Scottish Law Commission

(SCOT. LAW COM. No. 68)

REPORT ON BANKRUPTCY AND RELATED ASPECTS OF INSOLVENCY AND LIQUIDATION

Laid before Parliament
by the Lord Advocate
under section 3(2) of the Law Commissions Act 1965

Ordered by The House of Commons *to be printed*
25th February, 1982

EDINBURGH
HER MAJESTY'S STATIONERY OFFICE

The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Honourable Lord Hunter, V.R.D., *Chairman*[1]

Mr. A. E. Anton, C.B.E.

Mr. R. D. D. Bertram, W.S.

Dr. E. M. Clive

Mr. J. Murray, Q.C.

The Secretary of the Commission is Mr. R. Eadie. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

SCOTTISH LAW COMMISSION
(Scot. Law. Com. No. 68)

REPORT ON BANKRUPTCY
AND
RELATED ASPECTS OF INSOLVENCY
AND LIQUIDATION

H. of C. NO. 176 1981-1982 SESSION
ISBN 0 10 217682 5

CORRECTION

Page 3: line 4: "indication" should read "liquidation".
Page 11: line 4: insert "to" before "those"
Page 78: line 1: insert "of" after "power"
Page 302: line 18: "to" after "awarded" should read "at"
Page 484: 3rd last line: "state" should read "date"

[1]Lord Hunter's term of office expires on 30 September 1981; his successor as Chairman of the Commission is the Hon. Lord Maxwell.

APPENDIX 6

Draft Bankruptcy (Scotland) Bill

ARRANGEMENT OF CLAUSES

Administration of bankruptcy

Statutory meeting of creditors and confirmation of permanent trustee

Replacement of permanent trustee

Election, resignation and removal of commissioners

Vesting of estate in permanent trustee

Safeguarding of interests of creditors of insolvent persons

Effect of sequestration on diligence

Administration of estate by permanent trustee

Examination of debtor

Submission and adjudication of claims

Entitlement to vote and draw dividend

Distribution of debtor's estate

Discharge of debtor

Discharge of permanent trustee

Voluntary trust deeds for creditors

Miscellaneous and supplementary

SCHEDULES:

DRAFT

OF A

BILL

TO

Reform the law of Scotland relating to sequestration and personal insolvency; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introduction

The long title of the Bill reflects the fact that it deals mainly with sequestration, the principal procedure available in Scots law for resolving personal insolvency. It also contains provisions relating to trust deeds for creditors. The Bill does not deal with the administration or procedural structure of the law relating to the liquidation of registered companies. The Companies Act 1948, however, which regulates their liquidation, gives to a liquidator appointed by the Court in Scotland the same powers as a trustee on a bankrupt estate (1948 Act, section 245(5)) and directs him to apply the rules in the Bankruptcy (Scotland) Act 1913 relating *inter alia* to voting and ranking (1948 Act, section 318(*a*)) and fraudulent preferences (1948 Act, section 320). Since the Bill contains provisions which will necessarily affect the law applied in the liquidation of companies, consequential amendments to the 1948 Act have been made as well as other amendments required to ensure consistency in the law.

The Bill is concerned with virtually the whole law relating to sequestrations, that is, both the important substantive law and the procedure of a sequestration from its commencement to its termination with the discharge of the bankrupt and trustee. The new sequestration procedure has been set out as far as practicable in the order of events and related questions of substantive law are treated concurrently. This is designed to facilitate the use of the future Act by those concerned with sequestration procedure. Departures from this approach, however, have been inevitable, and have been made wherever this seemed convenient. The special procedures to deal with small assets cases and discharge on composition are set out in Schedules 2 and 3 to the Bill. Schedule 4 contains substantive provisions relating to trust deeds.

Administration of bankruptcy

Accountant in Bankruptcy.

1.—(1) The Accountant of Court shall have the following general functions in the administration of sequestration and personal insolvency—

(*a*) the supervision of the performance by interim trustees, permanent trustees and commissioners of the functions conferred on them by this Act and the investigation of any complaints made against them;

(*b*) the maintenance of a list of persons from which interim trustees shall be appointed;

(*c*) the maintenance of a register of insolvencies in a form prescribed by act of sedurunt which shall contain particulars of—

(i) estates which have been sequestrated; and

(ii) trust deeds which have been sent to him for registration under paragraph 5(*d*) of Schedule 4 to this Act; and

(*d*) the preparation of an annual report which shall be presented to the Court of Session and the Secretary of State and shall contain—

(i) statistical information relating to the state of all current sequestrations of which particulars have been registered in the register of insolvencies during the year to which the report relates;

(ii) particulars of trust deeds registered as protected trust deeds in that year; and

(iii) particulars of the performance of the Accountant of Court's functions under this Act.

Clauses 1 to 4

Clauses 1 to 4 describe the persons concerned with the administration of the procedures with which the Bill is concerned. The clauses set out their duties of a general character. Their specific duties are set out as they arise under the Bill.

Clause 1

The Accountant of Court would retain his existing general functions in the administration of bankruptcy and would assume additional functions but, when exercising these functions, he would be known as the Accountant in Bankruptcy—see subsection (2). (Paragraphs 4.2, 4.3 and 4.5).

Subsection (1)

The functions of the Accountant are modified following upon the introduction of interim trustees into sequestration procedure (see clause 2) (Paragraph 4.7).

The register of sequestrations established by section 156 of the 1913 Act contains only particulars of sequestrations. The proposed register of insolvencies will include certain particulars of "protected" trust deeds. For the suggested form of the register of insolvencies see Appendix 4 to this Report.

(2) The Accountant of Court when exercising the functions conferred on him by this Act shall be known as "the Accountant in Bankruptcy".

(3) If it appears to the Accountant in Bankruptcy that an interim trustee, permanent trustee or commissioner has failed without reasonable excuse to perform a duty imposed on him by any provision of this Act, he shall report the matter to the sheriff who, after hearing the interim trustee, permanent trustee or commissioner on the matter, may remove him from office or censure him or make such other order as the circumstances of the case may require.

(4) If the Accountant in Bankruptcy has information which leads him to suspect that an interim trustee, permanent trustee or commissioner has committed an offence in the performance of his functions under this Act, or that an offence has been committed in relation to a sequestration—

(*a*) by a debtor whose estate is the subject of the sequestration, in respect of his assets, his dealings with them or his conduct in relation to his business or financial affairs; or

(*b*) by any other person in his dealings with such a debtor in respect of the debtor's assets or his business or financial affairs;

he shall report the matter to the Lord Advocate.

(5) The Accountant in Bankruptcy shall on payment to him of the appropriate fee—

(*a*) make the register of insolvencies, at all reasonable times, available for inspection; and

(*b*) provide any person, on request, with a certified copy of any entry in the register.

Subsection (3)

This provision broadly follows section 158 of the 1913 Act. See paragraphs 4.4, 4.6 and 9.25.

Subsection (4)

The duty to report offences to the Lord Advocate, at present imposed upon trustees and the Accountant of Court, would be confined to the latter in his role as Accountant in Bankruptcy. For the content of this subsection, see paragraphs 4.7 and 23.9.

Interim trustee.

2.—(1) In every sequestration there shall be appointed an interim trustee in accordance with this Act whose general functions shall be—

(*a*) to safeguard the debtor's estate pending the appointment of a permanent trustee on the estate under this Act;

(*b*) to ascertain the reasons for the debtor's insolvency and the circumstances surrounding it;

(*c*) to ascertain the state of the debtor's liabilities and assets;

(*d*) to administer the sequestration process pending the appointment of a permanent trustee; and

(*e*) whether or not he is still acting in the sequestration, to supply the Accountant in Bankruptcy with such information as the Accountant in Bankruptcy considers necessary to enable him to discharge his functions under this Act.

(2) A person shall be entitled to have his name included in the list maintained by the Accountant in Bankruptcy under section 1(1)(*b*) of this Act if, but only if, he resides within the jurisdiction of the Court of Session and he has such qualifications and fulfils such conditions as may be prescribed in relation to permanent trustees by virtue of section 24(2)(*e*) of this Act; and any person aggrieved by the exclusion of his name from the list may appeal against that exclusion to the Court of Session.

(3) The Secretary of State may by regulations make provision in respect of the finding of caution by interim trustees and for the premium or a proportion or part of that premium to form a charge on the debtor's estate.

Clause 2

The institution of a system of interim trustees is new to Scottish sequestration procedure and deals with the main defects in the present law. See Chapter 2, especially paragraphs 2.42 to 2.46. Such a system would enable small assets cases to be identified at an earlier stage (see paragraphs 7.23 to 7.30) and would have certain procedural advantages. See paragraphs 7.18 to 7.22. The institution of this system makes the provision in section 14 of the 1913 Act for the appointment of an interim factor unnecessary and this provision is not re-enacted.

Subsection (2)

Subsection (2) gives effect to paragraph 4.11(*a*), (*b*) and (*d*). A person who allows his name to be on the list would not be entitled to refuse to act. The required qualifications and the conditions to be fulfilled are the same as for a permanent trustee.

Subsection (3)

See paragraphs 4.11(*c*) and 4.13. The wording is designed to permit of the making of regulations providing for the finding of caution on a comprehensive basis as opposed to caution for each sequestrated estate on an individual basis.

(4) The Accountant in Bankruptcy shall remove a person's name from the said list—

(*a*) at the person's own request;

(*b*) if it appears to the Accountant in Bankruptcy that the person has ceased to meet any of the requirements mentioned in subsection (2) above or of regulations made under subsection (3) above; or

(*c*) if, on an application by the Accountant in Bankruptcy to the sheriff of the sheriffdom in which the person is habitually resident or his principal place of business is, or was last, situated, the sheriff is satisfied that the person is incapacitated from acting as interim trustee or has so conducted himself that it is unfitting that his name should remain on the list:

Provided that removal of a person's name in pursuance of paragraph (*a*) above shall not absolve that person, if he is acting as an interim or permanent trustee in a particular case, from continuing so to act until he has completed his duties in relation to that case.

(5) Any person aggrieved by the removal of his name from the said list may appeal against that removal to the Court of Session.

Subsections (4) and (5)

These subsections follow from paragraph 4.11. A person whose name is on the list, though not entitled to refuse to act in a particular case, would be entitled to ask for his name to be removed from the list.

Permanent trustee.

3.—(1) In every sequestration there shall be a permanent trustee whose general functions shall be—

(*a*) to recover, manage and realise the debtor's estate, whether situated in Scotland or elsewhere;

(*b*) to distribute the estate among the debtor's creditors according to their respective entitlements;

(*c*) to maintain a sederunt book during his term of office for the purpose of providing an accurate record of the sequestration process;

(*d*) to keep regular accounts of his 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; and

(*e*) whether or not he is still acting in the sequestration, to supply the Accountant in Bankruptcy with such information as the Accountant in Bankruptcy considers necessary to enable him to discharge his functions under this Act.

(2) A permanent trustee in performing his functions under this Act shall have regard to advice offered to him by the commissioners (if any).

(3) If the permanent trustee has information in his possession which leads him to suspect that the debtor, or any person concerned with the administration of the debtor's estate, has committed an offence in relation to the sequestration, he shall report the matter to the Accountant in Bankruptcy.

Clause 3

The trustee would continue to have a central role in sequestration procedure. His duties would remain substantially the same as under the present law. To distinguish him from the interim trustee, however, he is called the permanent trustee. For the role and the duties of the permanent trustee see paragraphs 4.17 to 4.25 and 10.1 to 10.35.

Subsection (1)

Paragraphs (*a*) and (*b*) accord with the present law (see paragraph 4.18). In particular paragraph (*c*) implements paragraph 10.32, paragraph (*d*) paragraphs 10.33 and 10.35, and paragraph (*e*) paragraphs 4.5 and 10.35.

Subsection (2)

The trustee is no longer subject to the directions given by the creditors at any meeting but only to the directions of commissioners or, if there are no commissioners, to those of the Accountant in Bankruptcy in respect of his functions under clause 3(1)(*a*)—see clause 38. He is required, however, to have regard to advice given to him by the commissioners on any of his functions.

Subsection (3)

This subsection gives effect to paragraph 10.31. Under section 180 of the 1913 Act the trustee has a duty to report the commission of offences to the Lord Advocate, but only where he has reasonable grounds to do so. The trustee is now required to advise the Accountant in Bankruptcy when he suspects that an offence has been committed. The Accountant alone (under clause 1(4)) has a duty to report to the Lord Advocate.

Commissioners.

4.—(1) Except where section 23(4) of this Act is applicable, in any sequestration there may be elected in accordance with this Act one or more commissioners, not exceeding 5, who shall be either creditors or mandatories of creditors.

(2) The general functions of commissioners shall be—

(*a*) to supervise the intromissions of the permanent trustee with the sequestrated estate;

(*b*) to give him directions as to its recovery, management and realisation; and

(*c*) to advise him.

Clause 4

Commissioners will retain an important role in sequestration procedure as the representatives of the creditors.

Subsection (1)

The provisions relating to the election of commissioners are contained in clause 29. Their election will no longer require confirmation by the court—paragraph 4.33.

Subsection (2)

This clause states only the general functions of the commissioners. Reference is made to their advisory functions in clause 3(2). Their powers to give directions and consents are contained *inter alia* in clause 38, subsections (1) and (2). The particular functions of the commissioners are stated as they arise in the Bill.

Petitions for sequestration

Sequestration of the estate of a living or deceased debtor.

5.—(1) The estate of a living debtor or a debtor who has died after the commencement of this Act may be sequestrated in accordance with the provisions of this Act.

(2) The sequestration of the estate of a living debtor shall be on the petition of—

(*a*) the debtor, with the concurrence of a qualified creditor or qualified creditors;

(*b*) a qualified creditor or qualified creditors, if the debtor is apparently insolvent; or

(*c*) the trustee acting under a voluntary trust deed granted by or on behalf of the debtor whereby his estate is conveyed to the trustee for the benefit of his creditors generally (in this Act referred to as a "trust deed").

(3) The sequestration of the estate of a deceased debtor shall be 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; or

(*c*) the trustee acting under a trust deed.

Clauses 5 to 11

Clause 5 is the beginning of the time sequence in the Bill. Clauses 5 to 11 state the conditions which must be met in the presentation of a petition for sequestration.

Clause 5

Clause 5 deals principally with the question of what persons or bodies may present a petition for sequestration, but it also preserves the existing requirements of a "qualifying debt" in all petitions and of the practical insolvency of the debtor in a creditor's petition.

Subsection (1)

For subsection (1) see paragraphs 5.2 to 5.4. Subsection (1) covers minors, pupils and persons suffering from mental disorder (paragraph 5.3).

The expression "living debtor" is used since the word "debtor" in terms of clause 68 can mean a deceased debtor or an executor or other person administering a deceased debtor's estate. The word "debtor" includes a discharged debtor only in clause 62 (see subsection (4) of that clause).

The Bill generally states the law in the perspective of the individual living debtor, and caters specifically for other cases.

Subsection (2)

Paragraphs (*a*) and (*b*): paragraphs 5.23 and 5.24 explain why in debtors' petitions the concurrence of a qualified creditor is required. For the meaning of "qualified creditor" and "apparent insolvency", see the notes on subsection (4) of this clause and on clause 7.

Paragraph (*c*) gives effect to the proposals in paragraphs 24.16 and 24.18 The trustee's power to petition for sequestration may be an incentive to co-operation on the part of the debtor and will also be available if for any other reason the trustee considers sequestration to be more appropriate. For trust deeds generally see Chapter 24 and Schedule 4.

Subsection (3)

The concurrence of a qualified creditor is not required where an executor petitions for the sequestration of the estate of a deceased debtor. (See paragraphs 5.4 and 5.24). A creditor may petition for the sequestration of a deceased debtor's estate even where the debtor was not apparently insolvent at the date of death but, if that is so, not till 6 months after that date.

(4) In this Act "a qualified creditor" means a creditor who, at the date of the presentation of the petition, is a creditor of the debtor in respect of a liquid or illiquid debt (other than a contingent or future debt) which amounts to not less than £200 or such sum as may be prescribed; and "qualified creditors" means creditors who at the said date are creditors of the debtor in respect of such debts as aforesaid amounting in aggregate to not less than £200 or such sum as may be prescribed.

(5) Paragraphs 1(1) and (3), 2(1)(*a*) and (2), 5(1) and 6 of Schedule 1 to this Act shall apply in order to ascertain the amount of the debt or debts for the purposes of subsection (4) above as they 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.

(6) The petitioner shall send a copy of any petition presented under this section to the Accountant in Bankruptcy.

(7) Where, after a petition for sequestration has been presented but before the sequestration has been awarded, the debtor dies, then—

(*a*) if the petitioner was the debtor, the petition shall fall;

(*b*) if the petitioner is a creditor, the proceedings shall continue as nearly as possible in accordance with this Act.

(8) Where, after a petition for sequestration has been presented under this section but before the sequestration has been awarded, a creditor who—

(*a*) is the petitioner or concurs in a petition by the debtor; or

(*b*) has lodged answers to the petition,

withdraws or dies, there may be sisted in the place of—

(i) the creditor mentioned in paragraph (*a*) above, any creditor who was a qualified creditor at the date when the petition was presented and who remains so qualified at the date of the sist.

(ii) the creditor mentioned in paragraph (*b*) above, any other creditor.

Subsection (4)

For qualifying debts generally see paragraphs 5.30 and 5.31. Contingent debts are at present excluded by section 12 of the 1913 Act, but there is some authority that a petition may be founded on a future debt—paragraph 5.31. Neither future nor contingent debts may be used to found diligence and it is proposed that neither should support a sequestration petition (paragraph 5.31). The exclusion of future and contingent debts will become the only difference between the conditions required for a petition and those required for a claim to vote in the sequestration process or to be entitled to a dividend out of any available fund (see paragraph 16.2).

Subsection (5)

Schedule 1 states the rules for the calculation of a creditor's claim and, so far as appropriate, these rules are applied to determine the amount of a petitioning creditor's debt.

Subsection (6)

See paragraph 4.4.

Subsection (7)

Paragraphs (*a*) and (*b*) give effect to paragraph 7.4. The executors of a deceased debtor may petition for the sequestration of the deceased's estate under clause 5(3)(*a*).

Subsection (8)

The subsection is mainly a restatement of the present law with the addition of paragraph (i) (see paragraph 7.5). The reason for the different treatment of a petitioning or concurring creditor and a creditor opposing the petition is that a creditor may be entitled to oppose but may not be entitled to petition, e.g. because his debt is a contingent debt.

Sequestration of other estates.

6.—(1) Subject to subsection (2) below, the estate belonging to or held for or jointly by the members of any of the following entities may be sequestrated—

(*a*) a trust in respect of debts incurred by it;

(*b*) a partnership including a dissolved partnership;

(*c*) a body corporate or an unincorporated body;

(*d*) a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907.

(2) It shall not be competent to sequestrate the estate of any of the following entities—

(*a*) a company registered under the Companies Acts 1948 to 1980 or under any enactment repealed by the Companies Act 1948; or

(*b*) 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 shall be on the petition of—

(*a*) a majority of the trustees, with the concurrence of a qualified creditor or qualified creditors; or

(*b*) a qualified creditor or qualified creditors, if the trustees as such are apparently insolvent.

(4) The sequestration of the estate of a partnership shall be on the petition of—

(*a*) the partnership, with the concurrence of a qualified creditor or qualified creditors; or

(*b*) a qualified creditor or qualified creditors, if the partnership or any of the partners for a firm debt is apparently insolvent.

(5) A petition under subsection (4)(*b*) above may be combined with a petition for the sequestration of the estate of any of the partners as an individual where that individual is apparently insolvent.

(6) The sequestration of the estate of a body corporate shall be on the petition of—

(*a*) a person authorised to act on behalf of the body, with the concurrence of a qualified creditor or qualified creditors; or

(*b*) a qualified creditor or qualified creditors, if the body is apparently insolvent.

Clause 6

Clause 6 deals mainly with the question—what estates, apart from those of individual debtors, may be sequestrated? The clause implements the principle that it should be competent to sequestrate the estate of any person or entity (whether incorporated or not) unless the law otherwise provides expressly or by implication that sequestration should not be available in relation to that estate (paragraph 5.1). Where the petition for sequestration is not presented by or on behalf of the person or entity in question, his or its apparent insolvency must be averred (paragraphs 5.15 to 5.18).

Subsection (1)

Paragraphs (*a*) to (*d*) give effect to the proposals in paragraphs 5.5 to 5.13. The subsection clarifies the law in relation to the sequestration of estates belonging to trusts, dissolved partnerships and limited partnerships. It changes the law in permitting the sequestration of an estate which (in a non-technical sense) may be said to belong to an unincorporated association. In Schedule 6 limited partnerships are excluded from the winding-up provisions of the Companies Acts (see paragraph 5.9).

Subsection (2)

This follows from the recommendation in paragraph 5.10 that entities, whether incorporated or unincorporated, should be excluded from sequestration where it appears expressly or by implication from the terms of any enactment that sequestration is to be incompetent in relation to that entity. The most important exclusion from the sequestration process, that of a registered company, is expressly mentioned.

Subsection (3)

See paragraph 5.29.

Subsection (4)

Paragraph (*a*) retains the present law regarding petitions for sequestration (paragraph 5.26).

Paragraph (*b*) is also in consonance with the present law (*cf.* section 6 of the 1913 Act) (paragraph 5.20).

Subsection (5)

See paragraphs 5.8 and 5.26. Provision is made in clause 9(3) to cover the case where an individual partner would not otherwise be subject to the jurisdiction of the court.

Subsection (6)

See paragraph 5.27.

(7) The sequestration of the estate of an unincorporated body shall be on the petition of—

(*a*) a person authorised to act on behalf of the body, with the concurrence of a qualified creditor or qualified creditors; or

(*b*) a qualified creditor or qualified creditors, if a person representing the body is apparently insolvent for a debt of the body or a person holding property of the body in a fiduciary capacity is apparently insolvent for such a debt.

(8) This section shall apply to the sequestration of the estate of a limited partnership subject to such modifications as may be prescribed.

(9) Subsections (6) and (8) of section 5 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

Subsection (7)

The qualification in paragraph (*b*) is designed to cover the variety of situations found in the organisation of unincorporated bodies. See paragraph 5.28.

Subsection (8)

This subsection provides for the sequestration of the estate of a limited partnership to proceed in accordance with such modifications as may be prescribed by regulations made by the Secretary of State, for example, a regulation providing for the respective liabilities of the general and the limited partners of a limited partnership that has been sequestrated.

Meaning of apparent insolvency.

7.—(1) For the purposes of this Act, a debtor's apparent insolvency shall be constituted whenever—

(*a*) his estate is sequestrated, or he is adjudged bankrupt in England or Wales or Northern Ireland; or

(*b*) he gives written notice to his creditors that he has ceased to pay his debts in the ordinary course of business; or

(*c*) any of the following circumstances occurs—

(i) he grants a trust deed;

(ii) following the service on him of a duly executed charge for payment of a debt, the days of charge expire without payment;

(iii) following a poinding or seizure of any of his moveable property in pursuance of a summary warrant for the recovery of rates or taxes, 14 days elapse without payment;

(iv) a decree of adjudication of any part of his estate is granted, either for payment or in security;

(v) his effects are sold under a sequestration for rent due by him; or

(vi) a receiving order is made against him in England or Wales;

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.

(2) A debtor's apparent insolvency shall continue, if constituted under—

(*a*) subsection (1)(*a*) above, until his discharge; or

(*b*) subsection (1)(*b*) or (*c*) above, until he becomes able to pay his debts and pays them as they become due.

Clause 7

Introduction

The Bill retains the principle of the existing law that a creditor's petition for sequestration should be competent only where the debtor is unable or unwilling to pay his debts as they become due. (See clauses 5(2)(*b*) and 6(3)(*b*), (4)(*b*), (5), (6)(*b*), and (7)(*b*)). But the expression "apparent insolvency" replaces the present expression "notour bankruptcy" for the reasons explained in paragraphs 5.14 to 5.20. Clause 7 defines the circumstances in which a debtor is taken to be apparently insolvent: apart from clause 7(1)(*b*) and (*c*)(i), which are self-explanatory, these circumstances are for all practical purposes the same as those which constitute notour bankruptcy under section 5 of the 1913 Act.

Subsection (1)

Attention is drawn to the final words of subsection (1). Despite the reference in section 5 of the 1913 Act to insolvency "concurring" with any of the specific circumstances referred to in that provision, the case law shows that insolvency is inferred if any of the circumstances exists. The final words of subsection (1) are designed to reflect this judicial construction of section 5. (Paragraph 5.15).

Under clause 8 a creditor's petition for the sequestration of the estate of any debtor except a deceased debtor is competent only where the debtor's apparent insolvency was constituted not earlier than four months before the date of the presentation of the petition. The word "whenever" is introduced into the introductory words of clause 7(1) to make it clear that, even where the debtor is already apparently insolvent, his apparent insolvency may be constituted anew. (See 1913 Act, section 7 and paragraph 5.20).

Further provisions relating to presentation of petitions.

8.—(1) Subject to subsection (2) below, a petition for the sequestration of a debtor's estate (other than a deceased debtor's estate) may be presented—

(*a*) at any time by the debtor or by a trustee acting under a trust deed; but

(*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.

(2) A petition for the sequestration of the estate of a limited partnership may be presented within such time as may be prescribed.

(3) A petition for the sequestration of the estate of a deceased debtor may be presented—

(*a*) at any time by an executor or a person entitled to be appointed as executor on the estate or a trustee acting under a trust deed;

(*b*) by a qualified creditor or qualified creditors of the deceased debtor—

(i) at any time if apparent insolvency of the debtor was constituted within 4 months before his death; but

(ii) if apparent insolvency was not so constituted, not earlier than 6 months after the debtor's death.

(4) If an executor does not petition for sequestration of the deceased debtor's estate or for the appointment of a judicial factor to administer the estate within a reasonable period after he knew or ought to have known that the estate was absolutely insolvent and likely to remain so, any intromission by him with the estate after the expiry of that period shall be deemed to be an intromission without a title.

(5) The presentation of, or the concurring in, a petition for sequestration shall bar the effect of any statute of limitations in the United Kingdom.

Clause 8

Section 13 of the 1913 Act provides that a petition for sequestration, presented without the concurrence of a debtor who is alive, is competent only within 4 months of the debtor's notour bankruptcy. This principle—which applies generally except in the case of a deceased debtor—is adopted in this clause with the substitution of apparent insolvency for notour bankruptcy.

Subsection (1)

See paragraph 5.17.

Subsection (2)

See paragraph 5.9.

Subsection (3)

This subsection simplifies the present law contained in section 13 of the 1913 Act. Under the subsection a creditor cannot petition for sequestration until 6 months have elapsed from the date of death unless the debtor was then apparently insolvent. (See paragraphs 5.4 and 21.9 and 21.11).

Subsection (4)

This subsection implements the recommendation in paragraph 21.10. An intromitter without a title may incur liability for the debts of the deceased, though the court has regard to the circumstances of the intromission.

Jurisdiction.

9.—(1) The Court of Session shall have jurisdiction in respect of the sequestration of the estate of a living debtor or of a deceased debtor if the debtor had an established place of business in Scotland, or was habitually resident there, at the relevant time.

(2) The Court of Session shall have jurisdiction in respect of the sequestration of the estate of any of the entities mentioned in section 6 of this Act, if the entity—

(*a*) had an established place of business in Scotland at the relevant time; or

(*b*) was constituted or formed under Scots law, and at any time carried on business in Scotland.

(3) Notwithstanding that the partner of a firm, whether alive or deceased, does not fall within subsection (1) above, the Court of Session shall have jurisdiction in respect of the sequestration of his estate if a petition has been presented for the sequestration of the estate of the firm of which he is, or was at the relevant time before his decease, a partner and the process of that sequestration is still current.

(4) The provisions of this section shall apply to the sheriff as they apply to the Court of Session but as if for the word "Scotland" wherever it occurs there were substituted the words "the sheriffdom" and in subsection (3) after the word "presented" there were inserted the words "in the sheriffdom".

(5) In this section "the relevant time" means any time in the year immediately preceding the date of presentation of the petition or the date of death, as the case may be.

Clause 9

The clause makes it clear that sequestration proceedings may competently be initiated in the Court of Session as well as in the sheriff court. (See paragraph 5.35). Where sequestration has been awarded by the Court of Session, the process must be remitted to a sheriff in terms of clause 15(1). The main concern, however, of the clause is to define the jurisdiction in the international sense of the Court of Session and of the sheriff courts and simultaneously to determine the internal jurisdiction of the sheriff courts. (See paragraphs 6.19 to 6.22).

Subsection (3)

See clause 6(5) and paragraph 6.23.

Subsection (5)

The definition covers cases where the debtor has recently left the territory or his whereabouts are unknown. In relation to the sheriff court, this problem received recent attention in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), section 12.

Concurrent proceedings for sequestration or analogous remedy.

10.—(1) If, in the course of sequestration proceedings—

(*a*) the petitioner for sequestration.

(*b*) the debtor, or

(*c*) a creditor concurring in the petition,

is or becomes aware that—

(i) another petition for sequestration of the debtor's estate is before a court or such sequestration has been awarded; or

(ii) a petition for the appointment of a judicial factor on the debtor's estate is before a court or such a judicial factor has been appointed; or

(iii) a petition is before a court for the winding up of the debtor under Part IX of the Companies Act 1948 or the debtor has been wound up under the said Part IX; or

(iv) an application for an analogous remedy in respect of the debtor's estate is proceeding or such an analogous remedy is in force,

he shall bring that fact to the notice of the court to which the petition under this section is being presented.

(2) If a creditor fails to comply with subsection (1) above, he may be made liable for the expenses of presenting the petition for sequestration, and, if the debtor fails to comply with subsection (1) above, he shall be guilty of an offence.

(3) Where a petition for sequestration is before a court and any of the circumstances mentioned in heads (i), (ii) and (iii) of subsection (1) above exists, then—

(*a*) any sheriff before whom any petition mentioned in that subsection is pending, on his own motion or at the instance of the debtor or any creditor or other person having an interest, may allow that petition to proceed or may sist or dismiss it; or

(*b*) the Court of Session, if—

(i) any petition mentioned in subsection (1) above is before it, on its own motion or at the instance of the debtor or any creditor or other person having an interest, may allow that petition to proceed or may sist or dismiss it, or may direct any sheriff before whom such a petition is pending to sist or dismiss it or may order all the petitions to be heard together, or

Clause 10

Clause 10 deals with the problems presented by (1) concurrent petitions for sequestration, (2) concurrent petitions for sequestration and for the appointment of a judicial factor or for analogous remedies in courts outside Scotland (paragraph 6.25). It also deals with cases where after a petition for sequestration is presented, it appears that sequestration has already been awarded, or a judicial factor appointed, or an analogous remedy is in force in respect of the same estate. The term "analogous remedy" is defined in subsection (5).

Subsection (1)

This is a new imposition. Its purpose is explained in paragraph 6.26.

(ii) no such petition is before it, on an application by the debtor, any creditor or other person having an interest, may direct any sheriff before whom such a petition is pending to sist or dismiss it or may order all the petitions to be heard together.

(4) Where in respect of the same estate—

(*a*) a petition for sequestration is pending before a court; and

(*b*) an application for an analogous remedy is proceeding or an analogous remedy is in force,

the court, on its own motion or at the instance of the debtor or any creditor or other person having an interest, may allow the petition for sequestration to proceed or may sist or dismiss it.

1914 c. 59.
1959 c. 22.

(5) In this section "analogous remedy" means a bankruptcy order under the Bankruptcy Act 1914 or an administration order under section 148 of the County Courts Act 1959 in England or Wales or under any enactment having effect in Northern Ireland or a remedy analogous to either of the aforesaid remedies, or to sequestration, in any other country.

Subsection (4)

This subsection gives effect to the proposals in paragraph 6.31.

Section 43 of the 1913 Act relates to cases where the governing law should be that of another part of the United Kingdom. Subsection (4) applies also to proceedings before, and to awards made by, foreign courts. The courts, however, have a complete discretion in the matter.

Creditor's oath.

11.—(1) Every creditor, being a petitioner for sequestration, a creditor who concurs in a petition by a debtor or a qualified creditor who becomes sisted under subsection (8)(i) of section 5 of this Act or under that subsection as applied by section 6 of this Act, shall produce an oath in the prescribed form made by him or on his behalf.

(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 a British diplomatic or consular officer or 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 person making the oath, and the identity of the person before whom the oath is made and their authority to make and to administer the oath respectively shall be presumed to be correctly stated, and any seal or signature on the oath shall be presumed to be authentic, unless the contrary is established.

(4) If an oath contains any error or has omitted any fact, the court to which the petition for sequestration was presented may allow another oath to be produced rectifying the original oath; and this section shall apply to the making of that other oath as it applies to the making of the original oath.

(5) Every creditor must produce along with the oath *prima facie* evidence of the debt accordinging to its nature, and a petitioning creditor shall in addition produce such evidence as is available to him to show the apparent insolvency of the debtor.

Clause 11

Subsection (1)

The form of the oath will be prescribed in regulations made by the Secretary of State and it is suggested that the requirements should be similar to those in the statements of claim to be submitted under clauses 22 and 45 (paragraph 7.7). The aim is to secure that the requirements (which differ in the present law) for oaths, claims to vote and claims to rank should as far as possible be similar (paragraphs 16.1 to 16.9). It is also suggested that in future there should be only one form of oath, that is, the distinction between the oath of verity and the oath of credulity should be abolished. (See paragraph 7.8).

Subsection (2)

Subsection (2) replaces section 22 of the 1913 Act and conforms with current practice. It extends section 22 by permitting oaths to be taken abroad before British diplomatic or consular officers and, where the oath is taken before a foreign official, discards the present requirement of legalisation (paragraph 7.9).

Subsection (3)

This provision confirms the absence of any requirement of legalisation and throws the onus of proof on any person who challenges the authentication of the oath (paragraph 7.9).

Subsection (4)

This proposal reverts to an earlier practice of the sheriff court referred to in paragraph 7.13.

Subsection (5)

Section 20 of the 1913 Act in terms requires the petitioning or concurring creditor to produce vouchers as well as the accounts in all cases, but the courts have construed this to mean only that the creditor must produce whatever evidence is available to him according to the nature of the debt. The subsection reflects this construction. (See paragraph 7.11). There is some authority for the view that, in a creditor's petition, the petitioner must produce written evidence of the debtor's notour bankruptcy. This requirement is discarded. (See paragraph 7.2).

Award of sequestration and appointment and resignation of interim trustee

When sequestration is awarded

12.—(1) Where a petition for sequestration of his estate is presented by the debtor, the court shall award sequestration forthwith if the court is satisfied that the petition has been presented in accordance with the provisions of this Act unless cause is shown why sequestration cannot be competently awarded.

(2) Where a petition for sequestration of a debtor's estate is presented by a creditor or a trustee acting under a trust deed, the court to which the petition is presented shall grant warrant to cite the debtor or, if the debtor is deceased, his successors to appear before it to show cause why sequestration should not be awarded.

(3) If, on a petition for sequestration presented by a creditor or a trustee acting under a trust deed, the court is satisfied that, if the debtor has not appeared, proper citation has been made of the debtor (or, if the debtor is deceased, his successors), that the petition has been presented in accordance with the provisions of this Act and that, in the case of a petition by a creditor, the requirements of this Act relating to apparent insolvency have been fulfilled, it shall award sequestration forthwith unless—

(*a*) cause is shown why sequestration cannot competently be awarded; or

(*b*) the debtor forthwith pays or satisfies or produces written evidence of the payment or satisfaction of, or gives sufficient security for the payment of—

(i) the debt in respect of which he became apparently insolvent; and

(ii) any other debt due by him to the petitioner and any creditor concurring in the petition.

(4) In this Act "the date of sequestration" means if the petition for sequestration is presented by—

(*a*) the debtor, the date on which sequestration is awarded;

(*b*) a creditor or a trustee acting under a trust deed, the date on which the court grants warrant under subsection (2) above.

Clauses 12 to 15 deal with events in court when a petition has been presented.

Clause 12

Subsections (1) to (3)

The peremptory language of section 28 of the 1913 Act does not make it clear that even a debtor's petition may be refused when an essential condition, for example the concurrence of a qualified creditor, is not fulfilled. (See paragraph 7.16). The present text, while making this point clear, retains the principle that, where the conditions of sequestration are fulfilled, the court must award sequestration. (See paragraphs 5.21 and 7.16).

Subsection (4)

The date of the sequestration is crucial. It is the date on which the debtor's estate vests in the permanent trustee (clause 30) and by reference to which the prescribed periods for the making of gifts and the criterion of unfair preferences (clauses 33 and 35), the first accounting period (clause 49) and the periods governing the debtor's discharge are fixed (clauses 51 to 53). Subsection (4) applies the principle embodied in section 41 of the 1913 Act. In cases where the award of sequestration does not immediately follow presentation of the petition, the date of the sequestration is drawn back to the date of the first order, that is, the warrant under subsection (2).

Appointment and resignation of interim trustee.

13.—(1) An interim trustee shall be appointed by the court from the list maintained by the Accountant in Bankruptcy under section 1(1)(*b*) of this Act on sequestration being awarded or as soon as may be thereafter:

Provided that, where the petition for sequestration is presented by a creditor or a trustee acting under a trust deed, an interim trustee may be so appointed before sequestration is awarded if—

(*a*) the debtor consents, or

(*b*) the Accountant in Bankruptcy, the trustee acting under the trust deed or any creditor shows cause.

(2) The court may, on an application by an interim trustee, authorise the interim trustee to resign office and, if he does so, shall appoint another person from the said list to act in his place; and an interim trustee shall not otherwise resign office.

(3) Where for any reason an interim trustee is not acting or is incapacitated from acting, the court, on the application of the debtor, a creditor or the Accountant in Bankruptcy, shall appoint another interim trustee from the said list to act in his place.

(4) No one shall act as interim trustee in a sequestration if he would be disqualified from acting as permanent trustee in that sequestration by virtue of section 24(2)(*a*) to (*c*) of this Act.

(5) No person appointed as interim trustee under this section shall be entitled to decline to accept his appointment.

(6) An order of the court making an appointment under this section shall be appealable by any interested person only on the ground that the person appointed is disqualified from acting as interim trustee by or under this Act.

(7) An interim trustee, as soon as may be after his appointment, shall notify the debtor and the Accountant in Bankruptcy of the appointment.

Clause 13

Subsection (1)

The role of the interim trustee requires his early appointment In a debtor's petition this will be on the award of sequestration, i.e. forthwith after the presentation of the petition (see clause 12(1)). In a creditor's petition the appointment will also be made at the date of the award, but the award is not made until a date after the debtor has been cited to appear before the court. In the interval, however, an interim trustee may be appointed by the court with the debtor's consent or on cause shown by the Accountant in Bankruptcy, by the trustee under a trust deed or by any creditor (paragraphs 4.12 and 7.18).

Subsection (2)

The apparent strictness of the rule is justified by the fact that the period of office of the interim trustee will be relatively short, seldom exceeding six weeks and frequently less (paragraph 4.14).

Subsection (3)

See paragraph 4.14.

Subsection (4)

The disqualifications referred to in clause 24(2)(*a*) to (*c*) are those relating to a particular sequestration, i.e. that the proposed interim trustee is the debtor or has a family or business relationship with the debtor or holds an interest opposed to the general interests of the creditors. These disqualifications of a permanent trustee are applied because the interim trustee may become permanent trustee by operation of law in certain circumstances (see paragraph 4.11 and clause 24(4) and Schedule 2, paragraph 1(2)).

Subsection (5)

See paragraph 4.12.

Subsection (6)

This subsection is consistent with the principle that the appointment of the interim trustee should be a matter entirely within the discretion of the court (see paragraph 7.18).

Registration of court order.

14.—(1) The clerk of the court shall forthwith after the issuing of a relevant court order send—

(*a*) a certified copy of the order to the keeper of the register of inhibitions and adjudications for recording in that register; and

(*b*) a copy of the order to the Accountant in Bankruptcy.

(2) Recording under subsection (1)(*a*) above shall have the effect as from the date of issue of the relevant court order of an inhibition and of a citation in an adjudication of the debtor's heritable estate at the instance of the creditors who subsequently have claims in the sequestration accepted under section 46 of this Act.

(3) The effect mentioned in subsection (2) above shall expire—

(*a*) on the recording under section 15(5)(*a*) or 17(7)(*a*) of, or section 51(8)(*a*) as applied by paragraph 11 of Schedule 3 to, this Act of a certified copy of an order; or

(*b*) subject to subsection (4) below, if the effect has not expired by virtue of paragraph (*a*) above, at the end of 5 years from the date of issue of the relevant court order.

(4) The permanent trustee, if not discharged, shall before the end of the period of 5 years mentioned in subsection (3)(*b*) above send a memorandum in a form prescribed by act of sederunt to the keeper of the register of inhibitions and adjudications for recording in that register, and such recording shall renew the effect mentioned in subsection (2) above; and thereafter the said effect shall continue to be preserved only if such a memorandum is so recorded before the expiry of every subsequent period of 5 years.

(5) In this section "relevant court order" means, if the petition for sequestration is presented by—

(*a*) the debtor, the order of the court awarding sequestration; or

(*b*) a creditor or the trustee acting under a trust deed, the order of the court granting warrant under section 12(2) of this Act.

Clause 14

Subsections (1) and (2)

Like section 44 of the 1913 Act, the object of these subsections is to render the debtor's heritage litigious (paragraph 22.14(1) and (2)) i.e. the debtor is precluded from dealing voluntarily with his heritable estate in any way which would prejudice his creditors. Claims accepted under clause 46 are claims accepted for the purpose of voting and ranking.

Subsection (3)

The reference to clause 15(5)(*a*) is to deal with the rare case where following upon presentation of a petition for sequestration by a creditor or a trustee under a trust deed, the copy of the first order has been registered in the register of inhibitions and adjudications but the court does not subsequently make an award of sequestration. Here the register should be cleared. Clause 17(7)(*a*) relates to the straightforward case where an award of sequestration has been recalled. Again, the register must be cleared (paragraph 22.14(3)).

Further provisions relating to award of sequestration.

15.—(1) Where sequestration has been awarded by the Court of Session, it shall remit the sequestration to such sheriff as in all the circumstances of the case it considers appropriate.

(2) The Court of Session may at any time after sequestration has been awarded, on application being made to it, transfer the sequestration from the sheriff before whom it is depending or to whom it has been remitted to any other sheriff.

(3) Where the court makes an order refusing to award sequestration, an aggrieved person may appeal against the order within 14 days of its issue.

(4) Without prejudice to any right to bring an action of reduction of an award of sequestration, such an award shall not be subject to review otherwise than by recall under sections 16 and 17 of this Act.

(5) Where a petition for sequestration is presented by a creditor or a trustee acting under a trust deed, the clerk of the court shall send—

(*a*) a certified copy of an order refusing to award sequestration to the keeper of the register of inhibitions and adjudications for recording in that register;

(*b*) a copy of an order awarding or refusing to award sequestration to the Accountant in Bankruptcy.

(6) The interim trustee, as soon as an award of sequestration has been granted, shall publish a notice in the prescribed form in the Edinburgh Gazette and the London Gazette stating that sequestration has been awarded and inviting the submission of claims to him.

(7) Where sequestration has been awarded, the sequestration process shall remain current until the final distribution of the debtor's estate.

(8) Where a debtor whose estate has been sequestrated learns that he may derive benefit from another estate, he shall as soon as possible inform the person who is administering that estate of the sequestration.

(9) If the debtor fails to comply with subsection (8) above, he shall be guilty of an offence.

Clause 15

Subsections (1) and (2)

See paragraph 6.1 and sections 17 and 19 of the 1913 Act.

Subsections (3) and (4)

No appeal is competent against an award of sequestration, although the recall procedure in clauses 16 and 17 will be available (1913 Act, section 30 and paragraphs 7.17 and 8.2 to 8.4). Where the court declines to make an award of sequestration, the petitioner may appeal under subsection (3) (paragraph 7.17).

Subsection (5)

See paragraph 22.14(3). Paragraph (*a*) has already been discussed in connection with the note on clause 14(3)(*a*).

Subsection (6)

See paragraph 22.5.

Subsection (7)

This provision restates in different language the rule in section 42 of the 1913 Act that a process of sequestration is not to "fall asleep".

Subsections (8) and (9)

By virtue of clause 31(5) estate acquired by the debtor between his sequestration and his discharge may vest in the permanent trustee. Subsections (8) and (9) are useful consequentials (see paragraph 11.20).

Petitions for recall of sequestration.

16.—(1) A petition for recall of an award of sequestration may be presented to the Court of Session by—

(*a*) the debtor, any creditor or any other person having an interest (notwithstanding that he was a petitioner, or concurred in the petition, for the sequestration);

(*b*) the interim trustee, the permanent trustee (if appointed), or the Accountant in Bankruptcy.

(2) The petitioner shall serve upon the debtor, any person who was a petitioner, or concurred in the petition, for the sequestration, and the interim trustee or permanent trustee (if appointed), 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 of the service of the notice.

(3) At the same time as service is made under subsection (2) above, the petitioner shall publish a notice in the Edinburgh Gazette stating that a petition has been presented under this section and that any person having an interest may lodge answers to the petition within 14 days of the publication of the notice.

(4) A petition under this section may be presented—

(*a*) within 10 weeks after the date of sequestration; but

(*b*) at any time if the petition is presented on any of the grounds mentioned in paragraphs (*a*) to (*c*) of section 17(1) of this Act.

(5) Notwithstanding that a petition has been presented under this section, the proceedings in the sequestration shall continue as if that petition had not been presented until the recall is granted.

(6) Where—

(*a*) a petitioner under this section; or

(*b*) a person who has lodged answers to the petition,

withdraws or dies, any other person entitled to present or, as the case may be, lodge answers to a petition under this section may be sisted in his place.

Clauses 16 and 17

Introduction

The general principle embodied in these clauses is that, within 10 weeks after the date of the sequestration, the court should have a wide discretion to recall a sequestration wherever it thinks it appropriate, but that after this period it should be entitled (but not bound) to recall the sequestration only in the circumstances specified in clause 17(1)(*a*), (*b*), or (*c*) (see paragraphs 8.8 to 8.12).

Clause 16

The question whether an award should be reviewed by appeal or recall is discussed in paragraphs 8.2 to 8.4.

Subsection (1)

The Court of Session (as in section 30 of the 1913 Act) remains the unique forum for the reasons given in paragraph 8.4. The range of petitioners, however, is widened. (Paragraph 8.5).

Subsections (2) and (3)

See paragraph 8.6.

Subsection (4)

See Introduction to clauses 16 and 17. Where a case falls outwith the provisions of subsection (4) recourse to the *nobile officium* of the Court of Session will still be competent (paragraph 8.14).

Subsection (5)

The subsection follows the existing law in section 32 of the 1913 Act (paragraph 8.15).

Subsection (6)

See paragraph 8.15.

Recall of sequestration.

17.—(1) The Court of Session may recall an award of sequestration if it is satisfied that in all the circumstances of the case (including those arising after the date of the award of sequestration) it is appropriate to do so and, without prejudice to the foregoing generality, may recall the award if it is satisfied that—

(*a*) the debtor has paid his debts in full or has given sufficient security for their payment;

(*b*) a majority in number and 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 country; or

(*c*) one or more other awards of sequestration of the estate or analogous remedies (as defined in section 10(5) of this Act) have been granted.

(2) Where one or more awards of sequestion of the debtor's estate have been granted, the Court may, after such intimation as it considers necessary, recall an award other than the one in respect of which the petition under section 16 of this Act was presented.

(3) On recalling an award of sequestration, the Court—

(*a*) may direct the payment out of the debtor's estate of the outlays and remuneration of the interim trustee and permanent trustee (if appointed) and of the expenses of a creditor who was a petitioner, or concurred in the petition, for sequestration, but may require any person who was a party to the petition for sequestration to pay the whole or any part of the said outlays and remuneration;

(*b*) may make such order in relation to the expenses in the petition for recall as it thinks fit;

(*c*) may make any further order that it considers necessary or reasonable in all the circumstances of the case.

(4) Subject to subsection (5) below, the effect of the recall of an award of sequestration shall be, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position he would have been in if the sequestration had not been awarded.

(5) A recall of an award of sequestration shall not—

(*a*) affect the interruption of prescription or the barring of the effect of any statute of limitations caused by the presentation of the petition for sequestration or the submission of a claim under section 22 or 45 of this Act;

Clause 17

Subsections (1) and (2)

The court is given a complete discretion whether or not to recall an award of sequestration. The words in brackets are included to emphasise this discretion and to differentiate recall procedure from appeal procedure (see paragraph 8.3).

Paragraph (*a*) is intended to prevent abuse of the sequestration process (paragraph 8.9). Paragraph (*b*) widens the present rule in section 43 of the 1913 Act (paragraphs 6.29 to 6.31 and 8.10), and paragraph (*c*) and subsection (2) deal with the problems presented when there is already another award (paragraphs 6.31 and 8.11).

Subsection (3)

This subsection dispenses with restrictions deriving from case law and restores the court to its usual position in relation to expenses (paragraph 8.17).

Subsections (3)(c), (4) and (5)

The aim of these provisions is to restore so far as possible the parties concerned to the *status quo* before the award of sequestration with protection for third parties who have transacted with the trustee in good faith (paragraph 8.16).

(*b*) invalidate any transaction entered into before such recall by the interim trustee or permanent trustee (if appointed) with a person acting in good faith.

(6) Where the Court of Session considers that it is inappropriate to recall or to refuse to recall an award of sequestration forthwith, it may sist the sequestration subject to such conditions as it may think fit.

(7) The clerk of court shall send—

(*a*) a certified copy of an order recalling an award of sequestration to the keeper of the register of inhibitions and adjudications for recording in that register; and

(*b*) a copy of an order recalling or refusing to recall an award of sequestration to—

(i) the Accountant in Bankruptcy; and

(ii) the permanent trustee (if appointed) who shall insert it in the sederunt book.

Period between award of sequestration and statutory meeting of creditors

Interim preservation of estate.

18.—(1) The interim trustee may give general or particular directions to the debtor relating to the management of his estate.

(2) In exercising the functions conferred on him by section 2(1)(*a*) of this Act, an interim trustee may—

(*a*) require the debtor to deliver up to him any money or valuables, or any document relating to his business or financial affairs, belonging to or in the possession of the debtor or under his control;

(*b*) place in safe custody anything mentioned in paragraph (*a*) above;

(*c*) require the debtor to deliver up to him any perishable goods belonging to the debtor or under his control and may arrange for the sale or disposal of such goods;

(*d*) make or cause to be made an inventory or valuation of any property belonging to the debtor;

(*e*) require the debtor to implement any transaction entered into by the debtor.

(3) The court, on the application of the interim trustee, may—

(*a*) give directions to the debtor relating to the management of his estate;

(*b*) on cause shown, grant a warrant authorising the interim trustee to enter the house where the debtor resides or his business premises and to search for and take possession of anything mentioned in paragraphs (*a*) and (*c*) of subsection (2) above, if need be by opening shut and lock-fast places; or

(*c*) make such other order to safeguard the debtor's estate as it thinks appropriate.

(4) The debtor shall be guilty of an offence if—

(*a*) he fails without reasonable excuse to comply with—

(i) a requirement under subsection (2)(*a*), (*c*) or (*e*) above, or

(ii) directions under subsection (3)(*a*) above;

(*b*) he obstructs the interim trustee where the interim trustee is acting in pursuance of subsection (3)(*b*) above.

Clause 18 resumes the narrative of a sequestration process at the point immediately after the interim trustee's appointment under clause 13.

Clause 18

Sections 14 and 15 of the 1913 Act require recourse to the court for authority to take interim measures to preserve the estate. Under clause 18 an interim trustee may intervene by right of his appointment but may apply to the court for assistance where necessary.

Subsection (1)

At this stage the debtor's estate is neither vested in the interim trustee nor necessarily in his possession, and this subsection read along with subsections (2) and (3) enables the interim trustee effectively to secure its preservation.

Subsection (4)

The obstruction of the interim trustee is an offence of strict liability under subsection (4)(*b*). The debtor can plead reasonable excuse only where he is prosecuted for an offence under subsection (4)(*a*).

Debtor's statement of affairs.

19.—(1) The debtor shall deliver to the interim trustee—

(*a*) if the petitioner for sequestration is the debtor, within 7 days of the appointment of the interim trustee;

(*b*) if the petitioner for sequestration is a creditor or a trustee acting under a trust deed, within 7 days of the interim trustee notifying the debtor of his appointment,

a statement of affairs in the prescribed form.

(2) If the debtor.

(*a*) fails without reasonable excuse to deliver a statement of affairs to the interim trustee; or

(*b*) without reasonable excuse fails to disclose any material fact in his statement of affairs or makes a material misstatement in it;

he shall be guilty of an offence.

Clause 19

The bankrupt is required under section 77 of the 1913 Act to make up a "statement of affairs" and deliver it to the clerk at the meeting for the election of the trustee. In practice there are two disadvantages. The statement is rarely available at the meeting and, even if it is available, it is still too late. The introduction of the office of interim trustee makes it possible to require the debtor to deliver to the interim trustee a statement of affairs which the trustee can circulate to creditors before the meeting (paragraph 7.22).

Trustee's duties on receipt of statement of affairs.

20.—(1) On receipt of the debtor's statement of affairs, the interim trustee shall determine whether (having regard to section 48(1) and (4) of this Act) the debtor's assets are unlikely to be sufficient to meet in whole or in part—

(*a*) the preferred debts; or

(*b*) if there are no preferred debts, the ordinary debts.

(2) The interim trustee shall, as soon as possible after receipt of the statement of affairs and in any event not later than 21 days after his appointment, send to the Accountant in Bankruptcy a copy of the statement of affairs along with written comments which—

(*a*) shall indicate what in the opinion of the interim trustee are the causes of the insolvency and to what extent the conduct of the debtor may have contributed to the insolvency; and

(*b*) if he determines that the debtor's assets are unlikely to be sufficient as mentioned in subsection (1) above, shall state that determination.

(3) The written comments made under subsection (2) above shall be absolutely privileged.

(4) If the interim trustee requests—

(*a*) the debtor to appear before him and to give information which the interim trustee considers may assist him to carry out his duties under subsection (1) or (2) above; or

(*b*) the spouse of the debtor or any other person, who the interim trustee believes can give such information, to give that information,

and the debtor, spouse or other person refuses or delays to do so, the interim trustee may apply to the sheriff for a warrant for his private examination before the sheriff.

(5) Subsections (2) to (4) of section 41 and sections 43 and 44 of this Act shall apply, subject to any necessary modifications, in respect of private examination by the interim trustee as they apply in respect of private examination by the permanent trustee.

Clauses 20 to 24 and 29(1) and (2)

These clauses contain the principal provisions relating to the first or statutory meeting of creditors (see paragraphs 7.28 (general), 9.7 to 9.14 (ordinary procedure), and 9.15 (appeals)). The main business of the meeting is to elect the permanent trustee and the commissioners, except where there is a small assets case (see paragraphs 7.30 and 7.33). In that event, the interim trustee becomes permanent trustee by operation of law—see section 23(4) and Schedule 2, paragraph 1. Matters relating to the conduct of the meeting are governed by Schedule 5, Part II.

Clause 20

Subsection (1)

Under subsection (1) the interim trustee, on receipt of the statement of affairs, is required to determine whether, in the light of the information available to him, the small assets procedure (laid down in Schedule 2) should be adopted (see paragraphs 7.29 to 7.36). The terms "preferred debts" and "ordinary debts" are defined in clause 48(1)(*e*) and (*f*) and (2). The time-limits in this subsection are designed to permit the interim trustee to examine the statement of affairs and obtain further information from the debtor, if necessary by examination before the sheriff (paragraph 7.24).

Subsection (2)

On the basis of the statement of affairs and his interview, if any, with the debtor, the interim trustee would send comments on this statement to the Accountant in Bankruptcy (paragraphs 4.8 and 7.26).

Subsection (3)

See paragraph 7.27.

Subsection (4)

See paragraph 7.25.

Subsection (5)

Clause 41 deals with the procedure of private examination and related matters, clause 43 with ancillary matters such as compelling the attendance of the debtor for examination, and clause 44 with the conduct of the examination (paragraph 7.25).

Statutory meeting of creditors and confirmation of permanent trustee

Calling of meeting.

21.—(1) The interim trustee shall call a meeting of creditors (in this Act referred to as "the statutory meeting") to be held within 28 days, or such longer period as the sheriff on cause shown may allow, after the date of the award of sequestration.

(2) Not less than 7 days before the date fixed for the statutory meeting, the interim trustee shall—

(*a*) take reasonable steps to notify the creditors; and

(*b*) notify the Accountant in Bankruptcy,

of the date, time and place of the meeting.

(3) Not less than 4 days before the date fixed for the statutory meeting, the interim trustee shall send to every creditor known to him and to the Accountant in Bankruptcy, a summary of the debtor's statement of affairs along with any observations which the interim trustee may have on that statement; and, where the interim trustee determines that the debtor's assets are unlikely to be sufficient as mentioned in section 20(1) of this Act, the observations shall include an observation to that effect.

(4) The creditors may continue the statutory meeting to a date not later than the end of the period—

(*a*) of 28 days mentioned in subsection (1) above, or (as the case may be),

(*b*) allowed by the sheriff under that subsection.

Clause 21

Subsection (1)

The introduction of a system of interim trustees diminishes the need for the short time-limits contained in section 63 of the 1913 Act. The longer period allowed should enable the interim trustee to carry out the duties imposed under clause 20 (paragraphs 7.38 and 9.7).

Subsection (2)

Under section 63 of the 1913 Act the deliverance awarding sequestration specifies the time and place of the first meeting of creditors. The system proposed is designed to be more flexible. The procedure in subsection (2) is the same as that laid down in Schedule 5, paragraph 4, for the calling of meetings by the permanent trustee (paragraph 9.8).

Subsection (3)

The comments made under clause 20(2) are not sent to creditors (paragraph 9.8).

Submission of claims for voting purposes at statutory meeting.

22.—(1) For the purposes of voting at the statutory meeting, a creditor shall submit a claim in accordance with this section to the interim trustee at or before the meeting.

(2) A creditor shall submit a claim under this section by producing to the interim trustee—

(*a*) a statement of claim in the prescribed form; and

(*b*) vouchers or other evidence sufficient to constitute *prima facie* evidence of the debt according to its nature:

Provided that the interim trustee may dispense with any requirement under this subsection in respect of any debt or any class of debt.

(3) Where a creditor neither resides nor has a place of business in the United Kingdom, the interim trustee—

(*a*) shall, if he knows where he resides or where he has a place of business, write to him informing him that he may submit a claim under this section;

(*b*) may allow the creditor to submit an informal claim in writing.

(4) A creditor may at any time before the statutory meeting produce another statement of claim under this section specifying a different amount for his claim.

(5) If a creditor produces under this section a statement of claim, voucher or other evidence which is false—

(*a*) the creditor shall be guilty of an offence unless he shows that he neither knew nor had reason to believe that the statement of claim, voucher or other evidence was false;

(*b*) the debtor shall be guilty of an offence if he—

(i) knew or became aware that the statement of claim, voucher or other evidence was false, and

(ii) failed within one month of acquiring such knowledge to report it to the interim trustee or permanent trustee.

(6) A creditor may state the amount of his claim in foreign currency.

(7) The interim trustee shall, on production of any document to him under this section, initial it and keep a record of it stating the date when the document was produced to him, and, if requested by the sender, shall return the document (other than a statement of claim) to him.

(8) The submission of a claim under this section shall bar the effect of any statute of limitations in the United Kingdom.

(9) Schedule 1 to this Act shall have effect for determining the amount in respect of which a creditor shall be entitled to claim.

Clause 22

Subsection (1)

A claim submitted under subsection (1) is deemed by clause 45(2) to have been resubmitted for voting and ranking purposes (paragraph 9.10).

Subsection (2)

For a suggested form of statement of claim see Appendix 3 to the Report (paragraph 17.7).

Subsection (2)(*b*) reflects the construction given by the court to the provisions of section 45(1) of the 1913 Act (paragraphs 7.11 and 17.10).

The proviso to subsection (2) extends the dispensing power in section 118(3) of the 1913 Act (see paragraph 17.8).

Subsection (3)

This provision is in accordance with Article 31 of the draft E.E.C. Bankruptcy Convention (see paragraph 17.9).

Subsection (6)

Clause 23 (1)(*a*) directs how such a claim is to be converted into sterling.

Proceedings at meeting before election of permanent trustee.

23.—(1) At the commencement of the statutory meeting, the chairman shall be the interim trustee who as chairman shall—

(*a*) for the purposes of subsection (2) below, accept or reject in whole or in part the claim of each creditor, and, if the amount of a claim is stated in foreign currency, he shall convert that amount into sterling at the rate of exchange prevailing at the opening of business on the date of sequestration;

(*b*) invite the creditors thereupon to elect one of their number as chairman in his place and shall preside over the election:

Provided that if a chairman is not elected in pursuance of this paragraph, the interim trustee shall remain the chairman throughout the meeting; and

(*c*) arrange for a record to be made of the proceedings at the meeting.

(2) The acceptance of a claim in whole or in part under subsection (1) above shall, subject to sections 24(3) and 29(1) of this Act, determine in respect of the statutory meeting the entitlement to vote of a creditor and shall be the basis for calculating the value of such a vote under section 47(2) of this Act.

(3) On the conclusion of the proceedings under subsection (1) above, the interim trustee—

(*a*) shall make the debtor's statement of affairs along with any observations made under section 21(3) of this Act available for inspection; and

(*b*) shall answer to the best of his ability any questions, and shall consider any representations, put to him by the creditors relating to the debtor's assets or his business or financial affairs or his conduct in relation thereto.

(4) Where the interim trustee has determined that the debtor's assets are unlikely to be sufficient as mentioned in section 20(1) of this Act and, after considering any representations under subsection (3)(*b*) above, is satisfied that his determination is correct, the provisions of Schedule 2 to this Act shall have effect.

Clause 23

Subsection (1)

The introduction of the office of interim trustee permits him to discharge the functions, at present undertaken by the sheriff and the sheriff clerk under section 64 of the 1913 Act, at the first or, as we now call it, the statutory meeting of creditors (paragraph 9.9). The interim trustee will take the chair for the purposes set out in paragraphs (*a*) and (*b*) and will continue to chair the meeting if no creditor is elected to that office (paragraphs 9.10 and 11).

Subsection (2)

Clause 24(3) excludes a person who purchases a debt after the opening of the sequestration from voting in the election of the permanent trustee. The holder of a postponed debt is also excluded. (*Cf.* 1913 Act, section 60).

Subsection (3)

The introduction of the office of interim trustee is designed to allow both the preparation by the debtor of a comprehensive statement of affairs and the provision by the interim trustee of observations on the statement. Accordingly, the creditors may have fuller information than under existing law. This is of some importance (see paragraph 7.22), since the debtor's public examination will no longer be mandatory (paragraph 14.21 and clause 42).

Subsection (4)

Where the interim trustee has already determined under clause 20(1) that the case is a small assets case and, after hearing the representations of the creditors under subsection (3)(*b*), remains of that opinion, the business of the meeting ends without an election. In a small assets case the interim trustee becomes the permanent trustee by operation of law. (Schedule 2 paragraph 1(2)) (paragraph 9.12).

Election of permanent trustee.

24.—(1) Where subsection (4) of section 23 of this Act is not applicable, the creditors shall, at the conclusion of the proceedings under subsection (3) of that section, proceed at the statutory meeting to the election of a permanent trustee.

(2) None of the following persons shall be eligible for election as permanent trustee—

(*a*) the debtor;

(*b*) a person who has a family or business relationship with the debtor;

(*c*) a person who holds an interest opposed to the general interests of the creditors;

(*d*) a person who resides outwith the jurisdiction of the Court of Session;

(*e*) a person who does not possess such professional or other qualifications or fulfil such conditions as may be prescribed.

(3) The following persons shall not be entitled to vote in the election of the permanent trustee—

(*a*) anyone acquiring a debt due by the debtor, otherwise than by succession, after the date of sequestration;

(*b*) any creditor to the extent that his debt is a postponed debt.

(4) If no creditor entitled to vote in the election of the permanent trustee attends the statutory meeting or if no permanent trustee is elected, the interim trustee shall be deemed to be elected as permanent trustee.

(5) The creditors shall at the statutory meeting fix a sum which the permanent trustee shall find as caution for the performance of his duties under this Act:
Provided that, if the creditors fail to fix such a sum, the Accountant in Bankruptcy shall do so.

Clause 24

Subsections (1), (3) and (4)

See paragraph 9.12.

Subsection (2)

Paragraphs (*a*) to (*d*) reflect the disqualifications imposed by section 64 of the 1913 Act, but the words "a person who has a family or business relationship with the debtor" replace the expression "any person conjunct or confident with the bankrupt" (paragraphs 4.20 and 9.12). The expression "a person who has a family or business relationship" with another person is defined in clause 68. For paragraph (*e*) see paragraph 4.21.

Subsection (3)

Paragraph (*a*) reflects a principle embodied in section 60 of the 1913 Act, (para 9.12), though the obsolete reference to acquisitions by marriage has been omitted. Paragraph (*b*) embodies a new principle. It disqualifies not the wife of a bankrupt but any creditor whose debt is postponed (clause 48(3)) and, therefore, indirectly, creditors who are closely associated with the bankrupt (see paragraph 16.8).

Subsection (5)

The principle embodied in section 69 of the 1913 Act that the finding of caution is a pre-requisite of the confirmation in office of the trustee is retained. In the event of failure by the creditors to fix the amount of the caution, this will be done by the Accountant in Bankruptcy. (Paragraphs 4.23 and 9.13).

Confirmation of permanent trustee.

25.—(1) On the election of a permanent trustee—

(*a*) the interim trustee shall forthwith make a report of the proceedings of the statutory meeting to the sheriff and, if the creditors have failed to fix a sum under section 24(5) of this Act, to the Accountant in Bankruptcy; and

(*b*) any interested person may object to any matter connected with the election by notice sent to the sheriff within 4 days after the statutory meeting.

(2) If there is no timeous objection under subsection (1)(*b*) above, the sheriff shall forthwith declare the elected person to be the permanent trustee; and, as soon as that person has lodged a bond of caution under subsection (6) below, the sheriff shall confirm his election and the sheriff clerk shall issue to him an act and warrant in a form prescribed by act of sederunt and send a copy of it to the Accountant in Bankruptcy.

(3) If there is a timeous objection under subsection (1)(*b*) above, the sheriff shall forthwith hear parties thereon and give his decision.

(4) If in his decision under subsection (3) above the sheriff—

(*a*) rejects the objection, subsection (2) above shall apply as if there had been no timeous objection;

(*b*) sustains the objection, he shall order the interim trustee to arrange a new meeting for the election of a permanent trustee; and sections 23 and 24 of this Act and this section shall apply in relation to such a meeting.

(5) Any declaration, confirmation or decision of the sheriff under this section shall be final, and no expense in objecting under this section shall fall on the debtor's estate.

(6) The permanent trustee shall, within 7 days or such longer period as the sheriff may on cause shown allow, after the declaration by the sheriff under subsection (2) or (4)(*a*) above, lodge with the sheriff clerk a bond of caution for the sum fixed under section 24(5) of this Act.

Clause 25

As proposed in clause 23 the sheriff will no longer take the chair at the statutory meeting of creditors. The procedure, therefore, after the election of the trustee is modelled on the procedure applicable under section 66 of the 1913 Act where the sheriff is not present (see paragraphs 9.14 to 9.17).

Subsection (6)

The reference in this subsection to the "longer period" caters for possible delays in the execution of the bond of caution (see paragraph 9.16).

(7) The bond of caution mentioned in subsection (6) above shall be the bond of a body whose acceptance is authorised by the Court of Session under section 27 of the Judicial Factors (Scotland) Act 1849; and the premium of the bond shall form part of the expenses of the permanent trustee.

1849 c..51.

(8) The permanent trustee shall—

(*a*) insert the said act and warrant in the sederunt book; and

(*b*) where he is not the same person as the interim trustee, publish a notice in the Edinburgh Gazette in the prescribed form stating that he has been confirmed in office as permanent trustee.

(9) In this section, except in subsection (4)(*b*), any reference to election or to the elected person shall include a reference to deemed election or to the person deemed to be elected under section 24(4) of this Act.

Subsection (7)

The bodies approved under section 27 of the Judicial Factors (Scotland) Act 1849 are at present the British Guarantee Association or other public company incorporated by Act of Parliament or Royal Charter, carrying on guarantee business within Scotland.

Provisions relating to termination of interim trustee's functions.

26.—(1) Where the interim trustee does not himself become the permanent trustee, he shall, on confirmation of the permanent trustee in office, hand over to him everything in his possession which relates to the sequestration (including a copy of the debtor's statement of affairs, and written comments and observations made under sections 20 and 21(3) of this Act respectively) and shall thereupon cease to act in the sequestration.

(2) On confirmation of the permanent trustee in office, whether he has been elected or he is deemed to have been elected under section 24(4) of this Act, the interim trustee shall submit to the Accountant in Bankruptcy—

(*a*) his accounts of his intromissions (if any) with the debtor's estate; and

(*b*) a claim for the outlays reasonably incurred by him and for his remuneration.

(3) On a submission being made to him under subsection (2) above, the Accountant in Bankruptcy shall—

(*a*) audit the accounts; and

(*b*) issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee; and sub-paragraph (2) of paragraph 5 of Schedule 2 to this Act shall apply for the purposes of this paragraph as it applies for the purposes of sub-paragraph (1)(*b*) of that paragraph.

(4) The interim trustee, the debtor or any creditor may appeal to the sheriff against a determination under subsection (3)(*b*) above within 14 days of its issue.

(5) The permanent trustee, on being confirmed in office, shall make such insertions in the sederunt book as are appropriate to provide a record of the sequestration process before his confirmation, but he shall make no insertion therein relating to the written comments made by the interim trustee under section 20 of this Act.

Clause 26

Subsection (2)

During the period when the interim trustee is acting as such, there are no commissioners and the scrutiny of his accounts and the fixing of his remuneration must therefore be a matter for the Accountant in Bankruptcy (paragraph 4.16).

Subsection (3)

Paragraph 5(2) of Schedule 2 provides that, where the funds of the estate are insufficient to meet the outlays and remuneration of the interim trustee, the insufficiency will be met out of public funds (paragraphs 4.15 and 7.34 to 7.36).

Subsection (5)

The interim trustee is not required to keep a sederunt book in view of his short period of office. Since the function of the sederunt book is to provide a record of the sequestration process (clause 3(1)(*c*)), the permanent trustee is obliged to make appropriate insertions in it for the interim trustee's period in office. The privileged written comments by the interim trustee under clause 20 are not inserted because the sederunt book is to be patent to all interested persons (clause 60(1)), and nothing should inhibit frank comment by the interim trustee. See also clause 60(3).

Replacement of permanent trustee

Resignation and death of permanent trustee.

27.—(1) The permanent trustee may resign office if—

(*a*) the creditors, at a meeting called for the purpose, accept his resignation and thereupon elect a new permanent trustee; or

(*b*) on an application by the permanent trustee, the sheriff is satisfied that he should be permitted to resign; but the sheriff may make the granting of an application under this paragraph subject to the election of a new permanent trustee and to such conditions as he thinks appropriate in all the circumstances of the case.

(2) If the permanent trustee—

(*a*) has resigned office under subsection (1)(*b*) above; or

(*b*) has died,

the commissioners or, if there are no commissioners, the Accountant in Bankruptcy shall call a meeting of creditors for the election by them of a new permanent trustee.

(3) The foregoing provisions of this Act relating to the election and confirmation in office of the permanent trustee shall, subject to any necessary modifications, apply in relation to the election and confirmation in office of a new permanent trustee in pursuance of subsection (2) above.

Clauses 27 and 28

The narrative sequence is here interrupted to deal with the resignation, death or removal of the permanent trustee.

Clause 27

This clause makes provision for resignation of office by a permanent trustee. Continuity of administration is ensured by the requirement that a trustee who has been permitted to resign be immediately replaced. (Paragraph 9.23). Provision is also made for the case of death.

Subsection (3)

See paragraph 9.29.

(4) Where no new permanent trustee is elected in pursuance of subsection (2) above, a person appointed by the Accountant in Bankruptcy from the list maintained by him under section 1(1)(*b*) of this Act, not being a person ineligible for election as permanent trustee under section 24(2)(*a*) to (*c*) of this Act, shall, after lodging a bond of caution with the sheriff clerk for a sum fixed by the Accountant in Bankruptcy and on confirmation by the sheriff of the appointment, succeed to the office of permanent trustee.

(5) The new permanent trustee may require—

(*a*) delivery to him of all documents relating to the sequestration in the possession of the former trustee or his representatives, except the former trustee's accounts of which he shall be entitled to delivery of only a certified copy;

(*b*) the former trustee or his representatives to submit the trustee's accounts for audit to the commissioners or, if—

(i) there are no commissioners, or

(ii) the former trustee was a person who was deemed to be elected under section 24(4) of this Act and there appear to the new permanent trustee to be insufficient funds in the debtor's estate to meet the amount of the outlays and remuneration of the former trustee,

to the Accountant in Bankruptcy, and the commissioners or the Accountant in Bankruptcy shall issue a determination fixing the amount of the outlays and remuneration payable to the trustee or representatives in accordance with section 50 of this Act.

(6) The former trustee or his representatives, the debtor or any creditor may appeal against a determination issued under subsection (5)(*b*) above within 14 days after it is issued—

(*a*) where it is a determination of the commissioners, to the Accountant in Bankruptcy; and

(*b*) where it is a determination of the Accountant in Bankruptcy, to the sheriff;

and the determination of the Accountant in Bankruptcy under paragraph (*a*) above shall be appealable to the sheriff.

(7) The new permanent trustee shall pay to the former trustee or his representatives the amount fixed in the determination under subsection (5)(*b*) above or on appeal under subsection (6) above.

Subsection (4)

This is a new provision catering for cases where the creditors fail to elect a new trustee (see paragraph 9.28). The same provision applies where the creditors fail to elect a new trustee after the removal from office of a trustee under clause 28.

Removal of permanent trustee and trustee not acting.

28.—(1) The permanent trustee may be removed from office by—

(*a*) the creditors (other than any such person as is mentioned in section 24(3) of this Act) at a meeting called for the purpose if they also elect forthwith a new permanent trustee; or

(*b*) order of the sheriff, on the application of the Accountant in Bankruptcy or of a person representing not less than one quarter in value of the creditors, if the sheriff is satisfied that cause has been shown.

(2) The sheriff shall order any application under subsection (1)(*b*) above to be served on the permanent trustee and intimated in the Edinburgh Gazette, and before disposing of the application shall give the permanent trustee an opportunity of being heard.

(3) On an application under subsection (1)(*b*) above, the sheriff may, in ordering the removal of the permanent trustee from office, make such further order as he thinks fit or may, instead of removing the permanent trustee from office, make such other order as he thinks fit.

(4) The permanent trustee, the Accountant in Bankruptcy or any creditor may appeal against the decision of the sheriff on an application under subsection (1)(*b*) above within 14 days after the date of that decision.

(5) If the permanent trustee has been removed from office under subsection (1)(*b*) above or following an appeal under subsection (4) above, the commissioners or, if there are no commissioners, the Accountant in Bankruptcy shall call a meeting of creditors for the election by them of a new permanent trustee.

Clause 28

Subsections (1) to (5)

These subsections re-enact the provision in section 71 of the 1913 Act that, where the trustee has become unacceptable to a majority in number and value of the creditors, they may remove him from office without showing any reason for doing so (paragraph 9.24). The sheriff may remove a trustee on cause shown but, to minimise the risk of unjustified applications, may do so only at the instance of the Accountant in Bankruptcy or of a person representing not less than one-quarter in value of the creditors.

Subsection (5)

The calling of the meeting of the creditors to elect a new trustee is no longer a matter for the court but for the commissioners, or if there are no commissioners, for the Accountant in Bankruptcy (see paragraph 9.28).

(6) If for any reason the permanent trustee is not acting or is incapacitated from acting or a person is not confirmed in office as permanent trustee through failure to lodge a bond of caution with the sheriff clerk, the sheriff, on the application of a commissioner, the debtor, a creditor or the Accountant in Bankruptcy, after such intimation as the sheriff considers necessary, may—

(*a*) declare the office of permanent trustee to have become or to be vacant; and

(*b*) make any necessary order to enable the sequestration to proceed or to safeguard the estate pending the election of a new permanent trustee;

and thereafter the commissioners or, if there are no commissioners, the Accountant in Bankruptcy shall call a meeting of creditors for the election by them of a new permanent trustee.

(7) The foregoing provisions of this Act relating to the election and confirmation in office of the permanent trustee shall, subject to any necessary modifications, apply in relation to the election and confirmation in office of a new permanent trustee in pursuance of subsection (5) or (6) above.

(8) Subsections (4) to (7) of section 27 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

Subsection (6)

Where the trustee is not acting or is incapacitated from acting, provision is made not for his removal but for the court declaring that the office is vacant. This explains why a wider range of persons may here apply than under subsection (1).

Election, resignation and removal of commissioners.

Election, resignation and removal of commissioners

29.—(1) Except where section 23(4) of this Act is applicable, at the statutory meeting or any subsequent meeting of creditors, the creditors (other than any such person as is mentioned in section 24(3) of this Act) may elect commissioners or new or additional commissioners.

(2) None of the following persons shall be elected as a commissioner—

(*a*) any person mentioned in paragraphs (*a*) to (*c*) of section 24(2) of this Act;

(*b*) a person who has a family or business relationship with the permanent trustee.

(3) A commissioner may resign office at any time.

(4) Without prejudice to section 1(3) of this Act, a commissioner may be removed from office—

(*a*) if he is a mandatory of a creditor, by the creditor recalling the mandate and intimating in writing its recall to the permanent trustee;

(*b*) by the creditors (other than any such person as is mentioned in section 24(3) of this Act) at a meeting called for the purpose.

Clause 29

Introduction

Clause 29 deals with election of commissioners. In terms of clause 4(1), they are to be either creditors or mandatories of creditors and may be one or more, but not exceeding 5, in number. No commissioners may be appointed in a small assets case. For the general role of commissioners see clauses 4(2) and 38(1) and paragraphs 4.26 to 4.37.

Subsection (1)

The reference to clause 24(3) disqualifies a creditor who is not entitled to participate in the election of the permanent trustee also from participating in the election of commissioners. For the "statutory" meeting, see clause 21.

Subsection (2)

This provides that the debtor, persons who have a family or business relationship with the debtor or with the permanent trustee, and persons holding an interest opposed to the general interests of creditors, may not be appointed as commissioners.

Subsections (3) and (4)

Under section 72 of the 1913 Act the trustee is obliged to convene a meeting of creditors for the purpose of electing a new commissioner when a commissioner has declined to act, died, resigned or become incapacitated. The matter is now left to the discretion of the trustee. Under subsection (1) a new commissioner may now be elected at any meeting and not merely at one convened for that purpose, but he may be removed from office only at a meeting called for that purpose or, if a mandatory of a creditor, on the recall of his mandate. A commissioner may also be removed in terms of clause 1(3) on the application of the Accountant in Bankruptcy.

Vesting of estate in permanent trustee

Vesting of estate at date of sequestration

30.—(1) Subject to section 32 of this Act, the whole estate of the debtor, wherever situated, shall vest as at the date of sequestration in the permanent trustee for the benefit of the creditors; and the estate shall so vest by virtue of the act and warrant issued on confirmation of the permanent trustee's appointment.

(2) The exercise by the permanent trustee of any power conferred on him by this Act in respect of any heritable estate in Scotland vested in him by virtue of the act and warrant shall not be challengeable on the ground of any prior inhibition.

(3) Where the debtor has an uncompleted title to any heritable estate in Scotland, the permanent trustee may complete title thereto either in his own name or in the name of the debtor, but completion of title in the name of the debtor shall not validate by accretion any unperfected right in favour of any person other than the permanent trustee.

(4) Any real estate in the United Kingdom outwith Scotland shall so vest to the same extent as it would have done if the debtor had been adjudged bankrupt in that part of the United Kingdom in which the estate is situated:

Provided that where the laws of that part make provision for the registration or other publication of—

(*a*) adjudications of bankruptcy; or

(*b*) conveyances or assignments,

the act and warrant may be so registered or otherwise published to the same effect.

(5) Any moveable property, in respect of which but for this subsection—

(*a*) delivery or possession; or

(*b*) intimation of its assignation;

would be required in order to complete title to it, shall vest in the permanent trustee by virtue of the act and warrant as if at the date of sequestration the permanent trustee had taken delivery or possession of the property or had intimated its assignation to him, as the case may be.

Clause 30

Subsection (1)

Clause 32 is concerned with limitations on vesting. Subsection (1) follows the scheme of section 97 of the 1913 Act whereby the act and warrant transfers to and vests in the trustee the debtor's whole property subject to the defined exceptions. (Paragraph 11.1). To remove any past doubt (see paragraph 11.10) about the effect of the act and warrant under section 97 in relation to the vesting of any immoveable estate situated outwith the jurisdiction of Parliament the words "wherever situated" are inserted in the subsection.

Subsection (2)

See paragraph 11.7.

Subsection (3)

Subsection (3) allows the trustee to complete title to the estate in his own name where that would be desirable or if appropriate in the name of the bankrupt. Much of the complexity of sections 97(2) and 100 of the 1913 Act has been omitted as unnecessary in view of changes in the law (paragraphs 11.7 and 11.8).

Subsection (4)

This provision is intended to import the law of the *situs* in relation to immoveable property in England, Wales or Northern Ireland both as to the extent of the vesting and as to the procedural steps required to make the trustee's right effective (paragraph 11.10).

Subsection (5)

This provision makes it clear that delivery or (as the case may be) intimation is not required to complete the trustee's title to corporeal moveables or those incorporeal moveables which are transferred by assignation. (See paragraph 11.6).

(6) Any non-vested contingent interest which the debtor has shall vest in the permanent trustee as if an assignation of that interest had been executed by the debtor and intimation thereof made at the date of sequestration.

(7) Any money entrusted to the debtor by the debtor's spouse which at the date of sequestration is inmixed with the debtor's funds shall vest in the permanent trustee by virtue of the act and warrant:

Provided that such money shall not vest in the permanent trustee if it can be shown by a contract in writing signed by both spouses that the money was so lent or entrusted.

(8) Any person claiming a right to any estate claimed by the permanent trustee may apply to the court for the estate to be excluded from such vesting, a copy of the application being served on the permanent trustee; and the court shall grant the application if it is satisfied that the estate should not be so vested.

(9) 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 court may, on the application of the permanent trustee, order the successor to convey such estate to him.

Subsection (6)

A non-vested contingent interest would not otherwise be regarded as part of the debtor's estate (*cf.* section 97(4)). The provision may be useful where any such interest vests (by purification of the contingency) *after* the date of the debtor's discharge.

Subsection (7)

The principle embodied in section 1(4) of the Married Women's Property (Scotland) Act 1881 is modified and extended to both spouses. The subsection applies only where money is inmixed with the debtor's funds. Such money is regarded as a postponed debt on the debtor's estate (clause 48(1)(*h*) and (3)). (See paragraphs 11.14 to 11.16).

Subsection (8)

The corresponding provision in the 1913 Act is section 99.

Subsection (9)

See paragraph 11.9.

Vesting of estate, and dealings of debtor, after sequestration.

31.—(1) Subject to subsection (2) below, 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 permanent trustee, shall vest in the debtor.

(2) The sheriff, on the application of the permanent trustee, may determine having regard to the debtor's circumstances that his income is in excess of what is required for a suitable aliment for the debtor and his family; and, if the sheriff so determines, he shall fix the amount of the excess and order it to be paid to the permanent trustee.

(3) In the event of any change in the debtor's circumstances, the sheriff, on the application of the permanent trustee, the debtor or any other interested person, may vary or recall any order under subsection (2) above.

(4) Any income vesting in the debtor, other than any excess ordered by the sheriff to be paid to the permanent trustee, shall be an alimentary provision.

(5) Without prejudice to subsection (1) above, any estate, wherever situated, which—

(*a*) is acquired by the debtor on a relevant date; and

(*b*) would have vested in the permanent trustee if it had been part of the debtor's estate on the date of sequestration;

shall vest in the permanent trustee for the benefit of the creditors as at the date of acquisition; and any person who holds any such estate shall, on production to him of the act and warrant confirming the permanent trustee's appointment, convey or deliver the estate to the permanent trustee:

Provided that—

(i) if such a person has in good faith and without knowledge of the sequestration conveyed the estate to the debtor or to anyone on the instructions of the debtor, he shall incur no liability to the permanent trustee except to account for any proceeds of the conveyance which are in his hands; and

(ii) this subsection shall be without prejudice to any right or interest acquired in the estate in good faith and for value.

Clause 31

Introduction

Although under section 98 of the 1913 Act assets (including income) acquired by the debtor after the date of the sequestration *ipso jure* fall under the sequestration, a petition to the court is necessary to perfect the trustee's right. Under the procedure now proposed, assets (other than income) acquired by the debtor immediately vest in the trustee. The debtor's income will not vest in the trustee; but the latter is given the right to apply to the court to order the payment to him of any income in excess of that which is required for a suitable aliment for the debtor and his family (see paragraphs 11.3, 11.33 and 11.34).

Subsection (4)

This subsection is designed to protect the debtor's future income from the diligence of creditors other than alimentary creditors (see paragraphs 13.21 and 16.40).

Subsection (5)

This subsection is designed to ensure that the permanent trustee, without applying to the court, may obtain possession of or title to property acquired by the bankrupt after the date of the sequestration.

(6) The debtor shall immediately notify the permanent trustee of any assets acquired by him on a relevant date or of any other substantial change in his financial circumstances; and, if the debtor fails to comply with this subsection, he shall be guilty of an offence.

(7) Subject to subsection (8) below, any dealing of or with the debtor relating to his estate vested in the permanent trustee under section 30 of this Act shall be of no effect in a question with the permanent trustee.

(8) Subsection (7) above shall not apply where the person seeking to uphold the dealing establishes—

(*a*) that the permanent trustee—

(i) has abandoned to the debtor the property to which the dealing relates;

(ii) has expressly or impliedly authorised the dealing; or

(iii) is otherwise personally barred from challenging the dealing; or

(*b*) that the dealing occurred between the date of sequestration and the date of publication of the award of sequestration in the Edinburgh Gazette and 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 permanent trustee; or

(iii) a banking transaction in the ordinary course of business between the banker and the debtor;

and that the person dealing with the debtor was at the time when the dealing occurred unaware of the sequestration.

(9) In this section "a relevant date" means a date after the date of sequestration and before the date on which the debtor's discharge becomes effective.

Subsection (7)

See paragraphs 11.38 and 11.39.

Limitations on vesting.

32.—(1) The following property of the debtor shall not vest in the permanent trustee—

(*a*) property exempted from poinding for the purpose of protecting the debtor and his family;

(*b*) property held on trust by the debtor for any other person.

(*c*) money entrusted to the debtor by the debtor's spouse which at the date of sequestration is not inmixed with the debtor's funds.

(2) The vesting of a debtor's estate in a permanent trustee shall not affect the right of hypothec of a landlord.

(3) Where—

(*a*) the debtor has before the date of sequestration granted a disposition or other deed alienating any property to a person who has acquired it in good faith and for value but that person has not completed title to it at that date; and

(*b*) the property is of a type to which the permanent trustee does not obtain a completed title by virtue of his act and warrant alone,

the property shall not vest in the permanent trustee.

(4) Sections 30 and 31 of this Act are without prejudice to the right of any secured creditor which is preferable to the rights of the permanent trustee.

Clause 32

Subsection (1)

Subsection (1) is self-explanatory. The present exemptions from poinding are the necessary clothing of the debtor and his family, necessary household furniture and plenishings and the debtor's tools of trade (paragraph 11.3).

Paragraph (*b*) has hitherto rested on case law in Scotland but is a matter of express provision under English law—see 1914 Act, section 38(1) (paragraph 11.25).

Subsection (2)

See paragraph 11.24.

Subsection (3)

The subsection gives protection against the bankruptcy of the seller to an onerous acquirer of property, where some act of registration is necessary to complete his title.

Safeguarding of interests of creditors of insolvent persons

Gratuitous alienations.

33.—(1) Subsection (3) below applies where—

(*a*) by the alienation of a debtor, whether before or after the commencement of this Act, a significant part of his property has been transferrred or any claim or right of the debtor has been discharged or renounced; and

(*b*) any of the following has occurred—

(i) his estate has been sequestrated; or

(ii) he has granted a trust deed which has become a protected trust deed; or

(iii) within 7 months after his death, his estate has been sequestrated, or a judicial factor has been appointed under section 163 of the Bankruptcy (Scotland) Act 1913 to administer his estate and the estate was absolutely insolvent at the date of death; and

(*c*) the alienation took place on a relevant day.

(2) For the purposes of paragraph (*c*) of subsection (1) above, the day on which an alienation took place shall be the day on which the alienation became completely effectual; and in that paragraph "relevant day" means, if the alienation has the effect of favouring—

(*a*) a person who has a family or business relationship with the debtor, a day not earlier than 5 years before the date of sequestration, the granting of the trust deed or the debtor's death, as the case may be; or

(*b*) any other person, a day not earlier than 2 years before the said date.

(3) Where this subsection applies, the alienation shall be challengeable by—

(*a*) any creditor who is a creditor by virtue of a debt incurred on or before the date of sequestration, the granting of the trust deed or the debtor's death, as the case may be; or

(*b*) the permanent trustee in the sequestration, the trustee acting under the trust deed or the judicial factor, as the case may be.

Clause 33

Introduction

This clause assumes the retention of the common law right to challenge gratuitous alienations. This right is extended to the trustee under a protected trust deed and to a judicial factor appointed under section 163 of the 1913 Act upon the insolvent estate of a deceased debtor. In addition the clause creates a new statutory power of challenge. The 1621 Act is repealed in Schedule 7 and clause 33 replaces it. The principal change is that a creditor's right of challenge is related not to the insolvency in an absolute sense of the debtor at the time of the challenge but to the fact that his estate has been sequestrated, or that he has granted a trust deed which has become a protected trust deed, or that a judicial factor has been appointed on his insolvent estate. A similar right of challenge is conceded to the liquidator of a registered company by Schedule 6, paragraph 4 (see paragraph 12.29). Another important change is that the period during which gratuitous alienations are exposed to challenge is limited to five years in the case of persons having a family or business relationship with the debtor and two years in other cases (paragraphs 12.19 to 12.21). This scheme is intended to be general in its application and the special provision for donations between spouses contained in the proviso to section 5 of the Married Woman's Property (Scotland) Act 1920 is repealed in Schedule 7.

Subsection (1)(a) and (b)

Paragraph (*a*) is intended to include cash payments (paragraph 12.23) but to exclude conventional gifts of the usual kind (paragraph 12.25).

For paragraph (*b*) see introduction to this note and paragraph 12.19.

Subsection (2)

See introduction. Subsection (2)(*a*) substitutes for the term "conjunct or confident person" in the 1621 Act a reference to "a person who has a family or business relationship with the debtor" (paragraph 12.20). This expression is defined in clause 68. For paragraph (*b*) see paragraph 12.20.

Subsection (3)

See introduction and paragraphs 12.6, 12.19 and 12.21.

(4) On a challenge being brought under subsection (3) above, the court shall grant decree of reduction or for such restoration of property to the debtor's estate or other redress as may be appropriate, unless the person seeking to uphold the alienation establishes—

(*a*) that the debtor or deceased debtor was solvent immediately after the alienation or became solvent at any time thereafter; or

(*b*) that the alienation was made for adequate consideration:

Provided that this subsection shall be without prejudice to any right or interest acquired in the estate in good faith and for value from or through the transferee in the alienation.

(5) For the purposes of the foregoing provisions of this section, an alienation in implementation of a prior obligation shall be 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.

(6) This section is without prejudice to the operation of section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 (policy of assurance may be effected in trust for spouse, future spouse and children).

(7) A permanent trustee, the trustee acting under a protected trust deed and a judicial factor appointed under section 163 of the Bankruptcy (Scotland) Act 1913 shall have 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.

(8) The permanent trustee shall insert in the sederunt book any decree under this section affecting the sequestrated estate.

Subsections (4) and (5)

Subsection (4) ensures that the court may adapt its remedy to the circumstances of the case (paragraph 12.19).

Subsection (7)

See introduction and paragraph 12.16.

Recalling of orders for payment of capital sum on divorce.

34.—(1) This section applies where—

(*a*) the Court of Session has made an order, whether before or after the commencement of this Act, under section 5 of the Divorce (Scotland) Act 1976 for the payment by a debtor of a capital sum;

(*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, the debtor's estate has been sequestrated, he has granted a trust deed which has become a protected trust deed, or he has died and, within 7 months after his death, his estate has been sequestrated or a judicial factor has been appointed under section 163 of the Bankruptcy (Scotland) Act 1913 to administer his estate.

(2) Where this section applies, the Court of Session, on an application brought by the permanent trustee, the trustee acting under the trust deed or the judicial factor, may, after having regard to all the circumstances of the case, make an order for recall of the order made under the said section 5 and for the repayment to the applicant of any sum already paid under that order.

(3) Where an application is brought under this section in a case where the debtor's estate has been sequestrated, the permanent trustee shall insert a decree of recall in the sederunt book.

Clause 34

This provision is designed to facilitate the challenge of orders for payment on divorce where the order is made at a time when the paying spouse was in fact insolvent. See paragraphs 12.30 to 12.32.

Unfair preferences.

35.—(1) Subject to subsection (2) below, subsection (4) below applies to a transaction entered into by a debtor, whether before or after the commencement of this Act, which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of his creditors, being a preference created not earlier than 6 months immediately before—

(*a*) the date of sequestration of that person's estate;

(*b*) the granting by him of a trust deed which has become a protected trust deed;

(*c*) his death where, within 7 months after his death, his estate has been sequestrated, or a judicial factor has been appointed under section 163 of the Bankruptcy (Scotland) Act 1913 to administer his estate and his estate was absolutely insolvent at the date of death.

(2) Subsection (4) below shall not apply to any of the following transactions—

(*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 unless the transaction was collusive with the purpose of prejudicing the general body of creditors;

(*c*) a transaction whereby the parties thereto undertake reciprocal obligations (whether the performance by the parties of their respective obligations occurs at the same time or at different times) unless the transaction was collusive as aforesaid;

(*d*) the granting of a mandate by a debtor authorising an arrestee to pay over the arrested funds or part thereof to the arrester where—

(i) there has been a decree for payment, and

(ii) the decree has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution,

unless the granting of the mandate was collusive as aforesaid.

(3) For the purposes of subsection (1) above, the day on which a preference was created shall be the day on which the preference became completely effectual.

Clause 35

Introduction

This clause assumes the subsistence of the common law challenge of unfair preferences to creditors. This, indeed, is extended to other persons by subsection (6) below and Schedule 6, paragraph 3. The 1696 Act, repealed by Schedule 7, is restated in modern terms in this section. The principal change is that the statutory challenge is related not to the debtor's notour bankruptcy (or apparent insolvency) but simply to the fact of his sequestration, his granting a trust deed for creditors which becomes a protected trust deed or in the case of a deceased debtor, sequestration or the appointment of a judicial factor under section 163 of the 1913 Act on his insolvent estate. Unfair preferences during the six months preceding sequestration, the granting of the trust deed or (as the case may be) death are open to challenge though, in the case of a deceased debtor, only where his estate was sequestrated or a judicial factor appointed during the seven months following his death. Other changes are noted below (see paragraphs 12.44 to 12.51).

Subsections (1) and (2)

Paragraphs (*a*) to (*c*) of subsection (2) reflect the judicial construction of the 1696 Act (paragraph 12.46). Paragraph (*d*) creates a new category of protected transactions. Where a debtor, after the arrestment of property belonging to him, grants a mandate for the transfer of the arrested property to the arrester to avoid the expenses of further diligence, the cases have given rise to doubt as to the challengeability or otherwise of the mandate as an unfair preference. Subsection (2)(*d*) states that such a mandate is exempt from challenge unless shown to be collusive (paragraph 12.46).

(4) A transaction to which this subsection applies shall be challengeable by—

(*a*) any creditor who is a creditor by virtue of a debt incurred on or before the date of sequestration, the granting of the protected trust deed or the debtor's death, as the case may be; or

(*b*) the permanent trustee in the sequestration, the trustee acting under the protected trust deed, or the judicial factor, as the case may be.

(5) On a challenge being brought under subsection (4) above, the court, if satisfied that the transaction challenged is a transaction to which this section applies, shall grant decree of reduction or for such restoration of property to the debtor's estate or other redress as may be appropriate:

Provided that this subsection shall be without prejudice to any right or interest acquired in the estate in good faith and for value from or through the creditor in whose favour the preference was created.

(6) A permanent trustee, the trustee acting under a protected trust deed and a judicial factor appointed under section 163 of the Bankruptcy (Scotland) Act 1913 shall have the same right as a creditor has under any rule of law to challenge a preference created by a debtor.

(7) The permanent trustee shall insert in the sederunt book any decree under this section affecting the sequestrated estate.

Subsection (4)

Subsection (4) expands the existing range of challengers and the basis on which challenge can be mounted. Under the 1696 Act a title to challenge is restricted to creditors whose debts are subsisting at the date when the preference is granted. Under section 9 of the 1913 Act and section 320 of the 1948 Act the trustee in a sequestration and the liquidator of a registered company have a title to challenge whether representing prior creditors or not. Under the present law the trustee under a trust deed for creditors has a title only if the trust deed and creditors having a title to challenge confer a power of challenge (paragraph 12.47). A statutory right of challenge is now extended to a trustee in a trust deed which has become a protected trust deed, and to a judicial factor under section 163 of the 1913 Act.

Subsection (5)

Although the 1696 Act provides that unfair preferences shall be "voyd and null", these are in judicial practice treated as being voidable only (see paragraph 12.37). The present provision clarifies the effect of a challenge.

Subsection (6)

See introduction.

Effect of sequestration on diligence

Effect of sequestration on diligence.

36.—(1) The order of the court awarding sequestration shall have the effect in relation to the debtor's estate as from the date of sequestration of—

(*a*) a decree of adjudication (subject to no legal reversion) duly recorded in the register of inhibitions and adjudications on that date; and

(*b*) an arrestment in execution and decree of furthcoming, an arrestment in execution and warrant of sale, and a completed poinding,

in favour of the creditors according to their respective entitlements.

(2) Any estate of the debtor which is the subject of an effectual adjudication dated within a year and a day before the date of sequestration shall be managed and realised by the permanent trustee.

(3) No arrestment or poinding of the estate of the debtor (including any estate vesting in the permanent trustee under section 31(5) of this Act) executed within the period of 60 days before the date of sequestration or after that date, and no inhibition taking effect within that period, shall be effectual to create a preference for the arrester, poinder or inhibitor; and the benefit of any such arrestment or poinding executed within that period or after that date, or inhibition taking effect within that period, shall vest in the permanent trustee.

Clause 36

The present Bill treats the vesting of the bankrupt's estate (see clauses 31 and 32) separately from the effect of an award of sequestration on diligence. Since section 10 of the 1913 Act remains, the provisions of clause 36 must be read along with that section as amended. The main amendment to section 10 is the substitution of the debtor's "apparent insolvency" for his notour bankruptcy. Since the debtor's apparent insolvency, like his notour bankruptcy, is constituted by sequestration of his estate (clause 7(1)) the general effect is to preserve the present law as regards the inter-relationship of sequestration and equalisation of diligence. As under present law, arrestments and poindings executed within a short period before sequestration are ineffectual to create a preference for the arrester or poinder. The effect of sequestration upon diligence where the sequestration follows within seven months of the date of death of a deceased debtor is clarified, and the position of a judicial factor appointed within the same period upon the insolvent estate of a deceased person is assimilated to that of a permanent trustee. Under section 327 of the 1948 Act a liquidator is placed in a position similar to that of a trustee in a sequestration in a question with creditors who have executed diligence. This principle is maintained by the provision in Schedule 6, paragraph 6. A person who grants a trust deed for creditors will be apparently insolvent under clause 7(1)(*c*)(i), unless he establishes that, at the time the trust deed was granted, he was able and willing to pay his debts. The Bill ensures by clause 58 and Schedule 4, paragraph 6(*a*) that a creditor who has not acceded to a trust deed which becomes a protected trust deed may not prosecute the recovery of his debt by diligence where the trust deed does not permit acceding creditors to do so.

Subsections (1)(a) and (2)

The present law places a trustee in sequestration on an equal footing with creditors who have adjudged within the year preceding the date of sequestration (1913 Act, section 103). These subsections reproduce the present law.

Subsections (1)(b) and (3)

The effect of these subsections is to retain the present law as regards the equalisation of the sequestration with arrestments and poindings under section 10 of the 1913 Act, and as regards the reduction of any preference acquired by an arrestment or poinding executed within 60 days before the sequestration (*cf.* 1913 Act, section 104).

Subsection (3)

Subsection (3) also makes new law by treating inhibitions in the same way as arrestments and poindings where they take effect within 60 days before the date of sequestration, that is, they are rendered ineffectual to create any preference for the inhibitors.

(4) An arrester or poinder whose arrestment or poinding is executed within the said period of 60 days shall be entitled to payment, out of the arrested or poinded estate or out of the proceeds of the sale thereof, of the expenses incurred in obtaining the extract of the decree or other document on which the arrestment or poinding proceeded and in executing the arrestment or poinding.

(5) No poinding of the ground in respect of the estate of the debtor (including any estate vesting in the permanent trustee under section 31(5) of this Act) executed within the period of 60 days before the date of sequestration or after that date shall be effectual in a question with the permanent 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 one year immediately before the commencement of that term.

(6) The foregoing provisions of this section shall apply to the estate of a deceased debtor which—

(*a*) has been sequestrated; or

(*b*) was absolutely insolvent at the date of death and in respect of which a judicial factor has been appointed under section 163 of the Bankruptcy (Scotland) Act 1913;

within 7 months after his death, but as if for any reference to the date of sequestration and the debtor there were substituted respectively a reference to the date of the deceased's death and to the deceased debtor.

(7) It shall be incompetent after the issuing of a relevant court order as defined in section 14(5) of this Act for any creditor to raise or insist in an adjudication against the estate of the debtor (including any estate vesting in the permanent trustee under section 31(5) of this Act) or to be confirmed as executor-creditor on the estate.

(8) Where—

(*a*) a deceased debtor's estate is sequestrated; or

(*b*) a judicial factor is appointed under section 163 of the Bankruptcy (Scotland) Act 1913 to administer his estate (in a case where the estate is absolutely insolvent),

within 7 months after the debtor's death, no confirmation as executor-creditor on that estate at any time after the debtor's death shall be effectual in a question with the permanent trustee or the judicial factor, but the executor-creditor shall be entitled out of that estate, or out of the proceeds of sale thereof, to the expenses incurred by him in obtaining the confirmation.

Subsection (5)

See paragraphs 13.17 to 13.19. The law remains as under section 114 of the 1913 Act.

Subsection (6)

For an explanation of the proposed effect on diligence where sequestration of a deceased debtor's estate or the appointment of a judicial factor on an insolvent estate follows within 7 months of death, see paragraph 13.11.

Subsections (7) *and* (8)

These subsections deal with the effect of sequestration of a deceased debtor's estate or the appointment of a judicial factor on an insolvent estate in relation to confirmation of a creditor as executor-creditor (see 1913 Act, sections 29 and 106). It is also made incompetent to pursue an adjudication after sequestration proceedings have commenced, whether the estate is that of a living or deceased debtor (*cf.* 1913 Act, section 29).

Administration of estate by permanent trustee

Taking possession of estate by permanent trustee.

37.—(1) The permanent trustee shall—

(*a*) as soon as may be after his confirmation in office, for the purpose of recovering the debtor's estate under section 3(1)(*a*) of this Act, take possession of the debtor's whole estate and effects so far as vesting in the permanent trustee under sections 30 and 31 of this Act and any document in his possession or under his control relating to his assets or his business or financial affairs;

(*b*) make up and maintain an inventory and valuation of the estate and effects which he shall record in the sederunt book; and

(*c*) forthwith thereafter send a copy of any such inventory and valuation to the Accountant in Bankruptcy.

(2) The permanent trustee shall be entitled to have access to all documents relating to the assets or the business or financial affairs of the debtor sent by or on behalf of the debtor to a third party and in that third party's hands and to make copies of any such documents.

(3) If any person obstructs the permanent trustee when exercising, or attempting to exercise, the power conferred on him by subsection (2) above, the sheriff, on the application of the permanent trustee, may order that person to allow the permanent trustee to have access to the said documents and to make copies of them.

(4) The permanent trustee may require delivery to him of any title deed or other document of the debtor, notwithstanding that a right of lien is claimed over the title deed or document; but this subsection is without prejudice to any preference of the holder of the lien.

Clause 37

Clause 37 gives powers to the permanent trustee to enable him to fulfil his duty under clause 3(1)(*a*) to recover and manage the debtor's estate.

Subsection (1)

Paragraphs (*a*), (*b*) and (*c*) of subsection (1) reflect section 76 of the 1913 Act except for the requirement to show the annual value of the estate. The references to the debtor's estate are to both his estate at the date of sequestration (clause 30) and estate acquired after that date (clause 31) (see paragraph 10.3).

Subsections (2) and (3)

There is no provision corresponding to these two subsections in the 1913 Act. These subsections are complemented by clause 62 (see paragraphs 10.5 and 10.6).

Subsection (4)

Subsection (4) does not materially alter the present law (see paragraph 10.4).

Management and realisation of estate.

38.—(1) As soon as may be after his confirmation in office, the permanent trustee shall consult with the commissioners or, if there are no commissioners, with the Accountant in Bankruptcy concerning the exercise of his functions under section 3(1)(*a*) of this Act; and, subject to subsections (6) and (7) below, the permanent trustee shall comply with any general or specific directions given to him by the commissioners or the Accountant in Bankruptcy, as the case may be, as to the exercise by him of such functions.

(2) The permanent trustee may, with the consent of the commissioners (if any), do any of the following things if he considers that its doing would be beneficial for the administration of the estate—

(*a*) carry on 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*) exercise such powers in relation to any property as might have been exercised by the debtor for his own benefit.

(3) Any sale of the debtor's estate by the permanent trustee may be by either public sale or private bargain.

(4) The following rules shall 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—

(*a*) the permanent trustee may sell that part only with the concurrence of every such creditor unless he obtains a sufficiently high price to discharge every such security;

(*b*) subject to paragraph (*c*) below, the following acts shall be precluded—

(i) the taking of steps by a creditor to enforce his security over that part after the permanent trustee has intimated to the creditor that he intends to sell it;

(ii) the commencement by the permanent trustee of the procedure for the sale of that part after a creditor has intimated to the permanent trustee that he intends to commence the procedure for its sale;

(*c*) where the permanent trustee or a creditor has given intimation under paragraph (*b*) above, but has unduly delayed in proceeding with the sale, then, if authorised by the court—

(i) any creditor to whom intimation has been given under paragraph (*b*)(i) above may enforce his security or, as the case may be,

(ii) the permanent trustee may sell that part.

Clause 38

Subsection (1)

Clause 3(1) requires the permanent trustee, in performing his statutory duties, to have regard to the advice given to him by the commissioners, if there are any. The present clause requires the permanent trustee to comply with the directions of the commissioners if there are any, and where there are no commissioners, with directions of the Accountant in Bankruptcy. It requires the permanent trustee to comply with their directions as to the recovery, management and realisation of the estate (see paragraphs 4.30 and 10.9).

Subsection (2)

In the cases here specified the permanent trustee may act only with the consent of the commissioners (if any). Where there are no commissioners, the permanent trustee may act without any consent, although he must comply with any directions, general or specific, given to him by the Accountant in Bankruptcy under subsection (1).

Subsection (3)

No distinction is made here between heritable estate and moveable estate, and any part of the estate may be sold either by public sale or private bargain (see paragraphs 10.10 and 10.16).

Subsection (4)

See paragraph 10.8.

(5) The function of the permanent trustee under section 3(1)(*a*) of this Act to realise the debtor's estate shall include the function of selling, with or without recourse against the estate, debts owing to the estate.

(6) The permanent trustee may sell any perishable goods without complying with any directions given to him under subsection (1) above if the permanent trustee considers that compliance with the directions would adversely affect the sale.

(7) Where the debtor's estate includes the copyright in any work or any interest in such copyright, and the debtor is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the permanent trustee—

(*a*) may sell or authorise the sale of any copies of the work, or perform or authorise the performance of the work, only on terms of paying to the author such royalties or share of the profits as would have been payable by the debtor;

(*b*) unless he has the consent of the author or the sheriff, may assign the right, transfer the interest or grant any interest in the right by licence, only on terms which will secure to the author royalties or a share of the profits at a rate not less than that which the debtor was liable to pay.

(8) The validity of the title of any purchaser shall not be challengeable on the ground that there has been a failure to comply with a requirement of this section.

(9) It shall be incompetent for the permanent trustee or any person who has a family or business relationship with him, or any commissioner, to purchase any of the debtor's estate in pursuance of this section.

Subsection (5)

See paragraph 10.12. The corresponding provision in the 1913 Act is section 133. A purchaser without recourse against the estate may well ask for a higher discount than a purchaser with recourse against the estate.

Subsection (6)

See paragraph 10.10. A similar power is conferred on the interim trustee by virtue of clause 18(2)(*c*).

Subsection (7)

See paragraph 10.10. The subsection reflects section 102 of the 1913 Act.

Subsection (8)

See paragraph 10.20.

Subsection (9)

Section 116 of the 1913 Act states the same principle in different terms. The phrase "any person who has a family or business relationship" is defined in clause 68.

Contractual powers of permanent trustee.

39.—(1) Subject to subsections (2) and (3) below and to any directions given to him by the commissioners (if any), the permanent trustee may adopt any contract entered into by the debtor before the date of sequestration where he considers that its adoption would be beneficial to the administration of the debtor's estate, except where the adoption is precluded by the express or implied terms of the contract, or may refuse to adopt any such contract.

(2) The permanent trustee shall, within 28 days from the receipt by him of a request in writing from any party to a contract entered into by the debtor or within such longer period of that receipt as the court on application by the permanent trustee may allow, adopt or refuse to adopt the contract.

(3) If the permanent trustee does not reply in writing to the request under subsection (2) above within the said period of 28 days or longer period, as the case may be, he shall be deemed to have refused to adopt the contract.

(4) The permanent trustee may, subject to any directions given to him by the commissioners (if any), enter into any contract where he considers that this would be beneficial for the administration of the debtor's estate.

Clause 39

Subsection (1)

The subsection makes no change in the law relating to the trustee's contractual powers, except that the trustee's power to adopt is subject to any directions of the commissioners alone and not to those of the commissioners or creditors (paragraph 10.23).

Subsections (2) and (3)

The purpose of subsections (2) and (3) is to enable a party to a contract with the debtor to compel the trustee to decide whether to adopt the contract. (See section 54(4) of 1914 Act and paragraph 10.26).

Money received by permanent trustee.

40.—(1) Subject to subsection (2) below, all money received by the permanent trustee in the exercise of his functions shall be deposited by him in the name of the debtor's estate in an appropriate bank or institution.

(2) The permanent trustee may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed.

Clause 40

Subsections (1) and (2)

The provision is based on section 78 of the 1913 Act but the penalty provided by section 79 is omitted as unnecessary. See paragraphs 10.27 and 10.28.

Private examination

41.—(1) If the permanent trustee requests—

(*a*) the debtor to appear before him and to give information relating to his assets, his dealings with them or his conduct in relation to his business or financial affairs; or

(*b*) the spouse of the debtor or any other person who the permanent trustee believes can give such information (in this Act such spouse or other person being referred to as a "relevant person"), to give that information,

and the debtor or relevant person refuses or delays to do so, the permanent trustee may apply to the sheriff for a warrant for his private examination before the sheriff.

(2) On an application to him under subsection (1) above the sheriff—

(*a*) shall, subject to section 43(2) of this Act, issue a warrant requiring the debtor; or

(*b*) may issue a warrant requiring a relevant person,

to attend for private examination before him on a date (being not earlier than 8 days nor later than 16 days after the date of the warrant) and at a time specified in the warrant.

(3) A person who fails without reasonable excuse to comply with a warrant issued under subsection (2) above shall be guilty of an offence.

(4) Where the debtor is an entity mentioned in section 6(1) of this Act, the references in this section and in sections 42 to 44 of this Act to the debtor shall be construed, unless the context otherwise requires, as references to a person representing the entity.

Clause 41

Introduction

The permanent trustee may be unable to secure the co-operation of the debtor or some person with knowledge of the debtor's business or financial affairs in obtaining information that he requires for the discharge of his duties. This clause empowers the trustee to apply for the private examination before the sheriff of the debtor or any such person. The provision is new, and may be useful where the trustee wishes to examine some person but would prefer to avoid the more formal, detailed and expensive procedure of a public examination (which would no longer be mandatory under our new scheme but a matter within the discretion of the trustee and the creditors). The interim trustee would be conceded a similar power to apply for the private examination of the debtor and other persons (see clause 20(4) and (5)) although it is less likely that the interim trustee would have occasion to invoke the power. See paragraphs 7.23 to 7.25.

Subsection (1)

The permanent trustee must request the debtor or other person to furnish him with the desired information before he applies for private examination.

Subsection (2)

The sheriff must grant an application for the private examination of the debtor but has discretion to grant or refuse an application for the examination of any other person. This is consistent with the scheme for the public examination of the bankrupt (see clause 42(2) and (4)).

Subsection (4)

The debtor may not be a natural person. In that event a person representing the debtor-body may be examined as to its business dealings.

Public examination.

42.—(1) The permanent trustee—

(*a*) may; or

(*b*) if requested to do so by the Accountant in Bankruptcy or the commissioners (if any) or one quarter in number and value of the creditors, shall,

at any time not later than 8 weeks before the end of the first accounting period apply to the sheriff for a warrant for the public examination of the debtor relating to his assets, his dealings with them or his conduct in relation to his business or financial affairs.

(2) Subject to section 43(2) of this Act, the sheriff on an application under subsection (1) above shall issue a warrant requiring the debtor to attend for examination before him in open court on a date (being not earlier than 8 days nor later than 16 days after the date of the warrant) and at a time specified in the warrant.

(3) On the sheriff issuing a warrant under subsection (2) above, the permanent trustee shall—

(*a*) publish in the Edinburgh Gazette a notice in such form and containing such particulars as may be prescribed; and

(*b*) send a copy of the said notice to every creditor who has submitted a claim under section 45 of this Act or who is named in the debtor's statement of affairs and inform him that he may participate in the examination.

(4) The sheriff, on the application of the permanent trustee, may issue a warrant requiring a relevant person to attend for examination before him in open court at the public examination of the debtor; and any warrant shall be served on a relevant person not less than 7 days before the date fixed for the public examination.

(5) A person who fails without reasonable excuse to comply with a warrant issued under subsection (2) or (4) above shall be guilty of an offence.

Clauses 42 to 44

Introduction

These clauses deal with the public examination of the debtor and other persons. The essential difference between the scheme of the present law (see 1913 Act, sections 83 to 91) and the scheme of the clauses is that the public examination will cease to be required in every sequestration. Instead, the decision whether or not there should be an examination will rest with the trustee, the creditors and the Accountant in Bankruptcy. See paragraphs 14.16 to 14.22 for a detailed discussion of the new scheme.

Clause 42

Subsection (1)

The trustee may apply for the public examination of the debtor, and the decision whether or not to do so will usually rest with him. But he must apply for the public examination if so requested under subsection (1)(*b*). The subsection allows the trustee and others a period of about three months to assess the need or otherwise for a public examination. See paragraphs 14.21, 14.22 and 14.26.

Subsection (2)

Although the public examination is no longer required in every sequestration, it is still considered to be an integral part of the sequestration process. Accordingly, where application is made to the sheriff for the examination, he must grant warrant (except in a case where it appears that the examination should be taken on commission) for the attendance of the debtor for examination in the sheriff court. The examination must be held in open court before the sheriff.

Subsection (3)

See paragraph 14.27.

Subsection (4)

The trustee may wish to obtain information from some person other than the debtor—a "relevant person" as defined in clause 41(1)(*b*). He is therefore empowered to apply for the examination of any such person. But the sheriff has in this case a discretion whether to grant the application. This accords with the present law—see 1913 Act, section 86.

Subsection (5)

The offence created by the subsection may be committed by the debtor or by a relevant person.

Provisions ancillary to ss. 41 and 42.

43.—(1) If the debtor or relevant person is residing—

(*a*) in Scotland, the sheriff may, on the application of the permanent trustee, grant a warrant which may be executed by a messenger-at-arms or sheriff officer anywhere in Scotland; or

(*b*) in any other part of the United Kingdom, the Court of Session or the sheriff may, on the application of the permanent trustee, request any court having jurisdiction where the debtor or the relevant person, as the case may be, resides to take appropriate steps, which shall be enforceable by that court,

to apprehend the debtor or relevant person and have him taken to the place of the examination.

(2) If the debtor or a relevant person is for any good reason prevented from attending for examination, the sheriff may grant a commission to take his examination.

(3) The sheriff or the commissioner to whom a commission has been granted under subsection (2) above may at any time adjourn the examination to such a day as the sheriff or commissioner may fix.

(4) The sheriff or the commissioner may order the debtor, or a relevant person who has been required to attend for examination, to produce for inspection any document in his custody or control relating to the debtor's assets, his dealings with them or his conduct in relation to his business or financial affairs, and to deliver the document or a copy thereof to the permanent trustee for further examination by him.

(5) In this section "examination" means private examination or public examination.

Clause 43

Subsection (1)

The subsection makes provision for the apprehension in any necessary case of the debtor or a relevant person so that he may be brought to the place of examination. For the difference between this and the present law (1913 Act, sections 84 to 86) see paragraphs 14.37 and 14.38.

Subsection (2)

See paragraph 14.39.

Subsection (3)

This is broadly the same as present law—see 1913 Act, section 84.

Subsection (4)

The provision is similar to that in section 87 of the 1913 Act.

Subsection (5)

The provisions of clause 43 (and of clause 44) apply also to a private examination of the debtor or any relevant person.

Conduct of examination.

44.—(1) The examination, whether before the sheriff or a commissioner, shall be taken on oath.

(2) At the examination—

(*a*) the permanent trustee and, in the case of public examination, any creditor may question the debtor or a relevant person; and

(*b*) the debtor may question a relevant person,

as to any matter relating to the debtor's assets, his dealings with them or his conduct in relation to his business or financial affairs.

(3) The debtor or a relevant person shall be required to answer any question relating to the debtor's assets, his dealings with them or his conduct in relation to his business or financial affairs and shall not be excused from answering any such question on the ground that the answer may incriminate or tend to incriminate him or on the ground of confidentiality:

Provided that—

(*a*) a statement made by the debtor or a relevant person in answer to such a question shall not be admissible in evidence in any subsequent criminal proceedings against the person making the statement, except where the proceedings are in respect of a charge of perjury relating to the statement;

(*b*) any person subject to examination shall not be required to disclose any matter which is privileged between himself and any other person, not being a person called for examination.

(4) Without prejudice to proviso (*b*) to subsection (2) above, the debtor, or a relevant person, who—

(*a*) at the examination refuses to be sworn;

(*b*) at the examination refuses to answer, or without reasonable excuse fails to answer fully or truthfully or without prevarication, any question as to any such matter as is mentioned in subsection (2) above; or

(*c*) refuses to produce any document in his custody or control when required to do so by the sheriff or commissioner,

shall be guilty of an offence.

(5) Rule 65 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (recording of evidence) shall apply in relation to the recording of evidence at the examination before the sheriff or the commissioner.

Clause 44

Subsection (1)

This subsection provides that an examination (that is, a private or a public examination) shall be taken on oath. Accordingly, if the debtor or a relevant person gives an untruthful answer to any question, he can be prosecuted for perjury.

Subsection (2)

See paragraph 14.36.

Subsection (3)

The law has always recognised that the interests of the creditors and the public at large in the discovery of the debtor's estate and the manner in which he has dealt with it are paramount. The scheme of the subsection is therefore to require the debtor or a relevant person to answer any question within the scope of the examination, subject to one exception and a safeguard where the answer is self-incriminating. The issues are fully discussed in paragraphs 14.6 to 14.8 and 14.32 to 14.35.

Subsection (4)

See 1913 Act, section 89.

(6) The debtor's deposition at the examination shall be subscribed by himself and by the sheriff (or, as the case may be, the commissioner).

(7) The permanent trustee shall insert a copy of the record of the examination in the sederunt book and send a copy of the record to the Accountant in Bankruptcy.

(8) A relevant person shall be entitled to fees or allowances in respect of his attendance at the examination as if he were a witness in an ordinary civil cause in the sheriff court:

Provided that, if the sheriff thinks that it is appropriate in all the circumstances, he may dissallow or restrict the entitlement to such fees or allowances.

(9) In this section "examination" means private examination or public examination.

Subsection (6)

See paragraph 14.28.

Submission and adjudication of claims

Submission of claims to permanent trustee.

45.—(1) Subject to subsection (2) below and subsections (8) and (9) of section 49 of this Act, a creditor in order to obtain an adjudication as to his 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,

shall submit a claim in accordance with this section to the permanent trustee respectively—

(i) at or before the meeting; or

(ii) not later than 8 weeks before the end of the accounting period.

(2) A claim submitted by a creditor—

(*a*) under section 22 of this Act and accepted in whole or in part by the interim trustee for the purpose of voting at the statutory meeting; or

(*b*) under this section and accepted in whole or in part by the permanent trustee for the purpose of voting at a meeting or of drawing a dividend in respect of any accounting period,

shall be deemed to have been re-submitted for the purpose of obtaining an adjudication as to his 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, any subsequent accounting period.

(3) Subsections (2) and (3) of section 22 of this Act shall apply for the purposes of this section but as if in the proviso to subsection (2) for the words "interim trustee" there were substituted the words "permanent trustee with the consent of the commissioners, if any," and for any other reference to the interim trustee there were substituted a reference to the permanent trustee.

(4) A creditor may at any time produce another statement of claim under this section specifying a different amount for his claim:

Provided that a secured creditor shall not be entitled to produce another statement of claim specifying a different value for the security at any time after the permanent trustee requires the creditor to discharge, or convey or assign, the security under paragraph 5(2) of Schedule 1 to this Act.

Clause 45

Subsection (1)

A creditor is not entitled to vote at a meeting of creditors until he has lodged a claim with the permanent trustee or (while he is in office) with the interim trustee and the claim has been accepted. Where a claim is submitted only for the purpose of drawing a dividend, it suffices if the claim is submitted not later than eight weeks before the end of the accounting period in respect of which the dividend is to be paid. See paragraph 17.15.

Subsection (2)

This subsection makes clear that a creditor's claim after its submission and acceptance is available for voting at every meeting and for both the first dividend to which it gives an entitlement and any subsequent dividend. There is a small doubt about the exact effect of the present law (see paragraph 17.12).

Subsection (3)

This subsection imports by reference provisions relating to the form of the claim (which is to be prescribed) and the procedure to be followed where a creditor does not reside within the United Kingdom. See paragraphs 17.7 to 17.10 for the recommendations in this respect.

Subsection (4)

A trustee may elect to "take over" a security at the creditor's valuation at any time after the expiry of 12 weeks from the date of sequestration (see paragraphs 16.20 and 16.22 of Report and paragraph 5 of Schedule 1 to draft Bill).

(5) The permanent trustee, for the purpose of satisfying himself as to the validity or amount of a claim submitted by a creditor under this section, may require—

(*a*) the creditor to produce further evidence; or

(*b*) any other person who he believes can produce relevant evidence, to produce such evidence,

and, if the creditor or other person refuses or delays to do so, the permanent trustee may apply to the sheriff for his private examination before the sheriff.

(6) Sections 41(2) and (3) and 44(1) of this Act shall apply, subject to any necessary modifications, to the examination of the creditor or other person as they apply to the examination of a relevant person; and references in this subsection and subsection (5) above to a creditor in a case where the creditor is an entity mentioned in section 6(1) of this Act shall be construed, unless the context otherwise requires, as references to a person representing the entity.

(7) Subsections (5) to (9) of section 22 of this Act shall apply for the purposes of this section but as if—

(*a*) in subsection (5) the words "interim trustee or" were omitted;

(*b*) in subsection (7) for the words "interim" and "keep a record of it" there were substituted respectively the words "permanent" and "make an insertion relating thereto in the sederunt book".

Subsections (5) *and* (6)

See paragraph 17.17. *Cf.* 1913 Act, section 123.

Subsection (7)

This subsection imports by reference earlier provisions making it an offence to submit a false claim, and dealing with matters such as the statement of the amount of a claim in foreign currency, the effect of submission of a claim on prescription and limitation and the rules for determining the amount of a claim.

Adjudication of claims.

46.—(1) At the commencement of every meeting of creditors other than the statutory meeting, the permanent trustee shall, for the purposes of section 47 of this Act so far as it relates to voting, accept or reject the claim of each creditor.

(2) Where funds are available for payment of a dividend out of the debtor's estate in respect of an accounting period, the permanent trustee for the purpose of determining who is entitled to a dividend shall, not later than 4 weeks before the end of the period, accept or reject every claim submitted to him.

(3) If the amount of a claim is stated in foreign currency, the permanent trustee in adjudicating on the claim under subsection (1) or (2) above shall convert the amount into sterling at the rate of exchange prevailing at the opening of business on the date of sequestration.

(4) Where the permanent trustee rejects a claim, he shall forthwith notify the creditor giving reasons for the rejection.

(5) Where the permanent trustee accepts or rejects a claim, he shall forthwith record in the sederunt book his decision on the claim specifying—

(*a*) the amount of the claim accepted by him,

(*b*) the category of debt, and the value of any security, as decided by him, and

(*c*) if he is rejecting the claim, his reasons therefor.

(6) The debtor or any creditor dissatisfied with the acceptance or rejection of any claim may appeal therefrom to the sheriff—

(*a*) if the acceptance or rejection is under subsection (1) above, within 2 weeks of that acceptance or rejection;

(*b*) if the acceptance or rejection is under subsection (2) above, not later than 2 weeks before the end of the accounting period;

and the permanent trustee shall record the sheriff's decision in the sederunt book.

(7) Any reference in this section to the acceptance or rejection of a claim shall be construed as a reference to the acceptance or rejection of the claim in whole or in part.

Clause 46

Subsection (1)

A creditor cannot vote at a meeting until he has submitted a claim which has been accepted. The test for acceptance is whether the claim and supporting vouchers constitute *prima facie* evidence of a debt (see clause 22(2)). Further enquiry as to whether the debt actually subsists would be impracticable at this stage.

Subsection (2)

Acceptance of a claim for voting purposes is not conclusive of the question whether it is to be accepted for payment of a dividend. Where a dividend is to be paid in respect of any accounting period the permanent trustee must review all the claims which have been timeously submitted (*i.e.* not later than eight weeks before the end of the period) and accept or reject each claim. He can if necessary require further evidence to be submitted to him under clause 45(5). See paragraphs 17.15 and 18.20.

Subsection (4)

A creditor will not be notified where his claim is *accepted*. See paragraph 17.18.

Subsection (6)

Any creditor (as well as the debtor) may appeal against the acceptance or rejection of *any* claim, *i.e.* not necessarily the creditor's own claim. See paragraph 17.19.

Entitlement to vote and draw dividend

Entitlement to vote and draw dividend.

47.—(1) A creditor who has had his current claim accepted in whole or in part by the permanent trustee or on appeal under section 46(6) of this Act (an "accepted claim") shall be entitled—

(*a*) subject to sections 28(1)(*a*) and 29(1) and (4)(*b*) of this Act, to vote on any matter at a meeting of creditors in respect of which the claim is submitted; and

(*b*) to payment of a dividend in respect of the claim out of the debtor's estate so far as the estate has funds available to make that payment having regard to section 48 of this Act.

(2) For the purpose of voting under any provision of this Act, the value of the vote of any creditor shall be calculated as a fraction equal to the proportion which the amount of his accepted claim bears to the aggregate of the amounts of the accepted claims of all the creditors present and entitled to vote.

(3) Any reference in this Act to a majority, or a specified fraction, in value of the creditors is a reference to a majority, or a specified fraction, in value of the votes of the creditors calculated in accordance with subsection (2) above.

Clause 47

Subsection (1)

This subsection sets out the effect of acceptance of a claim for voting purposes (that is, acceptance under clause 46(1)) and for ranking purposes (that is, acceptance under clause 46(2)).

Subsections (2) and (3)

These subsections relate to the calculation of the value of the creditors' votes and should be read with paragraph 13 of Schedule 5 to the Bill. In the absence of provision to the contrary, all questions at meetings of creditors are determined by a majority in number and value of the creditors present and entitled to vote (not a majority in value only, as under present law—1913 Act, section 96).

Distribution of debtor's estate

Order of priority in distribution.

48.—(1) The funds of the debtor's estate shall be distributed by the permanent trustee to meet the following debts in the order in which they are mentioned—

(*a*) the outlays and remuneration of the interim trustee in the administration of the debtor's estate;

(*b*) the outlays and remuneration of the permanent trustee in the administration of the debtor's estate;

(*c*) where the debtor is a deceased debtor, deathbed and funeral expenses reasonably incurred and expenses reasonably incurred in administering the deceased's estate;

(*d*) the expenses reasonably incurred by a creditor who is a petitioner, or concurs in the petition, for sequestration;

(*e*) preferred debts (excluding any interest which has accrued thereon to the date of sequestration);

(*f*) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other paragraph of this subsection;

(*g*) interest at the rate of 8 per cent. or such other rate as may be prescribed on—

(i) the preferred debts;
(ii) the ordinary debts.

between the state of sequestration and the date of payment of the debt;

(*h*) any postponed debt.

Clause 48

Introduction

This clause sets out the order of distribution of the bankrupt's estate for payment (in whole or in part) of the competing claims upon it. There are some areas of uncertainty in this respect in the present law: for instance, it is not entirely clear from section 118 of the 1913 Act whether the common law preference for deathbed and funeral expenses takes precedence over the preferred debts enumerated in that section. For a full discussion of these matters see paragraphs 18.5 to 18.13.

Subsection (1)

The subsection sets out the order for distribution of the bankrupt's estate, that is, the estate available after the satisfaction of secured claims.

(2) In this Act "preferred debts" means—

(*a*) any wages or salary of any person in respect of his employment by the debtor during the 4 months immediately preceding the date of sequestration or, in the case of a deceased debtor, the date of his death, such preferred debt not exceeding £800 or such sum as may be prescribed to any one person;

(*b*) any advance made by a person for the purpose of, and used for, the payment of any such wages or salary as aforesaid payable in respect of such period as is mentioned in paragraph (*a*) above but only to the extent by which the preferred debt under the said paragraph has been diminished by reason of such payment; or

(*c*) any accrued holiday pay which under a person's contract of employment with the debtor would in the ordinary course have become payable to him in respect of the period of a holiday if his employment by the debtor had continued until he became entitled to a holiday;

and in paragraphs (*a*) and (*b*) above "wages or salary" includes any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause.

(3) In this Act "postponed debt" means—

(*a*) a loan made to the debtor or a share of the profits in his business which is postponed to the claims of other creditors under section 3 of the Partnership Act 1890;

1890 c. 39

(*b*) any money lent or entrusted to the debtor by the debtor's spouse which at the date of sequestration is inmixed with the debtor's funds, unless it can be shown by a contract in writing signed by both spouses that the money was so lent or entrusted,

(*c*) anything vesting in the permanent trustee by virtue of a successful challenge under section 33 of this Act or the proceeds of sale of such a thing.

(4) Any debt falling within any of paragraphs (*c*) to (*h*) of subsection (1) above shall have 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 to be paid in full, they shall abate in equal proportions.

(5) Any surplus remaining, after all the debts mentioned in this section have been paid in full, shall be made over the debtor or to his successors or assignees; and in this subsection "surplus" includes any kind of estate but does not include any unclaimed dividend.

Subsection (2)

The preferred debts, which are numerous under present law, are effectively reduced to two in number, that is, (*a*) wages or salary and related remuneration payable to employees, and (*b*) advances made for the purpose of payment of wages or salary. For a full discussion of the topic of preferred debts, see Chapter 15.

Subsection (3)

See paragraphs 11.14 to 11.16 and paragraphs 15.28 to 15.31 for a discussion of the categories of postponed debts.

Subsection (4)

This subsection reproduces section 118(2) of the 1913 Act.

Subsection (5)

This subsection reproduces section 155 of the 1913 Act but, in addition, makes clear that the bankrupt does not acquire any right to an unclaimed dividend. See also paragraph 20.21.

(6) Nothing in this section shall affect the right of a secured creditor which is preferable to the rights of the permanent trustee.

(7) The following debts shall no longer be accorded priority over other debts in the distribution of a debtor's estate—

(*a*) income tax, capital gains tax and corporation tax;
(*b*) development land tax;
(*c*) value added tax;
(*d*) car tax;
(*e*) general betting duty, gaming licence duty, bingo duty and gaming machine licence duty;
(*f*) social security contributions;
(*g*) local rates;
(*h*) contributions to occupational pension schemes;
(*i*) any sum due by an officer of a friendly society to a friendly society on his bankruptcy within the meaning of section 59 of the Friendly Societies Act 1974;

1974 c. 46

and accordingly the enactments which conferred the priority on those debts shall cease to have effect.

Subsection (7)

The repealed enactments are specified in Schedule 7.

Estate to be distributed in respect of accounting periods

49.—(1) Subject to subsection (6) below, the permanent trustee, until the funds of the estate are exhausted, shall make up accounts of his intromissions with the debtor's estate in respect of periods of 26 weeks, the first such period commencing with the date of sequestration.

(2) In this Act "accounting period" shall be construed in accordance with subsection (1) above and subsection (6) below.

(3) Subject to the following provisions of this section, the permanent trustee shall, if the funds of the debtor's estate are sufficient and after making allowance for future contingencies, pay a dividend out of the estate to the creditors in respect of each accounting period.

(4) The permanent trustee may pay—

(*a*) the debts mentioned in subsection (1)(*a*) to (*d*) of section 48 of this Act, other than his own remuneration, at any time;

(*b*) the preferred debts at any time with the consent of the commissioners (if any).

(5) If the permanent trustee is not ready to pay a dividend in respect of an accounting period, he may be authorised by the commissioners or, if there are no commissioners, the Accountant in Bankruptcy, to postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(6) Where the permanent trustee and the commissioners (if any) consider that it would be expedient to do so, the permanent trustee may accelerate payment of a dividend other than a dividend in respect of the first accounting period; and the accounting period shall be shortened accordingly and the next accounting period shall run from the end of that shortened period.

Clause 49

Introduction

Under present law the trustee makes up his accounts in respect of periods which are four months in length in the case of the first two periods and (if any estate still remains) three months in length thereafter. The claims submitted by creditors are examined and accepted or rejected by the trustee within the period of 14 days after the end of an accounting period, and every creditor is notified by letter of the acceptance or rejection of his claim. There is provision for appeals and for the trustee making up a scheme of division of the funds and paying dividends to the creditors in accordance with the scheme. The whole procedure is set out in sections 121 to 129 of the 1913 Act. The essential difference between the procedure of the 1913 Act and the scheme of the Bill is that the accounting periods are lengthened to 26 weeks and the procedure of adjudicating upon claims is done before the end of an accounting period. Accordingly, the trustee will know the extent of the claims upon the estate at the end of an accounting period and will be in a position to prepare a scheme of division at the same time as he prepares his accounts for submission to the commissioners. For a full discussion of the proposals see paragraph 18.14 *et seq.*

Subsection (1)

See Introduction and paragraph 18.16.

Subsection (3)

Where funds are available for payment of a dividend the trustee will already have examined and rejected or accepted every claim submitted to him (see clause 46(2)).

Subsection (4)

This subsection reproduces section 118(3A) of the 1913 Act.

Subsections (5) and (6)

These subsections relate to the acceleration and postponement of dividends. The effect is broadly the same as that of sections 130 and 131 of the 1913 Act except that (*a*) the consent of the Accountant in Bankruptcy to acceleration of a dividend is not required, (*b*) there can be no acceleration of the payment of the first dividend, and (*c*) where there are no commissioners, the Accountant may authorise postponement of payment of a dividend. Section 132 of the 1913 Act becomes redundant and is not re-enacted in the draft Bill.

(7) Where an appeal is taken under section 46(6)(*b*) of this Act against the acceptance or rejection of a creditor's claim, the permanent trustee shall, at the time of payment of dividends, set aside a suitable amount in respect of that claim until the appeal is determined.

(8) Where a creditor—

(*a*) has failed to produce evidence in support of his claim earlier than 8 weeks before the end of an accounting period on being required by the permanent trustee to do so under section 45(5) of this Act; and

(*b*) has given a reason for such failure which is acceptable to the permanent trustee,

the permanent trustee shall set aside a suitable amount for him in respect of that period for a reasonable time to enable him to produce that evidence or any other evidence that will enable the permanent trustee to be satisfied under the said section 45(5).

(9) Where a creditor submits a claim to the permanent 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 contingencies, funds are available for the payment of a dividend, the permanent trustee shall, if he accepts the claim in whole or in part, pay to the creditor—

(*a*) the same dividend or dividends as has or 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 him in respect of the said subsequent accounting period:

Provided that paragraph (*a*) above shall be without prejudice to any dividend which has already been paid.

Subsections (7) and (8)

These subsections reproduce existing law—1913 Act, sections 126 and 46 respectively.

Subsection (9)

This subsection reproduces the proviso to section 119 but states its probable intended effect more clearly—see paragraph 18.23.

Procedure after end of accounting period.

50.—(1) Within 2 weeks after the end of an accounting period, the permanent trustee shall in respect of that period submit to the commissioners or, if there are no commissioners, or the permanent trustee is a person who was deemed to be elected under section 24(4) of this Act and it appears to the permanent trustee that the funds of the debtor's estate are insufficient to meet the amount of his outlays and remuneration, to the Accountant in Bankruptcy—

(*a*) his accounts of his intromissions with the debtor's estate for audit and, where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and

(*b*) a claim for the outlays reasonably incurred by him and for his remuneration;

and, where the said documents are submitted to the commissioners, he shall send a copy of them to the Accountant in Bankruptcy.

(2) All accounts for law business incurred by the permanent trustee shall, before payment thereof by him, be submitted for taxation to the auditor of court of the sheriff before whom the sequestration is pending:
Provided that the permanent trustee may be authorised by the Accountant in Bankruptcy to pay any such account without taxation.

(3) Within 6 weeks after the end of an accounting period—

(*a*) the commissioners or, as the case may be, the Accountant in Bankruptcy shall—

(i) audit the accounts; and

(ii) issue a determination fixing the amount of the outlays and the remuneration payable to the permanent trustee;

and sub-paragraph (2) of paragraph 5 of Schedule 2 to this Act shall apply where the Accountant in Bankruptcy fixes the amount of the outlays and remuneration payable to a permanent trustee who is a person who was deemed to be elected under section 24(4) of this Act as it applies for the purposes of sub-paragraph (1)(*b*) of the said paragraph 5; and

(*b*) the permanent trustee shall make the audited accounts, scheme of division and the said determination available for inspection by the debtor and the creditors.

Clause 50

Subsection (1)

The permanent trustee will generally submit his accounts for audit and his claim in respect of his outlays and remuneration to the commissioners, where there are commissioners. Where there are no commissioners, the trustee submits his accounts and claim to the Accountant in Bankruptcy. But he also submits his accounts and claim to the Accountant in any case where he is deemed to be elected to the office of permanent trustee (see clause 24(4)) and the funds of the bankrupt's estate are or are likely to be insufficient to satisfy his claim for outlays and remuneration. (Any such case is likely to be rare because the interim trustee should identify any small assets case before the statutory meeting of creditors—see clause 20).

Subsection (2)

This is to the same effect as section 154 of the 1913 Act except that the proviso is new. See paragraph 20.20.

Subsection (3)

The maximum permitted period for the auditing of the accounts and the fixing of the amount of the trustee's outlays and remuneration is four weeks. The audited accounts etc are to be made available for inspection by the debtor and the creditors.

(4) The basis for fixing the amount of the remuneration payable to the permanent trustee shall be a commission calculated by reference to the value of the debtor's estate which has been realised by the permanent trustee, but there may also be taken into account both the work carried out by him and the extent of his responsibilities in administering the debtor's estate.

(5) In fixing the amount of such remuneration in respect of the final accounting period, the commissioners or, as the case may be, the Accountant in Bankruptcy may take into account any adjustment which the commissioners or the Accountant in Bankruptcy may wish to make in the amount of the remuneration fixed in respect of any earlier accounting period.

(6) Not later than 8 weeks after the end of an accounting period, the permanent trustee, the debtor or any creditor may appeal against a determination issued under subsection (3)(*a*)(ii) above—

(*a*) where it is a determination of the commissioners, to the Accountant in Bankruptcy; and

(*b*) where it is a determination of the Accountant in Bankruptcy, to the sheriff;

and the determination of the Accountant in Bankruptcy under paragraph (*a*) above shall be appealable to the sheriff.

(7) On the expiry of the period within which an appeal may be taken under subsection (6) above or, as the case may be, on conclusion of the appeal, the permanent trustee shall pay to the creditors their dividends in accordance with the scheme of division.

(8) Any dividend—

(*a*) allocated to a creditor which is not cashed or uplifted; or

(*b*) dependent on a claim which is not ready for payment,

shall be deposited by the permanent trustee in an appropriate bank or institution.

(9) If a creditor's claim is revalued, the permanent trustee may—

(*a*) in paying any dividend to that creditor, make such adjustment to it as he considers necessary to take account of that revaluation; or,

(*b*) require the creditor to repay to him the whole or part of a dividend already paid to him.

(10) The permanent trustee shall insert in the sederunt book, the audited accounts, the scheme of division and the final determination in relation to the permanent trustee's outlays and remuneration.

Subsections (4) and (5)

These subsections provide guidelines for the calculation of the trustee's remuneration—see paragraphs 20.2 to 20.9 for a discussion of existing practice.

Subsection (6)

The appeal procedure is slightly different from existing law—see section 122 of 1913 Act and paragraph 20.7.

Subsection (8)

For further provision as to unclaimed dividends see clauses 56(1)(*a*) and (*b*) and 57.

Subsection (9)

This provision is new. See paragraph 18.25.

Discharge of debtor

Accelerated discharge.

51.—(1) The debtor may, not earlier than one year after the date of sequestration, petition the sheriff for his discharge.

(2) A petitioner under this section shall lodge in court a declaration—

(*a*) that he has made a full and fair surrender of his estate and a full disclosure of all claims which he is entitled to make against other persons; and

(*b*) that he has delivered to the interim or permanent trustee every document under his control relating to his estate or his business or financial affairs.

(3) The sheriff, on a petition being presented to him under this section, shall—

(*a*) fix a date for a hearing not earlier than 28 days after the date of the presentation of the petition; and

(*b*) order the petitioner forthwith to publish in the Edinburgh Gazette a notice stating that he has applied for his discharge and to send a copy of the notice to every creditor known to him and to the permanent trustee or, if he has been discharged, to the Accountant in Bankruptcy.

(4) The permanent trustee or, if he has been discharged, the Accountant in Bankruptcy shall, not later than 7 days before the date fixed under subsection (3)(*a*) above, lodge in court a report upon the debtor's assets and liabilities, his financial and business affairs and his conduct in relation thereto and upon the sequestration and his conduct in the course of it.

(5) At the hearing the debtor, any creditor or the permanent trustee (if not discharged) may make representations.

(6) The sheriff, after having regard to the whole circumstances of the case including the report lodged under subsection (4) above, may grant or refuse to grant the debtor a discharge.

(7) The debtor or any creditor may appeal against the determination of the sheriff under subsection (6) above within 14 days after the determination is issued.

Clause 51

Subsection (1)

See paragraphs 19.21 and 19.22. The subsection would enable a debtor to present a petition for his discharge at any time after the lapse of one year from the date of sequestration. No consent of creditors is required (*cf.* section 143 of 1913 Act).

Subsection (2)

At present under section 144 of the 1913 Act, the debtor makes a declaration or an oath broadly to the same effect, but not till the court has found that he is entitled to his discharge. It is considered more appropriate that such a declaration should be submitted to the sheriff at the commencement of the proceedings for discharge.

Subsections (3) and (4)

The direction in subsection (3) that the hearing must be not earlier than 28 days after presentation of the petition is intended to allow sufficient time for the preparation of the report under subsection (4).

Subsection (6)

The sheriff would not be bound to refuse discharge by reason of the failure of the debtor's estate to yield a dividend of not less than a specified amount or by reason of the responsibility of the debtor for his insolvency, or even by reason of his misconduct in the course of the sequestration. These matters would merely be factors to be taken into account by the sheriff when considering the petition. (*Cf.* section 146 of 1913 Act).

(8) The clerk of the court shall send—

(*a*) a certified copy of a determination of the sheriff under subsection (6) above or, as the case may be, following an appeal under subsection (7) above, granting discharge, to the keeper of the register of inhibitions and adjudications for recording in that register; and

(*b*) a copy of such a determination to—

(i) the Accountant in Bankruptcy; and

(ii) the permanent trustee (if not discharged) for insertion in the sederunt book.

Subsection (8)

The bankrupt's *acquirenda* between the date of the sequestration and the date of his discharge vest in the trustee. After the discharge of the bankrupt any *acquirenda* (*eg.* heritable propoerty bequeathed to him) would belong to him. Registration of the discharge in the register of inhibitions and adjudications will disclose this position to persons inspecting the register.

Reduction of accelerated discharge.

52.—(1) Without prejudice to any rule of law relating to the reduction of court decrees, the Court of Session on the application of any creditor may reduce a determination under section 51 of this Act discharging the debtor where it is satisfied that a payment was made or a preference granted or that a payment or preference was promised for the purpose of facilitating the obtaining of the debtor's discharge.

(2) The Court may, whether or not it pronounces a decree of reduction under this section, order a creditor who has received a payment or preference in connection with the debtor's discharge to surrender the payment or the value of the preference to the debtor's estate.

(3) Where the permanent trustee has been discharged, the Court may, on pronouncing a decree of reduction under this section, appoint a judicial factor to administer the debtor's estate, and give the judicial factor such order as it thinks fit as to that administration.

(4) The clerk of court shall send a copy of a decree of reduction under this section or an order under subsection (2) above to the permanent trustee or judicial factor for insertion in the sederunt book.

Clause 52

This clause makes provision for the reduction of the debtor's accelerated discharge and for recovery of any payment made to any person where there has been a design to obtain a fraudulent discharge for the debtor. Cases could conceivably arise where, although such a payment had been made, the debtor himself was innocent of fraud. Recovery of a payment may therefore be ordered notwithstanding that the discharge of the debtor is not reduced. The clause is related to, but rather different from, the provision in sections 150 and 151 of the 1913 Act.

Automatic discharge after 5 years.

53.—(1) Subject to section 51 of this Act and the following provisions of this section, the debtor shall be discharged on the expiry of 5 years from the date of sequestration.

(2) Every debtor who has been discharged by virtue of subsection (1) above may apply to the Accountant in Bankruptcy for a certificate that he has been so discharged; and the Accountant in Bankruptcy, if satisfied of such discharge and on payment to him of the prescribed fee, shall grant a certificate of discharge in the prescribed form.

(3) The permanent trustee or any creditor may not later than 4 years and 9 months after the date of sequestration apply to the sheriff for a deferment of the debtor's discharge by virtue of subsection (1) above.

(4) On an application being made to him under subsection (3) above, the sheriff shall order—

(*a*) the applicant to serve the application on the debtor and (if he is not himself the applicant and is not discharged) the permanent trustee; and

(*b*) the debtor to lodge in court a declaration to the same effect as is mentioned in section 51(2) of this Act;

and, if the debtor fails to lodge such a declaration in court within 14 days of being required to do so, the sheriff shall defer his discharge without a hearing for a period not exceeding 2 years.

(5) If the debtor lodges the declaration in court within the said period of 14 days, the sheriff shall—

(*a*) fix a date for a hearing not earlier than 28 days after the date of the lodging of the declaration; and

(*b*) order the applicant to notify the debtor and the permanent trustee or (if he has been discharged) the Accountant in Bankruptcy of the date of the hearing;

and subsection (4) of section 51 of this Act shall apply in relation to the date fixed under paragraph (*a*) above as it applies to the date fixed under subsection (3)(*a*) of that section.

Clause 53

This clause gives effect to one of the major alterations recommended in the Report. The debtor will be discharged by operation of law on the expiry of five years from the date of the sequestration, unless the permanent trustee or any creditor has made a successful application to the sheriff for an order deferring such discharge (see paragraphs 19.13 to 19.20).

Subsection (1)

See paragraphs 19.13 and 19.14. Clause 51 relates to accelerated discharge. The "following provisions" are subsections (3) to (9), which deal with deferment of the discharge under subsection (1).

Subsection (2)

See paragraph 19.15.

Subsection (3)

See paragraph 19.16. The period of 3 months is to permit of the disposal of any application for deferment before the expiry of 5 years from the date of sequestration.

Subsection (4)

See paragraph 19.16. The permanent trustee will not necessarily remain in office until the debtor is discharged. As soon as the permanent trustee has made a final division of the estate, he may apply for a discharge (see clause 56).

Subsection (5)

See paragraph 19.17. For the report by the trustee or Accountant in Bankruptcy see the notes on clause 51(4).

(6) After considering at the hearing any representations made by the applicant, the debtor or any creditor, the sheriff shall make an order either deferring the discharge for such period not exceeding 2 years as he thinks appropriate or dismissing the application:

Provided that the applicant or the debtor may appeal against an order under this subsection within 14 days after its issue.

(7) Where the discharge is deferred under subsection (6) above, the clerk of the court shall send—

(*a*) a certified copy of the order of the sheriff deferring discharge to the keeper of the register of inhibitions and adjudications for recording in that register; and

(*b*) a copy of such order to—

(i) the Accountant in Bankruptcy; and

(ii) the permanent trustee (if not discharged) for insertion in the sederunt book.

(8) Notwithstanding that an application has been made under subsection (3) above or that discharge has been deferred under subsection (6) above, the sheriff may grant a discharge under section 51 of this Act either before or after the expiry of 5 years from the date of sequestration.

(9) The permanent 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; and subsections (4) to (8) above shall apply in relation to that further deferment.

(10) Where, before the commencement of this Act, a debtor's estate has been sequestrated but he has not been discharged, the debtor shall be discharged on the expiry of—

(*a*) 2 years after the commencement of this Act; or

(*b*) 5 years after the date of sequestration,

whichever expires later:

Provided that, not later than 3 months before the date on which the debtor is due to be discharged under this subsection, the permanent trustee or any creditor may apply to the sheriff for a deferment of that discharge; and subsections (4) to (8) above shall apply in relation to that deferment.

Subsection (6)

See paragraph 19.17. Where there is a deferment of a discharge it would be undesirable to make the period of deferment lengthy. Two years is selected as the maximum period of deferment.

Subsection (7)

See paragraph 19.18. The registration of the order of the sheriff in the register of inhibitions and adjudications is necessary because, in the absence of registration of the order, it would appear that the debtor had been discharged on the expiry of five years from the date of sequestration.

Subsection (8)

This provision is designed to preserve the debtor's right to petition for an accelerated discharge (paragraph 19.18). The continuing right to petition for accelerated discharge exists independently of the debtor's right to appeal against any deferment of the discharge granted by the sheriff.

Subsection (9)

Applications for further deferment of the discharge are competent—see paragraph 19.18.

Subsection (10)

See paragraph 19.19. This is a transitional provision for cases where a debtor's estate has been sequestrated before the coming into force of the new scheme but the debtor has not received his discharge. An application for deferment of the discharge by operation of law would also be competent in relation to any such case.

Effect of discharge under ss. 51 and 53.

54.—(1) Subject to subsection (2) below, on the debtor's discharge under section 51 of this Act or by virtue of section 53 of this Act, the debtor shall be discharged within the United Kingdom of all debts and obligations contracted by him, or for which he was liable, at the date of sequestration.

(2) The debtor shall not be discharged by virtue of subsection (1) above from—

(*a*) any liability to pay a fine or other penalty due to the Crown;

(*b*) any liability to forfeiture of a sum of money deposited in court under section 1(3) of the Bail etc. (Scotland) Act 1980;

(*c*) any liability incurred by reason of fraud or breach of trust;

(*d*) any obligation to pay aliment or any sum of an alimentary nature under any enactment or rule of law or any periodical allowance payable on divorce by virtue of a court order or under an obligation, not being aliment or a periodical allowance which could be included in the amount of a creditor's claim under paragraph 2 of Schedule 1 to this Act;

(*e*) the obligation imposed on him by section 62 of this Act.

Clause 54

Subsection (1)

See paragraph 19.23.

Subsection (2)

Subsection (2) does not give the present complete exemption for Crown debts, but retains in paragraphs (*a*) and (*b*) exemptions for sums due in respect of fines or penalties or deposited on bail (paragraph 19.23). For paragraph (*c*) see paragraph 19.24. Paragraph (*d*) implements the proposal in paragraph 16.41.

Discharge on composition

55. Schedule 3 to this Act shall have effect in relation to an offer of composition by or on behalf of the debtor to the permanent trustee in respect of his debts and his discharge and the discharge of the permanent trustee where the offer is approved.

Clause 55

Schedule 3 provides a simpler system than that available under sections 134 to 142 of the 1913 Act for the consideration of offers of composition and their approval by the court. See paragraphs 19.26 to 19.38.

Discharge of permanent trustee

Discharge of permanent trustee

56.—(1) After the permanent trustee has made a final division of the debtor's estate and has inserted his final audited accounts in the sederunt book, he–

(*a*) shall deposit any unclaimed dividends and any unapplied balances in an appropriate bank or institution;

(*b*) shall thereafter send to the Accountant in Bankruptcy the sederunt book, a copy of the audited accounts and a receipt for the deposit of the unclaimed dividends and unapplied balances; and

(*c*) may at the same time as sending the said documents apply to the Accountant in Bankruptcy for a certificate of discharge.

(2) The permanent trustee shall send notice of an application under subsection (1)(*c*) above to the debtor and take reasonable steps to notify the creditors of the application and inform the debtor and the creditors—

(*a*) that they may make written representations relating to the application to the Accountant in Bankruptcy within a period of 14 days after such notification; and

(*b*) that the sederunt book is available for inspection at the office of the Accountant in Bankruptcy.

(3) On the expiry of the period mentioned in subsection (2)(*a*) above, the Accountant in Bankruptcy, after examining the documents sent to him and any representations duly made to him, shall grant or refuse to grant the certificate of discharge.

(4) The permanent trustee, the debtor or any creditor may, within 14 days after the issuing of the determination under subsection (3) above, appeal therefrom to the sheriff; and the sheriff clerk shall send a copy of the decree of the sheriff to the Accountant in Bankruptcy.

(5) The grant of a certificate of discharge either by the Accountant in Bankruptcy or following appeal shall have the effect of discharging the permanent 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 permanent trustee in exercising the functions conferred on him by this Act.

(6) Where a certificate of discharge is granted, the sheriff clerk shall deliver up to the permanent trustee his bond of caution.

Clause 56

This clause implements the recommendation that it should no longer be necessary for the trustee to apply to the court for his discharge and empowers the Accountant in Bankruptcy, subject to rights of appeal, to grant a discharge to the permanent trustee (paragraphs 20.15 and 20.16). The clause also explicitly states the effect of the trustee's discharge (paragraphs 20.17 and 20.18).

Subsection (1)

Subsection (1)(*c*), along with subsection (3), gives effect to the recommendation mentioned above. Subsection (1)(*a*) makes new provision as regards the deposit of sums by the trustee—see paragraph 20.16.

Subsection (2)

See paragraph 20.16.

Subsection (3)

The effect of the recommendation will be that the Accountant in Bankruptcy will act in a quasi-judicial capacity in relation to the permanent trustee's discharge (paragraph 20.16).

Subsection (5)

The effects of a discharge under existing law are expressly stated in this subsection.

Subsection (6)

See paragraph 20.16. The bond of caution is the bond lodged under clause 25(6).

(7) Where a certificate of discharge is granted, the Accountant in Bankruptcy shall make an appropriate entry in the register of insolvencies and in the sederunt book.

(8) Where—

(*a*) the permanent trustee has distributed the debtor's estate under Schedule 2 to this Act; or

(*b*) the permanent trustee has died, resigned office or been removed from office,

the provisions of this section shall, subject to any necessary modifications, apply in relation to that permanent trustee or, if he has died, to his executor as they apply to a permanent trustee who has made a final division of the debtor's estate in accordance with the foregoing provisions of this Act.

Subsection (7)

See paragraph 20.16.

Subsection (8)

The present position regarding the discharge of the trustee in any of the circumstances mentioned in paragraph (*b*) is not clear (paragraph 20.19). Express provision is now made to cover these circumstances and the case mentioned in paragraph (*a*), that is, where the permanent trustee has completed his duties in a small assets case under Schedule 2. The position where the permanent trustee's duties have terminated in consequence of a composition contract is dealt with separately in Schedule 3.

Unclaimed dividends.

57.—(1) Any person, producing evidence of his right, may apply to the Accountant in Bankruptcy to receive a dividend deposited under section 56(1)(*a*) of this Act, if the application is made not later than 7 years after the date of such deposit.

(2) If the Accountant in Bankruptcy is satisfied of the applicant's right to the dividend, he shall authorise the appropriate bank or institution to pay to the applicant the sum deposited therein and any interest which has accrued thereon.

(3) The Accountant in Bankruptcy shall, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 56(1)(*a*) of this Act, hand over the deposit receipt or other voucher relating to such dividend or balance to the Secretary of State, who shall thereupon obtain payment of the amount due, principal and interest, from the bank or institution in which the deposit was made.

Clause 57

See paragraph 20.21. The seven year period is the same as in the 1913 Act (section 153(2) and (3)).

Voluntary trust deeds for creditors

Voluntary trust deeds for creditors.

58. Schedule 4 to this Act shall have effect in relation to trust deeds executed after the commencement of this Act.

Clause 58

Schedule 4 to the Bill introduces rules that are made applicable to all trust deeds. It also accords certain advantages to trust deeds complying with specified conditions—"protected" trust deeds. For further explanations see Chapter 24 and the notes on Schedule 4.

Liabilities and rights of co-obligants.

59.—(1) Where a creditor has an obligant bound to him along with the debtor ("the co-obligant") for the whole or part of the debt, the co-obligant shall not be freed from his liability for the debt by virtue of the creditor's voting or drawing a dividend or assenting to the discharge of the debtor or to any composition.

(2) Where—

(*a*) a creditor has had a claim accepted in whole or in part; and

(*b*) a co-obligant holds a security over any part of the debtor's estate,

the co-obligant shall account to the permanent trustee so as to put the estate in the same position as if the co-obligant had paid the debt to the creditor and thereafter had had his claim accepted in whole or in part in the sequestration after deduction of the value of the security.

(3) Without prejudice to any right under any rule of law of a co-obligant who has paid the debt, the co-obligant may require and obtain at his own expense from the creditor an assignation of the debt on payment of the amount thereof, and thereafter may in respect of that debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(4) In this section a "co-obligant" includes a cautioner.

Clause 59

Clause 59 is principally concerned with the inter-relationship of sequestration and the common law rules relating to the effect of a creditor's actings upon the position of an obligant who is liable along with the debtor to the creditor. The provisions reproduce the substance of section 52 and the proviso to section 61 of the 1913 Act. The proviso deals with a matter of unusual complexity, which is discussed in paragraph 16.28.

Sederunt book and other documents

60.—(1) The sederunt book shall be available for inspection at all reasonable hours by any interested person.

(2) Any entry in the sederunt book shall be sufficient evidence of the facts stated therein, except where it is founded on by the permanent trustee in his own interest.

(3) Notwithstanding any provision of this Act, the permanent trustee shall not be bound to insert in the sederunt book any document of a confidential nature.

(4) The permanent trustee shall not be bound to exhibit to any person other than a commissioner or the Accountant in Bankruptcy any document in his possession of a confidential nature.

(5) An extract from the register of insolvencies or the register of sequestrations bearing to be signed by the Accountant in Bankruptcy shall be sufficient evidence of the facts stated therein.

Clause 60

Subsection (1)

See paragraph 10.33. The sederunt book is to be "available for inspection at all reasonable hours" (*cf.* section 80 of 1913 Act).

Subsection (2)

This is a statement of the present case law (paragraph 10.33).

Subsection (3)

It would be inappropriate to include in the sederunt book (which is patent to any interested person) a document of a confidential nature, such as counsel's opinion on any matter affecting the interest of a creditor (see 1913 Act, section 80 and paragraph 10.33).

Subsection (4)

See 1913 Act, section 80 and paragraph 10.33.

Subsection (5)

This provision is new.

Power to cure defects in procedure.

61.—(1) The sheriff may, on the application of any person having an interest—

(*a*) if there has been a failure to comply with any requirement of this Act or any regulations made under it, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position he would have been in but for the failure;

(*b*) if for any reason the sequestration has become dormant or if any act to enable the sequestration to proceed cannot be taken, make such order as may be necessary to revive the sequestration or to enable it to proceed.

(2) The sheriff, in an order under paragraph (*a*) or (*b*) of subsection (1) above, may impose such conditions, including conditions as to expenses, as he thinks fit and may—

(*a*) authorise or dispense with the performance of any act in the sequestration process;

(*b*) appoint as permanent trustee on the debtor's estate a person who would be eligible to be elected under section 24 of this Act, whether or not in place of an existing trustee;

(*c*) extend or waive any time limit specified in or under this Act.

(3) An application under subsection (1) above—

(a) may at any time be remitted by the sheriff to the Court of Session, of his own accord or on an application by any person having an interest;

(*b*) shall be so remitted, if so directed by the Court of Session on an application by any such person,

if the sheriff or the Court of Session, as the case may be, considers that the remit is desirable because of the importance or complexity of the matters raised by the application.

(4) The permanent trustee shall insert in the sederunt book the decision of the sheriff or the Court of Session under this section.

Clause 61

This is a new provision designed to provide a more informal and less expensive remedy for procedural defects than recourse to the *nobile officium* of the Court of Session—which will, of course, remain available for an appropriate case (see paragraphs 7.41 to 7.47).

(5) This section shall apply in a case where before the commencement of this Act sequestration of a debtor's estate has been awarded under the Bankruptcy (Scotland) Act 1913 but the debtor has not yet been discharged, subject to the following modifications—

(*a*) in subsections (1)(*a*) and (2)(*c*) for the words "this Act" there shall be substituted the words "the Bankruptcy (Scotland) Act 1913";

(*b*) in subsections (2)(*b*) and (4) the word "permanent" shall be omitted:

(*c*) in subsection (2)(*b*) for the words "24 of this Act" there shall be substituted the words "64 of the Bankruptcy (Scotland) Act 1913".

Subsection (5)

The new provision is applied to sequestrations which are already in existence when the new legislation comes into force.

Debtor to co-operate with permanent trustee.

62.—(1) The debtor shall take every practicable step, and in particular shall execute any document, which may be necessary to enable the permanent trustee to perform the functions conferred on him by this Act.

(2) If the sheriff, on the application of the permanent trustee, is satisfied that the debtor has failed—

(*a*) to execute any document in compliance with subsection (1) above, he may authorise the sheriff clerk to do so; and the execution of a document by the sheriff clerk under this paragraph shall have the like force and effect in all respects as if the document had been executed by the debtor,

(*b*) to comply in any other respect with subsection (1) above, he may order the debtor to do so.

(3) If the debtor fails to comply with an order of the sheriff under subsection (2) above, he shall be guilty of an offence.

(4) In this section "debtor" includes a debtor discharged under this Act.

Clause 62

See paragraphs 10.5 and 19.24.

Subsection (2)

This subsection is new.

Subsection (4)

The debtor's obligation to co-operate with the permanent trustee continues after the former's discharge.

Arbitration and compromise.

63.—(1) The permanent trustee may, with the consent of the commissioners (if any)—

(*a*) refer to arbitration any claim or question of whatever nature which may arise 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;

and the decree arbitral or compromise shall be binding on the creditors and the debtor.

(2) Where any claim or question is referred to arbitration under this section, the Accountant in Bankruptcy may vary any time limit in respect of which any procedure under this Act has to be carried out.

(3) The permanent trustee shall insert a decree arbitral or compromise as aforesaid in the sederunt book.

Clause 63

Subsection (1)

For subsection (1) generally, see paragraphs 4.30 and 10.9 and section 172 of the 1913 Act. The consent of commissioners is also required under clause 38(2) in relation to litigation by the trustee.

Subsection (2)

This provision is designed to avoid unnecessary recourse to the sheriff under clause 61.

Meetings of creditors and commissioners.

64.—Part I of Schedule 5 to this Act shall have effect in relation to meetings of creditors other than the statutory meeting; Part II of that Schedule shall have effect in relation to all meetings of creditors under this Act; and Part III of that Schedule shall have effect in relation to meetings of commissioners.

Clause 64

For an explanation of the provisions of Schedule 5 to the Bill, see the notes on the paragraphs of that Schedule.

General offences by debtor etc.

65.—(1) A debtor who during the relevant period makes a false statement in relation to his assets or his business or financial affairs to any creditor or to any person concerned in the administration of his estate shall be guilty of an offence, unless he shows that he neither knew nor had reason to believe that his statement was false.

(2) A debtor, or other person acting in his interest whether with or without his authority, who during the relevant period destroys, damages, conceals or removes from Scotland any part of the debtor's estate or any document relating to his assets or his business or financial affairs shall be guilty of an offence, unless the debtor or other person shows that he did not do so with intent to prejudice the creditors.

(3) A debtor who is absent from Scotland and who after the date of sequestration of his estate fails, when required by the court, to come to Scotland for any purpose connected with the administration of his estate, shall be guilty of an offence.

(4) A debtor, or other person acting in his interest whether with or without his authority, who during the relevant period falsifies any document relating to the debtor's assets or his business or financial affairs, shall be guilty of an offence, unless the debtor or other person shows that he had no intention to mislead the permanent trustee, a commissioner or any creditor.

(5) If a debtor whose estate is sequestrated—

(*a*) knows that a person has falsified any document relating to the debtor's assets or his business or financial affairs; and

(*b*) fails, within one month of the date of acquiring such knowledge, to report his knowledge to the interim or permanent trustee,

he shall be guilty of an offence.

(6) A person who is absolutely insolvent and who during the relevant period transfers anything to another person for an inadequate consideration or grants any unfair preference to any of his creditors, and any person who during the relevant period solicits such transfer or preference, shall be guilty of an offence, unless the transferor or grantor or the person so soliciting shows that he did not do so with intent to prejudice the creditors.

Clause 65

Introduction

This clause would replace section 178 of the 1913 Act as the main offence—creating provision of bankruptcy legislation. Some of the offences created by the clause are not radically different from those in section 178, although there are differences of detail and certain of the offences in section 178 are omitted or are found not in clause 65 but elsewhere in the Bill. Thus, the counterpart of the offence created by section 178(A)(1) (failure by a bankrupt to disclose fully and truthfully the state of his affairs) is found in clause 19(2) of the Bill. The defects of section 178 are discussed in paragraph 23.7. See also paragraphs 23.9 to 23.11.

Subsection (1)

There is no precise equivalent to the offence in the 1913 Act. The "relevant period" is the period from one year before the date of sequestration to the date of the debtor's discharge (see subsection (9)).

Subsection (2)

Cf. section 178(A)(3). The offence created by the subsection is wider, *e.g.* it includes removal of property from Scotland, and the offence may be committed by some person other than the debtor. The offence may also be committed during the year (as opposed to four months) before sequestration. The reference in section 178(A)(3) to the debtor being "privy to" the commission of an offence has been omitted as this is considered to be a matter for the general criminal law relating to art and part.

Subsection (3)

Cf. latter part of section 178(B)(4). The provision in the subsection is in different terms to accord with the scheme of the Bill *e.g.* there is no mandatory public examination under the new scheme.

Subsection (4)

Cf. section 178(A)(4).

Subsection (5)

The offence created by the subsection is different from that provided for in section 178(B)(1), the counterpart of that provision being clause 22(5)(*b*).

Subsection (6)

Cf. section 178(B)(5). The new provision clearly creates an offence in relation to both gifts and preferences and also makes it an offence to solicit a gift or preference.

(7) A debtor who is engaged in trade or business shall be guilty of an offence if—

(*a*) within the year immediately preceding the date of sequestration of his estate, he pledges or disposes of, otherwise than in the ordinary course of his trade or business, any property which he has obtained on credit and has not paid for unless he shows that he did not intend to prejudice his creditors;

(*b*) at any time within the 3 years immediately preceding the date of sequestration, he has failed to keep or preserve such records as are necessary to give a fair view of the state of his assets or his business and financial affairs and to explain his transactions, unless he shows that such failure was neither reckless nor dishonest.

(8) If a debtor, being a debtor whose estate has been sequestrated or who has been adjudged bankrupt in England or Wales or Northern Ireland and who has not received his discharge, obtains credit from any person which causes the debtor's liabilities, apart from his liabilities under the sequestration or the adjudication, to exceed £100 or such other sum as may be prescribed, he shall be guilty of an offence, unless he shows that before obtaining such credit he informed the person that he had not received his discharge.

(9) 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 his discharge.

Subsection (7)

Cf. section 178(A)(5) and (6).

Subsection (8)

This subsection re-creates the offence in section 182 of the 1913 Act. The offence under the subsection may, however, be committed by an English as well as by a Scottish bankrupt (see *Kaye* v. *HM Advocate* 1957 S.L.T. 357).

The offence of illegally obtaining credit is prosecuted more frequently than any other bankruptcy offence. The limit of the amount that can be obtained on credit without disclosure of the bankruptcy (at present £50) is increased to £100. The limit may be increased from time to time by regulations made by the Secretary of State.

Legal proceedings and penalties.

66.—(1) Summary proceedings for an offence under this Act may be commenced at any time within the period of 6 months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge.

(2) Subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975 (date of commencement of summary proceedings) shall have effect for the purposes of subsection (1) above as it has effect for the purposes of that section.

(3) For the purposes of subsection (1) above, a certificate of the Lord Advocate as to the date on which the evidence in question came to his knowledge is conclusive evidence of the date on which it did so.

(4) A person guilty of an offence under this Act shall be liable—

(*a*) on summary conviction—

(i) subject to sub-paragraph (ii) below, to imprisonment for a term not exceeding 3 months,

(ii) if he has previously been convicted of an offence inferring dishonest appropriation of property or an attempt thereat, to imprisonment for a term not exceeding 6 months;

(*b*) on conviction on indictment—

(i) in the sheriff court, to imprisonment for a term not exceeding 3 years,

(ii) in the High Court of Justiciary, to imprisonment for a term not exceeding 5 years.

Clause 66

Subsection (1)

Summary proceedings for prosecution of a statutory offence must be commenced within six months after the offence was committed, unless there is express provision to the contrary (Criminal Procedure (Scotland) Act 1975, section 331(1)). As a result, the prosecution of an offence under the Act of 1913 may often be time-barred before the suspected offence is discovered. The subsection provides an appropriate remedy.

Subsection (2)

The date of commencement of summary proceedings is the date on which a warrant to apprehend or to cite the accused is granted, provided that it is executed without undue delay.

Subsection (4)

The subsection refers only to imprisonment as the punishment where a person is convicted of an offence under the proposed legislation. Sections 193 and 394 of the Criminal Procedure (Scotland) Act 1975 provide, however, that where there is a prosecution of a statutory offence punishable by imprisonment the court has the power to substitute a fine. The maximum amount of the fine in a summary prosecution is £100.

Regulations.

67.—Any power to make regulations under this Act shall be exercisable by statutory instrument and any statutory instrument made under section 5(4), 40(2) or 48(2) of, or paragraph 6 of Schedule 5 to, this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Clause 67

Regulations under the legislation are made by the Secretary of State.

Interpretation.

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

"accounting period" has the meaning assigned by section 49 of this Act;

"appropriate bank or institution" means a bank or institution mentioned in section 2(1) of the Banking Act 1979 or for the time being specified in Schedule 1 to that Act;

"the court" means the Court of Session or the sheriff;

"the date of sequestration" has the meaning assigned by section 12(4) of this Act;

"debtor" includes a deceased debtor or, as the context requires, an executor or a person entitled to be appointed as executor;

"debtor's estate" includes a deceased debtor's estate;

"ordinary debts" means the debts specified in section 48(1)(*f*) of this Act;

"a person who has a family or business relationship" with the debtor or the permanent trustee means a person who in relation to the debtor or the permanent trustee—

(*a*) is the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister (whether of the full blood or the half-blood or by affinity) and "child" includes an illegitimate child and the wife or husband of an illegitimate child; or

(*b*) is a partner, employer or employee or a person otherwise standing in a position of trust or confidence in relation to his business or financial affairs;

"postponed debt" has the meaning assigned by section 48(3) of this Act;

"preferred debts" has the meaning assigned by section 48(2) of this Act;

"prescribed" means prescribed by regulations made by the Secretary of State;

"protected trust deed" has the meaning assigned by paragraph 8 of Schedule 4 to this Act;

"relevant person" has the meaning assigned by section 41(1) of this Act;

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

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

"statutory meeting" has the meaning assigned by section 21(2) of this Act;

"trust deed" has the meaning assigned by section 5(2)(*c*) of this Act.

Clause 68

Subsection (1)

None of the definitions calls for special comment. The wide definition of "security" is the same as in section 2 of the 1913 Act and is designed to cover any security or preference (*e.g.* the preference of an arrester or poinder).

(2) Any reference in this Act to a debtor being absolutely insolvent shall be construed as a reference to his liabilities being greater than his assets, and any reference to a debtor's estate being absolutely insolvent shall be construed accordingly.

Amendments, repeals and transitional provisions.

69.—(1) Part I of Schedule 6 to this Act shall have effect for the purpose of amending the Companies Act 1948, being amendments consequential on, or otherwise relating to, the other provisions of this Act.

(2) Part II of that Schedule shall have effect for the purpose of making a general adaptation of enactments and documents, being an adaptation which is consequential on the provisions of this Act.

(3) The enactments mentioned in Part III of that Schedule shall have effect subject to the amendments respectively specified in that Schedule, being amendments consequential on the provisions of this Act.

(4) The enactments set out in Schedule 7 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(5) Where before the commencement of this Act a petition for the sequestration of the estate of a living debtor, or any such entity as is mentioned in section 6(1) of this Act, has been presented under the Bankruptcy (Scotland) Act 1913 but sequestration has not yet been awarded, the sequestration process shall continue as if the petition for sequestration had been presented under this Act, except that sequestration shall be awarded only if it could have been competently awarded under the said Act of 1913.

(6) Subject to sections 53(10) and 61(5) of this Act, nothing in this Act shall apply in relation to—

(*a*) a living debtor, or any such entity as is mentioned in section 6(1) of this Act, in respect of whose estate an award of sequestration has been granted before the commencement of this Act; or

(*b*) a debtor who has died before such commencement.

(7) A creditor may found in a petition for sequestration under this Act on apparent insolvency constituted before the commencement of this Act but only if the circumstance constituting apparent insolvency would also have constituted notour bankruptcy.

Clause 69

Subsections (1) to (3)

See the notes on the paragraphs of Schedule 6 for an explanation of the adaptation and amendment of documents and enactments.

Subsections (5) to (7)

These subsections deal with transitional cases. In particular, the sequestration of the estate of any person who dies before the new legislation comes into force will proceed under the 1913 Act even where the petition for sequestration is presented after the new legislation is in force.

Short title, commencement and extent.

70.—(1) This Act may be cited as the Bankruptcy (Scotland) Act 1981.

(2) This Act shall come into force on the expiry of the period of 6 months beginning with the date on which it is passed.

(3) This Act, except the provisions mentioned in subsection (4) below, extends to Scotland only.

(4) The provisions referred to in subsection (3) above are sections 8(5), 17(5), 22(8) (including that subsection as applied by section 45(6)), 30, 37, 43 and 54, and paragraph 13(*b*) of Schedule 3, paragraph 3(2) of Schedule 4 and paragraph 1 of Schedule 6 so far as it relates to the barring of the effect of a statute of limitations.

SCHEDULES

SCHEDULE 1

Sections 5(5), 22(8) and 45(7).

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 shall be entitled to claim shall be the accumulated sum of principal and any interest on the debt to the date of sequestration.

(2) If a debt does not depend on a contingency but would not be payable but for the sequestration until after the date of sequestration, the amount of the claim shall be calculated as if the debt were payable on the date of sequestration but subject to the deduction of interest at the rate of 8 per cent, or such other rate as may be prescribed, from the said date until the date for payment of the debt.

(3) In calculating the amount of his claim, a creditor shall deduct any discount (other than any discount for payment in cash) which is allowable by the contract or course of dealing between the creditor and the debtor or by the usage of trade.

Claims for aliment and periodical allowances on divorce

2.—(1) A person entitled to aliment, however arising, from a living debtor as at the date of sequestration, or a deceased debtor immediately before his death, shall not be entitled to include in the amount of his claim—

(*a*) any unpaid aliment for any period before the date of sequestration unless the amount of the aliment has been quantified by court decree or by any legally binding obligation which is supported by evidence in writing, and, in the case of spouses, the spouses were living apart during that period;

(*b*) any aliment for any period after the date of sequestration.

(2) This paragraph shall apply to a periodical allowance payable on divorce—

(*a*) by virtue of a court order; or

(*b*) under any legally binding obligation which is supported by evidence in writing;

as it applies to aliment.

Schedule 1

The Schedule makes provision for the determination of the amount which a creditor can claim, broadly on the lines of sections 48, 49, 51, 61 and 62 of the 1913 Act but with some significant alterations and additions, which will be explained below.

Paragraph 1

This paragraph reproduces section 48 of the 1913 Act but attempts to make the position clearer as regards the deduction of interest on a debt that is not payable till after the date of sequestration. The provision as regards the rate of interest is new.

Paragraph 2

The provisions of paragraph 2 have no counterpart in the 1913 Act. The extent of the entitlement of alimentary creditors to claim in a sequestration is not free from doubt, and paragraph 2 attempts to clarify the position as regards both aliment and periodical allowance payable on divorce *e.g.* under an order made under section 5 of the Divorce (Scotland) Act 1976. See paragraphs 16.34 to 16.41 for a discussion of the position. See also clause 54(2)(*d*), which makes clear that obligations to pay future aliment (*i.e.* accruing after the date of sequestration) are not affected by a bankrupt's discharge.

Debts depending on contingency

3.—(1) Subject to sub-paragraph (2) below, the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.

(2) On an application by the creditor—

(*a*) to the permanent trustee; or

(*b*) if there is no permanent trustee, to the sheriff,

the permanent trustee or sheriff shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more, and a cautioner may not then be sued for more than that value.

Debts due under composition contracts

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

Paragraph 3

This paragraph reproduces in simplified form the essence of sections 49 and 51 of the 1913 Act. The separate provision for the valuation of annuities contained in section 50 is omitted as no longer necessary, because of an expansion that has been made in the provision for the valuation of debts that are dependent on a contingency (see paragraph 16.13). Future instalments of an annuity payable over a fixed period are a future debt rather than one depending upon a contingency and can be valued accordingly.

Paragraph 4

This provision is again new. It is explained in paragraph 19.38.

Secured debts

5.—(1) In calculating the amount of his claim, a secured creditor shall deduct the value of any security as estimated by him:

Provided that if he surrenders, or undertakes in writing to surrender, a security for the benefit of the debtor's estate, he shall not be required to make a deduction of the value of that security.

(2) The permanent trustee may, at any time after the expiry of 12 weeks from the date of sequestration, require a secured creditor at the expense of the debtor's estate to discharge the security or convey or assign it to the permanent trustee on payment to the creditor of the value specified by the creditor; and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of his debt remaining after receipt of such payment.

(3) In calculating the amount of his claim, a creditor whose security has been realised shall deduct the amount (less the expenses of realisation) which he has received, or is entitled to receive, from the realisation.

Valuation of claims against partners for firm debts

6.—Where a creditor claims in respect of a firm debt against the estate of a partner of the firm, the creditor shall put a value on—

(*a*) the debt due to him from the firm's estate where that estate has not been sequestrated; or

(*b*) his claim against that estate where it has been sequestrated,

and deduct that value from his claim against the partner's estate; and the amount in respect of which he shall be entitled to claim on the partner's estate shall be the balance remaining after that deduction has been made.

Paragraph 5

Sub-paragraph (1)

This sub-paragraph reproduces the first provision in section 61 of the 1913 Act. The proviso is new.

Sub-paragraph (2)

This sub-paragraph reproduces with a modification the remaining part of section 61 other than the proviso. The period of 12 weeks referred to in the sub-paragraph is designed to afford a creditor adequate time for an accurate valuation of his security and to render unnecessary the complicated provision in section 58 of the 1913 Act.

Paragraph 6

Unlike section 62 of the 1913 Act, the valuation of the claim on the partnership estate will be done by the creditor. If the trustee on the individual partner's estate is dissatisfied with the creditor's valuation, he can take this into account when considering whether or to what extent to accept or reject under clause 46(2) the creditor's claim on the partner's estate.

Section 23(4)

SCHEDULE 2

SMALL ASSETS PROCEDURE

1.—(1) The interim trustee shall forthwith make a report of the proceedings at the statutory meeting to the sheriff.

(2) The sheriff shall thereupon declare the interim trustee to be the permanent trustee and the sheriff clerk shall issue to him an act and warrant in the prescribed form; and the trustee shall not be required to find caution for the performance of his duties.

2.—The trustee shall forthwith after the act and warrant is issued to him take possession of the debtor's estate so far as vesting in him under sections 30 and 31 of this Act and shall realise it.

3.—The trustee shall not, except with the consent of the Accountant in Bankruptcy—

(*a*) exercise any power conferred on him by section 38(2) of this Act; or

(*b*) apply to the sheriff for a warrant under section 41 or 42 of this Act for the examination of the debtor or any other person.

4.—The trustee shall as soon as possible submit to the Accountant in Bankruptcy—

(*a*) his accounts of his intromissions (if any) with the debtor's estate, both as interim trustee and as permanent trustee, for audit; and

(*b*) a claim for the outlays reasonably incurred by him and for his remuneration both as interim trustee and as permanent trustee.

Schedule 2

Introduction

The procedure of summary sequestration in sections 174 to 176 of the 1913 Act is discarded, and Schedule 2 provides a simplified procedure for dealing with cases where it is unlikely that the debtor's assets will be sufficient to pay any dividend to creditors of any class (see clauses 20(1) and 23(4)). The Schedule creates a procedure for the disposal of any such case with a minimum of formality and expense. Where the interim trustee is satisfied that a case is a small assets case and remains so satisfied at the statutory meeting of creditors, Schedule 2 applies.

Paragraph 1

Caution, which is normally required to be found by a permanent trustee, is dispensed with as inappropriate for a small assets case (see paragraphs 7.29 and 7.33).

Paragraph 2

See paragraph 7.34.

Paragraph 3

The trustee will require the consent of the Accountant in Bankruptcy to the carrying on of the debtor's business, bringing, defending or continuing any legal proceedings relating to the estate, creating a security over any part of the estate and exercising powers which the debtor (except for the sequestration) might have exercised for his own benefit. See paragraph 7.32.

Paragraph 4

See paragraph 7.34.

5.—(1) The Accountant in Bankruptcy shall—

(*a*) audit the accounts; and

(*b*) issue a determination fixing the amount of the outlays and remuneration payable to the trustee.

(2) Where the funds of the debtor's estate are insufficient to meet the amount of the outlays and remuneration of the trustee—

(*a*) that amount to the extent of the insufficiency shall be met out of money provided by Parliament; and

(*b*) the Accountant in Bankruptcy in his determination under sub-paragraph (1)(*b*) above shall specify the respective sums to be met out of the debtor's estate and out of such money.

6.—The trustee shall make the audited accounts and the said determination available for inspection by the debtor and the creditors.

7.—The trustee, the debtor or any creditor may appeal to the sheriff against the determination issued under paragraph 5(1)(*b*) of this Schedule within 14 days after it was issued.

8.—On the expiry of the period within which an appeal may be taken under paragraph 7 of this Schedule or, as the case may be, on conclusion of the appeal, the permanent trustee shall distribute the debtor's estate in accordance with section 48 of this Act.

Paragraph 5

See paragraphs 4.15 and 7.35.

Paragraphs 6 to 8

See paragraph 7.36. Clause 48 (see paragraph 8) deals with the order of distribution of the estate. After the distribution of the estate the trustee's formal duties under the small assets procedure are at an end, and it would be open to the debtor to apply for his discharge under clause 51 or to await his discharge by operation of law under clause 53. The trustee might also apply for his discharge under clause 56.

Section 55

SCHEDULE 3

DISCHARGE ON COMPOSITION

1.—(1) At any time after the sheriff clerk issues the act and warrant to the permanent trustee, an offer of composition may be made by or on behalf of the debtor in respect of his debts to the permanent trustee.

(2) Any offer of composition shall specify caution or other security to be provided for its implementation.

2.—The permanent trustee shall submit an offer made under paragraph 1 of this Schedule along with a report thereon to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy.

3.—The commissioners (unanimously if more than one) or the Accountant in Bankruptcy, as the case may be—

(*a*) if reasonably assured that the offer of composition will be timeously implemented and that, if the rules set out in section 48 of, and Schedule 1 to, this Act were applicable, its implementation would secure payment of a dividend of at least 25p in the £ in respect of the ordinary debts; and

(*b*) if satisfied with the caution or other security specified in the offer;

shall recommend that the offer should be placed before the creditors.

Schedule 3

Schedule 3 makes provision for discharge on composition. It replaces sections 134 to 142 of the 1913 Act. Little use is made of these sections (see paragraph 19.27), perhaps because bankrupts are seldom in a position to make a satisfactory offer of composition to their creditors but perhaps also because of the cumbersome nature of the procedure under existing law. It involves at least two meetings of creditors in addition to the judicial procedure for approval of the composition and discharge of the bankrupt and trustee. The scheme set out in Schedule 3 (which is self-explanatory) is designed to reduce to some extent the procedure attendant upon an offer of composition.

4.—Where a recommendation is made that the offer should be placed before the creditors, the permanent trustee shall—

(*a*) intimate the recommendation to the debtor and record it in the sederunt book;

(*b*) publish in the Edinburgh Gazette a notice stating that an offer of composition has been made and where its terms may be inspected;

(*c*) invite every creditor known to him to accept or reject the offer by completing a prescribed form sent by the permanent trustee with the invitation and returning the completed form to him; and

(*d*) send along with the prescribed form a report—

(i) summarising the offer and the present state of the debtor's affairs and the progress in realising his estate; and

(ii) estimating, if the offer is accepted, the expenses to be met in concluding the sequestration proceedings and the dividend which would be payable in respect of the ordinary debts if the rules set out in section 48 of, and Schedule 1 to, this Act were applied.

5.—(1) The permanent trustee shall determine from the completed prescribed forms duly received by him that the offer of composition has been accepted by the creditors, if a majority in number and not less than two-thirds in value of the creditors known to him have accepted it, and otherwise shall determine that they have rejected it.

(2) For the purposes of this paragraph, a prescribed form shall be deemed to be duly received by the permanent trustee if it is received by him not later than 14 days after the date on which it was sent to the creditor.

(3) The permanent trustee shall intimate in writing his determination under this paragraph to the debtor and any other person by whom the offer of composition was made and shall insert his determination in the sederunt book.

6.—Where the permanent trustee determines that the creditors have accepted the offer of composition, he shall submit to the sheriff—

(*a*) a statement that he has so determined;

(*b*) a copy of the report mentioned in paragraph 4(*d*) of this Schedule; and

(*c*) a declaration by the debtor to the same effect as is mentioned in section 51(2) of this Act.

7.—(1) The sheriff shall, on the receipt by him of the documents mentioned in paragraph 6 of this Schedule, fix a date and time for a hearing to consider whether or not to approve the offer of composition.

(2) The permanent trustee shall then send to every creditor known to him a notice in writing stating—

(*a*) that he has determined that the creditors have accepted the offer of composition;

(*b*) that a hearing has been fixed by the sheriff to consider whether or not to approve the offer;

(*c*) the place, date and time of the hearing; and

(*d*) that the recipient of the notice may make representations at the hearing as to whether or not the offer should be approved.

8.—(1) At the hearing the sheriff shall examine the documents and hear any representations and thereafter shall make an order—

(*a*) if he is satisfied that a majority in number and not less than two-thirds in value of the creditors known to the permanent trustee have accepted the offer of composition and that the terms of the offer are reasonable, approving the offer; and

(*b*) if he is not so satisfied, refusing to approve the offer.

(2) The sheriff may make an order approving the offer, notwithstanding that there has been a failure to comply with any provision of this Schedule.

(3) The debtor or any creditor may appeal against an order approving or refusing to approve the offer of composition within 14 days of the order being issued.

9.—(1) Where the offer of composition is approved, the permanent trustee shall—

(*a*) submit to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy, his accounts of his intromissions with the debtor's estate for audit and a claim for the outlays reasonably incurred by him and for his remuneration; and where the said documents are submitted to the commissioners, he shall send a copy of them to the Accountant in Bankruptcy;

(*b*) ensure that the interim trustee (where he is a different person) has submitted, or submits, to the Accountant in Bankruptcy his accounts and his claim for his outlays and remuneration.

(2) Subsections (3), (4), (6) and (10) of section 50 of this Act shall apply, subject to any necessary modifications, in respect of the accounts and claim submitted under sub-paragraph (1)(*a*) above as they apply in respect of the accounts and claim submitted under section 50(1) of this Act.

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

(*a*) by the permanent trustee, a declaration that all necessary charges in connection with the sequestration have been paid or provided for to the satisfaction of the persons concerned;

(*b*) by or on behalf of the debtor, the bond of caution or other security for payment of the composition.

11.—Once the documents have been lodged under paragraph 10 of this Schedule, the sheriff shall make an order discharging the debtor and the permanent trustee; and subsection (8) of section 51 of this Act shall apply in relation to an order under this paragraph as it applies in relation to a determination under subsection (6) of that section.

12.—(1) An order under paragraph 11 of this Schedule discharging the permanent trustee shall have the effect of discharging him from all liability (other than any liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of the permanent trustee in exercising the functions conferred on him by this Act.

(2) On an order discharging the permanent trustee being made, the sheriff clerk shall deliver up to him his bond of caution.

13.—Notwithstanding that an offer of composition has been made, the sequestration shall proceed as if no such offer has been made until the discharge of the debtor becomes effective; and the sequestration shall thereupon cease.

14.—A creditor who has not submitted a claim under section 45 of this Act before the sheriff makes an order approving an offer of composition shall not be entitled to make any demand against a person offering the composition on behalf of the debtor or against a cautioner in the offer; but this paragraph is without prejudice to any right of such a creditor to a dividend out of the debtor's estate equal to the dividend which creditors of the same class are entitled to receive under the composition.

15.—A debtor may make two, but no more than two, offers of composition in the course of a sequestration.

16.—On an order under paragraph 11 of this Schedule discharging the debtor becoming effective—

(*a*) the debtor shall be re-invested in his estate as existing at the date of the order;

(*b*) the debtor shall, subject to paragraph 14 of this Schedule, be discharged of all the debts for which he was liable at the date of sequestration (other than any debts mentioned in section 54(2) of this Act); and

(*c*) the claims of creditors in the sequestration shall be converted into claims for their respective shares in the composition.

17.—(1) Without prejudice to any rule of law relating to the reduction of court decrees, the Court of Session, on the application of any creditor, may recall the orders of the sheriff approving the offer of composition and discharging the debtor and the permanent trustee where it is satisfied—

(*a*) that there has been, or is likely to be, default in payment of the composition or of any instalment thereof; or

(*b*) that for any reason the composition cannot be proceeded with or cannot be proceeded with without undue delay or without injustice to the creditors.

(2) The effect of a decree of recall under this paragraph where the debtor has already been discharged shall be to revive the sequestration:

Provided that the revival of the sequestration shall not affect the validity of any transaction which has been entered into by the debtor since his discharge with a person who has given value and has acted in good faith.

(3) Subsections (3) and (4) of section 52 of this Act shall apply in relation to a decree of recall under this paragraph as they apply in relation to a decree of reduction under that section.

18.—Section 52 of this Act shall apply for the purpose of reducing an order discharging the debtor under paragraph 11 of this Schedule as it applies for the purpose of reducing a determination under section 51 of this Act.

Section 58

SCHEDULE 4

VOLUNTARY TRUST DEEDS FOR CREDITORS

Remuneration of trustee

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

Registration of notice of inhibition

2.—(1) The trustee, at any time after the trust deed has been delivered to him, may cause a notice in the prescribed form to be recorded in the register of inhibitions and adjudications; and such recording shall have the same effect as the recording in that register of letters of inhibition against the debtor.

(2) The trustee, at any time after the debtor's estate has been finally distributed among his creditors or the trust deed has otherwise ceased to be operative, may cause to be so recorded a notice in the prescribed form recalling the notice recorded under sub-paragraph (1) above.

Lodging of claim to interrupt prescription and bar effect of statute of limitations

3.—(1) In section 9(1) of the Prescription and Limitation (Scotland) Act 1973 (definition of relevant claim) at the end of paragraph (*b*) there shall be inserted

"or

(*c*) by a creditor to the trustee acting under a trust deed as defined in section 5(2)(*c*) of the Bankruptcy (Scotland) Act 1981;".

(2) The submission of a claim by a creditor to the trustee acting under a trust deed shall bar the effect of any statute of limitations in the United Kingdom.

Schedule 4

Introduction

Paragraphs 1 to 4 of the Schedule contain provisions applicable to all trust deeds for creditors, whereas paragraph 5 relates only to the conditions that must be fulfilled for a trust deed to qualify as a "protected" trust deed. A protected trust deed has a measure of protection from being superseded by sequestration (see paragraph 7 of the Schedule) and non-acceding creditors have no higher right to recover their debts than acceding creditors (see paragraph 6 of the Schedule). The trustee under a protected trust deed is empowered to challenge gratuitous alienations and unfair preferences both under statute and at common law (see clauses 33 and 35). The trustee under a protected trust deed may also apply for recall of an order for payment of a capital sum on divorce (see clause 34).

Paragraph 1

This provision replaces section 185 of the 1913 Act. It applies to every trust deed, whereas section 185 applies only where a trust deed does not provide for the audit of the trustee's accounts and for the fixing of his remuneration (see paragraph 24.17).

Paragraph 2

See paragraph 24.19.

Paragraph 3

The lodging of a claim with the trustee under a trust deed does not under the present law interrupt prescription. The paragraph provides that the lodging of a claim will both interrupt prescription and have a similar effect upon any statutory limitation to which the claim may be subject (see paragraph 24.20).

Valuation of claims

4.—Unless the trust deed otherwise provides, Schedule 1 to this Act shall apply in relation to a trust deed as it applies in relation to a sequestration but subject to the following modifications—

(*a*) in paragraphs 1, 2 and 5 for the word "sequestration" wherever it occurs there shall be substituted the words "granting of the trust deed";

(*b*) in paragraph 3(2) for the words from the beginning of paragraph (*a*) to "or sheriff" there shall be substituted the words "the trustee";

(*c*) paragraph 4 shall be omitted;

(*d*) in paragraph 5(2) for the references to the permanent trustee there shall be substituted references to the trustee.

Protected trust deeds

5.—Paragraphs 6 and 7 of this Schedule shall apply in respect of a trust deed if—

(*a*) the trustee is a person who would not be ineligible under any of paragraphs (*a*) to (*d*) of section 24(2) of this Act from being elected as permanent trustee if the debtor's estate were being sequestrated;

(*b*) the trustee, forthwith after the trust deed has been delivered to him, publishes a notice in the prescribed form in the Edinburgh Gazette—

(i) stating that the trust deed has been granted by the debtor; and

(ii) inviting creditors, in order that paragraphs 6 and 7 of this Schedule may apply, to accede to the trust deed within 4 weeks of the date on which the notice is so published;

(*c*) within the said period of 4 weeks a majority in number and not less than two-thirds in value of the creditors accede to the trust deed; and

(*d*) the trustee immediately after the expiry of the said period sends to the Accountant in Bankruptcy for registration in the register of insolvencies a copy of the trust deed with a certificate endorsed thereon that it is a true copy and that the accession of creditors as required by sub-paragraph (*c*) above has been obtained.

Paragraph 4

See paragraph 24.21. The statutory rules for the determination of the amount that a creditor can claim will not apply where a trust deed makes express provision that is at variance with them.

Paragraph 5

This paragraph specifies the requirements necessary for a trust deed to become a protected trust deed. Those requirements are discussed in paragraphs 24.22 to 24.26.

6.—Where the provisions of paragraph 5 of this Schedule have been fulfilled, then—

(*a*) subject to paragraph 7 of this Schedule, a creditor who has not acceded to the trust deed shall have no higher right to recover his debt than a creditor who has so acceded; and

(*b*) the debtor may not petition for the sequestration of his estate while the trust deed subsists.

7.—(1) A qualified creditor who has not acceded to the trust deed may present a petition for sequestration of the debtor's estate—

(*a*) not later than 6 weeks after the date of publication of the notice under paragraph 5(*b*) of this Schedule; but

(*b*) subject to section 8(1)(*b*) of this Act, at any time if he avers that the provision for distribution of the estate is or is likely to be unfairly prejudicial to a creditor or class of creditors.

(2) The court may award sequestration in pursuance of sub-paragraph (1)(*a*) above if it considers that to do so would be in the best interests of the creditors.

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

8.—In this Act a trust deed to which paragraphs 6 and 7 of this Schedule apply is referred to as a "protected trust deed".

Paragraph 6

See paragraphs 24.32 and 24.33 for an explanation of the effects of the provision in paragraph 6(*a*). The provision in paragraph 6(*b*) is explained in paragraph 24.28.

Paragraph 7

See paragraph 24.27. One of the major disadvantages of a trust deed under existing law is that it may at any time be superseded by sequestration on a petition at the instance of a non-acceding creditor. A non-acceding creditor's right to apply for sequestration will be greatly limited where the trust deed has become a protected trust deed.

Section 64

SCHEDULE 5

MEETINGS OF CREDITORS AND COMMISSIONERS

Part I

Meetings of creditors other than the statutory meeting

Calling of meeting

1.—The permanent trustee shall call a meeting of creditors if required to do so by—

(*a*) order of the court;

(*b*) one-tenth in number and value of the creditors;

(*c*) a commissioner; or

(*d*) the Accountant in Bankruptcy.

2.—A meeting called under paragraph 1 above shall be held not later than 28 days after the issuing of the order of the court under sub-paragraph (*a*) of that paragraph or the receipt by the permanent trustee of the requirement under sub-paragraph (*b*), (*c*) or (*d*) thereof.

3.—The permanent trustee or a commissioner who has given written notice to him may at any time call a meeting of creditors.

4.—The permanent trustee or a commissioner calling a meeting under paragraph 1 or 3 above shall, not less than 7 days before the date fixed for the meeting—

(*a*) take reasonable steps to notify the creditors; and

(*b*) notify the Accountant in Bankruptcy,

of the date, time and place fixed for the holding of the meeting and its purpose.

5.—(1) Where no meeting is called in pursuance of a requirement under paragraph 1 of this Schedule, the Accountant in Bankruptcy may, of his own accord or on the application of any creditor, call a meeting of creditors.

(2) The Accountant in Bankruptcy calling a meeting under this paragraph shall, not less than 7 days before the date fixed for the meeting, take reasonable steps to notify the creditors of the date, time and place fixed for the holding of the meeting and its purpose.

Schedule 5

Clauses 21 to 24 make provision for the calling by the interim trustee of the statutory meeting and for the proceedings at that meeting. These clauses are supplemented by Part II of this Schedule, which applies to all meetings of creditors. Part I of the Schedule makes provision for meetings of creditors other than the statutory meeting. Part III is concerned with meetings of commissioners.

Paragraphs 1 and 3

See paragraphs 7.40 and 10.29. The rule in section 93 of the 1913 Act is modified.

Paragraph 2

The 28 day period corresponds with the period after the date of the award of sequestration within which the statutory meeting under clause 21(1) must be held.

Paragraph 4

The notification procedure is the same as that under clause 21(2) for the statutory meeting and is similar to the provision in section 94 of the 1913 Act.

Paragraph 5

This is designed to confer a residual power on the Accountant in Bankruptcy to call a meeting of creditors. The notification procedure is as in paragraph 4.

6.—It shall not be necessary to notify under paragraph 4 or 5 of this Schedule any creditor whose accepted claim is less than £50 or such sum as may be prescribed, unless the creditor has requested in writing such notification.

Role of permanent trustee at meeting

7.—(1) At the commencement of a meeting, the chairman shall be the permanent trustee who as chairman shall, after carrying out his duty under section 46(1) of this Act, invite the creditors to elect one of their number as chairman in his place and shall preside over the election.

(2) If a chairman is not elected in pursuance of this paragraph, the permanent trustee shall remain the chairman throughout the meeting.

(3) The permanent trustee shall arrange for a record to be made of the proceedings at the meeting and he shall insert the minutes of the meeting in the sederunt book.

Appeals

8.—The permanent trustee, any creditor or other person having an interest may appeal to the sheriff against a resolution of the creditors at a meeting (other than a resolution under section 27(1)(*a*) of this Act) within 14 days after the date of the meeting.

Part II

All meetings of creditors

Validity of proceedings

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

Locus of meeting

10.—Every meeting shall be held in the sheriff court house of the sheriff to whom the petition for sequestration was presented or remitted or at such other place as is, in the opinion of the person calling the meeting, the most convenient for the majority of the creditors.

Paragraph 6

This provision is modelled on section 95 of the 1913 Act. The amount of the debt is increased from £20 to £50.

Paragraph 7

The four duties of initially taking the chair, adjudicating for voting purposes on the claims of creditors, presiding over the election of a chairman and arranging for a record of the proceedings to be made will be carried out by the permanent trustee (*cf.* clause 23).

Paragraph 8

It would be inappropriate to allow appeals against *acceptance* of resignations. See also paragraph 9.23.

Paragraph 9

This provision is new.

Paragraph 10

Meetings of creditors need not be held within the sheriffdom.

Mandatories

11.—(1) A creditor may authorise in writing any person to represent him at a meeting.

(2) A creditor shall lodge an authoritisation given under sub-paragraph (1) above with the interim trustee or, as the case may be, the permanent trustee before the commencement of the meeting.

(3) Any reference in paragraph 7(1) of this Schedule and the following provisions of this Part of this Schedule to a creditor shall include a reference to a person authorised by him under this paragraph.

Quorum

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

Voting at meeting

13.—All questions at any meeting shall be determined by a majority in number and value of the creditors present and entitled to vote.

Objections by creditors

14.—(1) The chairman at any meeting may allow or disallow any objection by a creditor, other than an objection relating to a creditor's claim.

(2) Any person aggrieved by the determination of the chairman in respect of an objection may appeal therefrom to the sheriff.

(3) If the chairman is in doubt whether to allow or disallow an objection, the meeting shall proceed as if no objection had been made, except that for the purposes of appeal the objection shall be deemed to have been disallowed.

Adjournment of meeting

15.—(1) If no creditor has appeared at a meeting at the expiry of a period of half an hour after the time appointed for the commencement of the meeting, the chairman shall adjourn the meeting to such other day as the chairman shall appoint, being not less than 7 nor more than 21 days after the day on which the meeting was adjourned.

(2) The chairman may, with the consent of a majority in number and value of those present at a meeting, adjourn it.

(3) Any adjourned meeting shall be held at the same time and place as the original meeting, unless in the resolution for the adjournment of the meeting another time or place is specified.

Paragraph 13

This principle is of general application throughout the Bill. Decisions are to be made by a majority in number and value of the creditors present and entitled to vote. The present law is that in the absence of provision to the contrary questions will be determined by a majority in value alone of the creditors present and entitled to vote (1913 Act, section 96).

Minutes of meeting

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

Part III

Meetings of Commissioners

17.—The permanent trustee may call a meeting of commissioners at any time, and shall call a meeting of commissioners—

(*a*) on being required to do so by order of the court; or

(*b*) on being requested to do so by the Accountant in Bankruptcy or any commissioner.

18.—If the permanent trustee fails to call a meeting of commissioners within 14 days of being required or requested to do so under paragraph 17 of this Schedule, a commissioner may call a meeting of commissioners.

19.—The permanent trustee shall give the commissioners at least 7 days notice of a meeting called by him, unless the commissioners decide that they do not require such notice.

20.—The permanent trustee shall act as clerk at meetings and shall insert a record of the deliberations of the commissioners in the sederunt book.

21.—If the commissioners are considering the performance of the functions of the permanent trustee under any provision of this Act, he shall withdraw from the meeting if requested to do so by the commissioners; and in such a case a commissioner shall act as clerk and shall transmit a record of the deliberations of the commissioners to the permanent trustee for insertion in the sederunt book.

22.—The quorum at a meeting of commissioners shall be one commissioner and the commissioners may act by a majority of their number.

39

Section 69

SCHEDULE 6

AMENDMENTS

Part I

Amendments of the Companies Act 1948 (c. 48)

1.—In section 318 (ranking of claims in Scotland), for the words from "following provisions" to the end of paragraph (*b*) there shall be substituted the words "following enactments—

(*a*) sections 22(1) to (7) and (9), 23(1) and (2) and 45 (except in so far as it relates to the application of section 22(8)) of, and Schedule 1 to, the Bankruptcy (Scotland) Act 1981 (claims by creditors for voting and payment of dividends);

(*b*) sections 46 and 47 of that Act in so far as they relate to voting;

(*c*) paragraphs 11 and 13 of Schedule 5 to that Act (voting at meetings);

(*d*) section 59 of that Act (liabilities and rights of co-obligants); and

(*e*) sections 8(5) and 22(8) of that Act (including that subsection as applied by section 45(7) of that Act) and section 9(1)(*b*) of the Prescription and Limitation (Scotland) Act 1973 (barring of effect of statute of limitations and interruption of prescription);".

2.—Section 319 (preferential payments), shall have effect subject to the following modifications—

(*a*) paragraphs (*a*), (*c*), (*e*), (*f*) and (*g*) of subsection (1). subsection (3) and in subsection (6), the words from "and in the case" to the end of the subsection shall cease to have effect;

(*b*) in subsection (2) for the words "paragraphs (*b*) and (*c*)" and "those paragraphs respectively" there shall be substituted respectively the words "paragraph (*b*)" and "that paragraph".

Schedule 6

The Schedule is divided into three Parts. Part I amends the provisions of the Companies Act 1948 relating to winding-up. Some of the amendments are necessary in consequence of the repeal of all but a few sections of the 1913 Act, while others are directed at creating or maintaining consistency in areas where the law applicable to sequestrations and that applicable to liquidations should be the same, for example, as regards preferred debts and the challenge of unfair preferences. Part II is principally concerned with making appropriate provision for enactments and documents that refer to notour bankruptcy (which is to be replaced by "apparent insolvency"). Part III deals simply with the amendments of enactments made necessary by the proposed legislation.

3.—In section 320(3) (fraudulent preference), for the words "notour bankruptcy" there shall be substituted the word "sequestration".

4.—After section 321 there shall be inserted the following section—

"Gratuitous alienations

321A (1) Subsection (3) below applies where—

(*a*) by the alienation of a company, whether before or after the commencement of the Bankruptcy (Scotland) Act 1981, a significant part of its estate has been transferred or any claim or right of the company has been discharged or renounced; and

(*b*) the winding up of the company has commenced; and

(*c*) the alienation took place on a relevant day.

(2) For the purposes of paragraph (*c*) of subsection (1) above, the day on which an alienation took place shall be the day on which the alienation became completely effectual; and in that paragraph "relevant day" means a day not earlier than 5 years before the commencement of the winding up of the company.

(3) Where this subsection applies, the alienation shall be challengeable by—

(*a*) any creditor who is a creditor by virtue of a debt incurred on or before the commencement of the winding up of the company; or

(*b*) the liquidator.

(4) Subsections (4), (5) and (7) of section 33 of the Bankruptcy (Scotland) Act 1981 shall apply for the purposes of this section as they apply for the purposes of that section but as if—

(*a*) for any reference to the debtor or deceased debtor there were substituted a reference to the company; and

(*b*) in subsection (7) for the words from the beginning to "1913" there were substituted the words "A liquidator".".

5.—Section 322 (effect of floating charge), shall cease to have effect.

6.—For section 327(1) (effect of diligence within 60 days of winding up Scottish company), there shall be substituted the following subsection—

"(1) In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act 1981—

(*a*) subsections (1) to (5) of section 36 (effect of sequestration on diligence); and

(*b*) subsections (3) and (4) and (8) and (9) of section 38 (realisation of estate);

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a debtor's estate, but as if for any reference to the debtor, sequestration, the date of sequestration and the permanent trustee there were substituted respectively a reference to the company, liquidation, the commencement of the winding up of the company and the liquidator and subject to any other necessary modifications.".

7.—In section 344 (unclaimed dividends etc. in Scotland to be lodged in bank)—

(*a*) for the words "joint stock bank of issue in Scotland" there shall be substituted the words "an appropriate bank or institution as defined in section 68(1) of the Bankruptcy (Scotland) Act 1981";

(*b*) after the word "bank" wherever it occurs there shall be inserted the words "or institution";

(*c*) for the words "one hundred and fifty-three of the Bankruptcy (Scotland) Act 1913" there shall be substituted the words "57 of the Bankruptcy (Scotland) Act 1981".

Part II

General adaptation of enactments and documents

8.—(1) Any reference in any enactment or document to notour bankruptcy, or to a person being notour bankrupt, shall be construed as a reference to apparent insolvency, or to a person being apparently insolvent, within the meaning of section 7 of this Act, but only in relation to any circumstance which arises after the commencement of this Act.

(2) For the purposes of any enactment or document—

(*a*) the apparent insolvency of any person may be constituted; and, without prejudice to the foregoing generality, the apparent insolvency of a partnership may be constituted if any of the partners for a firm debt is apparently insolvent;

(*b*) the apparent insolvency of an unincorporated body may be constituted if a person representing the body is apparently insolvent, or a person holding property of the body in a fiduciary capacity is apparently insolvent, for a debt of the body.

9.—Any reference in any enactment to a trustee in sequestration or to a trustee in bankruptcy shall be construed as a reference to a permanent trustee.

Part III

Consequential amendment of enactments

The Bankruptcy (Scotland) Act 1913 (c. 20)

10.—At the end of section 10 (arrestments and poindings), there shall be added the following subsection—

"(2) For the purposes of this section, a debtor's apparent insolvency may be constituted anew while he is apparently insolvent.".

11.—In section 163 (application for judicial factor on estates of persons deceased), for the words from "and in case" to the end there shall be substituted the words "and, if the deceased's estate is absolutely insolvent within the meaning of section 68(2) of the Bankruptcy (Scotland) Act 1981, section 48 of, and Schedule 1 to, that Act shall apply as if for any reference to the interim trustee or permanent trustee or to the date of sequestration there were substituted respectively a reference to the judicial factor or to the date of his appointment".

12.—In section 183 (application of section 32 of Bankruptcy Act 1883 to Scotland), in subsection (3)(*b*) for the words "from a competent court" there shall be substituted the words "under the Bankruptcy (Scotland) Act 1981".

13.—In section 189 (exemption from stamp duty of deeds etc. relating to estates of bankrupts), after the word "Act" there shall be inserted the words "or the Bankruptcy (Scotland) Act 1981".

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

14.—In section 44(3)(*c*) (limitation of effect of entries in the register of inhibitions and adjudications)—

(*a*) after the words "Bankruptcy (Scotland) Act 1913" there shall be inserted the words "or the Bankruptcy (Scotland) Act 1981";

(*b*) after the words "effect of recording" there shall be inserted "(*a*)" and after the words "as aforesaid" there shall be inserted the words "or (*b*) under section 14(1)(*b*) of the Bankruptcy (Scotland) Act 1981 the certified copy of an order shall have expired,".

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

15.—In section 9(1)(*b*) (definition of relevant claim), for the words from "such" to "that section" there shall be substituted the words "the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 45 of the Bankruptcy (Scotland) Act 1981".

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

16.—In section 121(1) (priority of certain debts on insolvency), for paragraph (*b*) there shall be substituted the following paragraph—

"(*b*) section 48 of the Bankruptcy (Scotland) Act 1981; and".

17.—In section 125(2) (transfer to Secretary of State of rights and remedies), for paragraph (*b*) there shall be substituted the following paragraph—

"(*b*) section 48 of the Bankruptcy (Scotland) Act 1981; and".

Section 69(4)

SCHEDULE 7

REPEALS

Chapter	*Short Title*	*Extent of repeal*
1621 c. 18	The Bankruptcy Act 1621	The whole Act.
1696 c. 5	The Bankruptcy Act 1696	The whole Act.
31 & 32 Vict. c. 101	The Titles to Land Consolidation (Scotland) Act 1868	Section 148.
44 and 45 Vict. c. 21	The Married Women's Property (Scotland) Act 1881	Section 1(4).
3 & 4 Geo. 5 c. 20	The Bankruptcy (Scotland) Act 1913	Section 1 to 9. Sections 11 to 162. Sections 165 to 182. Sections 185 to 187. Section 190. The Schedules.
10 & 11 Geo. 5 c. 64	The Married Women's Property (Scotland) Act 1920	In section 5, the proviso.
14 & 15 Geo. 5 c. 27	The Conveyancing (Scotland) Act 1924	Section 44(4)(*b*).
10 & 11 Geo. 6 c. 47	The Companies Act 1947	Sections 91 and 115.
11 & 12 Geo. 6 c. 38	The Companies Act 1948	In section 319, subsection (1)(*a*), (*c*), (*e*), (*f*) and (*g*), subsection (3) and in subsection (6) the words from "and in the case" to the end of the subsection. Section 322.

Chapter	*Short Title*	*Extent of repeal*
11 & 12 Geo. 6 c. 38		In section 398, the words "whether limited or not" and in paragraph (*d*) the words "registered in England or Northern Ireland". Section 399(9).
11 & 12 Geo. 6 c. 64	The National Service Act 1948	Section 48 as applied to Scotland by section 56.
15 & 16 Geo. 6 & 1 Eliz. 2 c. 33	The Finance Act 1952	Section 30(6) except the words "subsection (3)" to the end.
1965 c. 25	The Finance Act 1965	In Schedule 10, paragraph 15(1).
1966 c. 18	The Finance Act 1966	In Schedule 6, paragraph 14.
1972 c. 25	The Betting and Gaming Duties Act 1972	In Schedule 1, paragraph 14. In Schedule 2, paragraph 11. In Schedule 3, paragraph 16.
1972 c. 41	The Finance Act 1972	Section 41. In Schedule 7, paragraph 18.
1973 c. 65	The Local Government (Scotland) Act 1973	In section 31(2)(*b*), the words "from a court in Scotland".
1974 c. 46	The Friendly Societies Act 1974	In section 59, in subsection (1)(*a*) the words "or bankruptcy", in subsection (2) the words "or trustee in bankruptcy" and subsections (3) and (4).

Chapter	*Short Title*	*Extent of repeal*
1975 c. 14	The Social Security Act 1975	Section 153. Schedule 18.
1975 c. 60	The Social Security Pensions Act 1975	Section 58. Schedule 3. In Schedule 4, the entries relating to the Bankruptcy (Scotland) Act 1913 and the Companies Act 1948.
1976 c. 24	The Development Land Tax Act 1976	Section 42.
1976 c. 40	The Finance Act 1976	Section 22.
1976 c. 60	The Insolvency Act 1976	In section 5, subsections (3) and (4). Schedule 1 so far as relating to the Bankruptcy (Scotland) Act 1913 and section 319(2) of the Companies Act 1948.
1980 c. 55	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980	Section 12. In section 14(1)(*a*), the words "14 or".

Printed in Scotland for Her Majesty's Stationery Office by Bell and Bain Ltd., Glasgow

Dd 630532/4166 C16 1/82