18(b).
s.20(3)		s.28(5)	
s.20(4) and (5) s.20(5A)		-----	Repealed 2007 sch.6.
s.20A	Statutory meeting	s.28(6)	Inserted 1993 sch.1 para.8(4). Amended 2007 sch.6.
s.21	Calling of statutory meeting	s.29	Inserted 1993 sch.1 para.9. Amended 2007 sch.6.
s.21	Calling of statutory meeting	-----	Repealed 2007 s.11(1).
s.21A(1)	Calling of statutory meeting	s.30(3) and (4)	Inserted 1993 s.5. Amended 2007 s.11(2) and sch.6.
s.21A(2)		s.30(1)	Inserted 1993 s.5. Amended 2007 sch.1 para.20 and sch.6.
s.21A(3)		s.30(2)	Inserted 1993 s.5. Amended 2007 s.28(2) and sch.6.
s.21A(4)		s.30(5)	Inserted 1993 s.5. Amended 2007 sch.6.
s.21A(5)		s.30(6)	Inserted 1993 s.5. Amended 2007 sch.6.
s.21A(6)		s.30(7)	Inserted 1993 s.5. Amended 2007 sch.6.
s.21A(7)		s.30(8)	Inserted 1993 s.5. Amended 2007 sch.6.
s.21A(8)		s.30(9)	Inserted 1993 s.5. Amended 2007 sch.6.
s.21A(9)		-----	Repealed 2007 sch.6.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>	
s.21B(1)	Procedure where no statutory meeting called	s.31(1)	Inserted 1993 s.5. Amended 2007 sch.1 para.21(a) and sch.6.	
s.21B(1A)		s.31(2)	Inserted 2007 sch.1 para.21(b).	
s.21B(2)		-----	Repealed 2007 sch.6.	
s.22	Submission of claims for voting purposes at statutory meeting	s.32; Draft Order 2013 art.6	Amended 2007 sch.1 para.22 and sch.6.	
s.23	Proceedings at statutory meeting before trustee vote	s.33	Amended 1993 sch.1 para.11 and sch.2 and 2007 s.11(3) and sch.6.	
s.23A	Summary administration	-----	Repealed 2007 s.28(3).	
s.24(1)	Trustee vote	s.34(1) and (2)	Inserted in substitution for 24(1) as originally enacted 1993 sch.1 para.12(2). Amended 2007 s.11(4).	
s.24(2)		s.34(3) to (5)	Amended 1993 sch.1 para.12(3) and 2007 s.7(2), sch.1 para.23(2) and sch.6.	
s.24(3)		s.34(6) and (7)	Amended 2007 sch.1 para.23(3).	
s.24(3A)		s.34(8)	Inserted 1993 sch.1 para.12(4). Amended 2007 sch.1 para.23(4).	
s.24(3B)		-----	Repealed 2007 s.28(4).	
s.24(4)		s.34(9)	Amended 1993 sch.1 para.12(5). Amended 2007 sch.1 para.23(5) and sch.6.	
s.24(4A)		-----	Repealed 2007 s.28(4).	
s.24(5)		-----	Repealed 2007 s.28(4).	
s.25(A1)		Appointment of replacement trustee	s.41(1)	Inserted 2007 s.11(5).
s.25(1)			s.41(2) and (3)	Amended 2007 sch.1 para.24(2).
s.25(2)	s.41(4)		Amended 2007 sch.1 para.24(3).	
s.25(2A)	-----		Repealed 2007 s.28(5).	
s.25(3)	s.41(5)			
s.25(4)	s.41(6) to (8)		Amended 2007 sch.1 para.24(4).	
s.25(5)	s.41(9) and (10)		Amended 2007 sch.1 para.24(5).	
s.25(6)	-----	Repealed 2010 s.12.		
s.25A	Appointment of permanent trustee in certain cases	-----	Repealed 2007 sch.6.	
s.26(A1)	Provision relating to termination of original trustee's functions	s.42(1)	Inserted 2007 sch.1 para.25(2).	

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.26(1)		s.42(2)	Amended 1993 sch.1 para.14(2) and 2007 sch.1 para.25(3) and (10).
s.26(2)		s.42(3)	Amended 2007 sch.1 para.25(4) and sch.6.
s.26(2A)		s.42(4)	Inserted 2007 sch.1 para.25(5).
s.26(3)		s.42(5) and (6)	Amended 2007 sch.1 para.25(6) and sch.6.
s.26(4)		s.42(7) and (8)	Amended 1993 sch.1 para.14(3) and 2007 sch.1 para.25(7).
s.26(5)		s.42(9)	Amended 2007 sch.1 para.25(8).
s.26(5A)		s.42(1)	Inserted 1993 sch.1 para.14(4) Amended 2007 sch.1 para.25(9).
s.26A	Accountant in Bankruptcy to account for intromissions	s.43	Inserted 1993 sch.1 para.15. Amended 2007 sch.1 para.26 and sch.6.
s.27(1)	Discharge of original trustee	s.44(1)	Amended 2007 sch.1 para.27(1)(b).
s.27(2)		s.44(2)	Amended 2007 sch.1 para.27(1)(a) to (c).
s.27(3)		s.44(3)	Amended 2007 sch.1 para.27(1)(b) and (c).
s.27(4)		s.44(4) to (6)	Amended 2007 sch.1 para.27(1)(b) and (c).
s.27(4A)		s.44(7)	Inserted 1993 sch.1 para.16(2).
s.27(5)		s.44(8)	Amended 2007 sch.1 para.27(1)(b).
s.27(6)		s.44(9)	Amended 2007 sch.1 para.27(1)(c).
s.27(7)		-----	Repealed 2007 sch.6.
s.27(7A)		s.44(10)	Inserted 1993 sch.1 para.16(3).
s.28(1)	Resignation and death of trustee	s.45(1)	Inserted in substitution for 28(1) as originally enacted 1993 sch.1 para.17(2). Amended 2007 sch.1 para.28(2), (5) and (6) and sch.6.
s.28(1A)		s.45(2)	Inserted 1993 sch.1 para.17(2). Amended 2007 sch.1 para.28(2) and sch.6.
s.28(2)		s.45(3)	Amended 1993 sch.2, 2007 sch.1 para.28(2) and sch.6.
s.28(3)		s.45(4)	Amended 2007 sch.6.
s.28(4)		s.45(5)	Amended 1993 sch.1 para.17(3) and 2007 sch.1 para.28(3) and sch.6.
s.28(5)		s.45(6) and (7)	Inserted in substitution for 28(5) as originally enacted 1993 sch.1 para.17(4). Amended 2007 sch.1 para.28(4) and sch.6.
s.28(6)		s.45(8) and (9)	Amended 2007 sch.6.
s.28(7)		s.45(10) and (11)	Amended 2007 sch.6.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.28(8)		s.45(12)	Inserted 1993 sch.1 para.17(5).
s.28A	Replacement of trustee acting in more than one sequestration	s.46	Inserted 2007 s.12.
s.29(1)	Removal of trustee and provision for where trustee is unable to act or should no longer continue to act	s.47(1) to(3)	Amended 1993 sch.1 para.18 and 2007 sch.1 para.29(4) and sch.6.
s.29(2)		s.47(4)	Amended 2007 sch.6.
s.29(3)		s.47(5)	Amended 2007 sch.6.
s.29(4)		s.47(6)	Amended 2007 sch.6.
s.29(5)		s.47(7)	Amended 1993 sch.1 para.18 and 2007 sch.6.
s.29(6)		s.47(8), (9) and (11)	Amended 1993 sch.1 para.18 and 2007 sch.6.
s.29(7)		s.47(12)	Amended 2007 sch.1 para.29(2) and sch.6.
s.29(8)		s.47(13) to (19)	
s.29(9)		s.47(10)	Amended 2007 sch.6.
s.29(10)		s.47(20)	Inserted 2007 sch.1 para.29(3).
s.30(1)	Election, resignation and removal of commissioners	s.49(1) and (2)	
s.30(2)		s.49(3) to (5)	Amended 2007 sch.6.
s.30(3)		s.49(6)	
s.30(4)		s.49(7) and (8)	Amended 1993 sch.1 para.19 and 2007 sch.6.
s.31(1)	Vesting of estate at date of sequestration	s.50(1) and (2)	Partly repealed 2007 sch.6. Amended 2007 sch.5 para.13(2).
s.31(1A)		s.50(3)	Inserted 2007 s.17(1).
s.31(1B)		s.50(4)	Inserted 2007 s.17(1).
s.31(2)		s.50(5)	Amended 2007 sch.1 para.30(2) and sch.6.
s.31(3)		s.50(6) and (7)	Amended 2007 sch.6.
s.31(4)		s.50(8)	Amended 2007 sch.1 para.30(3) and sch.6.
s.31(5)		s.50(9)	Amended 2007 sch.6.
s.31(5A)		s.50(10)	Inserted 2007 s.29.
s.31(6)		s.50(11) and (12)	Amended 2007 sch.1 para.30(4) and sch.6.
s.31(7)		s.50(13)	2007 sch.1 para.30(5) and sch.6.
s.31(8)		s.51(1),(2) and (5)	Amended 1988H s.118(1), S.I. 2003/2109 reg.11 and 2007 s.17(1)(b).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.31(9)		s.51(3)	Inserted 1988H s.118(2). Amended 2001 sch.10 para.10.
s.31(10)		s.51(4)	Inserted 1988H s.118(2). Amended 2007 sch.6.
s.31ZA	Proceedings under EC Regulation: modified definition of "estate"	s.145	Re-numbered "31ZA" by 2007 Sch 1 para.31 (having been inserted as "31A" by S.I. 2003/2109 reg.12)
s.31A	Property subject to restraint order	s.52	Inserted 2002 sch.11 para.15(4). Amended 2007SC sch.8 para.150, 2007 sch.6 and 2009 sch.7 para.48(2) and (3).
s.31AA	Property released from detention	s.53	Inserted 2009 sch.7 para.49.
s.31B	Property in respect of which receivership or administration order is made	s.54	Inserted 2002 sch.11 para.15(4). Amended 2007 sch.6 and 2009 sch.7 para.50.
s.31BA	Property in respect of which realisation order made	s.55	Inserted 2009 sch.7 para.51.
s.31C	Property subject to certain orders where confiscation order discharged or quashed	s.56	Inserted 2002 sch.11 para.15(4). Amended 2007 sch.6 and 2009 sch.7 para.52(2) and (3).
s.32(1)	Vesting of estate, and dealings of debtor, after sequestration	s.57(1) and (2)	Amended 2007 s.18(2) and sch.6.
s.32(2)		s.57(3) and (4)	Amended 199 sch.2 para.1 and 2007 sch.6.
s.32(2WA)		s.57(5) and (6)	Inserted 2007 s.18(3).
s.32(2XA)		s.57(7)	Inserted 2007 s.18(3).
s.32(2YA)		s.57(8)	Inserted 2007 s.18(3).
s.32(2ZA)		s.57(10)	Inserted 2007 s.18(3).
s.32(2A)		s.57(11) and (12)	Inserted 1995P sch.3 para.14.
s.32(3)		s.57(13) and (14)	Amended 1991 sch.5 para.6(2)(a) and 2004 sch.28 para.34.
s.32(4)		s.57(15)	Amended 2007 sch.6.
s.32(4A)		s.57(16)	Inserted 2007 s.18(4).
s.32(4B)		s.58(1)	Inserted 2007 s.18(4).
s.32(4C)		s.58(3)	Inserted 2007 s.18(4).
s.32(4D)		s.58(4)	Inserted 2007 s.18(4).
s.32(4E)		s.58(5)	Inserted 2007 s.18(4).
s.32(4F)		s.58(6)	Inserted 2007 s.18(4).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.32(4G)		s.58(7)	Inserted 2007 s.18(4).
s.32(4H)		s.58(8)	Inserted 2007 s.18(4).
s.32(4J)		ss.57(9) and 58(2)	Inserted 2007 s.18(4).
s.32(4K)		s.58(9)	Inserted 2007 s.18(4).
s.32(4L)		s.58(10)	Inserted 2007 s.18(4).
s.32(5)		s.59(1) to (3)	Amended 1991 sch.5 para.6(2)(b).
s.32(6)		s.59(4) to (8)	Amended 2007 sch.1 para.32.
s.32(7)		s.60(1) and (2)	Amended 2007 sch.6.
s.32(8)		s.60(3) and (4)	Amended 2007 s.17(2)(a) and sch.6.
s.32(9)		s.60(5) and (6)	Amended 2007 s.17(2)(b) and sch.6.
s.32(9ZA)		s.60(9)	Inserted 2007 s.17(2)(c).
s.32(9A)		s.60(7)	Inserted 2007 s.19(1).
s.32(9B)		s.60(8)	Inserted 2007 s.19(1).
s.32(10)		s.51(5)	
s.33	Limitations on vesting	s.61	Amended 2002DA sch.3 para.15 and 2007 sch.6.
s.34	Gratuitous alienations	s.62	Amended 2004 sch.28 para.35 and 2007 sch.6.
s.35	Recalling of order for payment of capital sum on divorce or on dissolution of civil partnership	s.64	Amended 1999 sch.12 para.68 and 2007 sch.6.
s.36	Unfair preferences	s.63	Amended 2007 sch.6.
s.36A	Recovery of excessive pension contributions	s.65	Inserted 1999 s.16 (in substitution for s.36A as inserted 1995P s.95(2)). Amended 2007 sch.6.
s.36B	Orders under s.36A	s.66	Inserted 1999 s.16 (in substitution for s.36B as inserted 1995P s.95(2)). Amended 2007 sch.6.
s.36C	Orders under s.36A: supplementary	s.67	Inserted 1999 s.16 (in substitution for s.36C as inserted 1995P s.95(2)). Amended 2007P sch.5 para.1 and 2007 sch.6.
s.36D	Recovery of excessive contributions in pension-sharing cases	s.68	Inserted 1999 sch.12 para.69.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.36E	Recovery orders	s.69	Inserted 1999 sch.12 para.69. Amended 2007 sch.6.
s.36F	Recovery orders: supplementary	s.70	Inserted 1999 sch.12 para.69. Amended 2007P sch.5 and 2007 sch.6.
s.37(1)	Effect of sequestration on diligence	s.21(1) and (2)	Amended 2007 sch.1 para.33, sch.5 para.13(3)(a) and sch.6.
s.37(2)		s.21(3) and (4)	Amended 2007 sch.5 para.13(3)(b) and sch.6.
s.37(3)		s.21(5)	Amended 2002DA sch.3 para.15(4) and 2007 sch.5 para.13(3)(c) and sch.6.
s.37(4)		s.21(6) and (7)	
s.37(5)		s.21(8)	Amended 2002DA sch.3 para.15(4) and 2007 sch.5 para.13(3)(d).
s.37(5A)		s.21(9)	Inserted 1987D sch.6 para.27. Amended 1991 sch.5 para.6(3).
s.37(5B)		s.20(1)	Inserted 2007 sch.5 para.13(3)(e).
s.37(5C)		s.20(2)	Inserted 2007 sch.5 para.13(3)(e).
s.37(6)		s.21(10)	Amended 2007 sch.6.
s.37(7)		s.21(11) and (12)	Amended 2007 sch.6.
s.37(8)		s.21(13)	
s.37(8A)		s.20(3)	Inserted 2007 sch.5 para.13(3)(f).
s.37(8B)		s.20(4) and (5)	Inserted 2007 sch.5 para.13(3)(f).
s.37(8C)		s.20(6)	Inserted 2007 sch.5 para.13(3)(f).
s.37(8D)	s.20(7)	Inserted 2007 sch.5 para.13(3)(f).	
s.37(8E)	s.20(8)	Inserted 2007 sch.5 para.13(3)(f).	
s.37(8F)	s.20(9)	Inserted 2007 sch.5 para.13(3)(f).	
s.37(9)	s.21(14) to (16)	Amended 2007 sch.6.	
s.37(10)	s.20(10)	Inserted 2007 sch.5 para.13(3)(g).	
s.38	Taking possession of estate by trustee	s.71	Amended 2007 sch.1 para.34 and sch.6.
s.39(1)	Management and realisation of estate	s.72(1) to (3)	Amended 2007 sch.1 para.35(2) and sch.6.
s.39(1A)		s.72(4)	Inserted 2007 sch.1 para.35(3).
s.39(2)		s.72(5)	Amended 2007 sch.1 para.35(4) and sch.6.
s.39(3)		s.72(6)	Amended 2007 sch.6.
s.39(4)		s.72(7)	Amended 2007 sch.1 para.35(5) and sch.6.
s.39(5)		s.72(8)	Amended 2007 sch.6.
s.39(6)		s.72(9)	Amended 2007 sch.6.
s.39(7)		s.72(10)	Amended 2007 sch.6.
s.39(8)		s.72(11)	
s.39(9)	s.72(12)	Inserted 2007 s.8(2).	

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.39A	Debtor's home ceasing to form part of sequestrated estate	s.75	Inserted 2007 s.19(2). Para.(g) of subsection (3) inserted S.S.I. 2008/81 reg.4.
s.40	Power of permanent trustee in relation to the debtor's family home	s.76	Amended 2004 sch.28 para.36(2) to (4), 2007 sch.1 para.36 and sch.6 and 2010 s.11(a), (b) and (d). Subsections (3A) and (3B) inserted 2010 s.11(c).
s.41(1)	Protection of rights of spouse against arrangements intended to defeat them	s.77(1) to (4)	Amended 2007 sch.1 para.37 and sch.6.
s.41(2)		s.77(5)	
s.41A(1)	Protection of rights of civil partner against arrangements intended to defeat them	s.78(1) to (4)	Inserted 2004 sch.28 para.37. Amended 2007 sch.1 para.38.
s.41A(2)		s.78(5)	
s.42	Contractual powers of trustee	s.73	Amended 2007 sch.1 para.39 and sch.6.
s.43(1)	Money received by trustee	s.74(1) and (2)	Amended 2007 s.13(a), sch.1 para.40 and sch.6. Inserted 2007 s.13(b). Amended 2007 sch.6.
s.43(1A)		s.74(3) and (4)	
s.43(2)		s.74(5)	
s.43A	Debtor's requirement to give account of state of affairs	s.79	Inserted 2007 s.30.
s.44(1)	Private examination	s.80(1) and (2)	Amended 2004 sch.28 para.38 and 2007 sch.6.
s.44(2)		s.80(3) to (5)	
s.44(3)		s.80(6)	
s.44(4)		s.80(7)	
s.45(1)	Public examination	s.81(1) and (2)	Amended 2007 sch.6.  Amended 2007 sch.6.
s.45(2)		s.81(3) to (5)	
s.45(3)		s.81(6)	
s.45(4)		s.81(7)	
s.46(1)	Provisions ancillary to sections 44 and 45	s.82(1) and (2); Draft Order 2013 art.3(1) and (2)	Amended 1993 sch.1 para.20 and sch.6 and 2007 sch.1 para.41 and sch.6.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.46(2)		s.82(3) and (4); Draft Order 2013	
s.46(3)		art.3(3) and (4)	
s.46(4)		s.82(5); Draft Order 2013	
s.47	Conduct of examination	art.3(5)	Amended 2007 sch.6.
s.48(1)	Submission of claims to trustee	s.82(6); Draft Order 2013	
s.48(2)		art.3(6)	
s.48(3)		s.83	Amended S.I. 1986/517 para.5 and 2007 sch.6.
s.48(4)		s.84(1) to (3)	Amended 2007 sch.1 para.42(c) and sch.6.
s.48(5)		s.84(4)	Amended 2007 sch.1 para.42(a) and sch.6.
s.48(6)		s.84(5) to (7)	Amended 2007 sch.1 para.42(b) and sch.6.
s.48(7)		s.84(8) and (9)	Amended 2007 sch.6.
s.48(8)		s.85(1)	Amended 2007 sch.6.
s.49(1)	Adjudication of claims	s.85(3) and (4)	Partly repealed 2007 sch.6.
s.49(2)		ss.86 and 87; Draft Order 2013	
s.49(2A)		art.6	
s.49(3)		s.85(2)	Amended 2007 sch.6.
s.49(4)		s.88(1)	Amended 2007 sch.6.
s.49(5)		s.88(2) and (3)	Amended 2007 sch.6.
s.49(6) and (6A)		s.88(4)	Inserted 2007 s.8(3).
s.49(7)		s.88(5)	Amended 2007 sch.6.
s.50	Entitlement to vote and draw dividend	s.88(6)	Amended 2007 sch.6.
s.51(1)	Order of priority in distribution	s.88(7)	Amended 2007 sch.6.
s.51(2)		s.88(8) to (10)	Subsection (6) amended 2007 s.31(1)(a) and sch.6. Subsection (6A) inserted 2007 s.31(1)(b).
s.51(3)		s.88(11)	
		s.89	By S.I. 2003/2109 reg.13, content of section 50 as originally enacted re-numbered subsection "(1)". Subsections (2) to (5) inserted S.I. 2003/2109 reg.13. Amended 2007 sch. 6.
		s.90(1)	Amended 2007 sch.1 para.43 and sch.6.
		s.90(2) and (3)	
		s.90(4)	Amended 2004 sch. 28 para.39 and 2007 sch.6.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.51(4) s.51(5) s.51(5A) s.51(6) s.51(7)		s.90(5) s.90(6) and (7) s.90(8) s.90(9) s.90(10)	Inserted S.I.2003/2109 reg.14. Amended 2007 sch.6.
s.52(1)	Estate to be distributed in respect of accounting periods	s.91(1)	Inserted in substitution for 52(1) as originally enacted 1993 sch.1 para.21. Amended 2007 sch. 6.
s.52(2)		s.91(2) and (3)	Inserted in substitution for 52(2) as originally enacted 1993 sch.1 para.21. Amended 2007 sch. 6.
s.52(2ZA)		s.91(4)	Inserted 2007 sch. 1 para.44(3).
s.52(2A)		s.91(5)	Inserted 1993 sch. 1 para. 21. Amended 2007 sch. 6.
s.52(3)		s.92(1) and (2)	Amended 2007 sch. 6.
s.52(4)		s.92(3)	Amended 2007 sch. 6.
s.52(5)		s.92(4)	Amended 2007 sch. 6.
s.52(6)		-----	Repealed 1993 sch.2.
s.52(7)		s.92(5)	Amended 2007 sch. 6.
s.52(8)		s.92(6)	Amended 2007 sch. 6.
s.52(9)		s.92(7) and (8)	Amended 2007 sch. 6.
s.52(10)	s.92(9)	Inserted S.I. 2003/2109 reg.15.	
s.52(11)	s.92(10)	Inserted S.I. 2003/2109 reg.15.	
s.53(1)	Procedure after end of accounting period	s.93(1) and (2)	Amended 2007 sch.6.
s.53(2)		s.93(3) and (4)	Inserted in substitution for 53(2) as originally enacted 1993 sch.1 para.22(2). Amended 2007 sch.6.
s.53(2A)		s.93(5)	Inserted 1993 sch.1 para. 22(2). Amended 2007 sch.1 para.45(a) and sch.6.
s.53(3)		s.94(1)	Amended 1993 sch.1 para.22(3) and sch.2 and 2007 sch.6.
s.53(4)		s.94(2) and (3)	Amended 2007 sch. 6.
s.53(5)		s.94(4)	Amended 1993 sch.1 para.22(4).
s.53(6)		s.95(1) to (3)	Amended 1993 sch.1 para.22(5) and 2007 s.31(2)(a) and sch.6.
s.53(6A)		s.95(4)	Inserted 2007 s.31(2)(b).
s.53(6B)		s.95(5)	Inserted 2007 sch.1 para.45(b).
s.53(7)		s.96(1)	Amended 2007 sch. 6.
s.53(8)	s.96(2)	Amended 2007 sch. 6.	
s.53(9)	s.96(3)	Amended 2007 sch. 6.	
s.53(10)	s.96(4)	Amended 2007 sch. 6.	

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.53A	Modification of procedure under section 53 where Accountant in Bankruptcy is trustee	s.97	Inserted 2007 sch.1 para.46.
s.54(1)	Automatic discharge of debtor	s.98(1) and (2)	Amended 2007 s.1(2).
s.54(2)		s.98(3)	Amended 2007 s.1(3) and sch.6.
s.54(3)		s.99(1)	
s.54(4)		s.99(2) and (3)	Amended 2007 sch.6.
s.54(5)		s.99(4) and (5)	Amended 2007 sch.6.
s.54(6)		s.99(6) and (7)	Amended 2007 sch.6.
s.54(7)		s.99(8)	
s.54(8)		s.99(9) and (10)	
s.54(9)		s.99(11) and (12)	Amended 2007 sch.6.
s.55(1)	Effect of discharge under s.54	s.100(1) and (2); Draft Order 2013 art.4(1) and (2)	Amended 1993 sch.1 para. 23(2).
s.55(2)		s.100(3) and (4); Draft Order 2013 art.4(3) and (4)	Amended 1991 sch.5 para.6(4), 1995 sch. 4 para.58(4) and sch.8, 1995M s.2(3) and 2007CP sch. para.33(1).
s.55(2A)		s.100(6); Draft Order 2013 art.4(6)	Inserted as "3A" 2002 sch.11 but re-numbered as "(2A)" 2007 sch.1 para.47.
s.55(3)		s.100(5); Draft Order 2013 art.4(5)	Inserted 1993 sch.1 para.23(3).
s.56	Discharge on composition	s.101	Amended 2007 sch.6.
s.56A	Bankruptcy restrictions order	s.105	Inserted 2007 s.2(1).
s.56B	Grounds for making order	s.106	Inserted 2007 s.2(1).
s.56C	Application of section 67(9)	s.107	Inserted 2007 s.2(1).
s.56D	Timing of application for order	s.108	Inserted 2007 s.2(1).
s.56E	Duration of order and application for annulment	s.109	Inserted 2007 s.2(1).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.56F	Interim bankruptcy restrictions order	s.110	Inserted 2007 s.2(1).
s.56G	Bankruptcy restrictions undertaking	s.111	Inserted 2007 s.2(1).
s.56H	Bankruptcy restrictions undertakings: application of section 67(9)	s.112	Inserted 2007 s.2(1).
s.56J	Effect of recall of sequestration	s.113	Inserted 2007 s.2(1).
s.56K	Effect of discharge on approval of offer of composition	s.114	Inserted 2007 s.2(1).
s.57(1)	Discharge of permanent trustee	s.102(1)	Amended 2007 sch.1 para.49 and sch.6.
s.57(2)		s.102(2)	Amended 2007 sch.6.
s.57(3)		s.102(3)	Amended 2007 sch.6.
s.57(4)		s.102(4) and (5)	Amended 2007 sch.6.
s.57(4A)		s.102(6)	Inserted 1993 sch.1 para. 24(2).
s.57(5)		s.102(7)	Amended 2007 sch.6.
s.57(6)		s.102(8)	
s.57(7)		s.102(9)	Amended 2007 sch.6.
s.57(8)		s.102(10)	Inserted 1993 sch.1 para.24(3). Amended 2007 sch.6.
s.58	Unclaimed dividends	s.103	Amended 1993 sch.1 para.25. Transfer of functions 1998 s.53.
s.58A	Discharge of Accountant in Bankruptcy	s.104	Inserted 1993 sch.1 para.26. Amended 2007 sch.6.
s.59	Voluntary trust deeds for creditors	s.115	
s.59A	Petition for conversion into sequestration	s.116	Inserted S.I.2003/2109 reg.16. Amended 2007 sch.1 para.51.
s.59B	Contents of affidavit	s.117	Inserted S.I.2003/2109 reg.16. Amended 2007 sch.1 para.52.
s.59C	Power of sheriff	s.118	Inserted S.I.2003/2109 reg.16 and 2007 s.32. Amended 2007 sch.1 para.53.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.60	Liabilities and rights of co-obligants	s.125	Amended 2007 sch.6.
s.60A	Member State liquidator deemed creditor	s.126	Inserted S.I. 2003/2109 reg.17.
s.60B	Trustee's duties concerning notices and copies of documents	s.127	Inserted S.I. 2003/2109 reg.17. Amended 2007 sch.1 para.54.
s.61	Extortionate credit transactions	s.128	Partly repealed 2006 sch.4. Amended 2007 sch.1 para.55 and sch.6.
s.62	Sederunt book and other documents	s.129	Amended 2007 sch.6.
s.63	Power to cure defects in procedure	s.130	Amended 2007 sch.6.
s.64(1)	Debtor to co-operate with trustee	s.131(1)	Amended 2007 sch.1 para.56 and sch.6.
s.64(2)		s.131(2) and (3)	Amended 2007 sch.6.
s.64(3)		s.131(4)	
s.64(4)		s.131(6)	
s.64(5)		s.131(5)	
s.65	Arbitration and compromise	s.132	Amended 2007 sch.1 para.57 and sch.6.
s.66	Meetings of creditors and commissioners	s.133	
s.67(1)	General offences by debtor etc.	s.134(1)	
s.67(2)		s.134(2)	Amended 2007 s.24(2).
s.67(3)		s.134(3)	
s.67(4)		s.134(4)	Amended 2007 sch.6.
s.67(5)		s.134(5)	Amended 2007 sch.6.
s.67(6)		s.134(6)	
s.67(7)		s.134(7)	
s.67(8)		-----	Repealed 2007 s.24(3).
s.67(9)		s.134(8)	Amended 2007 s.24(4).
s.67(9A)		s.134(9)	Inserted 2007 s.24(5).
s.67(10)		s.134(10)	Amended 2007 s.24(6) and (7).
s.67(11)		s.134(11)	
s.67(11A)	s.134(12)	Inserted 2007 s.24(8).	
s.67(12)	s.134(13)		

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.68	Summary proceedings	s.135	Amended 1993 sch.1 para.27 and 1995 sch.4 para. 58(5).
s.69	Outlays of insolvency practitioners in actings as interim trustee or trustee	s.136	Amended 2007 sch.1 para.58 and sch.6. Transfer of functions 1998 s.53.
s.69A	Fees for the Accountant in Bankruptcy	s.124	Inserted 1993 s.8. Transfer of functions 1998 s.53. Amended S.I. 1999/1820 sch.2 para.82(3).
s.70(1)	Supplies by utilities	s.137(1) and (6)	Amended 2007 sch.1 para.59 and sch.6.
s.70(2)		s.137(2)	
s.70(3)		s.137(3)	
s.70(4)		s.137(4)	Amended 1986G sch.7 para.32, 1989 sch.16 para.32, 1995G sch.4 para.13, 2000 sch.6 para.46, 2002W sch.7 para.16 and 2003 sch.17 para.78(2).
s.70(5)		s.137(5)	Inserted 2003 sch.17 para.78(3).
s.71	Edinburgh Gazette	s.138	
s.71A	Further duty of Accountant in Bankruptcy	s.122	Inserted 2004C s.59.
s.71B	Disqualification provisions: power to make orders	s.139	Inserted 2007 s.5.
s.72(1)	Regulations	s.140(1), (2), (4) and (5); Draft Order 2013 art.5(1) to (3)	Transfer of functions 1998 s.53. Exercise by member of Scottish Executive of function to make, confirm or approve subordinate legislation 1998 s.118(2).
s.72(2) and (3)		s.140(3)	Inserted 2007 s.35. Amended 2010 s.13(1).
s.72ZA	Modification of regulation making powers	s.141; Draft Order 2013 art.5(4)	Inserted S.I. 2003/2109 reg.18.
s.72A	Variation of references to time, money etc	s.142	Inserted 1993 sch.1 para.28.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.73(1)	Interpretation	s.143(1) and (2)	<p>Definition of "act and warrant" spent, that of "enactment" redundant in an Act of the Scottish Parliament (S.I. 1999/1379 art.6(3), 1998 s.127 and 2010R s.25(1) and sch. 1) and that of "trustee" omitted (drafting).</p> <p>Amended 1993 sch.1 para.29(2), (3) and (4) and S.I. 2001/3649 art.225.</p> <p>Definition of "statement of assets and liabilities" inserted 1993 sch.1 para.29(5).</p> <p>Definitions of "centre of main interests", "creditor", "the EC Regulation", "establishment", "main proceedings", "secondary proceedings", "temporary administrator" and "territorial proceedings" inserted S.I. 2003/2109 reg.19.</p> <p>Definition of "protected trust deed" inserted 2007 s.20(2).</p> <p>Definitions of "bankruptcy restrictions order", "bankruptcy restrictions undertaking", "debtor application", "interim trustee", "original trustee", "replacement trustee", "sequestration proceedings" and "trustee vote" inserted 2007 sch.1 para.60(2).</p>
s.73(2)		s.143(5)	
s.73(3)		s.143(6)	
s.73(4)		s.143(7)	
s.73(5)		s.143(8) and (9)	Amended 2007 sch.1 para.60(3).
s.73(6)		s.143(10)	Inserted 1993 sch.1 para.29(7). Amended 2007 sch.1 para.60(4).
s.73(6A)		s.143(11)	Inserted 2007 sch.1 para.60(5).
s.74(1)	Meaning of "associate"	s.144(1) and (2)	
s.74(2)		s.144(3)	Amended 2004 sch.28 para.40.
s.74(3)		s.144(4) and (5)	Amended S.I. 1985/1925 reg.11(2) and S.S.I. 2008/82 reg.8(2).
s.74(4)		s.144(6) and (7)	Amended 2004 sch.28 para.40.
s.74(5)		s.144(8) and (9)	
s.74(5A)		s.144(10)	Inserted S.I. 1985/1925 reg.11(3) and S.S.I. 2008/82 reg.8(3).
s.74(5B)		s.144(11)	Inserted S.I. 1985/1925 reg.11(3) and S.S.I. 2008/82 reg.8(3).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
s.74(5C)		s.144(12) and (13)	Inserted S.I. 1985/1925 reg.11(3) and S.S.I. 2008/82 reg.8(3).
s.74(6)		s.144(14)	Amended S.I. 1985/1925 reg.11(4) and S.S.I. 2008/82 reg.8(4).
s.74(7)		s.144(15) and (16)	Transfer of functions 1998 s.53.
s.75(1)(a)	Amendments, repeals and transitional provisions	-----	Spent.
s.75(1)(b)		s.147	
s.75(3) to (5)		-----	Spent.
s.75(6) to (12)		s.148(4) to (8)	Amended 2007 sch.6.
s.76(1) and (2)	Receipts and expenses	-----	By virtue of 1998 s.119(2), of no effect in relation to functions of the Scottish Ministers exercisable within devolved competence.
s.77	Crown application	s.146	
s.78	Short title, commencement and extent	-----	Spent.
sch.1	Determination of amount of creditor's claim	sch.1	Amended 2004 sch.28 para.41 and 2007 sch.6.
sch.2	Adaptation of procedure etc. under the Act where permanent trustee not elected	-----	Repealed 2007 s.11(6).
sch.2A	Modification of duties of permanent trustee in summary administration	-----	Repealed 2007 s.28(3).
sch.3	Preferred debts	sch.2	Paragraphs 1 to 3 and 8 to 8C repealed 2002E sch.26. Paragraph 4 amended 1993PS sch.8 para.17. Paragraph 6A inserted S.I.1987/2093 reg.3(1). Paragraph 8D spent by virtue of the repeal of paragraph 2.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill or of draft order</i>	<i>Remarks</i>
sch.4	Discharge on composition	sch.3; Draft Order 2013 art.7	Amended 1993 sch.1 para.31 and 2007 s.21. Partly repealed 2007 sch.6.
sch.5 para.1 para.1A para.2(1) para.2(2) para.3 para.4 para.5	Voluntary trust deeds for creditors	sch.4  para.1 para.2 para.3(1) and (2) para.3(3) para.4 para.5 para.6 and s.140(4)	Inserted 2007 s.23(1). Partly repealed 2007 sch.6.  Partly repealed 2007 sch.6. Substituted 2007 s.20(1). Amended 2010 s.13(2).
sch.6	Meetings of creditors and Commissioners	sch.5	Amended 2007 sch.1 para.61.
sch.7 part 1	Consequential Amendments	-----	Spent.
sch.7 part 2	Re-enactment of certain provisions of Bankruptcy (Scotland) Act 1913	sch.6	Amended 1987D sch.6 para.28(a) and (b), 2002DA sch.3 para.15 and 2007 sch.1 para.62. Paragraph 24(7) spent. Paragraph 24(8) added 1987D sch.6 para.28(b).

GAS ACT 1986 (c.44)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.7 para.32	Supplies by utilities	s.137(4)(a)	Amends 1985 s.70(4)(a). Unnecessary.

DEBTORS (SCOTLAND) ACT 1987 (c.18)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.6 para.27	Effect of sequestration on diligence	-----	Amends 1985 s.37. Unnecessary.
sch.6 para.28	Arrestments and poindings	-----	Amends 1985 sch.7 para.24. Unnecessary.

INSOLVENCY (ECSC LEVY DEBTS) REGULATIONS 1987 (S.I. 1987 No.2093)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
reg. 3(1)	Levies on coal and steel production	sch.2 para.4	Inserts 1985 sch.3 para.6A. Unnecessary.

CRIMINAL JUSTICE ACT 1988 (c.33)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.15 para.107	Interpretation	-----	Spent. Amends 1985 s.5(4); but that amendment superseded 2002 sch.11 para.15(2).
sch.15 para.108	Constitution of apparent insolvency	-----	Amends 1985 s.7(1). Unnecessary.
sch.15 para.109	Discharged debtor not released from liabilities in respect of fines etc.	-----	Spent. Amends 1985 s.55(2); but that amendment superseded 2002 sch.11 para.15 and 2007 sch.1 para.47.

HOUSING ACT 1988 (c.50)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
s.118	Certain tenancies excluded from debtor's estate	-----	Amends 1985 s.31. Unnecessary.

ELECTRICITY ACT 1989 (c.29)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.16 para.32	Supplies of electricity to certain individuals	-----	Amends 1985 s.70(4)(b). Unnecessary.

CHILD SUPPORT ACT 1991 (c.48)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.5 para.6	Vesting of estate and dealings of debtor after sequestration; effect of sequestration on diligence; and effect of discharge under 1985 s.54	-----	Amends 1985 ss.32(3) and (5), 37(5A) and 55(2)(d). Unnecessary.

PENSION SCHEMES ACT 1993 (c.48)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.8 para.17	Contributions to occupational pension schemes etc.	-----	Amends 1985 sch.3 para.4. Unnecessary.

BANKRUPTCY (SCOTLAND) ACT 1993 (c.6)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
s.1(1)	Accountant in Bankruptcy	ss.120, 121 and 123	Inserts 1985 ss.1 (in substitution for earlier version of that section but now itself superseded by section 1 as inserted by 1998 sch.8 para.22), 1A, 1B and 1C. In so far as not spent, unnecessary.
s.1(2) and (3)	First appointment to be the Accountant in Bankruptcy	-----	Spent.
s.2	Appointment and functions of interim trustee	s.37	Inserts 1985 s.2 (in substitution for earlier version of that section). Inserted section partly repealed: 2007 s.7(1) and sch.6. Unnecessary.
s.3	Petitions for sequestration	-----	Amends 1985 s.5. Unnecessary.
s.4	Award of sequestration	-----	Amends 1985 s.12. Unnecessary.
s.5	Calling of statutory meeting	ss.30 and 31	Inserts 1985 ss.21A and 21B. Unnecessary.
s.6(1)	Summary administration	-----	Spent. Inserts 1985 s.23A. Inserted section repealed 2007 s.28(3).
s.6(2)	Modification of duties of permanent trustee in summary administration	-----	Spent. Inserts 1985 sch.2A. Inserted schedule repealed 2007 s.28(3).
s.7	Appointment of permanent trustee	-----	Spent. Inserts 1985 s.25A. Inserted section repealed 2007 sch.6.
s.8	Fees for the Accountant in Bankruptcy	s.124	Inserts 1985 s.69A. Unnecessary.
s.9	Remuneration of trustee	-----	Spent.
s.10	Finance	-----	Spent. 1998 s.119(2) and (3).

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
s.11(3)	Amendment of 1985 Act provisions	-----	Unnecessary.
s.12	Short title, interpretation, commencement and extent	-----	Spent.
sch.1	Miscellaneous amendments of the 1985 Act	-----	Unnecessary.

DRUG TRAFFICKING ACT 1994 (c.37)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.1 para. 10(1)	Sequestration of estate of living or deceased debtor	-----	Spent. Amends 1985 s.5(4); but that amendment superseded 2002 sch.11 para.15(2).
sch.1 para. 10(2) and sch.3	Constitution of apparent insolvency	-----	Amends 1985 s.7(1). Unnecessary.

PENSIONS ACT 1995 (c.26)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.3 paras.13 and 14	Vesting of debtor's estate on and after sequestration; and dealings of debtor after sequestration	-----	Amends 1985 ss.31(1) and 32. Unnecessary.

CRIMINAL PROCEDURE (CONSEQUENTIAL PROVISIONS) (SCOTLAND) ACT 1995 (c.40)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.4 para. 58(2) and sch.5	Meaning of "qualified creditor"	-----	Spent. Amends 1985 s.5(4); but that amendment superseded 2002 sch.11 para.15(2)
sch.4 para. 58(3) and sch.5	Meaning of "apparent insolvency"	-----	Spent. Amends 1985 s.7(1); but that amendment superseded 2002 sch.11 para.15(3).
sch.4 para. 58(4)	Effect of discharge	-----	Amends 1985 s.55(2). Unnecessary.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.4 para. 58(5)	Commencement of summary proceedings	-----	Amends 1985 s.68(2). Unnecessary.

GAS ACT 1995 (c.45)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.4 para.13	Supplies by utilities	-----	Amends 1985 s.70(4). Unnecessary.

SCOTLAND ACT 1998 (c.46)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.8 para.22	Accountant in Bankruptcy	s.119	Inserts 1985 s.1 (in substitution for s.1 as inserted by 1993 s.1(1)). Unnecessary.

WELFARE REFORM AND PENSIONS ACT 1999 (c.30)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.12 para.68	Recalling of order for payment of capital sum on divorce	s.64(1)	Amends 1985 s.35(1). Unnecessary.
sch.12 para.69	Recovery of excessive contributions in pension-sharing cases; recovery orders; and recovery orders:supplementary	ss.68, 69 and 70	Inserts 1985 ss.36D, 36E and 36F. Unnecessary.

SCOTLAND ACT 1998 (CONSEQUENTIAL MODIFICATIONS) (NO.2) ORDER 1999 (S.I. 1999 No.1820)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.2 para. 82(2)	Supervisory functions of the Accountant in Bankruptcy	-----	Amends 1985 s.1A(1). Unnecessary.
sch.2 para. 82(3)	Fees for the Accountant in Bankruptcy	-----	Amends 1985 s.69A. Unnecessary.

UTILITIES ACT 2000 (c.27)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.6 para.46	Supplies by utilities	s.137(4)(b)	Amends 1985 s.70(4)(b). Unnecessary.

HOUSING (SCOTLAND) ACT 2001 (asp 10)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.10 para.10	Tenancies excluded from whole estate of debtor	-----	Amends 1985 s.31(9). Unnecessary.

FINANCIAL SERVICES AND MARKETS ACT 2000 (CONSEQUENTIAL AMENDMENTS AND REPEALS) ORDER 2001 (S.I. 2001 No.3649)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
art.224	Petitions for sequestration under Financial Services and Markets Act 2000	-----	Spent. Amends 1985 s.10(1). (the section as amended being subsequently substituted: 2007 sch.1 para.8)
art.225	Meaning of "appropriate bank or institution"	-----	Amends 1985 s.73(1). Unnecessary.

PROCEEDS OF CRIME ACT 2002 (c.29)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.11 para. 15(2) and (3)	Meaning of "apparent insolvency"; and vesting of estate at date of sequestration	-----	Amends 1985 ss.5(4) and 7(1). Unnecessary.
sch.11 para. 15(5)	Effect of discharge	-----	Amends 1985 s.55. Unnecessary.

WATER INDUSTRY (SCOTLAND) ACT 2002 (asp 3)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.7 para.16	Supplies by utilities	-----	Amends 1985 s.70(4)(c). Unnecessary.

DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002 (asp 17)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.3 para. 15(2)	Meaning of apparent insolvency	-----	Spent. Amends 1985 s.7(1)(c)(iii) (sub-paragraph (iii) subsequently repealed 2007 sch.6)
sch.3 para. 15(3) to (5)	Limitations on vesting; and effect of sequestration on diligence	-----	Amends 1985 ss.33(1) and 37 and sch7 para.24. Unnecessary.

COMMUNICATIONS ACT 2003 (c.21)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.17 para. 78	Supply of communications service for purposes of business carried on by or on behalf of debtor	-----	Amends 1985 s.70(4) and (5). Unnecessary.

INSOLVENCY (SCOTLAND) REGULATIONS 2003 (S.I. 2003 No.2109)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
regs.5 and 6	Temporary administrators and member State liquidators	-----	Amends 1985 ss.5 and 6. Unnecessary.
reg.7	Petition for sequestration of estate: provision of information	s.10	Inserts 1985 s.6A. Unnecessary.
reg.8	Meaning of apparent insolvency	-----	Amends 1985 s.7(1) and (2). Unnecessary.
reg.9	Time limits	-----	Amends 1985 s.8(1) and (3). Unnecessary.
reg.10	Jurisdiction.	-----	Amends 1985 s.9. Unnecessary.
reg.11	Supplementary provisions	-----	Amends 1985 s.31(8). Unnecessary.
reg.12	Proceedings under EC Regulation: modified definition of "estate"	s.52	Inserts 1985 s.31A. Unnecessary.
reg.13	Entitlement to vote and draw dividend	-----	Amends 1985 s.50. Unnecessary.
reg.14	Order of priority in distribution	-----	Amends 1985 s.51. Unnecessary.
reg.15	Declaration and payment of dividend	-----	Amends 1985 s.52. Unnecessary.
reg.16	Conversion of trust deed into sequestration	ss.116 to 118	Inserts 1985 ss.59A to 59C.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
reg.17	Member State liquidator	ss.126 and 127	Inserts 1985 ss.60A and 60B. Unnecessary.
reg.18	Modification of regulation making powers	s.141	After 1985 s.72 inserts s.72ZA. Unnecessary.
reg.19	Interpretation	-----	Amends 1985 s.73(1). Unnecessary.

COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY ENTERPRISE) ACT 2004  
(c.27)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
s.59(2)	Information	s.122	Inserts 1985 s.71A. Unnecessary.

CIVIL PARTNERSHIP ACT 2004 (c.33)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.28 paras.31 to 36	Consequential amendments	-----	Amends 1985 ss.16(4), 17(8)(b), 20(4), 32(3)(b), 34(7) and 40(2) and (4). Unnecessary.
sch.28 para.37	Protection of rights of civil partner against arrangements intended to defeat them	s.78	Inserts 1985 s.41A. Unnecessary.
sch.28 paras.38 to 41	Further consequential amendments	-----	Amends 1985 ss.44(1)(b), 51(3)(b) and 74(2) and (4) and sch.1 para.2. Unnecessary.

DEBT ARRANGEMENT SCHEME (SCOTLAND) REGULATIONS 2004 (S.S.I. 2004 No.468)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
reg.46	Apparent insolvency	-----	Amends 1985 s.7(1). Revoked S.S.I. 2011/141 sch.5.
sch.3 paras.1 and 2	Consequential amendments	-----	Amends 1985 ss.14(1) and 15(5). Revoked S.S.I. 2011/141 sch.5.

PENSIONS ACT 2007 (c.22)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.5 paras.1 and 2	Removal of Secretary of State's role in approving actuarial guidance	ss.67(5)(b) and 70(5)(b)	Amends 1985 ss.36C(5) and 36F(4). Unnecessary.

BANKRUPTCY AND DILIGENCE etc. (SCOTLAND) ACT 2007 (asp 3)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
s.1	Discharge of debtor	-----	Amends 1985 s.54. Unnecessary.
s.2(1)	Bankruptcy restrictions orders and undertakings	ss.105 to 114	Inserts 1985 ss.56A to 56K. Unnecessary.
s.2(2)		-----	Amends 1985 s.1A(1)(b). Unnecessary.
s.5	Orders relating to disqualification	s.139	Inserts 1985 s.71B. Unnecessary.
s.6(1) and (2)	Amalgamation of offices of interim trustee and permanent trustee	-----	Amends 1985 ss.2 and 3. Unnecessary.
s.6(3)	Interpretation	-----	Provides for the construction of the expressions "interim trustee" and "permanent trustee" in any enactment. Drafting.
s.7	Repeal of trustee's residence requirement	-----	Repeals 1985 ss.2(3)(a) and 24(2)(d). Unnecessary.
s.8	Duties of trustee	-----	Amends 1985 ss.3, 39 and 49. Unnecessary.
s.9	Grounds for resignation or removal of trustee	-----	Amends 1985 ss.13 and 28. Unnecessary.
s.10	Termination of interim trustee's functions	ss.39 and 40	Inserts 1985 ss.13A and 13B. Unnecessary.
s.11	Statutory meeting and election of trustee	-----	Repeals 1985 s.21 and sch.2; and amends 1985 ss.21A, 23, 24 and 25. Unnecessary.
s.12	Replacement of trustee acting in more than one sequestration	s.46	Inserts 1985 s.28A. Unnecessary.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
s.13	Requirement to hold money in interest bearing account	-----	Amends 1985 s.43. Unnecessary.
s.14(1) to (4)	Debtor applications	-----	Amends 1985 ss. 1A, 2, 5 and 6. Unnecessary.
s.14(5)		s.11	Inserts 1985 s.6B. Unnecessary.
s.14(6)		s.13	Inserts 1985 s.8A. Unnecessary.
s.14(7)		-----	Amends 1985 ss.9 and 12.
and (8)			Unnecessary.
s.15(1)	Debtor applications by low income, low asset debtors	-----	Amends 1985 s.5. Unnecessary.
s.15(2)		s.7	Inserts 1985 s.5A. Unnecessary.
s.16	Sequestration proceedings to be competent only before sheriff	-----	Amends 1985 ss.9, 15, 16 and 17; and repeals 1985 s.9(4). Unnecessary.
s.17	Vesting of estate and dealings of debtor	-----	Amends 1985 ss.31 and 32. Unnecessary.
s.18	Income received by debtor after sequestration	-----	Amends 1985 ss.1A and 32. Unnecessary.
s.19(1)	Debtor's home and other heritable property	-----	Amends 1985 s.32. Unnecessary.
s.19(2)	Debtor's home ceasing to form part of sequestrated estate	s.75	Inserts 1985 s.39A. Unnecessary.
s.20	Modification of provisions relating to protected trust deeds	-----	Amends 1985 s.73 and substitutes paragraphs 5 to 13 of sch.5. Unnecessary.
s.21	Modification of composition procedure	-----	Amends 1985 schs.1 and 4 (including the substitution of paragraphs 5 to 8 and 11 of sch.4). Unnecessary.
s.22	Status of Accountant in Bankruptcy as officer of the court	-----	Amends 1985 s.1. Unnecessary.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
s.23	Accountant in Bankruptcy's power to investigate trustees under protected trust deeds	-----	Amends 1985 s.1A and sch.5. Unnecessary.
s.24	Modification of offences under s.67 of the 1985 Act	-----	Amends 1985 s.67. Unnecessary.
s.25	Debt limits in sequestrations	-----	Amends 1985 s.5. Unnecessary.
s.26	Creditor to provide debt advice and information package	-----	Amends 1985 s.5. Unnecessary.
s.27	Continuation of sequestration proceedings	-----	Amends 1985 s.12. Unnecessary.
s.29	Non-vested contingent interest reinvested in debtor	-----	Amends 1985 s.31. Unnecessary.
s.30	Debtor's requirement to give account of state of affairs	s.79	Inserts 1985 s.43A. Unnecessary.
s.31	Restriction of debtor's right to appeal under ss.49(6) and 53(6) of the 1985 Act	-----	Amends 1985 ss.49 and 53. Unnecessary.
s.32	Status of order on petition to convert protected trust deed into sequestration	-----	Amends 1985 s.59C. Unnecessary.
s.35	Certain regulations under the 1985 Act: procedure	-----	Amends 1985 s.72. Unnecessary.
s.36	Minor and consequential amendments of the 1985 Act	-----	Drafting. Unnecessary.
sch.1 paras.1 to 7	Minor and consequential amendments of the 1985 Act	-----	Amends 1985 ss.1A, 2, 5, 6, 7 and 9. Unnecessary.

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
para.8		ss.16 and 17	Substitutes 1985 s.10 and inserts 1985 s.10A. Unnecessary.
paras.9 to 45		-----	Amends 1985 ss.11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21A, 21B, 22, 24, 25, 26, 26A, 27, 28, 29, 31, 31A, 32, 37, 38, 39, 40, 41, 41A, 42, 43, 46, 48, 51, 52 and 53. Unnecessary.
para.46 paras.47 to 62		s.97 -----	Inserts 1985 s.53A. Amends 1985 ss. 55, 58A, 59A, 59B, 59C, 60B, 61, 65, 70 and 73 and Schs.6 and 7. Unnecessary.
sch.5 para.13	Minor and consequential amendments	-----	Amends 1985 ss.31 and 37. Unnecessary.

BANKRUPTCY (SCOTLAND) ACT 1985 (LOW INCOME, LOW ASSET DEBTORS ETC.)  
REGULATIONS 2008 (S.S.I 2008 No.81)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
reg.4	Debtor's home ceasing to form part of sequestrated estate	-----	Amends 1985 s.39A(3). Unnecessary.

BANKRUPTCY (SCOTLAND) REGULATIONS 2008 (S.S.I. 2008 No.82)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
reg.8	Definition of "associate"	-----	Amends 1985 s.74. Unnecessary.

POLICING AND CRIME ACT 2009 (c.26)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.7 paras.47 and 48	Minor and consequential amendments	-----	Amends 1985 ss.7(1) and 31A. Unnecessary.
para.49	Property released from detention	s.53	Inserts 1985 s.31AA. Unnecessary.
para.50	Further minor and consequential amendment	-----	Amends 1985 s.31B(1)(a). Unnecessary.
para.51	Property in respect of which realisation order made	s.55	Inserts 1985 s.31BA. Unnecessary

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
para.52	Further minor and consequential amendment	-----	Amends 1985 s.31C. Unnecessary.

COMPANIES ACT 2006 (CONSEQUENTIAL AMENDMENTS, TRANSITIONAL PROVISIONS AND SAVINGS) ORDER 2009 (S.I. 2009 No.1941)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
sch.1 para.60	The expression "company"	-----	Amends 1985 s.6(2). Unnecessary.

HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010 (asp 6)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
s.9(1)	Certificate for sequestration	-----	Amends 1985 s.5. Unnecessary.
s.9(2)		s.8	Inserts 1985 s.5B. Unnecessary.
s.9(3)		-----	Amends 1985 s.12. Unnecessary.
s.10	Trust deeds	-----	Amends 1985 s.5. Unnecessary.
s.11	Power in relation to debtor's family home	-----	Amends 1985 s.40. Unnecessary.
s.13	Regulations under the 1985 Act	-----	Amends 1985 s.72 and sch.5. Unnecessary.

DEBT ARRANGEMENT SCHEME (SCOTLAND) REGULATIONS 2011 (S.S.I. 2011 No.141)

<i>Existing provision</i>	<i>Subject matter</i>	<i>Provision of Bill</i>	<i>Remarks</i>
reg.45	Apparent insolvency	-----	Amends 1985 s.7(1)(c). Unnecessary.
sch.2 paras.1 and 2	Consequential amendments	-----	Amends 1985 ss.14(1)(c) and 15(5)(b). Unnecessary.





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